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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0070; Airspace Docket No. 23–ASO–01]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Beaufort, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Beaufort Marine Corps Air Station (MCAF)/Merritt Field, Beaufort, SC, by updating the airport's geographic coordinates. This action also updates the name of Beaufort Executive Airport (formerly Beaufort County Airport) and removes unnecessary verbiage from the Class E airspace extending upward from 700 feet above the surface. In addition, this action makes the editorial changes replacing the term Notice to Airmen with Notice to Air Missions and replacing the term Airport/Facility Directory with Chart Supplement. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it updates airspace descriptions. This update is an administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class D and Class E airspace are published in paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends the Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Beaufort Marine Corps Air Station (MCAF)/Merritt Field, Beaufort, SC, by updating the airport's geographic coordinates. This action also updates the name of Beaufort Executive Airport (formerly Beaufort County Airport). It removes unnecessary verbiage, referring

to Hilton Head Island, from the Class E airspace extending upward from 700 feet above the surface, as it is unnecessary. In addition, this action makes the editorial changes replacing the term Notice to Airmen with Notice to Air Missions and replacing the term Airport/Facility Directory with Chart Supplement. This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.6-mile radius of Beaufort MCAS/Merritt Field, excluding that airspace within a 1-mile radius of the Beaufort Executive Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO SC E2 Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from the surface within a 5.6-mile radius of Beaufort MCAS/Merritt Field, excluding that airspace within a 1-mile radius of the Beaufort Executive Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO SC E5 Beaufort, SC [Amended]

Beaufort MCAS/Merritt Field, SC
(Lat. 32°28'50" N, long. 80°43'09" W)
Beaufort Executive Airport
(Lat. 32°24'44" N, long. 80°38'04" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Beaufort MCAS/Merritt Field and a 6.5-mile radius of Beaufort Executive Airport.

Issued in College Park, Georgia, on May 2, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–10187 Filed 5–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[FAA–2018–0432]

Notice of Final Policy and Procedures on the Temporary Closure of Airports for Nonaeronautical Purposes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This notice announces the Final Policy and procedures for an airport sponsor requesting approval of the temporary closure of a federally obligated airport for a nonaeronautical purpose. Under federal law, the Secretary of Transportation may approve a project grant application for an airport development project only if the Secretary receives written assurances that a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary. Airport operators that have accepted Federal financial assistance are obligated to maintain the airport for public aviation use. Under certain conditions, an airport sponsor may temporarily close the airport or part of the airport for a nonaeronautical event, if the FAA approves the airport sponsor's request in advance of a nonaeronautical event. The Secretary's review and approval, delegated to the Federal Aviation Administration, constitutes a Federal Action that requires an assessment under the National Environmental Policy Act. The FAA adopts this policy statement to provide additional guidance for airport operators to comply with the requirements of the statute and obtain an FAA decision in a timely manner for the conduct of their nonaeronautical event at the airport.

DATES: Effective June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Lorraine Herson-Jones, (202) 267–3085; Lorraine.herson-jones@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Airport Sponsor Obligations

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) or other Office of Airport grants have agreed to comply with certain Federal laws and policies included in each grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97–248), as amended and recodified at 49 U.S.C. 47107(a)(1), and the contractual airport sponsor assurances require that the sponsor make the airport available for aviation use. Title 49 U.S.C. 47107(a)(8) requires grant agreements to include an assurance that “a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary [of Transportation].” This requirement is implemented by Grant Assurance 19, *Operation and Maintenance*, which incorporates the requirement that a temporary airport closure for a nonaeronautical purpose be first approved by the Secretary. The Secretary's approval authority has been delegated to the FAA as part of the administration of the AIP. It is the longstanding policy of the FAA that airport property be available for aeronautical use unless a particular nonaeronautical use is approved by the FAA.

Each year many sponsors of federally obligated airports request temporary closures of a ramp, taxiway, runway or an entire airport for a nonaeronautical event, typically for a period of one to three days. The FAA must approve any such request in advance before the event can take place. While the FAA offices generally applied similar criteria to the evaluation of requests for temporary closure, the agency has not provided uniform guidance for sponsors on the process to request a temporary closure. The FAA believes that a more detailed description of what is needed to support a request for temporary closure of airport facilities, and a clear listing of the obligations of an airport sponsor before, during and after a closure, will benefit both the airport sponsors and the FAA offices handling these requests. Conducting an event on airport property is a complex undertaking. Whether the purpose is an aeronautical event (e.g., air show) or nonaeronautical event, and whether the event requires a full closure of the airport or simply a closure of a ramp or taxiway, the event will require detailed planning and preparation that should not be taken lightly. The airport sponsor's primary responsibility is to

operate a safe airport providing access to aviation community.

The FAA affirms in this Notice that federally assisted airports should remain open for aviation use. Where an airport sponsor does request a temporary closure of airport facilities for a nonaeronautical event, this Notice describes the required contents of a request, and the criteria for the FAA's approval.

Summary of Key Provisions

The policy statement provides a standard request process for approval of nonaeronautical events at a federally obligated airport, and a detailed explanation of the measures an airport sponsor will need to take in order to protect the airport and comply with the terms of the FAA grant agreements. In summary:

- The airport sponsor should meet with the local FAA office no later than 120 days before the event to discuss their plans and develop a timetable for FAA review and approval.
- The airport sponsor must file Form 7460 Notice of Proposed Construction or Alteration at least 90 days before the event.
- The airport sponsor should submit at least 60 days in advance a written request for temporary closure to the FAA that addresses justification, the benefit to civil aviation, timetable, map, safety, communications with airport users, environmental review, and financial issues for review and approval.
- The airport sponsor must follow the Process for Notification of Airport Users including Notice to Air Missions (NOTAM).

II. Discussion of Public Comments

The FAA received public comments on the proposed policy from National Business Aviation Association, National Air Transportation Associations (NATA), San Carlos Airport & Pilots Association, the California Pilots Association, Georgia Department of Transportation, City of Manassas Airport Department, Manassas, Virginia and airport operators and airport users. In general, most commenters support the FAA's proposed policy regarding approval of the temporary closure of a federally obligated airport for a nonaeronautical purpose; however, one commenter objected to any approval of closing an entire airport for nonaeronautical events.

1. Burden of the Overall Approval Process

Manassas Regional Airport representative indicated that the entire application process for "Temporary

Airport Closure" seems very cumbersome. While some airports may become familiar with the process, smaller airport may have difficulty completing the process, which may ultimately dissuade them from hosting events. The commenter also inquired about the possibility of using a temporary event permit process rather than an agreement with the event promoter.

The Final Policy: The primary purpose of this policy is to outline a more defined process that sponsors can follow to comply with the law, 49 U.S.C. 47107(a)(8) requiring the Secretary of Transportation (delegated to the FAA) to approve the closure of an airport for nonaeronautical event. In implementing the requirements of this statute, the FAA has several objectives: first, the airport sponsor will continue to operate the airport safely. The airport sponsor has a plan identifying the necessary labor and resources to ensure that this objective is met. Second, the airport sponsor has taken the necessary steps to notify the airport users including air carriers, fixed base operators, and tenants of the impending event and, when possible, take steps to alleviate the impact of the event on airport users. Fixed base operators and tenants rely on uninterrupted airport access to conduct business and earn a livelihood. When airport access is denied or restricted, it can have a detrimental impact on airport users. Third, that the Federal investment in the airport is protected. The Federal Government invests over \$3.8 billion annually to maintain the Nation's airports and ensure that these assets are available for the purpose for which they were designed.

Regarding the suggestion of a permit versus a written agreement, the airport sponsor is responsible for licensing and procurement. Whether it is a permit or agreement, the document between a sponsor and the event promoter must assign responsibility for essential tasks, ensure safety, and contain indemnification and hold harmless provisions to protect the sponsor for damages, liabilities, and judgments. The document must protect the airport from damage and ensure that the airport be repaired or restored at the promoter's cost.

2. Clarification of the Term "Federally Obligated Airports"

National Business Aviation Association recommends the FAA clarify the term "federally obligated" airports, to identify the sources of an airport sponsors Federal obligations.

The Final Policy: FAA Order 5190.6B, Airport Compliance Manual, September 30, 2009 indicates that a sponsor's Federal obligations can include: (a) Grant agreements issued under the FAA administered airport development grant programs including the Airport Improvement Program (AIP) under 49 U.S.C. 47101, *et seq.*; (b) Instruments of surplus property transfer issued under the provisions of section 13(g) of the Surplus Property Act of 1944, as amended 49 U.S.C. 47151–47153; (c) Instruments of nonsurplus conveyance issued under section 16 of the 1946 Airport Act, as amended; under section 23 of the 1970 Airport Act, as amended; or under section 516 of the AIAA, as amended following recodification as 49 U.S.C. 47125.

3. Authority To Approve the Closure of an Entire Airport

National Business Aviation Association stated that the FAA "cannot allow closure of an entire airport". The FAA can only allow a partial closure for nonaeronautical purpose.

The Final Policy: Although closures of entire airports for nonaeronautical purposes should be rare and allowed only when there is a benefit to civil aviation, Congress clearly anticipated the possibility of requests for airport closures. Title 49 U.S.C. 47107(a)(8) requires grant agreements to include an assurance that "a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary [of Transportation]." Further, FAA Order 5190.6B, Section 7.21(b)(1) states: "An airport developed or improved with federal funds may not be closed to use the airport facilities for special outdoor events, such as sports car races, county fairs, parades, car testing, model airplane events, etc., without FAA approval." Closures of any portion of an airport for nonaeronautical purposes must receive FAA approval. Impacts to aviation need to be thoroughly assessed and considered. Therefore, closing the only runway at an airport should be avoided, if possible.

4. The Need for an Emergency Response Plan

National Air Transportation Association recommends the FAA require an emergency response plan (beyond the safety plan), scalable to the event and activities planned. This plan should include incident command structure, responsible agencies, emergency contacts, and mutual aid and evacuation routes.

The Final Policy: The airport operator is responsible for care, control, and

protection of property and people on an airport. Whether it is a small general aviation airport or a major air carrier airport. The services can range from a dedicated on-airport fire department or first responder services in the community that respond to accidents at the airport. Best management practices dictate that support services are engaged and participate in the planning of the event. Each airport should already have emergency procedures for handling incidents and accidents at the airport. The FAA encourages airport sponsors to conduct emergency response planning and develop a plan based upon their needs and scope of the event. An “emergency plan” requiring an incident command structure is too prescriptive; local officials are in the best position to decide the resources required.

5. *Schedule of Submissions*

National Air Transportation Association recommends the FAA adopt a schedule of submission setting a deadline for submitting documents for approval—similar to the 120-day period required for construction events on the airport by FAA Form 7460—Notice of Alteration and Construction. NATA also suggests that the application for an event follow a prescribed timetable with FAA approval due dates.

Manassas Regional Airport representative suggested a 90-Day review period in lieu of 100-Days. Manassas Regional Airport representative mentioned that there is a clear lead-time for a 7460 form, there is no mention of a lead-time for submitting a proposal to the Region or ADO. Manassas Regional Airport representative requested that the FAA consider allowing a single proposal submission for recurring events, rather than requiring a new application every year.

The Final Policy: Regarding the schedule for submission, as a first step in planning a public event at an airport, the airport operator should meet with the local FAA Airports District Manager or Regional Office (RO) as soon as possible. An initial meeting should occur at least 120 days before the planned event. Airport managers know that the closure of the airport, a runway or aircraft movement area will result in an impact to airport users. The Airport manager’s objectives must be, first, determine if it is possible to conduct the event safely with the minimum disruption to the airport users. Second, identify what steps the airport can take to ensure minimum disruption and impact to airport users. Airport managers know that in certain cases FAA Form 7460, Notice of Proposed

Construction or Alteration must be filed and a Notice to Air Missions must be issued. The event constitutes a Federal Action; therefore, the FAA will review the airport manager’s environmental submission and provide an approval. FAA examines a temporary closure request on a case-by-case basis.

FAA acknowledges single proposal submission for recurring events repeat are typically easier to review and less of an administrative burden for promoters. The FAA will leave this decision to the discretion of the local FAA office for nonaeronautical events that do not require closure of aircraft movement (e.g., promotes uninterrupted aeronautical use of airports and airport facilities). For situations involving a closure of aircraft movement areas, each event will be treated as a new event.

6. *Potential Impacts on Aviation*

San Carlos Airport Pilots and California Pilots Association (Pilots Association) believes the airports should remain available for aviation purposes. A “proposed nonaeronautical use of an airport should not prevent the airport from realizing its economic potential. The Pilots Association also urges FAA to consider the collective impact of multiple short closures on airport operations. The Pilots Association recommends better coordination between the airport sponsor and aeronautical tenants and users; tenants and users should have an opportunity to give feedback on potential closures. The Pilots Association asks that FAA require certification of notifications to stakeholders of the event and provide an opportunity to give feedback. The Pilots Association also recommends the airport sponsor should post all airport funds and resources used to subsidize the event and any physical damages or personnel injuries the direct result of the event.

The Final Policy: FAA’s Policy and Procedures Concerning the Use of Airport Revenue (64 FR 7704) February 16, 1999 permits the use of airport property for public recreational purposes and addresses the use of airport funds to support community activities and for participation in community events. The expenditures are directly and substantially related to the operation of the airport. The airport sponsor may consider the “directly and substantially related to air transportation” standard to be met if the contribution has the intangible benefit of enhancing the airport’s acceptance in local communities impacted by the airport. The use of airport property and the expenditure of airport revenue for a

nonaeronautical event must be performed in accordance with an airport sponsor’s grant assurance obligations. Airport revenue cannot be used toward conducting the event (e.g., use of airport staff must be reimbursed, equipment rental, and advertisement of the event cannot be funded in part or whole by the airport). The FAA acknowledges the airport sponsor should keep records of any inspection and repair costs, resulting from a nonaeronautical event. While the FAA will not require an airport sponsor to post event expenditures, this information is an integral part of an airport sponsor’s request and should be publicly available.

Regarding the impact of multiple short closures on airport operations, the Federal government makes a capital investment in a local airport to address the needs of aeronautical users and improve the airport’s access to the National Airport System. An airport sponsor’s justification for capital improvements does not include justifying the need for facilities to support auto races, fun runs or other nonaeronautical events. These events are treated as rare occurrences or as incidental events. When federally funded assets intended to support access to the National Airport System are regularly used for nonaeronautical events, it raises questions about the need for a Federal investment in the airport.

Regarding the suggestion that the FAA require certification of notifications to stakeholders of the event and provide an opportunity to give feedback, the FAA recognizes airport sponsors are in the best position to understand airport users’ specific needs for airport access and generally act in the airport’s best interest. The FAA expects airport sponsors to work with airport users to minimize the impact on airport users. The FAA encourages more intensive outreach to ensure safety and efficiency during the review process. The policy currently provides a baseline requirement to notify tenants and users. Airport users have redress through the Part 13 informal complaint process or the formal Part 16 complaint.

7. *Block Grant States Procedures*

Georgia Department of Transportation recommends that sponsors in Block Grant states coordinate with the Block Grant Agency by submitting an application in writing, in advance, and provide a schedule for various steps in the application process.

The Final Policy: Airport sponsors in Block Grant states should submit Temporary Closure requests to Block

Grant State agencies who will work with the FAA to complete the review.

8. Pilot Input

Theodore Gablin asked for a method for pilots to object to the request to perform nonaeronautical activities and suggested penalties for a sponsor that fails to comply with the policy.

The Final Policy: FAA Policy requires airport sponsors to consult with airport users and tenants regarding planned nonaeronautical events that may result in airport closures or a restriction on airport operations. The FAA expects that airport sponsors will work with airport users to resolve differences and develop a plan to minimize impacts to airport users. Airport users have redress to the FAA through the Part 13 informal complaint process or the formal Part 16 complaint.

9. Clarification on Obtaining Fair Market Value

Manassas Regional Airport representative asked for clarity on how airports obtain fair market value for runways and taxiways.

The Final Policy: Airport operators can obtain comparable land rental values from on-airport ground lease rates for nonaeronautical use, adjacent airport land or information rental rates from local commercial realtors or the city's community economic development agency.

10. Suggested New 7460 Forms

Manassas Regional Airport representative suggested that Form 7460 include temporary closures for nonaeronautical activities and create a separate form to prevent confusion among crane/construction companies and event sponsors.

The Final Policy: The FAA believes that Form 7460 is adequate for identifying obstructions connected with nonaeronautical activities on an airport. The FAA cannot create a separate notice for cranes. FAA Form 7460 is required by regulation to evaluate the effect of proposed construction or alteration on air navigation. Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C. 44718. The FAA Form 6000–26 (08/13) Airport Sponsor Strategic Event Submission is used by airport sponsors to notify the FAA of projects or events, which will result in runway or taxiway closures, or navigational aid outages etc. This form should be submitted 60 days prior to the event to the FAA Air Traffic Organization (ATO).

11. Proof of Nonprofit Status

Manassas Regional Airport representative suggested that airport sponsors should require nonprofit charitable organizations submit proof of their status.

The Final Policy: The FAA agrees that the airport sponsor's examination of a promoter's nonprofit status is good business practice.

12. Addressing Nonaeronautical Events That Occur Along With Aeronautical Events

Manassas Regional Airport representative asked that the FAA consider addressing temporary closures of airports for nonaeronautical purposes associated with aeronautical events (example: closing down a taxi lane for vehicle parking for an airshow). Basic guidelines for temporary closures for aeronautical purposes are described in FAA Order 5190.6B, Section 7.21(b)(2).

The Final Policy: FAA Order 5190.6B, paragraph 7.21 Temporary Closing an Airport for Special Event discusses both aeronautical and nonaeronautical events. Aeronautical events can include air shows, fly-ins, and aviation conventions. These events are normally used to promote some aspects of aviation. Airport funds can be used to support community activities if the expenditures are "directly and substantially related to air transportation" standard to be met if the contribution has intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport. Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA's Policy Concerning the Use of Airport Revenue (Revenue Use Policy) (64 FR 7704) February 16, 1999. Nonaeronautical events, such as auto races, carnivals, fun runs, are events that could be conducted off-airport and are not promoting aviation. Air Shows require a certificate of waiver authorization from the FAA Flight Standards. The FAA considers the event aeronautical if the majority of activities are aeronautical and promote aviation. However, if the majority of the events are nonaeronautical, this policy applies. Airport sponsors should consult the Revenue Use Policy and FAA Order 5190.6B, paragraph 17.14 Property for Community Purpose and paragraph 17.15, Exception for Community Use.

III. Policy on the Temporary Closure of Airports for Nonaeronautical Purposes

A. Introduction

The FAA believes that the primary purpose of public airports is to serve aeronautical users and therefore, airports should remain open and available for aviation use. However, under certain circumstances, an airport sponsor may request the FAA's approval of temporary closures for nonaeronautical activities or purposes, such as car shows, county fairs, parades, model airplane events, running events and fireworks. The FAA will not approve a closure if it would result in a negative impact to civil aviation.

In most cases, the impact to aviation, safety, security, liability, and other risks will outweigh the financial and community goodwill benefits promised to the airport for nonaeronautical activities. Closures of entire airports or closures of the only runway at an airport should be highly scrutinized, and only allowed when there is a net benefit to the airport. A nonaeronautical use of an airport should not prevent the airport from realizing its economic potential nor diminish its role in the system of airports.

Moreover, airport sponsors must not allow any nonaeronautical activity that will damage or impact the useful life of airport pavements, signs, markings, lighting or other infrastructure. Under Grant Assurance 11, airport sponsors are required to implement a pavement preventative maintenance program to ensure the useful life of the pavement is protected. As a result, car racing events should not be approved on recently rehabilitated (resurfaced or reconstructed) pavements. Moreover, airports are generally unsuitable locations for high velocity auto events, such as drag racing, and are likely to require additional liability insurance and crowd protection. These high-risk events should be highly scrutinized by both the sponsor and the ADO or region.

This policy provides procedures for airport sponsors who choose to submit a request for such closures and establishes benchmarks for safety for a nonaeronautical event.

B. Request for Temporary Airport Closure

To request a temporary airport closure for a nonaeronautical event, an airport sponsor must meet with the FAA at least 120 days to discuss their plans and develop a timetable for FAA review and approval. Within 60 days of the event, the airport sponsor must submit a written request for the event that includes the information outlined

below. In Block Grant states, the airport sponsor must submit the request to the State Block Grant Agency with a copy to the FAA Regional Airports Office or Airport District Office (ADO). The airport sponsor must provide sufficient information and assurances to indicate that each requirement has been or will be satisfied. The written request must address:

1. *Impact on aeronautical activities.*

An estimate of the number of impacted aircraft operations (scheduled services, commercial, general aviation, military) and how this number was determined.

2. *Justification.* A written statement describing the nonaeronautical event and a justification for the event at the airport. If an event would require that aircraft operations be suspended during the event, a proposal must identify why closure of the airport is necessary, and how the proposed nonaeronautical use justifies loss of the use of the airport for the duration of the event. The statement should address alternative off-airport locations considered, and why these locations are not viable. The justification must also clearly identify the net benefit of the event to civil aviation.

3. *Timing.* The dates of the proposed closure periods including set up and take down period. Identify whether this is an annual or one-time event.

4. *Map.* A map depicting:

a. Location of nonaeronautical activity on airport (e.g., spectator areas, parking areas, staging areas, fueling, concession areas, closed areas),

b. Areas to be used for the nonaeronautical activity that have been developed or improved with Federal funds (identify the grant number and anticipated impact to the Federal investment),

c. Impacted Navigational Aids (NAVAIDs),

d. Location and description of elements that may affect the National Airspace System (NAS), and

e. Structures or other elements that may require a form 7460 application.

5. *Communications.* The request must document the airports sponsor's communications with airport users to discuss the details of the event, and address concerns and mitigate the impact of the event on users to the extent possible. The following contacts should be notified:

a. Tenants, fixed base operators (FBO), airlines, and local users,

b. Air traffic control tower,

c. Local aviation organizations,

d. Airport security and local law enforcement agencies, and

e. FAA Flight Standards District Office.

6. *Safety.* For a proposed closure of the airport to operations or a closure of any part of the airfield movement area or proposed obstructions to movement area associated safety clearances, the sponsor must prepare a Safety Plan, in coordination with local or state public safety officials, to include at least the following items:

a. Special markings for the event, and removal and restoration of markings after the event.

b. Notice to tenants and pilots, including appropriate NOTAMs and other methods.

c. Reporting and marking of any structures affecting protected zones or surfaces.

e. If applicable, a description of the mutual aid fire and rescue agreements and whether there needs to be a presence of mutual aid safety services during the event.

d. Safe separation between aircraft operations and the public. These may include: special taxi routes, restricted access to terminal gates, crowd control, designated vehicular routes, staging areas, and structural barriers to protect the viewing public. The Sponsor and the event promoter are responsible for the safety of attendees; Sponsor will ensure that the event promoter provides sufficient barricades to ensure the public is protected.

e. Sponsor's determination and analysis that there is no adverse effect on the airport's approved security plan.

f. Where necessary to maintain the safety, security and efficiency of airport operations, Regions or ADOs should use applicable elements from the FAA Advisory Circular 150/5370-2, Operational Safety on Airports during Construction.

g. The airport sponsor must provide timely advance notice of the nonaeronautical event to pilots and airport tenants, and to the Air Traffic Control (ATC) tower if applicable. The sponsor must issue appropriate NOTAMs to advise itinerant pilots of any limited availability of the airport during the event. The sponsor must provide advance notice to airport businesses and other tenants of any effect on use of airport property during the event. The sponsor should provide a Draft of the NOTAM(s) to be issued for the event.

h. Filing of a Form 7460 may be necessary to obtain the FAA review of any temporary structures on the airport and use of airport property. The Form 7460 can be filed prior to or with the request for approval of closure, but must be filed no later than 90 days prior to the event to allow time for the FAA to

review, comment and response from proponent.

i. Post-event inspection and repair of any damage to airport property to assess the airport property prior to re-opening for aeronautical uses to identify and fix:

1. Damage to pavements, lighting, signs, markings and other airport infrastructure.

2. Temporary markings HAZMAT issues (if applicable).

3. Conduct Foreign Object Debris (FOD) sweep.

4. Identification of the party who will be responsible for funding any repairs and a timeframe within which the repairs will be made.

5. Indicate impacts to NAVAIDs and procedures for taking these out and in service.

6. Procedures and equipment to delineate closed areas (e.g., X on runways, fencing, gates, barricades).

7. *Financial.* The airport must recover fair market value (FMV) payment for the nonaeronautical use of airport property to the extent required by the *Revenue Use Policy*. Therefore, the airport sponsor must document how the airport will be compensated for the use of the airport for nonaeronautical events. The airport sponsor should assess the condition of airfield facilities and airport property in the event areas before the event, and have the event proponent acknowledge that condition in writing. The airport sponsor's agreement with the event sponsor must include the event proponent's binding written agreement to restore airport property to its pre-event condition and repair all damage to airport facilities resulting from the event. All repairs and restoration of property must be completed at the expense of the event proponent in a timely manner and in conformance with FAA standards. The sponsor should understand the following:

a. The airport sponsor must receive full compensation for the time of airport personnel and the use of airport resources for the event (e.g. police/airport operations overtime pay), but not necessarily staff time for review of the event.

b. Airport funds and resources may not be used to subsidize the event, except insofar as the event will be staged by the airport sponsor itself. Use of airport property for a nonaeronautical purpose at below fair market value payment is considered a subsidy.

c. The airport sponsor's agreement with the event promoter should contain the event promoter's binding written agreement to indemnify and hold harmless the airport sponsor for any damages, liabilities or judgments against

the airport sponsor relating to the use of the airport for the event.

d. For an event proposed by a commercial/for-profit party:

1. Financial benefits must be equal to at least the fair market value of the subject property use.

2. In-kind services or benefits must be equivalent to FMV compensation.

3. Airport revenue cannot be used toward conducting the event (*e.g.*, use of airport staff must be reimbursed, equipment rental, advertisement of the event cannot be funded in part or whole by the airport).

4. The event should also generate intangible benefits for the airport such as community goodwill and community interest.

e. For an event organized by a non-profit/charitable organization or by the airport sponsor itself on its own behalf. In all non-profit nonaeronautical cases there needs to be a benefit to the airport that clearly outweighs the loss or displacement of aeronautical activities. Examples of benefits to the airport may include:

1. Advertising for the airport included in the event advertising at no cost to the airport.

2. A percentage of ticket sales paid to the airport.

3. Intangible benefits (*e.g.*, community goodwill, increasing local awareness of the airport, encouraging local and community support of the airport, generating an interest in airport use).

IV. Airshows and Aeronautical Events

While 49 U.S.C. 47107(a)(8) and Grant Assurance 19 do not require Office of Airports approval of the temporary closure of an airport for aeronautical events in the processes of issuing an airshow waiver Flight Standards Service (AFS) will describe the safety conditions for the FAA's approval of the event. However, the AFS waiver relates to aircraft operations and the separation between aircraft operations and the viewing public. AFS will coordinate the ground operations plan with Regions and ADOs as appropriate. Events that are primarily nonaeronautical with an air show or other aeronautical event as an incidental activity should be reviewed by the Region or ADO.

V. Environmental Analysis Requirement

Approval of the closure of airport facilities for a nonaeronautical event is a Federal action that requires environmental review, under the National Environmental Policy Act (NEPA). The level of review will vary depending on the nature of the proposed event and should be

coordinated with the RO/ADO for review and approval.

Issued in Washington, DC.

Kevin C. Willis,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2023-09983 Filed 5-11-23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0168]

RIN 1625-AA08

Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the Bush River and Otter Point Creek, in Maryland. This action is necessary to provide for the safety of life on these navigable waters located at Edgewood, MD during a high-speed power boat race on May 13, 2023 and May 14, 2023. This regulation prohibits persons and vessels (other than those already at berth at the time the regulation takes effect) from being in the regulated area unless authorized by the Captain of the Port, Sector Maryland-National Capital Region (COTP), or a designated representative.

DATES: This rule is effective from 9 a.m. on May 13, 2023, through 7 p.m. on May 14, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0168 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 MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2596, email MDNCRWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

II. Background Information and Regulatory History

On November 11, 2022, the Kent Narrows Racing Association (KNRA) notified the Coast Guard that it will be conducting the Harford County Spring Nationals Inboard Hydroplane Race on May 13, 2023 and May 14, 2023 from 9 a.m. to 7 p.m. on both days. The high-speed power boat racing event consists of approximately 60 participating racing boats—including composite and wood hull inboard hydroplanes—12 to 28 feet in length. In response, on March 23, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD (88 FR 17467). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the high-speed power boat race. During the comment period that ended April 24, 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 high-speed power boat race scheduled to take place on May 13, 2023 and May 14, 2023.

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 Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event and for vessels that operate within the specified waters of the Bush River and Otter Point Creek. The purpose of this rule is to protect event participants, non-participants, and transiting vessels 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 March 23, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a regulated area from 9 a.m. on May 13, 2023 through 7

p.m. on May 14, 2023. The regulated area will cover all navigable waters of the Bush River and Otter Point Creek, shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°21'15" N, longitude 076°14'39" W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N, longitude 076°13'57" W, and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. These boundaries are based on a detailed course map for the event which the Coast Guard received from the sponsor on March 7, 2023. The COTP, and the Coast Guard Event Patrol Commander (or "Event PATCOM," a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the COTP) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Harford County Spring Nationals participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at a safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the COTP with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed in a manner that minimizes wake while within the regulated area and that would not endanger event participants

or any other craft. A spectator vessel must not loiter within the navigable channel while present within the regulated area. Only participant vessels and official patrol vessels will be allowed to enter the race area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

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 duration of the regulated area, which will impact a small, designated area of the Bush River for a total of 20 enforcement hours. Although this regulated area extends across a large portion of the waterway, the rule will allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely will be able to transit the regulated area as instructed by the Event PATCOM. Such vessels must operate at a safe speed that minimizes wake and not loiter within the navigable channel while present within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

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 implementation of regulations within 33 CFR 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 20 total enforcement hours. It is categorically excluded from further review under paragraph L61 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 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0168 to read as follows:

§ 100.T05–0168 Special Local Regulation; Bush River and Otter Point Creek; Between Perryman, MD and Edgewood, MD.

(a) *Location.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N, longitude 076°14'39" W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N, longitude 076°13'57" W; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. The following locations are within the regulated area: The regulations in this section apply to the following area:

(2) *Race Area.* The area is bounded by a line commencing at position latitude 39°26'39.48" N, longitude 076°15'23.44" W, to latitude 39°26'36.52" N, longitude 076°15'13.33" W, to latitude 39°26'36.94" N, longitude 076°15'10.01" W, to latitude 39°26'38.59" N, longitude 076°15'07.41" W, to latitude 39°26'41.03" N, longitude 076°15'06.22" W, to latitude 39°26'43.61" N, longitude 076°15'06.76" W, to latitude 39°26'45.63" N, longitude 076°15'08.89" W, to latitude 39°26'47.93" N, longitude 076°15'16.76" W, to latitude 39°26'50.24" N, longitude 076°15'24.63" W, to latitude 39°26'49.81" N, longitude 076°15'27.95" W, to latitude 39°26'48.16" N, longitude 076°15'30.56" W, to latitude 39°26'45.72" N, longitude 076°15'31.75" W, to latitude 39°26'43.15" N, longitude 076°15'31.20" W, to latitude 39°26'41.13" N, longitude 076°15'29.07" W thence back to the beginning point.

(3) *Buffer zone.* The buffer zone surrounds the entire race area and is bounded by a line commencing at position latitude 39°26'39.60" N, longitude 076°15'30.00" W, to latitude 39°26'37.80" N, longitude 076°15'24.00" W, to latitude 39°26'34" N, longitude 076°15'14.40" W, to latitude

39°26'34.80" N, longitude 076°15'09.00" W, to latitude 39°26'37.20" N, longitude 076°15'05.40" W, to latitude 39°26'40.80" N, longitude 076°15'03.60" W, to latitude 39°26'44.40" N, longitude 076°15'04.20" W, to latitude 39°26'46.80" N, longitude 076°15'07.20" W, to latitude 39°26'49.80" N, longitude 076°15'15.60" W, to latitude 39°26'52.20" N, longitude 076°15'25.20" W, to latitude 39°26'51.60" N, longitude 076°15'28.80" W, to latitude 39°26'49.20" N, longitude 076°15'32.40" W, to latitude 39°26'45.60" N, longitude 076°15'34.20" W, to latitude 39°26'42.60" N, longitude 076°15'33.60" W thence back to the beginning point.

(4) *Spectator Area.* The spectator area is designated as the all waters immediately surrounding the buffer zone up to a distance of 500 feet immediately surrounding the buffer zone.

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

Buffer zone is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and nearby transiting vessels. This area provides separation between a race area and other vessels that are operating in the vicinity of the regulated area established by the special local regulations 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 Maryland-National Capital Region (COTP) in the enforcement of the regulations in this section.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been so designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

Race area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as a participant or assigned as official patrols.

(c) *Regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 7 p.m. on May 13, 2023 and from 9 a.m. to 7 p.m. on May 14, 2023.

Dated: May 5, 2023.

David E. O'Connell,

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

[FR Doc. 2023-10125 Filed 5-11-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0377]

RIN 1625-AA00

Safety Zone; Roostertail Fireworks, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters in the Detroit River in Detroit, MI. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Binienda and Steel wedding. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This rule is effective from 9 p.m. through 10:30 p.m. on May 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0377 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568-9564, email Tracy.M.Girard@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 event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment in the Detroit River. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by May 20, 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**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

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 Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 200-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 10:30 p.m. on May 20, 2023. The safety zone will encompass all U.S. navigable waters of the Detroit River within a 200-yard radius of the fireworks launch site located near the public launch site, in Detroit, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Detroit River one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM Marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the 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. 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, 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 1 and a half hours that will prohibit entry within 200-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] 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 record keeping

requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T09–0377 to read as follows:

§ 165.T09–0377 Safety Zone; Roostertail Fireworks, Detroit River; Detroit, MI

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the Detroit River within a within a 200-yard radius of the fireworks launch site located at position 42°41'15.75" N, 082°58'22.94" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 9 p.m. through 10:30 p.m. on May 20, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *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 Detroit (COTP) in the enforcement of the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: May 8, 2023.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2023–10149 Filed 5–11–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0050]

RIN 1625–AA00

Safety Zone; Gallants Channel, Beaufort, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Gallants Channel, near Beaufort, NC. The safety zone is necessary to enhance the safety of mariners and participants during the swim portion of a triathlon. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Sector North Carolina, or a designated representative.

DATES: This rule is effective May 12, 2023. The Coast Guard will enforce the safety zone in this rule on May 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0050 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 Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email ncmarineevents@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 February 1, 2023, the FS Series organization notified the Coast Guard that it will be hosting the Crystal Coast Triathlon in Beaufort, NC. The swim

portion of this event will take place from 8 a.m. to 10 a.m. on the waters of Gallants Channel each year, on the second Saturday in May. The swim portion of the Crystal Coast Triathlon will consist of approximately 400 participants. The racecourse will be on the waters of Gallants Channel and will run from the Route 70 Bridge in Beaufort, NC, then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860).

In response, on March 30, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Gallants Channel, Beaufort, NC” (88 FR 19027). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this swimming event. During the comment period that ended May 1, 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 contrary to public interest because immediate action is needed to protect non-participating persons, vessels, and participants against the hazards associated with restricted waterway during the swim portion of this triathlon.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 70034. The Captain of the Port, Sector North Carolina (COTP) has determined the presence of vessels, and anyone else in or transiting the designated area of Gallants Channel in Beaufort, NC during the swim portion of the triathlon would pose a safety concern to the swimmers, and to the vessels and others within the designated area, due to the large number of swimmers on the waterway during the swim portion of the triathlon. This rule is necessary to protect non-participating persons, vessels, and participants from the hazards associated with the event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 30, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. The safety zone will be enforced from 8 a.m. through 10 a.m., every second Saturday in May, although the enforcement period would be subject to change. The safety zone will include all navigable waters of Gallants Channel from the Route 70 Bridge in Beaufort, NC, at N

34°43'38", W 076°40'04" then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860) at N 34°43'58", W 076°40'27.5". This area is typically used by recreational boaters. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. To request permission to transit the area, mariners can contact Coast Guard Sector North Carolina Command Center at telephone number (910) 343-3882 or on-scene representatives on VHF-FM marine band radio channel 16 (156.8 MHz).

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be able to safely transit around this safety zone, which will impact a designated area of Gallants Channel in Beaufort, NC. The two-hour enforcement period should not be overly burdensome to any vessel or entity because it is not an area normally used for commercial vessel traffic. The Coast Guard will issue a Broadcast Notice to Mariners about the safety zone and about this rule, to notify vessels in the region of the establishment of this regulation. The rule will allow vessels to request permission from the COTP or a designated representative to enter the zone if necessary.

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 does not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that prohibits entry into portions of Gallants Channel in Beaufort, NC. 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 protestors. 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 § 165.529 to read as follows:

§ 165.529 Safety Zone; Gallants Channel, Beaufort, NC.

(a) *Definitions.* For the purposes of this section—

Captain of the Port means the Commander, Coast Guard Sector North Carolina.

Participant means an individual or vessel involved with the Crystal Coast Triathlon.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: all navigable waters of Gallants Channel from the Route 70 Bridge in Beaufort, NC, at N 34°43′38″, W 076°40′04″ then North-West to Russel Slough Channel Day-Beacon 10 (LLNR34860) at N 34°43′58″, W 076°40′27.5″.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of the participants, entry into or remaining in this safety zone is prohibited unless authorized by the COTP, Sector North Carolina or a designated representative.

(3) No vessel may be present in the safety zone when it is subject to enforcement, and any vessel in violation of that prohibition must depart the zone immediately.

(4) The COTP North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910–343–3882.

(5) The Coast Guard can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

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

(e) *Enforcement period.* This section will be enforced the second Saturday in May, from 8 a.m. through 10 a.m. The enforcement period may change, but a notice will be provided if there is a change in the enforcement period.

Dated: May 5, 2023.

Matthew J. Baer,
Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.
[FR Doc. 2023–10138 Filed 5–11–23; 8:45 am]
BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0795; FRL–10217–03–R9]

Air Plan Approval; California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from solvent cleaning and degreasing operations. We

are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective June 12, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0795. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at lazarus.arnold@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
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I. Proposed Action

On December 13, 2022 (87 FR 76171), the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Revised	Submitted
YSAQMD	2.31	Solvent Cleaning and Degreasing	07/14/2021	07/18/22

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation. On the same day, we also made an interim final determination (87 FR 76107) that the submittal from the California Air Resources Board on behalf of the Yolo-Solano Air Quality

Management District corrected the SIP deficiency from a previous submittal, allowing us to defer the imposition of sanctions resulting from our previous disapproval action concerning the District’s rule.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During

this period, we received four comments. Three of the submitted comments were supportive of our assessment of the rule as described in our proposed action. One comment was irrelevant and outside the scope of this specific rulemaking action.

III. EPA Action

No comments were submitted that change our assessment of the rule as

described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The July 14, 2021 version of Rule 2.31 will replace the previously approved version of this rule in the SIP.

As a result of this action, the sanctions that were deferred in our interim final determination are now rescinded, and a federal implementation plan to resolve the deficiency is no longer required under section 110(c) of the Act.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Yolo-Solano AQMD, Rule 2.31, Solvent Cleaning and Degreasing, revised on July 14, 2021, which regulates VOC emissions from solvent cleaning and degreasing operations. The EPA has made, and will continue to make, these documents available through 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).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, 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, 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. The 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.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

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. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive

impact on the air quality of the affected area. 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 the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(503)(i)(D)(2) and (c)(596) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(503) * * *

(i) * * *

(D) * * *

(2) Previously approved on July 30, 2021, in paragraph (c)(503)(i)(D)(1) of this section and now deleted with replacement in (c)(596)(i)(A)(1), Rule 2.31, “Solvent Cleaning and Degreasing,” revised on April 12, 2017.

* * * * *

(596) The following regulation was submitted on July 18, 2022, by the Governor’s designee, as an attachment to a letter dated July 11, 2022.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(1) Rule 2.31, “Solvent Cleaning and Degreasing,” revised on July 14, 2021.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2023–10097 Filed 5–11–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket Nos. 03–185 and 22–261; FCC 23–25; FR ID 138531]

Establishing Rules for Digital Low Power Television and Television Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts several rule updates to otherwise outdated rules for low power television and TV translator stations following the July 13, 2021, transition from analog to digital operations. These changes are designed to ensure the Commission’s rules clearly reflect its requirements, and are understandable to all stakeholders.

DATES: Effective June 12, 2023, except for the amendments in instruction 3 (§ 74.703), instruction 7 (§ 74.734), instruction 8 (§ 74.735), instruction 11 (§ 74.751), instruction 13 (§ 74.763), and instruction 15 (§ 74.784) which are delayed indefinitely. The Commission will publish a separate document in the **Federal Register** announcing the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at (202) 418–1665 or Emily.Harrison@fcc.gov. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Report and Order*, in MB Docket Nos. 03–185, 22–261; FCC 23–25, adopted on April 17, 2023, and released on April 17, 2023. The full text of this document is available for download at <https://www.fcc.gov/document/fcc-adopts-amendments-lptv-and-tv-translator-rules>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the PRA. These new or modified information collections will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

Rules Applicable to LPTV/Translator Digital Operations

When the Commission initially adopted rules for digital LPTV/ translators in 2004, it did not apply all of the part 74 rules to digital LPTV/ translators. Instead, it adopted eleven rules specifically for digital LPTV/ translator stations, and also identified in § 74.789 which of the part 74 rules applicable to analog LPTV/translator operations would also apply to digital LPTV/translator operations. *NPRM* at

para. 10, citing 47 CFR 74.786 through 74.796; *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03–185, Report and Order, 19 FCC Rcd 19331 (2004) (2004 Order) (subsequent history omitted). Now that the LPTV/translator digital transition is completed, we tentatively concluded in the *NPRM* that it is necessary and appropriate to eliminate the analog version of our rules, and update all of the part 74 rules as necessary for digital operations. *NPRM* at para. 10. We tentatively concluded that the transition to digital operation did not provide any basis to relieve LPTV/translator stations of these obligations and that their continued applicability is in the public interest. *Id.* No commenters opposed our proposal and ATBA offered support. *See* Comments of the Advanced Television Broadcasting Alliance, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (ATBA Comments) at 2. We therefore now adopt the proposals.

Specifically, we adopt the following unopposed proposals, for the reasons discussed in the *NPRM*. First, we conclude that a revised § 74.702(b) (Channel assignments), which describes LPTV/translator stations’ secondary status with respect to a primary station’s proposal to change the Table of TV Allotments, should apply to digital LPTV/translator stations, consistent with existing practice. In addition, § 74.702(a) and § 74.786 (Digital channel assignments) reflect the same information pertaining to channel assignments. We therefore retain the requirements in § 74.702(a) and delete § 74.786. Similarly, we also delete §§ 74.789 (Broadcast regulations applicable to low power television and television translator stations) and 74.787(a)(5)(viii) (Licensing). For the reasons discussed in the *NPRM*, we conclude that there is no need to have rules specifying which part 74 rules apply to digital LPTV/translators, as, with the elimination of the analog rules, all rules in part 74 will apply to digital. We also adopt and apply to digital LPTV/translator stations a new § 74.737 regarding antenna location, which tracks and replaces a corresponding rule that has previously applied to analog LPTV/translator stations, and a new § 74.762 regarding frequency measurements. We adopt new station identification requirements in 47 CFR 74.783 that apply to digital operations, as discussed *infra*.

We also adopt two proposals, with some modification, that did receive comment. In the *NPRM*, we proposed that § 74.750 (Transmission system facilities), regarding the certification of equipment, should continue to apply to digital LPTV/translator stations. Section 74.750(c)(5), which we proposed to move to new § 74.795(b)(6) in the *NPRM* at paragraph 10, requires that an LPTV/translator station's transmission equipment be capable of automatically placing the station in a "non-radiating condition" if the station's input channel is lost, either due to the absence of a transmitting signal or failure of the receiving portion of the facilities used for rebroadcasting the signal of another station. Canyon TV/Cannaliato suggests this rule is no longer relevant after the digital transition, because the transmitter would not be transmitting white noise if it were to lose its input channel. Comments of Canyon TV, MB Docket No. 03–185 (filed Aug. 17, 2022) (Canyon TV/Cannaliato Comments) at 1. Canyon TV/Cannaliato states that it is the licensee of one translator in the State of Montana. Canyon TV/Cannaliato Comments at 1. Canyon TV/Cannaliato asserts that the requirement exists "to prevent the transmission of out of band and spurious energy" and offers that a better rule might be to require licensees to ensure a translator which loses its input channel "does not radiate any spurious or out of band energy that is less than 60db [sic] below the amplitude of the pilot carrier." *Id.* We disagree. We do not believe it is in the public interest for a station to transmit null packets in the event it loses its input channel and can no longer provide over-the-air programming to viewers. This practice would occupy spectrum that may be used by other entities to provide service to the public and may cause interference to other stations, even if the station that has lost its input channel is otherwise operating in accordance with the rules. See 47 CFR 74.763(c) (Time of operation) ("Failure of a low power TV or TV translator station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC."). See also ATBA Comments at 2 (supporting a number of the Commission's proposed changes, including "[m]odifying Section 74.750 regarding the certification of equipment to reflect the completion of the LPTV/translator analog to digital transition"). We also note that transmitting null packets would not

constitute "broadcasting" as that term is defined in the Communications Act of 1934, as amended, and that LPTV/translator stations that fail to broadcast a signal meant to be received by the general public must notify the Commission that they are silent, and are subject to automatic cancellation under section 312(g) of the Communications Act if they are silent for more than a consecutive 12-month period. See 47 U.S.C. 153(7) (BROADCASTING.—"The term 'broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations."). See also 47 CFR 74.701(a) and (j) (Definitions). See 47 CFR 73.1740(a)(4) (Minimum operating schedule) and 74.763(b) (Time of operation). 47 U.S.C 312(g); see also *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686, 10688 (MB 2010) (transmitting an equipment test pattern was insufficient to establish a break in a station's silence for the purpose of section 312(g)), citing *A–O Broadcasting Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008). We therefore adopt our proposed changes to § 74.750 (Transmission system facilities), including retaining certain aspects of technical requirements contained in § 74.750(c) (subsections (c)(5) and (c)(8)) and move them to digital rule § 74.795(b)(6) through(b)(7).

We also adopt new § 74.762 regarding frequency measurements, as proposed in the *NPRM*, with some modification. Canyon TV/Cannaliato objects to this proposal, which would require LPTV/translator stations to measure the frequency of their output channel as often as necessary to ensure operation consistent with the Advanced Television Systems Committee (ATSC) standard in § 73.682 of the rules. Consistent with the prior analog rule, these measurements would be required to be made during specified intervals not exceeding 14 months. In the event a station was found to be operating in a manner inconsistent with the standard, it would be required to promptly suspend operation and not resume operation until the transmitter is restored to its assigned frequency. Canyon TV/Cannaliato claims that this process would require removing modulation, which cannot be done with most transmission equipment currently in use, and that replacing such equipment would be costly and untimely with ATSC 3.0 on the horizon. See Canyon TV/Cannaliato Comments at 1, which state that "replacing these processors/exciters would be a financial burden at \$3,000+ for each translator

station, but also an untimely one with ATSC 3.0 on the horizon." Canyon TV/Cannaliato instead suggests that we employ a similar requirement to what is imposed on full power television stations in § 73.1540 (Carrier frequency measurements). *Id.* at 1–2. We would note that in September 2022, after Canyon TV/Cannaliato filed its comments, the Commission proposed to strike such language from 47 CFR 73.1540 because this technical engineering term related to analog television operation and is now obsolete. See *Part 73 NPRM* at n.12. By contrast, ATBA supports our proposed frequency measurement requirement. ATBA Comments at 2. No other comments were received regarding this proposal. We disagree with the premise of Canyon TV/Cannaliato's argument. We believe that LPTV/translator stations can meet the proposed frequency measurement requirement without replacing existing equipment. Stations can comply with the rule by reviewing the station's signal on a spectrum analyzer and determining that the pilot carrier (for ATSC 1.0) and the overall signal (for ATSC 1.0 and ATSC 3.0) appear correctly and are properly contained within their assigned spectrum, consistent with the standard in use and our rules. This approach would not be burdensome, even on an annual basis, and would ensure the station is operating in a manner consistent with the standard. We believe the rule as proposed is able to preemptively correct potential equipment issues and does not impose the cost of additional equipment on stations. However, for the sake of clarity, we identify the specific portions of § 73.682 that contain the information needed to conduct frequency measurements, rather than citing to the entire broadcast standard (§ 73.682 as a whole), which includes audio and video transmission standards irrelevant to frequency measurements, as well as the PSIP standard, which does not apply to LPTV/translators. Therefore, the rule we adopt today in § 74.762 replaces a reference to § 73.682 with references to § 73.682(d), A/53 Part 2 (for ATSC 1.0), and § 73.682(f)(2) (for ATSC 3.0).

LPTV/Translator Protection of Land Mobile Radio Service

We adopt the proposals set forth in the *NPRM* relating to LPTV/translator protection of the Land Mobile Radio Service (LMRS). Sections 74.709(a) and (b) (Land mobile station protection) of the Commission's rules require LPTV/translator stations to protect certain channels for use by the LMRS in thirteen U.S. cities listed in the rule,

which specifies a 130 kilometer radius from the coordinates for these cities as a threshold for determining interference. 47 CFR 74.709 (Land mobile station protection). The 130 kilometer radius around each set of coordinates was calculated based on the 1927 North American Datum (NAD 27). As a result of improvements in technology and measuring capabilities, NAD 27 has been superseded by the 1983 North American Datum (NAD 83). The Commission's Office of Engineering and Technology and Office of the Managing Director have previously explained that "[g]eodetic datum is a set of constants specifying the coordinate system used for calculating the coordinates of points on the Earth. NAD 83 was developed based on satellite and remote-sensing measurement techniques, and provides greater accuracy than the older NAD 27." *Amendment of Parts 1, 2, 25, 73, 74, 90, and 97 of the Commission's Rules to Make Non-Substantive Editorial Revisions to the Table of Frequency Allocations and to Various Service Rules*, Memorandum Opinion and Order, 23 FCC Rcd 3775, 3796, para. 61, n.101 (OET/OMD 2008) (2008 OET/OMD Order). Because it provides greater accuracy and the older NAD 27 is outdated, we proposed in the *NPRM* to amend the rule to use NAD 83 for purposes of specifying these coordinates. *NPRM* at para. 12; 2008 OET/OMD Order, 23 FCC Rcd at 3796, para. 61, n.101. We further tentatively concluded that updating the coordinates in the rule to NAD 83 would serve the public interest by conforming the values with the coordinate system used in the Commission's LMS database and with those found in § 90.303(b) (Availability of frequencies) of the rules, which define the service that § 74.709 protects. *Id.* Section 90.303(b) defines the specific center points used to permit land mobile operations, which represent the specific locations that § 74.709(a) is designed to protect. *See* 47 CFR 90.303(a) (stating that "coordinates are referenced to the North American Datum 1983 (NAD83)") and (b) (listing coordinates of geographic centers and TV channels of thirteen urbanized areas). As such, conforming the values in § 74.709(a) to those of § 90.303(b) would help to ensure that land mobile operations are appropriately considered and protected from LPTV/translator operations. There is no equivalent to § 74.709(b) in the Part 90 rules, so we therefore proposed to convert these values to NAD 83 by conforming them to the as-filed coordinates for the associated television station if the associated station still exists at the same

location, or if it does not, converting them directly to NAD 83.

Commenters generally agree with our proposal to replace the NAD 27 coordinates with the more current NAD 83, but some commenters express specific concerns. *See, e.g.,* ATBA Comments at 2 ("First, the FCC proposes to replace the use of the near century old NAD 27 geodetic datum with the more current NAD 83 to determine land mobile protections. ATBA agrees that the use of NAD 83 will improve accuracy and consistency with the Commission's other databases.") (internal references omitted). The National Association of Broadcasters (NAB) points out, and the Society of Broadcast Engineers (SBE) agrees, that a few of the coordinates we proposed are different from those derived if the existing coordinates are converted to NAD 83 via the North American Datum Conversion program (NADCON). *See* Comments of the National Association of Broadcasters, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (NAB Comments) at 2–3; Reply Comments of the Society of Broadcast Engineers, Inc., MB Docket Nos. 03–185 and 22–261 (filed Nov. 7, 2022) (SBE Reply) at 3–4. As NAB notes, NADCON was superseded by the NGS Coordinate Conversion and Transformation Tool (NCAT). NAB Comments at 2. We note that the coordinates we proposed are the ones found in Part 90 of the Commission's rules, and differ by 25 meters at most (approximately 82 feet). Given that the values in this table are designed to protect the Part 90 service, we believe the most consistent approach is to make the values in § 74.709 match those found in Part 90. Staff discovered after the *NPRM* was issued that the proposed Miami longitude seconds value contained a typographical error, which is being corrected in this *Report and Order*.

NAB also encourages us to add a note to § 74.709(a) for Cleveland, Ohio and Detroit, Michigan that is consistent with the notes found in Part 90 indicating that these channels are not available for land mobile use and thus do not require protection. NAB Comments at 4. *See* 47 CFR 90.303(b), nn. 2 and 3. *See also* SBE Reply at 6. We also note that there are full power and Class A television stations assigned to some of these channels already, making them unusable for land mobile operations at the present time. In addition, NAB urges the Commission to consider using this docket to "remove land mobile assignments that have remained unused for more than 50 years," citing Cleveland, Ohio and Detroit, Michigan. NAB Comments at 4. We note that a

pending petition for rulemaking submitted by the Land Mobile Communications Council (LMCC) also addresses this issue. In that petition, LMCC proposed removing the Cleveland, Ohio and Detroit, Michigan rows entirely from the relevant rule section in Part 90. *See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, Land Mobile Communications Counsel (LMCC), Petition for Rulemaking in the Matter of Subpart L of Part 90 of FCC Rules: Updated Method to Determine Potential Interference Between Land Mobile Stations and Digital Television Stations Operating in the 470–512 MHz Band ("T-Band")*, Public Notice, Report No. 3186 (rel. Jan. 12, 2022); Petition for Rulemaking of Land Mobile Communications Council, RM–11915 (filed June 24, 2021). Due to the pendency of that petition, we decline at this time to add a note to § 74.709(a). We do not believe that this will create confusion for licensees, as the note in Part 90 already indicates that the Cleveland, Ohio and Detroit, Michigan channels are not available and thus those areas do not require protection.

NAB also requests that this update to the coordinates not result in stations having to relocate. NAB Comments at 4. We note that the coordinates in the rule are used only to determine whether an LPTV/translator application's interfering contour is outside of the relevant LMRS protected zone for the potentially affected channel and community for purposes of granting an application. We are not aware of any actual instance in which a station would have to relocate and we believe it is unlikely that these minor corrections will result in any stations suddenly finding themselves no longer compliant with § 74.709. But in response to NAB's concern, we clarify that absent any actual interference, we do not anticipate requiring an LPTV/translator station to make changes solely due to these coordinate updates. *See* 47 CFR 74.703(e) (Interference) provides that "[LPTV/translator] stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation." LPTV/translator stations are required to protect land mobile operations even if they otherwise comply with the rules.

LPTV Pilot Project Digital Data Services Act

We decline to adopt the *NPRM* proposal to delete the rule implementing the LPTV Pilot Project

Digital Data Services Act (DDSA). *NPRM* at para. 14. See LPTV Digital Data Services Act (Pub. L. 106–554, 114 Stat. 4577, Dec. 21, 2000 (DDSA), *codified at* 47 U.S.C. 336(h)); 47 CFR 74.785 (Low power TV digital data service pilot project). The DDSA mandated that the Commission issue regulations establishing a pilot project pursuant to which twelve specified LPTV stations could provide digital data services to demonstrate the feasibility of using LPTV stations to provide high-speed wireless digital data service, including internet access, to unserved areas. When the Commission implemented the DDSA in 2001, the Commission had not yet authorized Class A or LPTV/translator stations to operate digital facilities. The DDSA was implemented by the Commission in *Implementation of LPTV Digital Data Services Pilot Project*, Order, 16 FCC Rcd 9734 (2001); Order on Reconsideration, 17 FCC Rcd 2988 (2002); 47 CFR 74.785. In 2004, the Commission authorized all LPTV/translator stations to operate in digital. See 2004 Order. Currently, all LPTV stations must operate in digital and may offer ancillary and supplementary services, including the services contained in the pilot project of the DDSA. See 47 CFR 74.790(i) and (m) (Permissible service of TV translator and LPTV stations); 73.624(c) and (e) (Digital television broadcast stations). The Commission's ancillary and supplementary rules provide that broadcasters may offer services that "include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section." 47 CFR 73.624(c). One difference between the Commission's ancillary and supplementary rules and the DDSA is that the rules require that ancillary and supplementary services may not derogate the station's required signal to viewers, while the DDSA does not. We stated in the *NPRM* that none of the stations identified in the statute are currently providing service pursuant to an experimental authorization issued under the DDSA, and that some of the stations have been cancelled. *NPRM* at para. 14. At the time the statute was enacted, the LPTV stations to which it applied were KHLM–LP, Houston, Texas; WTAM–LP, Tampa, Florida; WWRJ–LP, Jacksonville, Florida; WVBG–LP, Albany, New York; KHII–LP, Honolulu, Hawaii; KPHE–LP (K19DD), Phoenix, Arizona; K34FI and

K65GZ, Bozeman, Montana; WXOB–LP, Richmond, Virginia; WIIW–LP, Nashville, Tennessee; WSPY–LP (now WLPD–CD), Plano, Illinois; W24AJ (now WPVN–CD), Aurora, Illinois; and "[a] station and repeaters . . . [to provide] service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough." According to LMS, three of these stations (K34FI, K44GE (formerly K65GZ), and WXOB–LP) have been cancelled. In addition, two of the stations (WLPD–CD and WPVN–CD) are now Class A television stations, and the DDSA only applies to LPTV stations. As a result, in the *NPRM*, we tentatively concluded that this rule served no useful purpose. *NPRM* at para. 14.

Three comments were submitted in response to this proposal in the *NPRM*, all urging the retention of the DDSA rule. These commenters question the Commission's authority to modify the Congressional directive, and seek to preserve the program. Comments of U.S. Television LLC, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (U.S. Television LLC Comments) at 1–2; Comments of Wireless Access, LLC, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (Wireless Access Comments) at 1, 4; Reply Comments of the LPTV Broadcasters Association, MB Docket Nos. 03–185 and 22–261 (filed Nov. 3, 2022) (LPTV Broadcasters Association Reply) at 3. Based on the interests set forth by these commenters, we conclude that retaining the DDSA digital pilot program rule may serve a useful purpose, and therefore, we decline to adopt the proposal in the *NPRM* and will retain the DDSA digital pilot program rule.

Station Identification

After evaluation of the record, we are persuaded to adopt our LPTV station identification proposals, but we decline to adopt our proposed changes to identification requirements for TV translator stations at this time. In the *NPRM*, we examined § 74.783(a) (Station identification), which requires analog LPTV/translator stations to provide station identification. *NPRM* at para. 15. See 47 CFR 74.783(a) through (c) (Station identification). When the Commission adopted its rules for digital LPTV/translator operations in 2004, it declined to adopt a separate rule for digital stations, choosing instead to allow such LPTV/translator stations the flexibility to identify themselves in different manners, including following the analog station identification provisions in § 74.783(a). See 2004 Order, 19 FCC Rcd at 19337–38, paras. 15–18 (noting that Commission was unable to award second channels to

LPTV/translator or Class A stations to facilitate their digital transitions due to the lack of sufficient spectrum. To prevent the disruption of service to viewers, the Commission determined that the low power television digital transition should be completed at some fixed time after the deadline for full power television stations, which would allow viewers to transition to digital service without loss of their existing service). See *id.* at 19394, para. 192 (declining to establish identification requirements for digital LPTV and TV translator stations). While the Commission declined to adopt such a requirement, it explained that it believed that digital TV translator and LPTV stations could be practically identified by other means. The Commission encouraged "operators of digital LPTV and TV translator stations to experiment with possible means for identifying their stations" and "plan[ned] to revisit this issue in a future periodic review proceeding." See *id.* at 19395, para. 194. Thus, we disagree with the National Television Association's (NTA) assertion that "18 years ago the Commission decided that digital translators would not be subject to a station identification requirement." Comments of the National Television Association, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (NTA Comments) at 1. These provisions allow identification via (1) transmitting the call sign in International Morse Code at least once every hour, or (2) arranging for the primary station whose signal is being rebroadcast to identify the translator station by transmitting an easily readable visual presentation or a clearly understandable aural presentation of the translator station's call letters and location. 47 CFR 74.783(a)(1) and (2) (Station identification). We tentatively concluded in the *NPRM* that given the completion of the LPTV/translator digital transition, we should require digital LPTV/translator stations to comply with the station identification provisions set forth in § 74.783, as revised to reflect digital operations. *NPRM* at para. 15; 47 CFR 74.783(a)(1) and (2). We also proposed in the *NPRM* to include the option for LPTV/translator stations to use the Program and System Information Protocol (PSIP) to transmit the station's call sign as the "short channel name" on at least one stream of programming that the LPTV/translator station transmits. PSIP transmits a television station's virtual channel (see *infra*), and can also transmit electronic program guides with titles and descriptions to be decoded

and displayed by a viewer's digital receiver. ATSC A/65C defines the standard protocol—referred to as PSIP—for the transmission of data tables compatible with digital multiplex bit streams via terrestrial broadcasts. *NPRM* at para. 16. The “short channel name” is a seven character field in the Terrestrial Virtual Channel Table that stations use to comply with the digital transmission standard set forth in ATSC A/65C as incorporated in § 73.682(d) of our rules. *See* 47 CFR 73.682(d). For example, a station would enter in the short channel name field the station's call sign, e.g., “K20DA-D.”

As discussed in detail below, in light of the record on these proposals, we decline to adopt identification requirements for TV translator stations at this time in light of concerns of commenters, but we may consider extending station identification requirements to TV translator stations in a future proceeding. We do find sufficient support to require digital LPTV stations to comply with the station identification provisions set forth in § 74.783 applicable to analog operations, updated to reflect digital operations. We also adopt our proposal to include an option for LPTV stations to use the PSIP to transmit the station's call sign as the “short channel name” on at least one stream of programming that the LPTV station transmits.

Identification Requirements for TV Translator Stations. A number of commenters objected to our proposed station identification requirements for TV translator stations. These commenters express concerns about cost and consumer confusion. NTA Comments at 1 and 3. In support, NTA cites translator use in Alaska and asserts that “Alaska Public Television operates about 125 heterodyne translators in very small and remote communities. Under the Commission's PSIP identification alternative, unless identified by DTV primary stations, these translators would have to be replaced at great cost.” *Id.* at 4. NTA also indicates that not all TV translator stations are identifying at this time, and if we were to adopt a rule, many of those translators would not have the means to do so. One translator owner and operator of a Montana translator station estimates that if not identified by their DTV primary station, the cost of updating equipment to enable translators to insert data into the PSIP of the received data would cost between \$4,000 and \$10,000 for each translator. *Id.* at 5 and Exhibit 1, Statement of Charles J. Cannaliato. NAB Comments at 5. *See also* SBE Reply at 2 (“SBE supports NAB's recommendation that [the ability of

translating stations to make changes in their PSIP] be limited to those LPTV stations that actually do originate programming to avoid causing confusion among viewers.”). NAB recommends instead that the use of PSIP for station identification purposes be limited to LPTV stations that originate programming and do not operate as translators. *Id.*

In light of the commenter concerns about the technical challenges inherent in our proposal for TV translators and the unintended costs that could be imposed by the proposed modification of the rule, we decline to adopt the proposed identification requirements for TV translator stations at this time. Consistent with the Commission's decision in 2004 to allow TV translator stations the flexibility to identify themselves in different manners, we encourage TV translator stations that are not currently providing station identification to explore options for providing identification. *See 2004 Order*, 19 FCC Rcd at 19395, para. 194. In this regard, instead of the proposed mandatory requirement, we adopt a rule that includes one voluntary option for TV translator stations to identify their signal, specifically, arranging with the originating station to provide identification in a visual manner. *See* revised § 74.783(b). We note that FM translator stations, despite not being able to use visual identification, are still required to identify. One option for identifying is to arrange for the primary station to identify the translator three times per day. *See* 47 CFR 74.1283(c)(1) (Station identification).

Identification Requirements for LPTV Stations. After evaluation of the record, we are persuaded to require LPTV stations to comply with our analog LPTV station identification rules now that the LPTV/translator digital transition is complete and analog operations have terminated. Accordingly, we adopt the proposal in the *NPRM* that digital LPTV stations continue to comply with the station identification provisions set forth in § 74.783, updated to reflect digital operations. *NPRM* at para. 15. We received support for this proposal, and received no opposition to the proposal with respect to LPTV stations that originate programming. ATBA Comments at 2 (ATBA “supports the Commission's proposals to update its station identification rules to reflect digital operations.”) (internal references omitted); Comments of One Ministries, Inc., MB Docket Nos. 03–185 and 22–261 (filed Sept. 26, 2022) (OMI Comments) (“OMI agrees that it is helpful to have the using [sic] the option

for LPTV/translator stations to use the Program and System Information Protocol (PSIP) to transmit the station's call sign as the ‘short channel name’ on at least one stream of programming that the LPTV/translator station transmits.”). We do not believe the transition to digital operation provides any basis to relieve LPTV stations that originate programming of their obligation to provide station identification, and we therefore adopt our proposal to require such stations to follow the station identification provisions set forth in § 74.783. Consistent with our decision above, LPTV stations that do not originate programming will be considered to be under the same rules for station identification as translators. *See supra*.

We also adopt our proposal in the *NPRM* to revise § 74.783(a)(1) to provide an alternative identification method for LPTV stations to replace the outdated option to insert the call sign via Morse Code. *NPRM* at para. 16. 47 CFR 74.783(a)(1) (Station identification). Specifically, we proposed to allow the option to use PSIP to transmit the station's call sign as the “short channel name” on at least one stream of programming that the LPTV station transmits. *NPRM* at para. 16 and n.48. Commenters supported this update. OMI agrees that it is helpful for LPTV stations to use the PSIP to transmit the station's call sign as the “short channel name” on at least one stream of programming that the LPTV station transmits. OMI Comments. ATBA also supports the proposal, saying it “believes the proposed alternate methods for stations to identify their broadcasts will streamline the station identification process . . .” ATBA Comments at 2. We agree, and we amend the rules accordingly to include the option for LPTV stations to use PSIP to transmit the station's call sign as the “short channel name” on at least one stream of programming that the LPTV station transmits. In addition, because we have decided herein to apply these requirements to LPTV stations but not to TV translator stations, we reorganize § 74.783 to make it more clearly understandable by delineating the subsections that separately apply to LPTV stations (§ 74.783(a)), TV translators (§ 74.783(b)), and to both (§ 74.783(c)). *See infra*. In its comments, it appears that ATBA is suggesting that the alternative method apply to full power and Class A television stations. *See* ATBA Comments at 2–3 (stating the alternate method should apply to “all stations and streams”). To the extent that ATBA's proposal relates to stations

in categories beyond LPTV stations, the proposal is outside the scope of this part 74 LPTV/translator rules proceeding, and thus we decline to adopt it for other categories of stations.

While not opposing this change, one commenter expressed concern that, because some Commission-assigned LPTV/translator call signs are in the format of two numbers followed by three letters, this proposal would require eight characters, but the “short channel name” field in PSIP only allows seven characters. *See* revised § 74.791(d) (Call signs), as discussed. *See* Canyon TV/Cannaliato Comments at 1. This commenter proposed dropping the “-D” from the end of call signs which have such a designation, as this is a remnant of when it was necessary to distinguish between analog and digital operations. *Id.* While the “-D” may be superfluous with the transition of all LPTV/translator stations to digital, we do not believe it is necessary to prescribe a mandatory change of the call signs of a significant number of stations. Instead, we clarify here that any station with an eight character call sign that seeks to identify by this method may opt to drop the “-D” when placing it in the “short channel name” field. We have revised § 74.783 to include this clarification. *See* revised § 74.783(a)(2).

TSID Requirements. We adopt the proposal in the *NPRM* regarding LPTV/translator stations’ use of transport stream ID (TSID) with some modifications. To identify a station using the PSIP “short channel name,” a station must request and be assigned a TSID. *See NPRM* at para. 17. In the *NPRM*, we proposed to require that an LPTV/translator station that has requested and been assigned a TSID must broadcast with the station’s assigned TSID during its hours of operation. *Id.* We also proposed to require translator stations that had not been assigned a TSID to pass through the TSID of their respective originating station. *See NPRM* at para. 17 and Appendix B (proposed § 74.783(d)(1)). *See* revised § 74.783(c). The proposed requirement to broadcast with the assigned TSID would be in addition to, and not in place of, one of the other identification requirements. *See NPRM* at para. 17. We also proposed to apply the same requirement to a station’s bit stream ID (BSID), which is the equivalent value used in ATSC 3.0. *See NPRM* at para. 17 and proposed § 74.783(d)(2).

While the proposal did receive support (see OMI Comments), several commenters object to this proposal, concerned that it would require translators to insert a TSID or BSID. *See,*

e.g., Canyon TV/Cannaliato Comments at 1. Canyon TV/Cannaliato asserts that the proposal to use TSIDs would “impose a significant financial burden to community translators because the majority (perhaps more than 80%) of translator stations do not have the capability of inserting a TSID into the data stream.” *Id.* For example, NAB asserts that the use of a BSID is contrary to the applicable ATSC standard, and urges the Commission not to allow translator stations to use a BSID for identification, arguing that it would create industry and viewer confusion. NAB Comments at 5–6. SBE also joins NAB in “advocating against the use of BSID for translator stations operating in ATSC 3.0.” SBE Reply at 3. The *NPRM*’s proposal was directed only at scenarios where stations have assigned TSIDs because they are either originating programming or otherwise modifying the streams of originating stations. For example, a single TV translator station may rebroadcast the respective primary streams of several different originating television stations, each of which have their own TSIDs. A TV translator, however, can only pass through one TSID, and currently our rules do not address which TSID a TV translator station would use. Under our adopted rule, under these circumstances, a TV translator station providing PSIP would be required to ask to be assigned its own unique TSID and broadcast it. Our intent is to prevent a station that is modifying one or more originating station(s) stream(s) from failing to transmit a TSID, and preventing a station that is originating programming while providing PSIP data from failing to transmit its assigned TSID even though the PSIP equipment would allow it to do so. Our aim is to eliminate cases where stations that are originating programming and are assigned TSIDs do not properly transmit that TSID, or where stations are otherwise passing through signals from one or more originating stations but either fail to provide a TSID or provide an incorrect one. Contrary to commenter concerns, we do not expect a translator that is not otherwise altering the signal of a single originating station to insert a unique TSID or BSID different from that of the originating station. We therefore adopt our proposal, with clarifying changes to require stations assigned a TSID to transmit that TSID. *See* revised § 74.783(c)(1) (stating that all low power TV stations originating programming shall transmit their assigned odd-numbered TSID, if one has been assigned. All TV translator stations, and low power TV stations not originating

programming, shall pass through the assigned TSID of the originating station, unless the station is modifying the signal of one or more originating stations in such a way that it is not clear which originating station’s TSID should be used. In that case, the station shall transmit its assigned odd-numbered TSID if one has been assigned). We conclude that the TSID requirement is in addition to, and not in place of, one of the other identification requirements. We also adopt the same requirement with respect to a station’s BSID, which has the same function as the TSID, but in the ATSC 3.0 context.

LPTV Virtual Channels. We adopt the proposal in the *NPRM* to codify the Media Bureau’s practice of requiring LPTV stations to transmit with a virtual channel that avoids conflicts with any full power or Class A station’s virtual channel in cases where a contour overlap would arise, or with virtual channels chosen by other LPTV stations. *NPRM* at para. 18. During the DTV transition, most full power television stations transmitted two over-the-air signals using two different radio frequency (RF) channels—an analog (NTSC) channel and a paired digital channel capable of transmitting multiple streams of programming. ATSC, an international, non-profit member organization, developed the PSIP standard setting forth rules and priorities for determining a digital television station’s “virtual” channel number, the channel number viewers see on their television receiver when they view a digital television station over-the-air. *See Request for Declaratory Ruling by Meredith Corporation and “Alternative PSIP Proposal” by PMCM TV, LLC for WJLP (formerly KVVN(TV))*, *Middletown Township, New Jersey*, 32 FCC Rcd 7229, 7230, para. 3 and *passim* (2017), *petitions for review denied*, *PMCM TV, LLC v. Fed. Comm’n’s Comm’n*, 731 Fed. App’x 1 (D.C. Cir. 2018). Under Annex B.1.1 to ATSC 65/C, which sets forth the mandatory requirements for assigning the virtual channel number components of full power and Class A stations’ virtual channels, most of those stations’ virtual channel numbers begin with their analog channel numbers. A TV translator station is required to pass through the virtual channel number of its primary station unless it conflicts with a broadcaster operating in the service area of the translator, in which the translator must change its virtual channel number to a non-conflicting number. Annex B.1.10. As discussed below, Annex B does not apply to LPTV stations. We stated in the *NPRM* that

LPTV licensees are not required to comply with the virtual channel assignment methodology found in ATSC A/65C Annex B, as full power and Class A stations are, and we were not proposing to require them to do so. *NPRM* at para. 18.

ATBA agrees with our proposal, but asks us to provide “greater flexibility” to select a virtual channel. ATBA Comments at 3. In the absence of any further information of what this request entails, we decline to make further modifications. But we note that LPTV stations are already permitted to select any valid virtual channel within channels 2–69 that does not create a conflict.

SBE proposes that we require LPTV stations to enter their virtual channels in LMS. SBE Reply at 2–3. NAB, in its reply, also notes that virtual channel assignments and changes in virtual channel assignments should be included in the Commission’s database to “avoid potential conflicts and viewer confusion.” See Reply Comments of the National Association of Broadcasters, MB Docket Nos. 03–185 and 22–261 (filed Nov. 7, 2022) (NAB Reply) at 3. We note that we already allow stations to informally request that the staff enter their virtual channels into LMS on a voluntary basis, and encourage LPTV stations to do so. LPTV stations may ask the staff to indicate their virtual channel in LMS by sending a request to the Video Division in the Media Bureau. Such requests should include the station’s facility ID, virtual channel, and a map showing the station’s contour and the contours of surrounding stations using the indicated virtual channel to demonstrate the lack of overlap with other full power, Class A, and LPTV/translator stations. In the event that overlap with other full power, Class A, or LPTV/translator stations is observed, the staff will notify the station making the request that it must choose an alternative virtual channel. Because virtual channel assignments do not require Commission approval, we do not believe it is necessary to make this voluntary procedure mandatory, and we decline to explicitly require it.

SBE also requests that the Commission affirm that full power and Class A virtual channels have primary rights over those of LPTV/translator stations. SBE Reply at 2–3. We believe that our proposed language makes this clear, in that LPTV/translator stations are required to utilize a virtual channel which does not create an overlap with a station that is required to follow ATSC A/65C, Annex B, which includes full power and Class A stations. See revised § 74.790(n). See also ATSC A/65C,

Annex B.1.8, which indicates that the virtual channel number used by a broadcaster should “be different from those used by any other broadcaster with an overlapping DTV service area.” Should the contour of a full-power and Class A station come into conflict with that of an LPTV, since the LPTV station has secondary status, it is required to change its virtual channel. For example, the Commission recently announced winning bidders in the Commission’s auction of construction permits for full power television stations (Auction 112), and awarded a total of eighteen construction permits. *Auction of Construction Permits for Full Power Television Stations Closes, Winning Bidders Announced for Auction 112*, AU Docket No. 21–449, Public Notice, DA 22–659 (OEA/MB 2022). These new full power stations will determine their virtual channels using ATSC A/65C, Annex B, as required by § 74.682(d) of the Commission’s rules. If that virtual channel number overlaps with that of an LPTV station, the LPTV station will be required to change its virtual channel. As a result, we do not believe it is necessary to amend the proposed language to affirm SBE’s assertion.

In light of the comments, we find that it is in the public interest to codify the Bureau’s practice of requiring LPTV stations to transmit with a virtual channel that avoids conflicts with any full power or Class A station’s virtual channel in cases where a contour overlap would arise, or with virtual channels previously chosen by other LPTV stations. *2004 Order*, 19 FCC at 19413, para. 243, n.505. See revised § 74.790(n). Absent this rule change, LPTV stations could potentially create contour overlap with full power and Class A stations, leading to virtual channel conflicts. We reiterate that LPTV licensees are not required to comply with the virtual channel assignment methodology found in ATSC A/65C, Annex B, as full power and Class A stations are required to do. *2004 Order*, 19 FCC Rcd at 19413, para. 243 (noting that the Commission will not at the time require digital LPTV stations to comply with the ATSC A/65B standard). See also ATSC A/65C, Annex B (2006) (ATSC A/65C, Annex B); 47 CFR 73.682(d) (TV transmission standards) (The Commission later incorporated the 2006 version of Annex B into the Commission’s rules by reference for full power and Class A stations).

LPTV/Translator Call Sign Assignment Protocol. In this *Report and Order*, we adopt our tentative conclusion from the *NPRM* that we should add a new § 74.791(d) (Call signs) to reflect the staff’s current call

sign assignment protocol for LPTV/translator stations. *NPRM* at para. 19 and Appendix B. Section 74.783(d) (Station identification) provides that an LPTV/translator station call sign will be made up of the letters K or W, the station’s channel number, and “two additional letters.” See 47 CFR 74.783(d) (Station identification). For certain channel numbers, however, all two letter combinations have been exhausted for several years, and consistent with the Commission’s policy that all stations have a unique call sign, stations have been assigned a three letter call sign beginning with “AAA,” continuing sequentially through the alphabet for the third letter. This three letter protocol is built into the Commission’s LMS system. ATBA supports this proposal, and no entity opposed it. ATBA Comments at 3. Considering the necessity of modifying the two letter protocol due to the exhaustion of such combinations, and the fact that any change would affect the staff’s ability to continue timely processing applications, we adopt the proposal and amend § 74.791 to add paragraph (d).

Technical Modifications

Processing Priority. We adopt the processing priority proposal put forth in the *NPRM*. Section 74.708(b) (Class A TV and digital Class A TV station protection) requires LPTV/translator stations to protect previously filed Class A applications, and § 74.710(a) (Digital low power TV and TV translator station protection) requires LPTV/translator stations to protect previously filed LPTV/translator applications. 47 CFR 74.708(b) (Class A TV and digital Class A TV station protection) and 74.710(a) (Digital low power TV and TV translator station protection). These subsections reference the Bureau’s practice that if two applications are filed on different days and otherwise have equal processing priority, the filing earlier in time will receive priority. In the *NPRM*, we tentatively concluded that these requirements should be maintained in the rules, but moved into the Commission’s digital rules in § 74.787(c) (Licensing). *NPRM* at para. 20. No commenters opposed this proposal. We therefore adopt the proposal, maintain the rules, and move them into the Commission’s digital rules in § 74.787(c). 47 CFR 74.787(c).

Vertical Polarization Considerations. We adopt our proposal in the *NPRM* to remove references to antennas with solely vertical polarization in certain part 74 rules. Sections 74.735(c) (Power limitations) and 74.750(f) (Transmission system facilities) of the rules reference

vertically polarized transmitting antennas. 47 CFR 74.735(c) (Power limitations) and 74.750(f) (Transmission system facilities). We noted in the *NPRM* that despite the reference, the Commission's LMS filing system does not and has not allowed stations to specify a vertically polarized antenna. Further, we noted that television viewers' home receive antennas are generally horizontally, not vertically, polarized. In the *NPRM*, we therefore proposed to modify the language in § 74.735(c) and in revised § 74.750(f) to remove the reference to antennas with solely vertical polarization. *NPRM* at para. 21. We also proposed to clarify, consistent with the similar rule applicable to full power stations, that the horizontally polarized power is to be higher than or equal to the vertically polarized power in all directions, and require documentation that antennas meet this requirement. *See* 47 CFR 73.682(a)(14) (TV transmission standards) ("It shall be standard to employ horizontal polarization."). *See also* 47 CFR 73.316(a) (FM antenna systems). *NPRM* at para. 21 and n.57.

OMI and NTA believe we should retain the reference to antennas with solely vertical polarization and OMI requests that we modify LMS to allow them. OMI's comments do not argue in favor of antennas with solely vertical polarization so much as they make a case for the use of a vertical polarization component. OMI Comments. We note that a vertical polarization component is already permitted via elliptically- and circularly-polarized antennas, and that these types of antennas would not be implicated by the rule change proposed. 47 CFR 74.735(c). While there may be future applications where a vertically polarized component is helpful, use of antennas with solely vertical polarization would require television viewers to change their home receive antennas from horizontal to vertical polarization, which we do not believe viewers should be required to do. Thus, we do not believe that permitting the use of antennas with solely vertical polarization makes sense. We therefore decline to retain this reference for unknown future applications, but will address such applications when and if they materialize.

As NAB notes, station assignments and analysis parameters assume the use of horizontal polarization, U.S. bilateral agreements with Canada and Mexico do not permit solely vertical polarization, and NAB suggests that "[a] loss of standardization in this regard will adversely affect the entire broadcast television industry." NAB Reply at 4. We agree with NAB's concerns, and we

therefore adopt the proposal in the *NPRM* and modify the language in § 74.735(c) and in revised § 74.750(f) to remove the reference to antennas with solely vertical polarization. NTA cites a single case of a TV translator station in Mink Creek, Idaho (Mink Creek) which takes advantage of a polarity shift caused by reflecting the signal of a vertically-polarized station off a mountain in order to achieve horizontal polarity at the receive antennas in the community targeted by the station. NTA Comments at 11–12. While we acknowledge this example, we do not believe it is evidence of a commonly-used method or cause for the Commission to contemplate use of vertical-only operations in its licensing or record keeping. We are not aware of any other examples of scenarios like Mink Creek. Given the burdens associated with changing equipment, we direct the Media Bureau to consider requests for waiver of the rule. Mink Creek and any other existing similar situations where stations are currently operating with vertical-only polarization should promptly, upon the effective date of these rules, submit a waiver request to the Video Division, Media Bureau.

With respect to our proposal to require that vertical power not exceed horizontal power, commenters agree that the our proposal might be overly prescriptive in that an antenna could be designed to comply with the rule, but after installation be found to have a slightly higher vertical than horizontal power. In that scenario the rule as proposed could require the antenna to be removed and replaced. *See, e.g.*, NAB Comments at 6; Letter from Robert Weller, Vice-President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC (Nov. 18, 2022) (*NAB Ex Parte*) (requesting that some clarification may be needed to ensure that proposed rule changes do not adversely affect the operation of existing stations or impose new requirements); Reply Comments of Hammett & Edison, Inc., Consulting Engineers, MB Docket Nos. 03–185 and 22–261 (filed Nov. 7, 2022) (H&E Reply) at 1. We agree with commenters and note that this outcome was not the intent of the proposal. Thus, we clarify that the amended rule requires that an antenna should be *designed* such that the horizontal power is intended to be higher than or equal to the vertical power in all directions. This new requirement is consistent with stations being primarily horizontal, with a possible vertical component intended to be less than or equal to the horizontal

component. *See* revised § 74.735(c). NAB and SBE also suggest that our wording in the proposed revised § 74.735(c)(2)—to require submission of documentation that the antenna is designed such that the horizontal power is intended to be higher than or equal to the vertical power in all directions—may have been unclear. NAB Comments at 9; SBE Reply at 6. NAB put forth a suggested revision to provide additional clarity. NAB Comments at 9 (suggesting that the modified text should read instead: "Relative field azimuth plane pattern (patterns for both horizontal and vertical polarization should be included if elliptical or circular polarization is used) of the proposed antenna. A value of 1.0 should be used for the maximum radiation in the horizontal polarization."). We agree that NAB's formulation contains a clearer statement of the intent of our original proposal. We therefore adopt the proposal in the *NPRM* using the modified, clearer language proposed by NAB.

Antenna Pattern Plots. We adopt our proposal in the *NPRM* to update our requirements for submitting antenna pattern plots in applications, with minor adjustments. Section 74.735(c)(4) (Power limitations) currently requires that horizontal plane patterns be plotted "to the largest scale possible on unglazed letter-size polar coordinate paper." 47 CFR 74.735(c)(4). The *NPRM* suggested that this requirement is outdated and not consistent with current licensee and Commission staff practices. We proposed in the *NPRM* to require licensees to submit patterns in the form of a .pdf attachment to an application filed in LMS, and clarify that similar plots are required for elevation (§ 74.735(c)(6)) or matrix patterns (§ 74.735(c)(7)) submitted in the LMS form. *NPRM* at para. 22. *See* revised §§ 74.735(c)(6) and 74.735(c)(7). No commenter disagreed with our assessment, but NAB points out, and SBE agrees, that the terminology we used in the proposed text for the revised rule could be modified to more accurately reflect our intent. NAB Comments at 9; SBE Reply at 6. NAB urges that the proposed § 74.735(c)(4) should read: "All azimuth plane patterns be plotted in a PDF attachment to the application in a size sufficient to be easily viewed." *Id.* We agree that NAB's formulation contains a clearer statement of the intent of our original proposal and therefore adopt it. We note that one goal of this proposal is to ensure that undistorted and complete antenna patterns are available for review. For example, when a station with mechanical beam tilt files a

distorted horizontal plane pattern in LMS to reflect what the antenna looks like in terms of interference to other stations, it can be difficult or impossible to determine the undistorted azimuth pattern absent additional documentation. A station with mechanical beam tilt should instead submit in LMS an undistorted azimuth and elevation pattern and provide the amount and azimuth of the mechanical tilt, or may submit a matrix pattern, but such stations are not required to do so. NAB also proposes that matrix patterns should be submitted as spreadsheets rather than PDFs. We agree that this approach would provide flexibility to applicants and conform to modern practices and include that option in the revised rule. Having received no comments on the *NPRM*'s proposal to clarify that similar plots are required for elevation or matrix patterns submitted in the LMS form, we adopt that proposal, as well.

Modification of Transmission Systems. We adopt our proposal in the *NPRM* to amend § 74.751 (Modification of transmission systems) with a modification proposed by commenters. Section 74.751(b)(4)(i) states: “(b) [f]ormal application (FCC Form 2100, Schedule C) is required for any of the following changes: (4) [a]ny horizontal change of the location of the antenna structure which would (i) be in excess of 152.4 meters (500 feet).” 47 CFR 74.751(b)(4)(i) (Modification of transmission systems). Therefore, the section on its face appears to permit a licensee to relocate its antenna structure less than 500 feet (152.4 meters) without requesting authorization. *See id.* We note that this rule, as written, only addresses relocations of the entire “antenna structure,” which is a tower or building. We note that, scenarios where an antenna structure moves less than 500 feet are highly unlikely to occur in the real world. Additionally, we note a change of location at distances under 500 feet without submission of an application, is not consistent with standard licensing practices.

In the *NPRM*, we noted that the Commission staff's standard processing practice is to require a licensee to file a minor modification application whenever a station seeks to relocate its antenna. *NPRM* at para. 23. We explained in the *NPRM* that because the most precise antenna location provides the most accurate results when using OET Bulletin No. 69 (OET–69 Bulletin), the staff has consistently required a minor modification application for all antenna relocations, and the industry has routinely submitted such minor modification applications. *Id.* We

therefore proposed in the *NPRM* to revise the language of the rule to codify current staff practice and the application filing requirements of LMS, related to the movement of the station antenna specifically, and modify § 74.751(b)(4) to require LPTV/translator licensees and permittees to file an application in LMS on FCC Form 2100, Schedule C, requesting authorization for all antenna relocations. *Id.*

In filed comments, ATBA requests that we “preserve [the Commission's] existing rule that permits a licensee to relocate facilities less than 500 feet (152.4 meters) without requesting prior authorization and to incorporate this rule into its processing practices.” ATBA Comments at 3. The rule, however, appears to apply only to relocation of the entire antenna structure and not generally to other relocations of antennas. *See supra*. NTA asserts that changes in location of less than 500 feet should not make a material difference to the result of the OET–69 Bulletin analyses, and additionally cites to the fact that a 1.0 kilometer cell size is the default in such analyses for LPTV/translator stations, noting that means each cell is “approximately 3,900 feet” on a side. NTA Comments at 19. The OET–69 Bulletin is referenced in § 74.793 of the Commission's rules and provides guidance on the use of Longley-Rice methodology for evaluating TV service coverage and interference in accordance with the Commission's rules. NTA Comments at 19. We calculate that 1.0 kilometer is approximately 3,280 feet, not 3,900 feet. NTA further states that “[r]ather [than] having to file a minor change to move your antenna 20 feet, or adjust a small error in coordinates, LPTV and translator owners should be able to continue to use an informal procedure, such as letter notifications, just like their full service counterparts.” NTA Comments at 20. Neither LPTV/TV translator nor full power stations are permitted to follow such a procedure; for example, full power stations are required to formally file such changes in LMS on Form 2100, Schedule B. We find that there is good cause to amend the rule to require the filing of a minor modification application for moves of less than 500 feet and that such moves can make a material difference to the result of the OET–69 Bulletin. Specifically, we note that stations have the option of selecting both a smaller cell size than the 1.0 kilometer default in the OET–69 Bulletin (0.5 kilometers) and an option to select a smaller path profile spacing increment, as small as 0.05 kilometers or 164 feet, when the

path loss calculations are conducted. A station which has used a smaller path profile spacing increment than the default 1.0 kilometer value can thus change the terrain paths used in the calculation of interference with a relatively small change of coordinates. Additionally, in particularly rough terrain, 500 feet can be, for instance, the difference between the peak of a mountain and a point significantly down the slope of that mountain. Because LPTV/translator stations are more likely than full power stations to operate from very short antenna heights and also because they do so in mountainous areas where significant changes in terrain height can occur over short distances, these differences can be meaningful. While the fact that the Commission uses the radiation center above mean sea level to determine antenna height for interference calculations should limit the impact of some cases, we remain concerned that such moves could cause changes to interference calculations, particularly when smaller path profile spacing increments are used as described above, since it could cause changes in the impact of terrain shielding near the transmitter site. We therefore disagree with ATBA and NTA, and conclude that it serves the public interest for such changes to be evaluated via an application for a construction permit.

NAB argues that “LPTV and TV Translator stations should not be held to a higher standard than full power stations, which are generally allowed to change geographic coordinates by three seconds of latitude and/or longitude as a matter of right” and compares our proposal to the requirements applicable to full power stations contained in § 73.1690 (Modification of transmission systems). NAB Comments at 7 (internal references omitted). We agree with NAB that it is reasonable to conform the LPTV/translator rule to more closely match this full power rule. Section 73.1690(b)(2) and the associated § 73.1690(c)(11) apply only to coordinate corrections and not to relocations. Section 73.1690(c)(11) explicitly requires that a station may correct its coordinates in a streamlined manner “provided there is no physical change in location and no other licensed parameters are changed.” 47 CFR 73.1690(c)(11) (Modification of transmission systems). We therefore amend § 74.751 to permit LPTV/translator stations as well to correct station coordinates in the absence of any such physical change in location or other licensed parameters, where the change is not more than three seconds

latitude and/or three seconds longitude. See revised § 74.751(b)(4) and (c). See *infra*. Limiting streamlined processing only to coordinate corrections improves the accuracy of the coordinates of the facility already in operation, and thus such a correction cannot cause a change in real world interference, even if the predictions change slightly, and therefore we believe this change serves the public interest. As minor modifications do not require a filing fee, and because the staff practice is to process such modifications as rapidly as possible, we do not believe the two-step process is a significant burden. However, to mitigate the concern expressed by NAB related to cost, we direct the Media Bureau to waive any LMS-imposed filing fee associated with the LPTV/translator station's FCC Form 2100 filing, consistent with the current practice for full power stations. See NAB Comments at 8.

We also adopt the proposal in the *NPRM* to delete two subsections of § 74.751 as irrelevant and unnecessary. *NPRM* at para. 24. Section 74.751(b)(6) permits relocation of a station's transmitter without authorization in only certain instances. As we stated in the *NPRM*, because the antenna location, rather than the transmitter location, is the relevant consideration in determining interference, service, and loss, we proposed to delete § 74.751(b)(6) entirely regarding the transmitter's location, as it is not relevant in this analysis. The *NPRM* also proposed to delete § 74.751(c), which requires LPTV/translator licensees to notify the Commission in writing of any other equipment changes they make that are not specifically referenced in paragraphs (a) and (b) of the section. We noted that we do not believe this information is relevant to the Commission's application decision-making processes, and that staff does not routinely receive such notifications. We received no comments opposing these proposed changes, and so we adopt the proposal in the *NPRM*, and delete the subsections.

Minimum Service Standards. We adopt our proposal in the *NPRM* to update the video quality standard. Section 74.790(g)(3) (Permissible service of TV translator and LPTV stations) provides that "LPTV station[s] must transmit at least one over-the-air video program signal at no direct charge to viewers at least comparable in resolution to that of its associated analog (NTSC) LPTV station or, in the case of an on-channel digital conversion, that of its former analog LPTV station." 47 CFR 74.790(g)(3); see also 2004 Order, 19 FCC Rcd at 19348–

9, para. 51. We proposed in the *NPRM* to update the quality standard set forth in the rule to reflect that 480i video resolution is "comparable in resolution to analog television programming," consistent with the update the Commission made to its full power station rules in § 73.624(b). See *NPRM* at para. 25; see also *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20–145, Report and Order, 35 FCC Rcd 14492, 14507, para. 30 (2020). We received no comments opposing this proposal. We conclude that this quality standard is an appropriate standard for LPTV stations and therefore adopt it. Furthermore, we adopt the proposal in the *NPRM* that the desired-to-undesired (D/U) ratios for ATSC 3.0 into TV and vice versa for predicting interference to stations are assumed to be similar and need not be differentiated in the rules beyond TV service. See *NPRM* at para. 25.

LMS Filing Procedures. We adopt our proposal in the *NPRM* to update certain rules to require electronic filing. Certain rules specify the filing of a letter or similar submission for relief with the Commission. We proposed in the *NPRM* to update such rules to instead require submission in LMS, the Commission's broadcast licensing and management database. *NPRM* at para. 26. We also proposed to require email submission of certain specified information in the event LPTV/TV translator stations rebroadcast the programs of other TV broadcast stations. See *NPRM*, Appendix B at proposed § 74.784(b). Doing so is consistent with current licensee and Commission staff practices not just for LPTV/translators, but also full power and Class A licensees and permittees. We received no comments opposing these proposed updates. Therefore, we amend our rules to require LPTV/translator licensees and permittees to file written reports, submissions, letters, notifications, or other required filings in LMS. 47 CFR 74.703(h) (Interference); 74.734(a)(4) (Attended and unattended operation); and 74.763(b) (Time of operation). We also note that we amend § 74.784(b) (Rebroadcasts) as proposed to require email submission. We believe that this amendment is in the public interest because it will streamline application submission, processing, and record keeping, and provide a centralized location for public inspection of all licensing-related matters.

Additional Questions and Proposals Raised by Commenters

We decline to adopt several proposals raised by commenters. In doing so, we note that the *NPRM's* scope was limited

to amendments to the part 74 rules to reflect the current operating environment, including the termination of analog operations in the LPTV/translator service. Specifically, the *NPRM* proposed to adopt rules previously applicable to analog operations for digital operations, update geographic coordinates to the current NAD standard, modify station identification requirements, require LPTV stations to transmit with a virtual channel that avoids conflicts with other stations, update the process for filing applications with the Commission, and make other technical modifications. See *NPRM* at para. 9. We received several proposals that seek to make material changes to our rules, or changes outside of part 74. Comments of Scripps Broadcasting Holdings LLC, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (Scripps Comments) at 1, 4 (proposing to adopt a "90-day shot clock" for resolving channel substitution petitions for rulemaking in part 73); ATBA Comments at 4–6 (proposing that the freeze on major modifications of LPTV stations be lifted and requesting that the Commission "provide greater certainty for LPTV operators planning to invest in new and innovative digital technologies."); Comments of Mountain Broadcasting Corporation, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (Mountain Broadcasting Comments) at 2; see also Reply Comments of Mountain Broadcasting Corporation, MB Docket Nos. 03–185 and 22–261 (filed Nov. 7, 2022) (Mountain Broadcasting Reply) at 5–6 (proposing that the Commission apply Annex B of the ATSC A/65C to both full power and LPTV stations and allow any virtual channel designation that does not result in a contour overlap; and require LPTV stations to file items similar to those maintained by full power stations in a public file). We therefore decline to adopt these proposals as outside the scope of this proceeding.

Aside from the proposals that were outside the scope of this proceeding, CDE asked whether the wording in § 74.701(c) (Definitions) adopted in the *Part 74 Order* ("analog to digital replacement translator (DRT)") is correct given that the analog sunset date was July 13, 2021 at 11:59 p.m. Comments of Cohen, Dippell and Everist, P.C., MB Docket No 22–261 (filed Oct. 24, 2022) (CDE Comments) at 2; see also 47 CFR 74.701(c) (Definitions). We take this opportunity to clarify that the wording is correct. In this instance, we do require reference to the word "analog" despite completion

of the digital transition. In 2009, the Commission adopted a new, replacement digital translator service to permit full power television stations to continue to provide service to viewers within their existing analog coverage areas where the viewers would otherwise lose service after the station transitioned to digital. *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08–253, Report and Order, 24 FCC Rcd 5931 (2009). While the definition of the DRT service includes the word “analog” because it is replacing service to the analog coverage area, the replacement translator service is digital.

Finally, the LPTV Broadcasters Association proposes replacing the term “low power television” in the Commission’s rules with “local power television.” Comments of the LPTV Broadcasters Association, MB Docket Nos. 03–185 and 22–261 (filed Oct. 24, 2022) (LPTV Broadcasters Association Comments) at 1–3. While we recognize the local service that LPTV can provide, we decline to adopt this change. As discussed above, the purpose of this proceeding is to eliminate confusion within our rules. Because several of our rules stem from statutory requirements, and because Congress has used the term “low power television,” we believe that changing this term would result in inconsistencies between the statute and the rules and would create, not eliminate, confusion within our rules. See, e.g., 47 U.S.C. 336(h) (Provision of Digital Data Service by Low-Power Television Stations); *Low Power Protection Act* (Pub. L. No. 117–344, S. 3405 (Jan. 5, 2023) (defining “low power TV station” with respect to § 74.701 of the Commission’s rules); *Community Broadcasters Protection Act of 1999*, Public Law No. 106–113, 113 Stat. Appendix 1 at pp. 1501A–594–1501A–598 (1999), *codified at* 47 U.S.C. 336(f).

Cost Benefit and Diversity, Equity and Inclusion Analysis

After evaluating the record received in response to the *NPRM*’s request for comment on the benefits and costs associated with adopting the proposals set forth in the *NPRM*, we conclude that to the extent that the revised rules impose any costs on Commission licensees and regulatees, such costs will be minimal and are outweighed by the benefits to the public of the revised rules. *NPRM* at para. 27 (seeking comment on the benefits and costs associated with adopting the proposed changes). A few commenters explicitly

addressed the costs and benefits of the proposed rules or provided specific data and analysis supporting claimed costs and benefits in response to the *NPRM*. For example, Canyon TV/Cannaliato asserts that our proposal to use TSIDs would impose a significant financial burden to community translators. See Canyon TV/Cannaliato Comments at 1. NTA in its comments cites an estimate by one translator owner and operator of Montana translator stations of the cost to update equipment to enable translators to insert data into the PSIP of the received data for each translator. See NTA Comments at 5. Canyon TV/Cannaliato also noted with respect to our frequency measure requirement proposal that replacing certain equipment in order to comply would be a financial burden for translator stations. See Canyon TV/Cannaliato Comments at 1. As described *supra*, the revisions to the rules codify the staff’s current practices or better reflect technological advancements in the industry and take into consideration potential financial burdens on LPTV/translators. We did not adopt the TSID- and PSIP-related rules that could have led to increased costs, and we clarified in the *Report and Order* that we do not believe the frequency measurement requirement will lead to increased cost. The revised rules reflect an effort to simplify, streamline, and modernize existing rules and procedures that will enable LPTV/translator stations to more easily comply with licensing requirements through familiar and low cost measures. Thus, we expect any costs imposed by the updated rules will be minimal and outweighed by the public benefits of clarity and modernization.

The *NPRM* also sought comment on how the proposals set forth in the *NPRM* can advance equity in the provision of broadcast services for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. The *NPRM* also sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility. *NPRM* at para. 28. We received no comments on these topics and no objection to adoption of the proposed rules based on these concerns. We acknowledge the importance of these aims, and we believe that the revised rules reflect an effort to simplify, streamline, and modernize existing rules and procedures that will enable LPTV/translator stations to more easily comply with licensing requirements through familiar and low cost measures and we do not believe

they will have negative implications related to diversity, equity, inclusion, or accessibility.

Procedural Matters

Paperwork Reduction Analysis. The *Report and Order* contains either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 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 this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses in the FRFA.

Congressional Review Act. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. 801(a)(1)(A).

Regulatory Flexibility Analysis. 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.” See 5 U.S.C. 603 and 605(b).

Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule and/or policy changes contained in this Report and Order on small entities.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Initial Regulatory Flexibility Act Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (NPRM)* released in July 2022. 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules*

Related to Low Power Television and Television Translator Stations, Order and Sixth Notice of Proposed Rulemaking, FCC 22–58 (rel. July 13, 2022) (*NPRM*); Erratum, FCC 22–58 (rel. Sept. 9, 2022). The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604.

Need for, and Objectives of, the Report and Order

The *Report and Order* reflects the Commission's effort to update its rules following the termination of analog operations in the low power television (LPTV) and TV translator services (collectively LPTV/translator). The Commission adopts certain rules previously applicable to analog operations for digital operations and considers requests and comments received on subjects not included in the *NPRM* proposals, including analysis of the cost and benefits of the proposed rules.

In the *Report and Order*, the Commission retains the rule requiring LPTV stations that avail themselves of the provisions set forth in the LPTV Pilot Project Digital Data Services Act (DDSA) digital data service pilot project to comply with the Commission's rule implementing the DDSA. The *Report and Order* amends the Commission's rules for LPTV/translator alphanumeric call signs to account for exhaustion of all two letter call sign combinations for some channel numbers, and consistent with the Commission's policy that all stations have a unique call sign, the *Report and Order* codifies the current practice of assigning a call sign ending in three letters beginning with "AAA" and continuing sequentially through the alphabet ("AAB", "AAC", etc.) in such cases. The *Report and Order* also requires digital LPTV stations to comply with the station identification provisions in § 74.783 applicable to analog operations, updated to reflect digital operations. Additionally, the Commission adopts its proposal to include an option for LPTV stations to use the Program and System Information Protocol (PSIP) to transmit the station's call sign as the "short channel name" on at least one stream of programming that the LPTV station transmits, and mandates the broadcast of the station's assigned TSID (or BSID, which is the Advanced Television Systems Committee (ATSC) 3.0

functional equivalent), assuming one is assigned.

The *Report and Order* adopts a modified version of the Commission's proposal to require a minor modification application on FCC Form 2100, Schedule C for all station relocations, including those under 500 feet, but allows for coordinate corrections of under 3 seconds latitude and/or longitude without paying a filing fee. The *Report and Order* also codifies the staff's practice of requiring LPTV stations to transmit with a virtual channel that avoids conflicts with any full power or Class A station's virtual channel in cases where a contour overlap would arise, or with virtual channels chosen by other LPTV stations. Further, the *Report and Order* updates various filing requirements that currently specify submission by letter or other means to the FCC to instead require submission in the Commission's Licensing and Management System (LMS), or otherwise through electronic submission, and clarifies what documentation is required when applications are submitted with various kinds of directional patterns. In addition, the *Report and Order* removes references in the rules to the use of antennas with solely vertical polarization, and requires that the design of broadcast antennas is such that horizontal power is intended to be higher than or equal to the vertical power in all directions.

The *Report and Order* also adopts updates to the coordinates found throughout § 74.709 from NAD 27 to NAD 83 and otherwise conforms the values in § 74.709(a) with those found in § 90.303. These coordinates are used only to determine where the Commission will or will not grant applications. Section 74.703(e) still requires the resolution of actual interference, so the adjustments to § 74.709(a) will not change the required amount of interference protection between LPTV/translator stations and land mobile operations. Finally, the *Report and Order* adopts updates to the quality standard set forth in § 74.790(g)(3) to reflect that 480i video resolution is "comparable in resolution to analog television programming," consistent with the update the Commission made to its full power station rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. *Id.* 604(a)(3).

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the 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 rules adopted herein. *Id.* 604(a)(4). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *Id.* 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA). *Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632(a)(1)). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." *Id.* 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. 15 U.S.C. 632.

The rules adopted herein will directly affect small television broadcast stations. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This industry is comprised of "establishments primarily engaged in broadcasting images together with sound." See U.S. Census Bureau, 2017 NAICS Definition, "515120 Television Broadcasting," <https://www.census.gov/naics/?input=515120&year=2017&details=515120>. These establishments operate television broadcast studios and facilities for the programming and transmission of

programs to the public. *Id.* These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small. See 13 CFR 121.201, NAICS Code 515120 (as of Oct. 1, 2022 NAICS Code 516120). 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017>. *EC1700SIZEREVFIRM* &hidePreview=false. Of that number, 657 firms had revenue of less than \$25,000,000. *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices. Based on this data, we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

As of December 31, 2022, there were 1,375 licensed commercial television stations. *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 23–21 (rel. Jan. 11, 2023) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>. Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIAKelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations and 3,122 TV translator stations. BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, <http://www.biakelsey.com/data-platforms/media-access-pro> (last visited

on Jan. 13, 2023). *Broadcast Station Totals PN*. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

In this section, we identify the reporting, recordkeeping, and other compliance requirements adopted in the *Report and Order* and consider whether small entities are affected disproportionately by any such requirements. While the Commission is not in a position to determine whether small entities will have to hire professionals to comply with our decisions and cannot quantify the cost of compliance for small entities, the approaches we have taken to implement the requirements have minimal or *de minimis* cost implications for impacted entities.

The Commission concludes it will modify § 74.751(b)(4) to require LPTV/translator licensees and permittees to file a minor modification application requesting authorization for all station relocations, including those moving the antenna or the antenna structure less than 500 feet (152.4 meters), but will permit stations seeking to correct coordinates by less than 3 seconds of latitude and/or longitude to do so without paying a filing fee. See revised § 74.751(b)(4) and (c) (Modification of transmission systems). The rule as currently written exempts relocations of the station's antenna structure by less than 500 feet from the application process. These requirements will result in a modified paperwork obligation for small entities and other licensees. The *Report and Order* adopts a new § 74.762 regarding frequency measurements, which would require small and other LPTV/translator stations to measure the frequency of their output channel as often as necessary, but not exceeding 14 months, to ensure operation consistent with the ATSC standard in § 73.682 of the rules. The Commission also adopts LPTV station identification proposals to comply with § 74.783, updated to reflect digital operations, including the option to transmit the station's "short channel name" on at least one stream of

programming. Further, the *Report and Order* amends our rules to require LPTV/translator licensees and permittees to file written reports, submissions, letters, notifications, or other required filings in LMS, or otherwise by electronic submission, thereby streamlining application submission, processing, and record keeping for small and other entities. The Commission will seek approval and the corresponding burdens, such as those require to comply with the Paperwork Reduction Act of 1995 (PRA), to account for this modified reporting requirement. Public Law 104–13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." 5 U.S.C. 604(a)(6).

The actions taken by the Commission in the *Report and Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

The *Report and Order* adopts a number of proposals that would codify the staff's current practices or better reflect technological advancements in the industry that may benefit small entities. For example, the *Report and Order* codifies the staff's practice of requiring LPTV stations that voluntarily transmit with a virtual channel to choose one that avoids conflicts with any full-power or Class A station's virtual channel in cases where a contour overlap would arise, or with virtual channels chosen by other LPTV stations. We considered alternatives by the Society of Broadcast Engineers (SBE) that would require small and other LPTV licensees to enter these channels in LMS, but decline this option because LPTV virtual channel assignments do not need Commission approval. Moreover, the *Report and Order* removes references in the rules to the use of antennas with solely vertical

polarization, and requires that the horizontal power is intended to be higher than or equal to the vertical power in all directions, consistent with the requirements for full-power stations. We considered proposals from the National Association of Broadcasters (NAB) and SBE that we modify the wording of the proposed rules, and adopted the clearer language proposed by NAB. These revisions simplify, streamline, and modernize existing rules and procedures that will enable small and other LPTV/translator stations to more easily comply with licensing requirements through familiar and low cost measures. We also adopted a rule for LPTV stations allowing the option of identifying by using PSIP to transmit the station's call sign as the "short channel name" on at least one stream of programming that the LPTV station transmits. *NPRM* at para. 16 and n.48. The rule we adopted is simpler and less expensive than other methods of identification for stations that are already using PSIP.

The *Report and Order* also updates the coordinates in § 74.709 from NAD 27 to NAD 83 in order to conform the values with those found in Part 90 of the Commission's rules. These coordinates are used only to determine whether the Commission will or will not grant applications. Section 74.703(e) still requires the resolution of actual interference, and so the Commission would not need to balance the interference protection afforded to land mobile operation with the updated, streamlined benefits for small entities as a result of this revision. While NAB encourages us to add a note to Part 90 regarding land mobile assignments, we decline to do so due to a pending petition for rulemaking on that subject. Further, the *Report and Order* updates various filing requirements that currently specify submission by letter or other means to the FCC to instead require submission in LMS or electronically. The Commission anticipates that this option will lessen the physical burden on small entities.

A few commenters explicitly addressed the costs and benefits of the proposed rules or provided specific data and analysis supporting claimed costs and benefits in response to the *NPRM*. Specifically, Canyon TV/Cannaliato noted the financial burden TSIDs would impose to community translators, and that replacing equipment to comply with the rules would be a financial burden for translator stations. NTA cited similar cost concerns in its comments. In assessing the impact on small entities, we took into consideration potential financial burdens on small and

other LPTV/translators, and in adopting the TSID- and PSIP-related rules we had proposed, we clarified that we did not intend to impose a requirement that could have led to increased cost. Additionally, Canyon TV/Cannaliato raised the possibility of additional costs due to our proposed requirement to regularly conduct frequency measurements. However, in adopting this proposed rule, we believe small and other LPTV/translator stations can comply without replacing existing equipment. Specifically, stations can comply with the rule by reviewing the station's signal on a spectrum analyzer and determining that the pilot carrier (for ATSC 1.0) and the overall signal (for ATSC 1.0 and ATSC 3.0) appear correctly and are properly contained within their assigned spectrum, consistent with the standard in use and our rules. We also clarified in the *Report and Order* that we do not believe the frequency measurement requirement will lead to increased cost, and identified specific portions of § 73.682 that contain the information needed to conduct frequency measurements, easing the burden on small and other entities in comparison to citing the entire broadcast standard.

Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, *it is ordered*, pursuant to the authority contained in §§ 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 336, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 336, 403, this Report and Order *is adopted*.

It is further ordered that the Commission's rules *are hereby amended* as set forth in the appendix and such amendments shall be effective 30 days after publication in the **Federal Register**, except for §§ 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784, which contain new or modified information collection requirements and will be submitted for approval by the Office of Management and Budget under the Paperwork Reduction Act and shall become effective after the Commission

publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered, that pursuant to § 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission shall send a copy of this Report and Order to Congress and to the Government Accountability Office.

List of Subjects in 47 CFR Part 74

Low Power TV, TV translator stations. Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

- 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

- 2. Section 74.702 is amended by revising paragraph (b) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(b) Changes in the Table of TV Allotments (§ 73.622(j) of this chapter), authorizations to construct new full power television stations or to authorizations to change facilities of existing such stations, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the full power television station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to § 73.3572 of this chapter.

* * * * *

- 3. Delayed indefinitely, amend § 74.703 by revising paragraph (h) to read as follows:

§ 74.703 Interference.

* * * * *

(h) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC after operation is resumed containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference. This report shall be filed

via a Resumption of Operations notice in the FCC's Licensing and Management System (LMS).

* * * * *

§ 74.708 [Removed and Reserved]

■ 4. Remove and reserve § 74.708.

■ 5. Amend § 74.709 by:

- a. In paragraph (a) revising table 1; and
 - b. In paragraph (b)(2), revising table 2.
- The revisions read as follows:

§ 74.709 Land mobile station protection.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

City	Channels	Coordinates	
		Latitude	Longitude
Boston, MA	14, 16	42°21'24.4"	071°03'23.2"
Chicago, IL	14, 15	41°52'28.1"	087°38'22.2"
Cleveland, OH	14, 15	41°29'51.2"	081°49'49.5"
Dallas, TX	16	32°47'09.5"	096°47'38.0"
Detroit, MI	15, 16	42°19'48.1"	083°02'56.7"
Houston, TX	17	29°45'26.8"	095°21'37.8"
Los Angeles, CA	14, 16, 20	34°03'15.0"	118°14'31.3"
Miami, FL	14	25°46'38.4"	080°11'31.2"
New York, NY	14, 15, 16	40°45'06.4"	073°59'37.5"
Philadelphia, PA	19, 20	39°56'58.4"	075°09'19.6"
Pittsburgh, PA	14, 18	40°26'19.2"	079°59'59.2"
San Francisco, CA	16, 17	37°46'38.7"	122°24'43.9"
Washington, DC	17, 18	38°53'51.4"	077°00'31.9"

(b) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (b)(2)

City	Channel	Coordinates	
		Latitude	Longitude
San Diego, CA	15	32°41'52.7"	116°56'06.3"
Waterbury, CT	20	41°31'02.3"	073°00'58.4"
Washington, DC	14	38°57'17.4"	077°00'15.9"
Washington, DC	20	38°57'49.9"	077°06'17.2"
Champaign, IL	15	40°04'10.0"	087°54'46.0"
Jacksonville, IL	14	39°45'52.1"	090°30'29.5"
Ft. Wayne, IN	15	41°05'35.2"	085°10'41.9"
South Bend, IN	16	41°36'20.0"	086°12'46.0"
Salisbury, MD	16	38°24'15.4"	075°34'43.7"
Mt. Pleasant, MI	14	43°34'24.1"	084°46'21.0"
Hanover, NH	15	43°42'30.2"	072°09'14.3"
Canton, OH	17	40°51'04.2"	081°16'36.4"
Cleveland, OH	19	41°21'19.2"	081°44'23.5"
Oxford, OH	14	39°30'26.2"	084°44'08.8"
Zanesville, OH	18	39°55'42.0"	081°59'07.0"
Elmira-Corning, NY	18	42°06'22.0"	076°52'16.0"
Harrisburg, PA	21	40°20'43.1"	076°52'08.3"
Johnstown, PA	19	40°19'47.3"	078°53'44.1"
Lancaster, PA	15	40°15'45.0"	076°27'50.0"
Philadelphia, PA	17	40°02'30.9"	075°14'21.9"
Pittsburgh, PA	16	40°26'46.2"	079°57'50.2"
Scranton, PA	16	41°10'58.3"	075°52'19.7"
Parkersburg, WV	15	39°20'59.8"	081°33'55.4"
Madison, WI	15	43°03'03.0"	089°29'13.0"

* * * * *

§ 74.710 [Removed and Reserved]

■ 6. Remove and reserve § 74.710.

■ 7. Delayed indefinitely, amend § 74.734 by revising the first sentence of paragraph (a)(4) to read as follows:

§ 74.734 Attended and unattended operation.

(a) * * *

(4) A notification must be filed with the FCC via a Change of Control Point Notice in LMS providing the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the

transmitter promptly should such action be deemed necessary by the FCC. * * *

* * * * *

■ 8. Delayed indefinitely, amend § 74.735 by revising the first and second sentences of paragraph (c) introductory text, the first and second sentences of paragraph (c)(2) and paragraph (c)(4),

and adding paragraphs (c)(6) and (7) to read as follows:

§ 74.735 Power limitations.

* * * * *

(c) The limits in paragraph (b) of this section apply to the effective radiated power in the horizontally polarized plane. For either omnidirectional or directional antennas, where the ERP values of the vertically and horizontally polarized components are not of equal strength, the ERP limits shall apply to the horizontal polarization, and the vertical ERP shall not intentionally exceed the horizontal ERP in any direction. * * *

* * * * *

(2) Relative field azimuth plane pattern (patterns for both horizontal and vertical polarization should be included if elliptical or circular polarization is used) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation in the horizontal polarization. * * *

* * * * *

(4) All azimuth plane patterns must be plotted in a PDF attachment to the application in a size sufficient to be easily viewed.

* * * * *

(6) If an elevation pattern is submitted in the application form, similar tabulations and PDF attachments shall be provided for the elevation pattern.

(7) If a matrix pattern is submitted in the application form, similar tabulations shall be provided as necessary in the form of a spreadsheet to accurately represent the pattern.

■ 9. Revise § 74.737 to read as follows:

§ 74.737 Antenna location.

(a) An applicant for a new low power TV or TV translator station or for a change in the facilities of an authorized station shall endeavor to select a site that will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station, if any, that will be retransmitted.

(b) The transmitting antenna should be placed above growing vegetation and trees lying in the direction of the area intended to be served, to minimize the possibility of signal absorption by foliage.

(c) A site within 8 kilometers of the area intended to be served is to be preferred if the conditions in paragraph (a) of this section can be met.

(d) Consideration should be given to the accessibility of the site at all seasons of the year and to the availability of facilities for the maintenance and operation of the transmitting equipment.

(e) The transmitting antenna should be located as near as is practical to the transmitter to avoid the use of long transmission lines and the associated power losses.

(f) Consideration should be given to the existence of strong radio frequency fields from other transmitters at the site of the transmitting equipment and the possibility that such fields may result in the retransmissions of signals originating on frequencies other than that of the primary station being rebroadcast.

■ 10. Revise § 74.750 to read as follows:

§ 74.750 Transmission system facilities.

(a) A low power TV or TV translator station shall operate with a transmitter that is either certificated for licensing under the provisions of this subpart or type notified for use under part 73 of this chapter.

(b) External preamplifiers also may be used provided that they do not cause improper operation of the transmitting equipment, and use of such preamplifiers is not necessary to meet the provisions of § 74.795(b).

(c) through (d) [Reserved]

(e) The following procedures shall apply:

(1) Any manufacturer of apparatus intended for use at low power TV or TV translator stations may request certification by following the procedures set forth in part 2, subpart J, of this chapter.

(2) Low power TV and TV translator transmitting apparatus that has been certificated by the FCC will normally be authorized without additional measurements from the applicant or licensee.

(3) Applications for certification of modulators to be used with existing certificated TV translator apparatus must include the specifications electrical and mechanical interconnecting requirements for the apparatus with which it is designed to be used.

(4) Other rules concerning certification, including information regarding withdrawal of type acceptance, modification of certificated equipment, and limitations on the findings upon which certification is based, are set forth in part 2, subpart J, of this chapter.

(f) The transmitting antenna system may be designed to produce horizontal, elliptical, or circular polarization.

(g) Low power TV or TV translator stations installing new certificated transmitting apparatus incorporating modulating equipment need not make equipment performance measurements and shall so indicate on the station

license application. Stations adding new or replacing modulating equipment in existing low power TV or TV translator station transmitting apparatus must have a qualified person examine the transmitting system after installation. A report of the methods, measurements, and results must be kept in the station records. However, stations installing modulating equipment solely for the limited local origination of signals permitted by § 74.790 need not comply with the requirements of this paragraph (g).

■ 11. Delayed indefinitely, amend § 74.751 by:

■ a. Revising paragraph (b)(4);

■ b. Removing and reserving paragraph (b)(6); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(b) * * *

(4) Any horizontal change of the location of the antenna.

* * * * *

(c) Notwithstanding the requirements in paragraph (b) of this section, a station may file in LMS a correction of geographic coordinates where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude, provided there is no physical change in location and no other licensed parameters are changed. An exhibit should be attached to the application(s) specifying that it is a coordinate correction.

■ 12. Revise § 74.762 to read as follows:

§ 74.762 Frequency measurements.

(a) The licensee of a low power TV station or a TV translator station must measure the frequency of its output channel as often as necessary to ensure operation consistent with the Advanced Television Systems Committee (ATSC) standard (see § 73.682 of this chapter; for ATSC 1.0, § 73.682(d), ATSC A/53 Part 2, and for ATSC 3.0, § 73.682(f)(2)), and at least once each calendar year at intervals not exceeding 14 months.

(b) In the event that a low power TV or TV translator station is found to be operating inconsistent with the standard in paragraph (a) of this section, the licensee promptly shall suspend operation of the transmitter and shall not resume operation until the transmitter has been restored to its assigned frequency.

■ 13. Delayed indefinitely, amend § 74.763 by revising paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC via a Suspension of Operations Notice filing in LMS, not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the FCC shall be notified via a Resumption of Operations Notice filing in LMS of the date normal operations resumed. If causes beyond the control of the licensee make it impossible to comply within the allowed period, a request for Special Temporary Authority (see § 73.1635 of this chapter) shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary via LMS.

* * * * *

■ 14. Revise § 74.783 to read as follows:

§ 74.783 Station identification.

(a) Each low power TV station as defined by § 74.701(f) must transmit its station identification using one of the following methods:

(1) When originating programming, as defined by § 74.701(h), a low power TV station may use the station identification procedures given in § 73.1201 of this chapter on its primary stream. Other streams may use the method in paragraph (a)(2) of this section. The identification procedures given in the remainder of this paragraph are to be used at any time the station is not originating programming; or

(2) By transmitting the call sign in the short channel name field of the Program and System and Information Protocol (PSIP) (or its ATSC 3.0 equivalent) for at least one stream on the station. If the station is assigned an alphanumeric call sign consistent with § 74.791(d) and its call sign has more than 7 characters, it may drop the “-D” from the end of the call sign when identifying with this method; or

(3) By arranging for the primary station, whose signal is being rebroadcast, to identify the low power TV station by transmitting an easily readable visual presentation or a clearly understandable aural presentation of the low power TV station’s call letters and location. Two such identifications shall

be made between 7 a.m. and 9 a.m. and 3 p.m. and 5 p.m. each broadcast day at approximately one hour intervals during each time period. Television stations which do not begin their broadcast day before 9 a.m. shall make these identifications in the hours closest to these time periods at the specified intervals.

(b) Licensees of television translator stations may arrange for identification via the method in paragraph (a)(3) of this section. Licensees of television translators who make such arrangements for station identification to be made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television station licensee to keep in its file, and available to FCC personnel, the translator’s call letters and location, giving the name, address, and telephone number of the licensee or his service representative to be contacted in the event of malfunction of the translator. It shall be the responsibility of the translator licensee to furnish current information to the television station licensee for this purpose.

(c) Transport Stream ID (TSID) values are identification numbers assigned to stations by the FCC and stored in the Commission’s online database. Two sequential values are assigned to each station.

(1) All low power TV stations originating programming shall transmit their assigned odd-numbered TSID, if one has been assigned. All TV translator stations, and low power TV stations not originating programming, shall pass through the assigned TSID of the originating station, unless the translator or low power TV station is modifying the signal of one or more originating stations in such a way that it is not clear which originating station’s TSID should be used. In that case, the station shall transmit its assigned odd-numbered TSID if one has been assigned.

(2) In ATSC 3.0, a similar value is used called a Bit Stream ID (BSID). LPTV stations operating in ATSC 3.0 mode shall utilize their assigned even-numbered TSID as their BSID, and LPTV/translator stations shall transmit the BSID as otherwise required of the TSID in paragraph (d)(1) of this section.

■ 15. Delayed indefinitely, amend § 74.784 by revising paragraph (b) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station

authorized under the provisions of this subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC shall be notified of the call letters of each station rebroadcast, and the licensee of the low power TV or TV broadcast translator station shall certify it has obtained written consent from the licensee of the station whose programs are being retransmitted. This notification shall be provided by email to TVRebroadcast@fcc.gov, the Video Division’s email box.

* * * * *

§ 74.786 [Removed and Reserved]

■ 16. Remove and reserve § 74.786.

■ 17. Section 74.787 is amended by removing paragraph (a)(5)(viii) and adding paragraph (c) to read as follows:

§ 74.787 Licensing.

* * * * *

(c) *Licensing.* An application to construct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it fails to protect an authorized Class A, low power TV, or TV translator station or an application for such a station filed prior to the date the low power TV or TV translator application is filed.

§ 74.789 [Removed and Reserved]

■ 18. Remove and reserve § 74.789.

■ 19. Section 74.790 is amended by revising paragraph (g)(3) and adding paragraph (n) to read as follows:

§ 74.790 Permissible service of TV translator and LPTV stations.

* * * * *

(g) * * *

(3) Whenever operating, an LPTV station must transmit at least one over-the-air video program signal at no direct charge to viewers at a resolution of at least 480i (vertical resolution of 480 lines, interlaced).

* * * * *

(n) An LPTV station shall transmit at least the minimum Program System and Information Protocol (PSIP) information necessary for receivers to display the station’s programming. The station is not required to utilize any specific virtual channel number but must avoid creating a contour overlap with any full power TV or Class A TV station’s virtual channel, or creating a contour overlap with another LPTV station using the same virtual channel.

■ 20. Section 74.791 is amended by adding paragraph (d) to read as follows:

§ 74.791 Call signs.

* * * * *

(d) *Call sign protocol.* The use of the initial letter generally will follow the pattern used in the broadcast service, *i.e.*, stations west of the Mississippi River will be assigned an initial letter K and those east, the letter W. The two letter combinations following the channel number will be assigned in order, and requests for the assignment of the particular combinations of letters will not be considered. The channel number designator for Channels 2 through 9 will be incorporated in the call sign as a 2-digit number, *i.e.*, 02, 03, etc., so as to avoid similarities with call signs assigned to amateur radio stations. In the event that the two letter combination following the channel numbers reaches ZZ, the next subsequent call sign shall have three letters, beginning with AAA.

■ 21. Section 74.795 is amended by:

- a. Removing “and” at the end of paragraph (b)(4);
- b. Removing the period at the end of paragraph (b)(5) and adding “;” in its place; and
- c. Adding paragraphs (b)(6) and (7).

The additions read as follows:

§ 74.795 Low power TV and TV translator transmission system facilities.

* * * * *

(b) * * *

(6) The apparatus must be equipped with automatic controls that will place it in a non-radiating condition when no signal is being received on the input channel, either due to absence of a transmitted signal or failure of the receiving portion of the facilities used for rebroadcasting the signal of another station. The automatic control may include a time delay feature to prevent interruptions caused by fading or other momentary failures of the incoming signal; and

(7) Wiring, shielding, and construction shall be in accordance with accepted principles of good engineering practice.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230504–0121]

RIN 0648–BI79

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions

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

ACTION: Final rule.

SUMMARY: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule establishing fish aggregating device (FAD) design requirements, International Maritime Organization (IMO) number requirements, and bycatch restrictions for sharks and rays. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: This rule is effective on June 12, 2023.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule (86 FR 55790, October 7, 2021), are available via the Federal e-rulemaking Portal, at www.regulations.gov (search for Docket ID NOAA–NMFS–2021–0068). Those documents are also available from NMFS at the following address: Sarah Malloy, Acting Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address

listed above and to www.reginfo.gov/public/do/PRAMain.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2021, NMFS published a proposed rule in the **Federal Register** (86 FR 55790) proposing to establish FAD design requirements, IMO number requirements, and bycatch restrictions for sharks and rays. The 30-day public comment period for the proposed rule closed on November 8, 2021.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

The United States is also a member of the Inter-American Tropical Tuna Commission (IATTC). The convention areas for IATTC and WCPFC overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude (“overlap area”). The preamble of the proposed rule provides further detail on United States implementation of WCPFC and IATTC requirements in the overlap area, which are not repeated here.

This final rule implements specific provisions of four recent WCPFC decisions (CMM 2018–01,

“Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean”; CMM 2018–06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish”; CMM 2019–04, “Conservation and Management Measure for Sharks”; and CMM 2019–05, “Conservation and Management Measure on Mobulid Rays”). The preamble to the proposed rule provides background information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the regulations, which is not repeated here.

The Action

The specific elements of the final rule are detailed below.

1. Non-Entangling FAD Requirements

This final rule implements specific FAD design requirements related to net mesh set forth in paragraph 19 of CMM 2018–01. A more recent measure, CMM 2021–01, further revises the non-entangling FAD requirements by prohibiting the use of any mesh net. However, since the new requirements of CMM 2021–01 go into effect on January 1, 2024, the requirements of CMM 2018–01 are being implemented now. NMFS will implement the requirements of CMM 2021–01 in a future rulemaking. Under this final rule, if the FAD design includes a raft (e.g., flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a stretched mesh size less than 7 cm and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed. Additionally, any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”) or have a stretched mesh size less than 7 cm in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. This element of the final rule applies to all purse seine vessels used for commercial fishing for highly migratory species (HMS) on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area). NMFS notes that Paragraph 19 of CMM 2018–01 states that WCPFC members shall ensure that the specific FAD design requirements apply to any FAD to be deployed in, or that drifts into, the Convention Area. NMFS determined that it would be impractical to require vessel owners and operators to ensure that non-conforming FADs do not drift into the Convention Area. Thus, the FAD design

requirements of this final rule apply only to FADs that are to be deployed or redeployed (i.e., placed in the water).

2. IMO Number Requirement

Existing regulations at 50 CFR 300.217(c) apply to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 GRT or 100 GT (gross tons). The owner of any such fishing vessel is required to ensure that an “IMO number” has been issued for the vessel. The preamble to the proposed rule provides background information on the IMO ship identification number scheme and associated instructions, which are not repeated here. The existing regulations include a process for fishing vessel owners to request an exemption from NMFS if they are unable to obtain IMO numbers. When NMFS receives such a request it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes. Under this final rule, the existing regulations are revised to include vessels less than 100 GRT down to a size of 12 meters in overall length (LOA). This element of the final rule applies to vessels used for commercial fishing for HMS in the Convention Area, including the overlap area, either on the high seas or in waters under the jurisdiction of a foreign nation.

3. Revised Purse Seine Restrictions for Oceanic Whitetip Shark and Silky Shark and Additional Shark Release Requirement for All Vessels

This final rule also implements two specific provisions of CMM 2019–04 (1) an exemption from existing no-retention requirements for purse seine vessels in specific cases where an oceanic whitetip shark or silky shark is not seen during fishing operations and are delivered into the vessel hold; and (2) a requirement for vessels to haul any incidentally caught sharks alongside the vessel before being cut free in order to facilitate species identification. The Commission amended this CMM in December 2022. The revisions that would likely require regulatory action include provisions that prohibit longline vessels operating in the

Convention Area between 20° North and 20° South from using wire trace as branch lines and from using shark lines or branch lines running off of the longline floats or drop lines, and a requirement for longline vessels to follow certain guidelines when releasing sharks that are not retained. Both of these provisions become effective January 1, 2024. NMFS plans to implement the applicable new requirements in a separate rulemaking.

Existing regulations under 50 CFR 300.226 prohibit the crew, operator, and owner on all vessels used for commercial fishing for HMS in the Convention Area from retaining on board, transshipping, storing, or landing any part or whole carcass of an oceanic whitetip shark or silky shark that is caught in the Convention Area, unless collected by an on-board observer. This final rule establishes an exemption for purse seine fishing vessels in the case of any silky shark or oceanic whitetip shark that is not seen during the fishing operation and is unknowingly delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark and silky shark could be stored and landed, but the vessel owner or operator would be required to notify the observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports the responsible government authority is the NOAA Office of Law Enforcement divisional office nearest to the port. Under this final rule, it is prohibited to sell or barter oceanic whitetip shark and silky shark surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

This final rule also establishes a requirement that any shark be hauled alongside the vessel before being cut free (if on a line or entangled in a net) in order to facilitate species identification by the observer on board. This element of the final rule only applies to vessels on which a WCPFC observer or camera monitoring device are present on board.

Both of these elements of the final rule apply to all U.S. vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area).

4. Fishing Restrictions for Mobulid Rays

This final rule also implements specific requirements of the provisions of CMM 2019–05 for mobulid rays, including the following five elements:

(1) Owners and operators are prohibited from setting on a mobulid ray if the animal is sighted prior to a set;

(2) Owners and operators are prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a mobulid ray;

(3) Owners and operators are required to release any mobulid ray unharmed, as soon as possible, in a manner that results in the least possible harm to the individuals captured, taking into consideration the safety of the crew;

(4) Owners and operators are required to allow observers to collect biological samples of mobulid rays, if requested to do so by a WCPFC observer; and

(5) An exemption for purse seine vessels from elements 2 and 3¹ in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold. In such cases, a vessel owner or operator will be required to notify the observer on board, and surrender the whole mobulid ray at the first point of landing, to the responsible government authorities, or other competent authority, or discard it. It is prohibited to sell or barter mobulid rays surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

The five mobulid ray elements of the final rule apply to U.S. vessels used for commercial fishing for HMS on the high seas and EEZs in the Convention Area (excluding the overlap area).

Comments and Responses

NMFS received two comment letters on the proposed rule. One commenter provided a general statement of support for the proposed rule. The remaining comments are summarized below, followed by responses from NMFS.

Comment 1: The American Tunaboat Association (ATA) commented that all ATA vessels are already in compliance with the FAD design requirements in the proposed rule, with one exception. The proposed rule would require that “all FADs on board or deployed from the vessel in the Convention Area comply with the design requirement.” ATA noted that vessels would be working to retrieve old FADs from the water and requested that NMFS modify the rule to make clear that the prohibition would not apply to FADs that have been retrieved for destruction or recycling and that will not be redeployed.

Response: NMFS has revised the regulatory text from that included in the

proposed rule to clarify that the design requirements only apply to FADs that are to be deployed (*i.e.*, are to be placed in the water) in the Convention Area from a vessel, as specified in the CMM. The new FAD design elements would not apply to FADs that were deployed and in the water before the effective date of this rule. Although the new FAD design elements do not apply to FADs that have been retrieved by vessel owners and operators and are onboard the vessel to be destroyed or recycled, FADs that have been serviced or retrieved must meet the FAD design elements before they are re-deployed back into the water.

Comment 2: ATA commented that they recognize the proposed FAD design requirements are part of a larger transition over time to fully non-entangling (mesh-free) and eventually biodegradable FADs and they expressed support for the eventual goal of effective biodegradable FADs. ATA noted that more work is needed to transition to biodegradable FADs and recognized that parallel efforts are underway to transition to fully biodegradable FADs in the interim. However, ATA suggested that any transition from the current requirements to fully non-entangling FADs could postpone the transition to biodegradable FADs, and could significantly increase the cost to vessels over the transition period. ATA suggested that focus should instead be directed at enhancing efforts to develop and deploy biodegradable FADs in the short-term.

Response: NMFS acknowledges the comment and notes that the WCPFC FAD working group is continuing discussion on the use and development of biodegradable FADs. In December 2021, the WCPFC adopted CMM 2021–01, which includes modifications to the existing non-entangling FAD design requirements and obligates Commission Members to implement fully non-entangling (mesh free) design requirements by January 1, 2024. NMFS plans to implement the modified design requirements in a separate rulemaking. Implementation of the modified design requirements is necessary to satisfy the obligations of the United States under the Convention.

Comment 3: ATA expressed support for the element of the proposed rule that would allow a limited exemption for purse seine vessels to the prohibition on the retention of oceanic whitetip sharks and silky sharks if a shark is inadvertently brought into the hold of the vessel.

Response: NMFS acknowledges the comment.

Comment 4: ATA sought clarification on the element of the proposed rule that would require that sharks be hauled alongside a vessel before being cut free in order to facilitate species identification. ATA suggested that it would not be practical or safe to bring a purse seine net to the side of a purse seine vessel in order to cut a shark free and that this requirement seems more applicable to longline vessels. ATA noted that the proposed rule correctly acknowledges that for purse seine vessels, it is expected that in most cases, the shark would be released after it is brailled from the net and brought on deck. ATA suggested modifications to the regulation text that would clarify that a shark must be released as soon as possible once it is brought alongside or on board the vessel.

Response: The shark release requirements found at 50 CFR 300.226(b) went into effect on March 23, 2015 (80 FR 8807, Feb. 19, 2015). These requirements are not being changed in this final rule. Rather, this final rule simply adds an exemption to the release requirements for sharks that are not sighted prior to being delivered into a purse seine vessel hold (50 CFR 300.226(e)). Separately, under this final rule, NMFS is implementing a new requirement (found at 50 CFR 300.230) to facilitate species identification for sharks that are incidentally caught during fishing operations. This regulation clearly states that the requirement to bring the shark alongside the vessel for identification purposes only applies to sharks that are “not brought on board the fishing vessel,” and only when observers or electronic cameras are available. Thus, NMFS does not believe that further revision to the regulatory text is needed.

Comment 5: ATA commented that the prohibition from setting on a mobulid ray is a requirement that may occasionally result in a lost opportunity for a purse seine vessel to make a set and that it will likely have an economic impact on the fleet. ATA noted, however, that ATA vessels will already be seeking to minimize the number of mobulid ray interactions in the purse seine fishery, due to obligations under the Endangered Species Act and that ATA understands the intent of the requirement. The remaining elements of the proposed rule related to mobulid ray interactions are things that ATA members have already committed to implement.

Response: NMFS acknowledges the potential economic impact that may result from the prohibition against setting on a mobulid ray. These and other potential impacts have been

¹ NMFS notes that the preamble to the proposed rule included a typographical error listing element 1 instead of element 3 for this exemption.

described in detail by NMFS in the EA and RIR associated with this rulemaking. Implementation of the prohibition is necessary to satisfy the obligations of the United States under the Convention.

Comment 6: ATA commented that provisions for both sharks and rays use language such as “as soon as possible” and “take all reasonable steps” and raised concerns that such subjective terms have resulted in adverse enforcement actions based on determinations from observer reports in the past. However, ATA stated that it counts on the reasonable application and fair administration of NMFS enforcement powers in such cases.

Response: The shark handling and release requirements found at 50 CFR 300.226(b) went into effect on March 23, 2015 (80 FR 8807, February 19, 2015), and NMFS is not modifying those regulations in this final rule. Rather, this final rule implements new handling and release requirements for mobulid rays at 50 CFR 300.229(c). These requirements implement CMM 2019–05, which requires vessels to release mobulid rays alive and unharmed “to the extent practicable . . . as soon as possible.” Thus, the mobulid ray handling and release regulation implements language directly from the CMM, and is written to be consistent with existing regulations on shark handling and release.

Changes From the Proposed Rule

This final rule includes one substantive change to the regulatory text from the proposed rule. NMFS has revised the regulatory text for FAD requirements at 50 CFR 300.223(b)(4) to clarify that the FAD design requirements will only apply to FADs to be deployed or redeployed (*i.e.*, placed in the water) from a vessel. This final rule also includes editorial corrections in 50 CFR 300.229(e) so that both uses of the term WCPFC observer are preceded by the word “a”, an editorial correction to 50 CFR 300.229(f) so that the word shark is deleted from the last sentence, and editorial corrections to 50 CFR 300.226(a) and (b) so the inadvertent editorial changes made to the existing regulatory text in the proposed rule are withdrawn.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this action is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii, American Samoa, CNMI and Guam on August 2, 2021, for review by the responsible state and territorial agencies under section 307 of the CZMA. Hawaii replied by letter dated August 16, 2021, stating that, because the proposed rule is outside of the jurisdiction of the Hawaii Coastal Zone Management Program’s enforceable policies, it would not be responding to the consistency determination. The CNMI replied by letter dated August 31, 2021, stating that it concurs that the action is consistent with the enforceable policies of CNMI’s coastal management program. Guam replied by letter dated September 28, 2021, stating that based on the information provided, it has determined that the action will be consistent with the enforceable policies of Guam’s Coastal Management Program. No response was received from American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

Executive Order 12866

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

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Significant Issues Raised by Public Comments in Response to the IRFA

NMFS did not receive any comments specifically on the IRFA. One public comment received on the proposed rule referred to potential economic impacts of the proposed action; see Comment #5 and NMFS’ response to that comment above.

Description of Small Entities to Which the Rule and Specifications Will Apply

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

This final rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area. This includes vessels in the purse seine, longline, tropical troll (including those in American Samoa, the CNMI, Guam, and Hawaii), Hawaii handline, Hawaii pole-and-line, and west coast-based albacore troll fleets. The estimated number of affected fishing vessels is as follows based on the number of vessels reported in the 2022 U.S. Annual Report Part 1 to WCPFC (for the 2021 fishing year): 19 purse seine vessels, 149 longline vessels, 21 albacore troll vessels, and 1,913 tropical troll and handline vessels. Thus, the total estimated number of vessels that would be subject to the rule is 2,102. As of January 2023, there are 14 purse seine vessels with WCPFC Area Endorsements (*i.e.*, vessels authorized to be used for commercial fishing for HMS on the high seas in the Convention Area), 13 of which are active. The following analysis includes 13 vessels as the baseline, even though the total number of estimated vessels includes the number of 19 purse seine vessels from Annual Report Part 1.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of revenues for the 13 currently active vessels, by vessel, for 2019–2021 reveals that average annual per-vessel revenue was about \$8,757,000 (NMFS unpublished data on catches combined with fish price data from https://investor.thaiunion.com/raw_material.html accessed on March 22, 2022). Eleven of the active purse seine

vessels had estimated average annual revenues of less than \$11 million, and thus are considered to be small entities.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble. The classes of small entities subject to the requirements and the expected costs of complying with the requirements are described above in the Classification section of this final rule.

As described in the Paperwork Reduction Act (PRA) subsection below, this final rule contains a revised collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA.

Non-entangling FAD Element: To comply with this element of the rule, affected vessel owners and operators are required to use specific materials and design specifications for FADs that are to be deployed (*i.e.*, are to be placed in the water) in the WCPFC Convention Area. This element would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all purse seine vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area). A majority of the purse seine vessels are already subject to equivalent requirements in the eastern Pacific Ocean. NMFS has established regulations for measures adopted by the IATTC (see 83 FR 15503, April 11, 2018; 83 FR 62732, December 6, 2018), which became effective on January 1, 2019. Of the 14 purse seine vessels to which this element of the rule would apply, 13 are currently active on both the WCPFC Record of Fishing Vessels (RFV) and the IATTC Regional Vessel Register (RVR), meaning that they are authorized to fish in both the WCPO and the EPO. It is expected that the owners and operators of purse seine vessels on both lists would therefore already be responsible for implementing the FAD design requirements in the EPO, as specified in 50 CFR 300.28(e). All 13 active purse seine vessels currently on the WCPFC RFV are also on the International Seafood Sustainability Foundation (ISSF) ProActive Vessel Register (PVR), and their owners and operators have agreed to comply with ISSF-adopted conservation measures, which include the use of non-entangling FADs or lower entanglement risk FADs. The ISSF

lower entanglement risk FADs meet the same design specifications and material requirements in this element of the rule. Therefore, for the owners and operators of all purse seine vessels that would be subject to the requirement, NMFS expects that there would be no change in the materials they currently use to design FADs.

To the extent that any of those vessels are not already implementing the design specifications, and for any new purse seine vessels that enter the fishery, there would likely be some costs associated with complying with this requirement. However, it is not possible to predict the costs associated with any certainty, as FAD designs vary between vessels, and the availability of materials is expected to vary over time. If specific non-entangling FAD materials were difficult or costly to obtain (*e.g.*, netting with 7 cm mesh size), it could affect a vessel's ability to fish on FADs. In cases where vessels choose to forego fishing on FADs, it could increase operating costs in the form of increased fuel usage to fish on unassociated schools of fish instead of fishing on FADs.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

IMO Number Element: This element of the rule requires owners of fishing vessels less than 100 GRT down to a size of 12 meters LOA to obtain an IMO number. This requirement is part of a collection of information subject to approval by OMB under the PRA. The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to vessels used for commercial fishing for HMS in the Convention Area (including the overlap area), either on the high seas or in waters under the jurisdiction of a foreign nation. Existing regulations at 50 CFR 300.217(c) require that vessels at least 100 GRT obtain an IMO number, so most entities that would be required to obtain an IMO number already have them. NMFS estimates that 48 fishing vessels would initially be subject to the expanded requirement, 45 longline vessels and three troll vessels. NMFS has established regulations, at 50 CFR 300.22(b)(3)(iii), which implement similar requirements for vessels fishing on the high seas in the EPO. NMFS estimates that all but one of the 48 fishing vessels initially subject to this element of the final rule are already subject to the IATTC IMO requirements in the EPO. NMFS projects that as fishing vessels enter the fishery in the future, roughly four per year would be required to obtain IMO numbers.

The requirement to obtain an IMO number would be a one-time requirement; once a number is issued for a vessel, the owner of the vessel would be in compliance for the remainder of the vessel's life, regardless of changes in ownership. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (1): This element of the rule provides an exemption to existing oceanic whitetip and silky shark prohibitions in the case where an oceanic whitetip shark or silky shark is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen as part of a purse seine operation. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these requirements would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would relieve vessel owners and operators from the burden associated with the existing regulation, qualifying for the exemption could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering the shark to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the shark. Under either option, the cost would be offset by the reduced risk of monetary fines that may be associated with current regulations prohibiting the retention of oceanic whitetip sharks and silky sharks.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (2): This element of the rule requires that any incidentally

caught shark not brought on board be hauled alongside the vessel before being released in order to facilitate better species identification by the WCPFC observer on board. It would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area); however, it would only apply to vessels on which an observer or electronic monitoring camera is present, so for the foreseeable future, it is expected that it would apply only to purse seine and longline vessels, which currently carry observers.

For purse seine vessels, NMFS expects that this requirement would not be frequently applicable. Although an observer would be present on 100 percent of trips, in most cases, the fish would be released only after it is brailled from the purse seine and brought on deck. As stated above, NMFS notes that observers on purse seine vessels already routinely identify sharks that are brailled and brought on board the vessel. In the infrequent circumstance that the vessel operator and crew determined that it is possible to release the fish before it is brought on deck, greater intervention and time on the part of crew members would be needed to ensure that the observer is able to properly identify species. To the extent that time could otherwise be put to productive activities, this could lead to increased costs associated with labor.

For longline vessels, it is expected that an observer would be present on about 20 percent of trips for deep-set trips and 100 percent on shallow-set trips.² In these cases, it is expected that under current fishing practices, the fish would be released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (1): This element of the rule prohibits vessels from targeting mobulid rays or making a set in instances in which a mobulid ray is sighted prior to a set. This requirement would not impose any new

reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the exclusive economic zones in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less frequently in the tropical handline and pole-and-line fleets. It is unknown whether U.S. purse seine vessels currently intentionally set on mobulid rays. If such a practice does exist, this element would be expected to impact purse seine vessels by prohibiting them from setting on a mobulid ray if sighted prior to a set.

In the event that a mobulid ray is sighted prior to a desired set, complying with this requirement could cause forgone fishing opportunities and result in economic losses. It is difficult to project the frequency of pre-set mobulid ray-sighting events because such events are not recorded. Historical data on mobulid ray interactions are available, but interactions are not equivalent to pre-set sightings. According to anecdotal information from purse seine vessel operators, a majority of mobulid rays are not seen before the set commences. Nonetheless, historical mobulid ray interaction rates can provide an upper bound estimate of the frequency of pre-set mobulid ray sighting events in the future. Based on unpublished observer data from the Pacific Islands Forum Fisheries Agency (FFA) observer program between 2015 and 2019, mobulid ray interactions occur in approximately 3 percent of observed purse seine sets on average in the purse seine fishery (100 percent of sets were observed in 2015–2019). In those instances where a mobulid ray is sighted prior to a set, the vessel operator would have to wait and/or move the vessel to find the next opportunity to make a set. The consequences in terms of time lost, distance travelled, and associated costs cannot be projected with any certainty, but a range of possible outcomes can be foreseen. At worst, the operator would lose the opportunity to make a set for the remainder of the day. At best, the operator would find an opportunity to make a set soon after the event—that is, on the same day, and limited costs would be incurred. This requirement is not expected to require any professional skills that the affected vessel owners,

operators and crew do not already possess.

Mobulid Ray Element (2): This element of the rule prohibits vessels from retaining on board, transshipping, or landing any mobulid ray in the Convention Area. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less frequently in the tropical handline and pole-and-line fleets. There are no recorded interactions with mobulid rays in the tropical troll or albacore troll fleets.

Unpublished observer data from the FFA observer program and NOAA's Pacific Islands Observer program indicate that between 2015 and 2019, an estimated two mobulid rays were retained per year in the purse seine fishery, on average, and in the longline fishery, it is estimated that that less than one mobulid ray was retained per year, on average. The remainder of the mobulid catch was released alive or discarded dead. In the tropical handline and pole-and-line fleets, there were no reported mobulid rays retained between 2015 and 2019. This requirement would foreclose harvesting businesses' opportunity to retain and sell or otherwise make use of any species of mobulid ray that may previously have been retained by U.S. fishing vessels. The consequences in terms of opportunity loss cannot be projected with any certainty; however, available data indicate that there is no history of commercial sale of mobulid rays by U.S. fishing vessels. Additionally, existing requirements under 50 CFR 300.27 prohibit vessels from retaining on board, transshipping, storing, landing, or selling any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area in the EPO. For those vessels that fish in both the WCPO and EPO, it is expected that they would already be responsible for implementing the retention prohibition requirements included in the EPO.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

² Based on average percent observer coverage on Hawaii longline vessels, 2017–2021.

Mobulid Ray Element (3): This element of the rule requires vessels to release any mobulid ray caught in the Convention Area as soon as possible and in a manner that results in as little harm to the animal as possible, without compromising the safety of any persons. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). The requirement could bring costs in the form of reduced efficiency of fishing operations if vessels were required to change their release/discard practices relative to current practices.

For purse seine vessels, it is expected that in most cases, the animal would be released after it is brailled from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded rays. If the vessel operator and crew determined that it is possible to release the animal before it is brought on deck, this would likely involve greater intervention and time on the part of crew members, which would be costly to the extent that time could otherwise be put to productive activities.

Existing regulations under 50 CFR 300.27 require that vessels promptly release any mobulid ray caught in the IATTC Convention Area, unharmed, and as soon as it is seen in the net or on deck. As noted above, most of the purse seine vessels registered on the WCPFC RFV are also registered to fish on the IATTC RFV, and fish in both the WCPO and the EPO, so it is expected that those vessels would already be responsible for implementing the release requirements in the EPO.

For longline, tropical handline and pole-and-line vessels, it is expected that the animal would be quickly released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (4): This element of the rule is a limited exemption from the mobulid retention prohibition and the mobulid release requirement in that vessel owners and operators would be relieved of those

requirements in those cases where a WCPFC observer collects, or requests assistance to collect, a sample of a mobulid ray, if requested to do so by a WCPFC observer. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the rule applies to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). Under existing regulations, operators and crew of vessels with WCPFC Area Endorsements are already required to assist WCPFC observers in the collection of samples. This element of the rule would effectively expand that requirement—specifically for mobulid rays—to vessels not required to have WCPFC Area Endorsements. This element may bring additional costs to fishing businesses because it may require the owner, operator, and crew to assist the observer in the collection of samples if requested to do so by the observer. It is not possible to project how often observers would request assistance in collecting samples. When it does occur, it is not expected that sample collection would be so disruptive as to substantially delay or otherwise impact fishing operations, but the fishing business could bear small costs in terms of crew labor, and possibly the loss of storage space that could be used for other purposes. It is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (5): This element of the rule provides a limited exemption to elements 2 and 3 in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below.

This element of the rule applies specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these changes would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would relieve vessel owners and operators from the burden associated

with the existing regulation, the steps for discarding or surrendering the animal could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering the mobulid ray to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the animal. Under either option, the cost is would be offset by the reduced risk of monetary fines.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Disproportionate Impacts

Small entities would not be disproportionately affected relative to large entities. Nor would there be disproportionate economic impacts based on home port. As indicated above, there could be disproportionate impacts according to vessel size for the IMO number requirement.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with or duplicate these regulations. NMFS has identified several Federal regulations that overlap with the final rule. These include: the non-entangling FAD requirements, which overlap with existing EPO regulations at 50 CFR 300.28(e); the IMO number requirements, which overlap with existing EPO regulations at 50 CFR 300.22(b)(3)(iii); the purse seine shark retention requirements, which overlap with existing EPO regulations at 50 CFR 300.27(f); and the mobulid ray requirements, which overlap with existing EPO regulations at 50 CFR 300.27(i). The regulations for the EPO apply when vessels fish in the EPO, including the area of overlapping jurisdiction between the IATTC and the WCPFC (overlap area). Aside from the IMO number requirements, the regulations under this final rule apply in the WCPO, excluding the overlap area. The revised IMO number requirements in this rule also apply in the overlap area.

Alternatives to the Final Rule

NMFS has not been able to identify any alternatives that would minimize any significant economic impact of the final rule on small entities. NMFS rejected the alternative of taking no action at all because it would be inconsistent with the United States'

obligations under the Convention. As a Contracting Party to the Convention, the United States is required to implement the decisions of the Commission. Consequently, NMFS has limited discretion as to how to implement those decisions.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared small entity compliance guides for this rule, and will send copies of the appropriate guide to holders of permits in the relevant fisheries. The guide and this final rule also will be available via the Federal e-rulemaking Portal, at www.regulations.gov (search for ID NOAA–NMFS–2021–0068) and by request from NMFS PIRO (see ADDRESSES).

Paperwork Reduction Act

This final rule contains one collection-of-information requirement that has been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA), temporary Control Number 0648–0798. NMFS will merge the collection-of-information requirement implemented by this final rule with the existing, approved information collection under OMB Control Number 0648–0595, “Western and Central Pacific Fisheries Convention Vessel Information Family of Forms”. This final rule requires the owners of certain fishing vessels to ensure that IMO numbers are issued for vessels. This would be a one-time requirement; no renewals or updates would be required during the life of a vessel. Public reporting burden for a vessel to acquire an IMO number is estimated to average approximately 30 minutes per response. These estimates include the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and compiling, reviewing, and submitting the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject

to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: May 5, 2023.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.217, revise paragraph (c)(2) to read as follows:

§ 300.217 Vessel identification.

(c) * * *

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel's current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC, or less than 100 GRT down to a size of 12 meters in overall length. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit at: www.imonumbers.lrfairplay.com.

■ 3. In § 300.222, add paragraphs (bbb) through (eee) to read as follows:

§ 300.222 Prohibitions.

(bbb) Fail to comply with the FAD design requirements in § 300.223(b)(4).

(ccc) Fail to comply with the requirements of any exemption under § 300.226(e).

(ddd) Fail to comply with any of the restrictions, prohibitions or requirements specified in § 300.229.

(eee) Fail to comply with the handling and release requirements in § 300.230.

■ 4. In § 300.223, add paragraph (b)(4) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(b) * * *

(4) FAD design requirements to reduce entanglements. Owners and operators of fishing vessels of the United States equipped with purse seine gear shall ensure that all FADs to be deployed (*i.e.*, are to be placed in the water) from the vessel in the Convention Area comply with the following design requirements:

(i) *Raft*. If the FAD design includes a raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure of the raft, the mesh netting shall have a stretched mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the raft when deployed; and

(ii) *Subsurface*. Any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”), or if not tightly tied into bundles, then must be made of stretched mesh size less than 7 centimeters and be configured as a panel that is weighted on the lower end with enough weight to keep the netting vertically taut in the water column.

* * * * *

■ 5. In § 300.226, revise paragraphs (a) and (b) and add paragraph (e) to read as follows:

§ 300.226 Oceanic whitetip shark and silky shark.

* * * * *

(a) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or silky shark (*Carcharhinus falciformis*) that is caught in the Convention Area unless subject to the provisions of paragraph (c) or (e) of this section.

(b) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any oceanic whitetip shark or silky shark that is caught in the Convention Area as soon as possible after the shark is caught and brought alongside the vessel, and take

reasonable steps for its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraph (c) or (e) of this section.

* * * * *

(e) Paragraphs (a) and (b) of this section do not apply in the event that any oceanic whitetip shark or silky shark is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark or silky shark could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any oceanic whitetip shark or silky shark surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

■ 6. Add § 300.229 to read as follows:

§ 300.229 Mobulid ray restrictions.

The requirements of this section apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. For the purpose of this section, mobulid ray is defined as any ray in the family Mobulidae, which includes manta rays and devil rays (*Mobula spp.*).

(a) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot set or attempt to set on or around a mobulid ray if the animal is sighted at any time prior to the commencement of the set or the attempted set.

(b) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of a mobulid ray, unless subject to the provisions of paragraphs (d), (e) and (f) of this section.

(c) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any mobulid ray, as soon as possible, and must ensure that all reasonable steps are taken to ensure its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraphs (d), (e) and (f) of this section.

(d) Paragraphs (b) and (c) of this section do not apply in the event that a WCPFC observer collects, or requests the assistance of the vessel crew, operator, or owner in the collection of, samples of a mobulid ray in the Convention Area.

(e) The crew, operator, and owner of a vessel must allow and assist a WCPFC observer to collect samples of a mobulid ray in the Convention Area, if requested to do so by a WCPFC observer.

(f) Paragraphs (b) and (c) of this section do not apply in the event that a mobulid ray is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board

that vessel, prior to being delivered into the vessel hold and frozen. In such a case, a mobulid ray could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole ray to the responsible government authorities or discard the animal at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any mobulid ray surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

■ 7. Add § 300.230 to read as follows:

§ 300.230 Shark handling and release.

(a) The requirements of paragraph (b) of this section apply to all fishing vessels of the United States used for commercial fishing for HMS. The requirements apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. The requirements apply only if there is a WCPFC observer or camera monitoring device on board the fishing vessel.

(b) Prior to releasing any shark that is caught during fishing operations and not brought on board the fishing vessel, the owner and operator, without compromising the safety of any persons, shall ensure that the shark is brought alongside the vessel for identification purposes.

[FR Doc. 2023-09966 Filed 5-11-23; 8:45 am]

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Proposed Rules

Federal Register

Vol. 88, No. 92

Friday, May 12, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. FAA–2021–1143; Notice No. 29–21–01–SC]

Special Conditions: Airbus Helicopters Model H160B Helicopter; Extended Duration of Flight After Loss of Main Gearbox Lubrication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Helicopters (Airbus) Model H160B helicopter. This helicopter will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for helicopters. This design feature is the extended duration of safe flight beyond 30 minutes after the loss of main gearbox lubrication. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before June 26, 2023.

ADDRESSES: Send comments identified by docket number FAA–2021–1143 using any of the following methods:

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

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

Hand Delivery or Courier: Take comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT:

Kamron Dowlatabadi, Mechanical Systems, AIR–623, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5219; email Kamron.M.Dowlatabadi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these proposed special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these proposed special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these proposed special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments the FAA receives, which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On November 7, 2014, Airbus applied for FAA type certification for the Model H160B helicopter. On November 1, 2016, Airbus applied for an extension, which is also the date of the updated type certification basis.

The Airbus Model H160B helicopter is a 14 CFR part 29 transport-category, twin-turboshaft-engine helicopter. This helicopter has a maximum takeoff weight of 13,436 lbs. with seating for 12 passengers and 2 crewmembers. The Airbus Model H160B helicopter is a new part 29 helicopter characterized by the integration of composite materials in its airframe, five main rotor blades (Blue Edge™ technology), a Fenestron™ tail rotor, and a Helionix™ avionics suite.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model H160B helicopter meets the applicable provisions of part 29 as amended by amendments 29–1 through 29–55. The date of the Airbus Model H160B helicopter type certification basis is November 1, 2016.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 29) do not contain adequate or appropriate safety standards for the Airbus Model H160B helicopter because of a novel or unusual design feature, special conditions are

prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model H160B helicopter must comply with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Feature

The Airbus Model H160B helicopter will incorporate the following novel or unusual design feature:

Extended duration of safe flight beyond 30 minutes after indication to the crew of the loss of main gearbox lubrication.

Discussion

Current regulations do not prescribe a duration for continued safe flight and landing to be specifically called out in the rotorcraft flight manual when a loss of main gearbox lubrication warning is activated. Although § 29.927(c)(1) requires a loss of main gearbox lubrication bench test for 30 minutes to show that the main gearbox is operational for 30 minutes following a loss of main gearbox lubrication event, the bench test conditions may not be representative of aircraft flight conditions because a 30-minute main gearbox bench test may not translate to 30 minutes of continued safe flight and landing.

The novel or unusual design feature of the Airbus Model H160B helicopter is intended to enable the helicopter to continue safe flight, for a minimum of 30 minutes, to the intended destination or to a safe landing location after the loss of main gearbox lubrication. To meet this minimum 30 minutes of continued safe flight, the Airbus Model H160B helicopter main gearbox is designed with a redundant lubrication system. This main gearbox redundant lubrication system would allow operation after the failure of a single lubrication system. Current regulations do not address a redundant lubrication system that allows operation after the failure of a single lubrication system because at the time the existing

regulations were issued, the agency did not envision that a flight duration of more than 30 minutes, after the loss of main gearbox lubrication, was needed. Accordingly, these proposed special conditions would provide testing criteria to ensure the reliability of the redundant lubrication system to provide safe flight beyond 30 minutes after announcement of the loss of the main gearbox lubrication.

These proposed special conditions would add requirements in lieu of the existing airworthiness standards in § 29.917(a) and (c), and would add a new requirement to § 29.1585.

The FAA did not envision the standards for the lubrication system components to be a critical failure point at the time of the issuance of the existing regulations, and the standards were not included in the design assessment of the drive system. Accordingly, these proposed special conditions would include “any associated lubrication system components including oil coolers.”

These proposed special conditions would add a safety margin over the current 30-minute main gearbox bench test by requiring a test duration of more than 30 minutes to ensure that the rotor-drive gearbox system has an in-flight operational endurance capability of at least 30 minutes following a failure of any one pressurized, normal-use lubrication system. The 30-minute test interval starts when the lubrication-failure indication to the flight crew is triggered and the engine is at maximum continuous power. These proposed special conditions would require a bench test of the main gearbox for at least 60 minutes in some cases, depending on reduction factors, which are applied to correlate the test duration with the maximum period of in-flight operation following loss of lubrication, and to ensure that the main gearbox operates for 30 minutes after a loss-of-lubrication situation.

The degree of confidence specified in Category A and B in these proposed special conditions would require the applicant to establish a reduction factor to correlate the test duration with the maximum period of in-flight operation following loss of lubrication. The factor assigned by the applicant is directly dependent on the availability of supporting data with respect to the mechanical behavior of the gearbox, and must reflect the applicant's confidence in the repeatability of the certification test data. Test loading, in the context of these special conditions, refers to the engine, gearbox, clutch system, and rotors (or similar test apparatus) interconnected and operating in unison,

as this combination of mechanical elements pertains to power input transmitted to the gearbox and subsequent reaction torques simulating operating conditions.

These proposed special conditions would add a requirement that the maximum duration of operation after a failure, which results in a loss of main gearbox lubrication and an associated oil pressure warning, must be furnished in the rotorcraft flight manual, a duration that must not exceed the maximum period substantiated.

Applicability

As discussed above, these proposed special conditions would be applicable to the Airbus Model H160B helicopter. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of helicopter. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Helicopters Model H160B helicopter. Unless stated otherwise, all requirements in §§ 29.917, 29.927, and 29.1585 would still apply.

In lieu of § 29.917(a), the following special condition applies:

(a) *Design: General.* The rotor-drive gearbox system includes any part necessary to transmit power from the engines to the rotor hubs. This includes gearboxes, shafting, universal joints, couplings, rotor-brake assemblies, clutches, supporting bearings for shafting, any attendant accessory pads or drives, any cooling fans, and any associated lubrication-system components including oil coolers that are a part of, attached to, or mounted on the rotor-drive gearbox system.

In lieu of § 29.927(c), the following special condition applies:

(c) *Lubrication system failure.* For rotor-drive gearbox systems featuring a pressurized normal-use lubrication system, the following requirements for continued safe flight and landing apply:

(1) *Category A.* Confidence must be established that the rotor-drive gearbox system has an in-flight operational endurance capability of at least 30 minutes following a failure of any one pressurized, normal-use lubrication system.

(i) For each rotor-drive gearbox system necessary for continued safe flight or safe landing, the applicant must conduct a test that simulates the effect of the most severe failure mode of the normal-use lubrication system, as determined by the failure analysis of § 29.917(b). The duration of the test must be dependent on the number of tests and the component condition after each test.

(ii) The test must begin when the indication to the flight crew shows a lubrication failure has occurred, and its loading must be consistent with 1 minute at maximum continuous power, followed by the minimum power needed for continued flight at the rotorcraft maximum gross weight.

(iii) The test must end with a 45-second out-of-ground-effect (OGE) hover to simulate a landing phase. Test results must substantiate the maximum period of operation following a loss of lubrication by means of an extended test duration or multiple test specimens, or another approach prescribed by the applicant and accepted by the FAA.

(2) *Category B.* Confidence must be established that the rotor-drive gearbox system has an in-flight operational endurance capability to complete an autorotation descent and landing following a failure of any one pressurized, normal-use lubrication system.

(i) For each rotor-drive gearbox system necessary for safe autorotation descent or safe landing, the applicant must conduct a test of at least 16 minutes and 15 seconds, following the most severe failure mode of the normal-use lubrication system, as determined by the failure analysis of § 29.917(b).

(ii) The test must begin when the indication to the flight crew shows that a lubrication failure has occurred, and its loading must be consistent with 1 minute at maximum continuous power. Thereafter, the input torque should be reduced to simulate autorotation for a minimum of 15 minutes.

(iii) The test must be conducted using an input torque to simulate a minimum power landing for approximately 15 seconds.

In addition to § 29.1585, the following special condition applies:

(h) *Power Plant limitations.* The maximum duration of operation after a failure, resulting in any loss of lubrication of a rotor-drive-system gearbox and an associated oil-pressure warning, must be furnished in the rotorcraft flight manual, and must not exceed the maximum period substantiated in accordance with § 29.927(c) of these special conditions.

Issued in Des Moines, Washington, on May 8, 2023.

Suzanne A. Masterson,

*Acting Manager, Technical Policy Branch,
Policy and Standards Division, Aircraft
Certification Service.*

[FR Doc. 2023–10135 Filed 5–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0937; Project Identifier MCAI–2022–00134–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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 Airbus Helicopters Model EC155B1 helicopters. This proposed AD was prompted by reports of failure of the main gearbox (MGB) oil cooling fan hub (fan hub). This proposed AD would require for helicopters with an affected part (fan hub) installed, using an endoscope, repetitively inspecting the fan hub, including the area around the fan hub attachment screws, for a crack. Depending on the inspection results, this proposed AD would require performing additional inspections and replacing an affected fan hub. This proposed AD would also allow an affected fan hub to be installed on a helicopter if certain actions are accomplished, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 June 26, 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](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0937; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0937.

Other Related Service Information:

For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at airbus.com/helicopters/services/technical-support.html. You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT:

Kevin Kung, Aerospace Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7244; email 9-AVS-AIR-BACO-COS@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–2023–0937; Project Identifier MCAI–2022–00134–R” 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 Kevin Kung, Aerospace Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7244; email 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives that 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 a series of EASA ADs with the most recent being EASA AD 2022–0006R2, dated January 31, 2022 (EASA AD 2022–0006R2), to correct an unsafe condition for Airbus Helicopters Model EC 155 B1 helicopters.

This proposed AD was prompted by reports of failure of the fan hub. The

FAA is proposing this AD to inspect for cracks on and around the fan hub. The unsafe condition, if not addressed, could result in an undetected loss of lubrication of the MGB or engine and reduced control of the helicopter.

You may examine EASA AD 2022–0006R2 in the AD docket at *regulations.gov* under Docket No. FAA–2023–0937.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0006R2 requires, for helicopters with a certain part-numbered fan hub installed, repetitively inspecting the fan hub, including the area around the fan hub attachment screws, for a crack. EASA AD 2022–0006R2 also requires, if there is a crack, additional inspections, replacing an affected fan hub, and sending certain information to Airbus Helicopters.

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.

Other Related Service Information

The FAA also reviewed Airbus Helicopters Alert Service Bulletin No. EC155–05A039, Revision 0, dated January 6, 2022. This service information specifies procedures, using an endoscope, to inspect the fan hub and the fan hub attachment screws for a crack. This service information also specifies procedures to interpret the results of the endoscope inspection; and depending on the results, performing close monitoring, replacing an affected fan hub, and sending certain information to Airbus Helicopters.

FAA’s Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0006R2, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and

except as discussed under “Differences Between this Proposed AD and the EASA 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, the FAA proposes to incorporate EASA AD 2022–0006R2 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0006R2 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 EASA AD 2022–0006R2 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 2022–0006R2. Service information referenced in EASA AD 2022–0006R2 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0937 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2022–0006R2 requires replacing each affected fan hub with a serviceable fan hub if any crack is detected, whereas this proposed AD would require removing each affected fan hub from service and replacing it with a serviceable fan hub if any crack is detected.

Service information referenced in EASA AD 2022–0006R2 specifies sending certain information, including pictures, to the manufacturer, whereas this proposed AD would not.

Interim Action

The FAA considers that this proposed AD would be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA

estimates the following costs to comply with this proposed AD.

Inspecting the fan hub including each fan hub attachment screw and interpreting the results would take about 1 work-hour for an estimated cost of \$85 per inspection and \$850 for the U.S. fleet per inspection cycle.

Replacing an affected fan hub with a serviceable fan hub would take about 8 work-hours and parts would cost about \$7,273 for an estimated cost of \$7,953 per fan hub replacement.

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:

Airbus Helicopters: Docket No. FAA–2023–0937; Project Identifier MCAI–2022–00134–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main rotor gearbox.

(e) Unsafe Condition

This AD was prompted by reports of failure of the main gearbox (MGB) oil cooling fan hub (fan hub). The FAA is issuing this AD to inspect for cracks on and around the fan hub. The unsafe condition, if not addressed, could result in an undetected loss of lubrication of the MGB or engine and reduced control of the helicopter.

(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 2022–0006R2, dated January 31, 2022 (EASA AD 2022–0006R2).

(h) Exceptions to EASA AD 2022–0006R2

(1) Where EASA AD 2022–0006R2 requires compliance in terms of flight hours, this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2022–0006R2 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (2.2) of EASA AD 2022–0006R2 requires within 50 FH [flight hours] after crack detection around the attachment screw, replace the affected part [fan hub] with a serviceable part, for this AD, within 50 hours TIS after crack detection around the attachment screw, remove the affected fan hub from service, and replace it with a serviceable fan hub.

(4) Where paragraph (3) of EASA AD 2022–0006R2 requires replacing an affected part with a serviceable part before next flight if any crack is detected in any area other than around the attachment screw, for this AD, if any crack is detected in any area other than around the attachment screw, before further flight, remove the affected fan hub from service, and replace it with a serviceable fan hub.

(5) Where the service information referenced in EASA AD 2022–0006R2 specifies to "make sure that there is no crack," this AD requires inspecting the area for a crack.

(6) Where the service information referenced in EASA AD 2022–0006R2 specifies to discard certain parts, this AD requires removing those parts from service.

(7) Where the service information referenced in EASA AD 2022–0006R2 specifies creating a Technical Event and sending certain information to Airbus Helicopters, this AD does not include those requirements.

(8) Where the service information referenced in EASA AD 2022–0006R2 specifies to use tooling, this AD allows the use of equivalent tooling.

(9) This AD does not adopt the "Remarks" section of EASA AD 2022–0006R2.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0006R2 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the 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.

(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.

(l) Related Information

For more information about this AD, contact Kevin Kung, Aerospace Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7244; email 9-AVS-AIR-BACO-COS@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 2022-0006R2, dated January 31, 2022.

(ii) [Reserved]

(3) For EASA AD 2022-0006R2, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website atad.easa.europa.eu.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(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 May 2, 2023.

Michael Linegang,

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

[FR Doc. 2023-10075 Filed 5-11-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1040; Project Identifier MCAI-2022-01512-T]

RIN 2120-AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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 MHI RJ Aviation ULC Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a manufacturing quality escape concerning the installation of the Halon metering device on certain cargo fire extinguisher containers. This proposed AD would require the inspection of cargo fire

extinguisher container serial numbers and the replacement of the affected containers. This proposed AD would also limit the installation of affected parts. 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 June 26, 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-2023-1040; 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 identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833-990-7272 or direct-dial telephone 450-990-7272; fax 514-855-8501; email thd.crj@mhirj.com; website mhirj.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.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, 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:

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-2023-1040; Project Identifier MCAI-2022-01512-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to 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 Chirayu Gupta, 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. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued AD CF-2022-66, dated December 8, 2022 (also referred to after this as the MCAI), to correct an unsafe condition on all MHI RJ Aviation ULC Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000) airplanes. The MCAI

states that during assembly of the Halon metering device, the discharge head was not fully seated on cargo fire extinguisher containers having certain serial numbers. The threads in the discharge neck were not re-tapped after the discharge disc was welded resulting in an undersized thread, which prevented the Halon metering device from being fully seated. This will result in an increased Halon mass flow rate through the metering device during discharge, which could reduce the duration of the Halon flow. This condition, if not corrected, when combined with a cargo fire, could lead to a reduction in the fire extinguishing capabilities of the fire protection system.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1040.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022. This service information specifies procedures for an inspection for the serial numbers of the high rate of discharge (HRD) and low rate of discharge (LRD) cargo fire extinguisher containers and the replacement of affected cargo fire extinguisher containers.

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.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also limit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 597 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 1 work-hour × \$85 per hour = \$85	\$0	Up to \$85	Up to \$50,745.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × \$85 per hour = \$255	\$0	\$255

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:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.):
Docket No. FAA-2023-1040; Project Identifier MCAI-2022-01512-T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 26, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (type certificate previously held by Bombardier Inc.) airplanes, certificated in any category, identified in paragraphs (c)(1) through (5) of this AD.

(1) Model CL-600-2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(2) Model CL-600-2C11 (Regional Jet Series 550) airplanes.

(3) Model CL-600-2D15 (Regional Jet Series 705) airplanes.

(4) Model CL-600-2D24 (Regional Jet Series 900) airplanes.

(5) Model CL-600-2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by a manufacturing quality escape concerning the installation of the Halon metering device on certain cargo fire extinguisher containers. The FAA is issuing this AD to address an increased Halon mass flow rate through the metering device during discharge, which could reduce the duration of the Halon flow. The unsafe condition, if not addressed, when combined with a cargo fire, could lead to a reduction in the fire extinguishing and suppression capabilities of the fire protection system.

(f) Compliance

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

(g) Inspection and Replacement

Within 1,000 flight hours or 6 months, whichever occurs first from the effective date of this AD, inspect the serial numbers of the high rate of discharge (HRD) and low rate of discharge (LRD) cargo fire extinguisher containers in accordance with Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the HRD and LRD cargo fire extinguisher containers can be conclusively determined from that review.

(1) If neither of the HRD or the LRD container serial numbers is listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022, no further work is required by this paragraph.

(2) If the serial numbers of both the HRD and LRD containers are listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022: Within 4,500 flight hours from the effective date of this AD, replace the HRD and LRD cargo fire extinguisher containers in accordance with Section 2.B. of the Accomplishment Instructions of the MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022.

(3) If the serial number of either the HRD or the LRD container, but not both, is listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin

670BA-26-014, dated July 28, 2022: Within 8,800 flight hours from the effective date of this AD, replace the affected HRD or LRD cargo fire extinguisher container in accordance with Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022.

(h) Parts Installation Limitation

As of the effective date of this AD, it is prohibited to install an HRD or LRD cargo fire extinguisher container with a serial number listed in Section 2.B. of the Accomplishment Instructions of MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022, unless the cargo fire extinguisher container is ink-stamped with a circled "G" adjacent to the nameplate, signifying the incorporation of Kidde Service Bulletin Fire Extinguisher-26-A dated April 4, 2022.

(i) 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 (j)(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 MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF-2022-66, dated December 8, 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-2023-1040.

(2) For more information about this AD, contact Chirayu Gupta, 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.

(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) MHIRJ Service Bulletin 670BA-26-014, dated July 28, 2022.

(ii) [Reserved].

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2, Canada; North America toll-free telephone 833-990-7272 or direct-dial telephone 450-990-7272; fax 514-855-8501; email thd.crj@mhjrj.com; website mhjrj.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 May 8, 2023.

Michael Linegang,

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

[FR Doc. 2023-10203 Filed 5-11-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2022-1471; Airspace Docket No. 22-AAL-63]

RIN 2120-AA66

**Modification of Class E Airspace;
Ralph M. Calhoun Memorial Airport,
Tanana, AK**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace designated as a surface area and modify the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, Tanana, AK. Additionally, this action proposes several administrative amendments to update the airport's existing Class E airspace legal descriptions. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2022-1471

and Airspace Docket No. 22–AAL–63 using any of the following methods:

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

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

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

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

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

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

operations at Ralph M. Calhoun Memorial Airport, AK.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

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

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center,

Operations Support Group, 2200 South 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class E airspace designated as a surface area and modify the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, AK.

The Class E surface area airspace at the airport should be increased from a 3.9-mile radius around the airport to a 5.1-mile radius to fully contain IFR arrival operations between the surface and 1,000 feet above the surface when executing the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 7 approach, or the Area Navigation (RNAV) Global Positioning System (GPS) RWY 7 approach. Additionally, the two existing westward extensions to the Class E surface area at the airport should be removed, as they are no longer needed for containing IFR operations. Finally, the Class E surface area should be extended 1.4 miles to the southwest to fully contain aircraft departing on the RWY 25 obstacle departure procedure (ODP) between the surface and the base of adjacent controlled airspace.

The Class E airspace extending upward from 700 feet above the surface at the airport should also be modified. The existing Class E airspace extending upward from 700 feet above the surface contains a procedure box area to the east that can be removed, as it is no longer needed. Furthermore, the airspace radius should be increased by 0.2 miles to more appropriately accommodate arriving IFR operations below 1,500 feet above the surface when executing the VOR/DME RWY 7 or RNAV (GPS) RWY 7 approaches. Lastly, the existing Class E airspace extending upward from 700

feet above the surface should be extended to 10.5 miles east of the airport to fully contain departing IFR operations until they reach 1,200 feet above the surface while conducting the RWY 25 ODP.

The FAA proposes administrative modifications to the airport's legal descriptions. The geographic coordinates located on line three of the text header of both the Class E surface area and Class E airspace extending from 700 feet above the surface at the airport should be updated to match the FAA's database. The Bear Creek Non-directional Beacon was decommissioned on December 2, 2021, and reference to it should be removed from both of the airport's legal descriptions. Finally, reference to the Tanana VOR/DME navigational aid should be removed from both legal descriptions as it is no longer needed.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK (Lat. 65°10'28" N, long. 152°06'29" W)

That airspace within a 5.1-mile radius of the airport, and within 3.6 miles each side of the airport's 214° bearing extending from the 5.1-mile radius to 6.5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AAL AK E5 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK (Lat. 65°10'28" N, long. 152°06'29" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport, and within 1.9 miles each side of the airport's 082° bearing extending from the 6.6-mile radius to 10.5 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the airport.

* * * * *

Issued in Des Moines, Washington, on May 9, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–10184 Filed 5–11–23; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 20

Known Mailer and Exceptions

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes amending *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®) in various sections to remove the "known mailer" definition and exceptions for customs declarations.

DATES: Submit comments on or before June 12, 2023.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to PCFederalRegister@usps.gov, with a subject line of "IMM Known Mailer and Exceptions." Faxed comments will not be accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Vlad Spanu at (202) 268–4180 or Kathy Frigo at (202) 268–4178.

SUPPLEMENTARY INFORMATION: The Postal Service proposes removing IMM section 123.62 regarding known mailers in its entirety, and other related information in the IMM associated with known mailers, as noted in this article. This proposal helps align postal regulations with current customs policy.

Associated revisions to the DMM will be published separately.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

List of Subjects in 39 CFR Part 20

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

PART 20—[AMENDED.]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

1 International Mail Services

* * * * *

120 Preparation for Mailing

* * * * *

123 Customs Forms and Online Shipping Labels

* * * * *

123.6 Required Usage

123.61 Conditions

* * * * *

[Revise a. to read as follows:]

a. Mailers use the hard copy PS Form 2976–R and present it at a USPS retail service counter, or use an electronic PS Form 2976, PS Form 2976–A, or PS Form 2976–B as described in Exhibit 123.61.

* * * * *

Exhibit 123.61

Customs Declaration Form Usage by Mail Category

* * * * *

[In the section “First-Class Package International Service Packages (Small Packets), as well as IPA Packages (Small Packets) and ISAL Packages (Small Packets),” remove the 2nd row (beginning with “All package-size items . . .”) in its entirety.]

* * * * *

[Remove section 123.62, “Known Mailers,” in its entirety, renumbering current sections 123.63 and 123.64 to be 123.62 and 123.63, respectively, and renumbering all associated references in Exhibit 123.61 accordingly.]

* * * * *

2 Conditions for Mailing

* * * * *

270 Free Matter for the Blind

* * * * *

272 Eligibility

* * * * *

272.4 Customs Form Required

[Remove the second sentence.]

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–09909 Filed 5–11–23; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 230504–0120]

RIN 0648–BH85

Endangered and Threatened Species: Designation of Nonessential Experimental Populations of Chinook Salmon Upstream of Shasta Dam, Authorization for Release, and Adoption of Limited Protective Regulations Under the Endangered Species Act Sections 10(j) and 4(s)

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

ACTION: Proposed rule; notification of availability of a draft environmental assessment; request for comments.

SUMMARY: We, NMFS, propose a rule to designate and authorize the release of nonessential experimental populations (NEPs or experimental populations) of Sacramento River (SR) winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley (CV) spring-run Chinook salmon (*O. tshawytscha*) in the McCloud and Upper Sacramento Rivers upstream of Shasta Dam (the NEP Area), California, and, under the Endangered Species Act (ESA), establish a limited set of take exceptions for the experimental populations. Successful reintroduction of populations within the species’ historical ranges would contribute to viability and further conservation of these species. The issuance of limited protective regulations for the conservation of these species would provide regulatory assurances to the people in the Upper Sacramento River and McCloud River watersheds. This proposed rule also announces the availability for comment of a draft environmental assessment (EA)

analyzing the environmental impacts of this proposed experimental population designation and the associated take exceptions.

DATES: Comments on this proposed rule and EA, must be received no later than June 12, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0052, 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–2018–0052 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 part of the public record and will generally be posted to <http://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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. You may access a copy of the draft EA by the following:

- Visit NMFS’ National Environmental Policy Act (NEPA) website at: https://www.westcoast.fisheries.noaa.gov/publications/nepa/nepa_documents.html.

FOR FURTHER INFORMATION CONTACT: Steve Edmondson, steve.edmondson@noaa.gov or by phone at (916) 930–3600, or by mail at National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

SUPPLEMENTARY INFORMATION:

Background Information Relevant to Experimental Population Designation

NMFS listed the SR winter-run Chinook salmon Evolutionarily Significant Unit (ESU)¹ as endangered under the ESA, 16 U.S.C. 1531 *et seq.*, on January 4, 1994 (59 FR 440) and reaffirmed this status on June 28, 2005 (70 FR 37159), and 5-year reviews announced on August 15, 2011 (76 FR 50448), April 14, 2014 (79 FR 20802), and May 26, 2016 (81 FR 33468). Section 9 of the ESA prohibits take of the endangered SR winter-run Chinook

salmon. The State of California listed SR winter-run Chinook salmon as endangered in 1989 under the California Endangered Species Act (CESA). The federally listed ESU is composed of a single population that includes all naturally spawned SR winter-run Chinook salmon in the Sacramento River and its tributaries (70 FR 37160, June 28, 2005, as well as SR winter-run Chinook salmon that are part of the conservation hatchery program at the Livingston Stone National Fish Hatchery (NFH) (R. Jones, NMFS, letter to Chris Yates, NMFS, September 28, 2015, regarding inclusion of Livingston Stone NFH fish in the ESU; 81 FR 33468, May 26, 2016). Designated critical habitat of SR winter-run Chinook salmon (58 FR 33212, June 16, 1993) includes: (1) the Sacramento River from Keswick Dam, Shasta County (River Mile (RM) 302) to Chipps Island (RM 0) at the westward margin of the delta; (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait; (3) all waters of San Pablo Bay westward of the Carquinez Bridge; and (4) those waters north of San Francisco-Oakland Bay Bridge.

NMFS listed the CV spring-run Chinook salmon ESU as threatened under the ESA on September 16, 1999 (64 FR 50394), and reaffirmed this status in a final rule on June 28, 2005 (70 FR 37160), and 5-year reviews announced on August 15, 2011 (76 FR 50447) and May 26, 2016 (81 FR 33468). The listed ESU of CV spring-run Chinook salmon currently includes all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries, as well as the spring-run Chinook salmon from the Feather River Hatchery (FRH) spring-run Chinook salmon program. On January 9, 2002 (67 FR 1116), NMFS issued protective regulations under section 4(d) of the ESA for CV spring-run Chinook salmon that apply the take prohibitions of section 9(a)(1) of the ESA except for listed exceptions (see 50 CFR 223.203). Critical habitat has been designated for CV spring-run Chinook salmon (70 FR 52488, September 2, 2005), and includes most of the occupied riverine habitat within their extant range. CV spring-run Chinook salmon are also listed as a threatened species by the State of California under CESA, California Fish and Game Code, Division 3, Chapter 1.5.

In 2014, we adopted a final recovery plan for the SR winter-run and CV spring-run Chinook salmon ESUs (79 FR 42504, July 22, 2014). The Central Valley Recovery Plan identifies re-

establishing populations of SR winter-run and CV spring-run Chinook salmon above impassable barriers to unoccupied historical habitats as an important recovery action (NMFS 2014). More specifically, the Central Valley Recovery Plan explains that re-establishing populations above impassable barriers, such as Shasta Dam, would aid in recovery of the ESUs by increasing abundance, spatial structure and diversity and by reducing the risk of extinction to the ESUs.

NMFS is proposing this rule to (a) designate and authorize the release of NEPs of SR winter-run and CV spring-run Chinook salmon pursuant to ESA section 10(j) in the McCloud and Upper Sacramento Rivers upstream of Shasta Dam, and (b) establish take prohibitions for the NEPs and exceptions for particular activities.

The NEP Area extends from Shasta Dam up to Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River. All other tributaries flowing into Shasta Reservoir up to the ridge line, including tributaries below Pit 7 Dam, McCloud Dam, and Box Canyon Dam, up to the ridge line would be included in the NEP Area. All other areas above Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River would not be part of the NEP Area. The NEP Area extends up to the ridgelines to account for watershed processes and ends at the aforementioned dams because these dams lack fish passage facilities. The NEP Area is part of the species' historical range. The NEPs are all SR winter-run and CV spring-run Chinook salmon, including fish released or propagated, naturally or artificially, within the NEP Area.

Statutory and Regulatory Framework for Experimental Population Designations

Section 10(j) of the ESA (16 U.S.C. 1539(j)) allows the Secretary of Commerce to authorize the release of any population of a listed species outside their current range if the release "further their conservation." An experimental population is a population that is geographically separate from nonexperimental populations of the same species.

Before authorizing the release of an experimental population, section 10(j)(2)(B) requires that the Secretary must "by regulation identify the population and determine, on the basis of the best available information, whether or not the population is essential to the continued existence of the listed species.

An experimental population is treated as a threatened species, except that non-essential populations do not receive the benefit of certain protections normally applicable to threatened species (ESA section 10(j)(2)(C)). Below we discuss the impact of treating experimental populations as threatened species and of exceptions that apply to experimental populations.

For endangered species, section 9 of the ESA prohibits take of those species. For a threatened species, ESA section 9 does not specifically prohibit take of those species, but the ESA instead authorizes NMFS to adopt regulations under section 4(d) to prohibit take or that it deems necessary and advisable for species conservation. If designated, the proposed experimental populations of SR winter-run and CV spring-run Chinook salmon must generally be treated as threatened species. Therefore, we propose to issue tailored protective regulations under ESA section 4(d) for the proposed experimental populations of SR winter-run and CV spring-run Chinook salmon to identify take prohibitions necessary to provide for the conservation of the species with exceptions for particular activities.

Section 7 of the ESA provides for Federal interagency cooperation and consultation on Federal agency actions. Section 7(a)(1) directs all Federal agencies, in consultation with NMFS as applicable depending on the species, to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species. Section 7(a)(2) requires all Federal agencies, in consultation with NMFS as applicable depending on the species, to ensure any action they authorize, fund or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 applies equally to endangered and threatened species.

Although ESA section 10(j) provides that an experimental population must generally be treated as a threatened species, for the purposes of ESA section 7, if the experimental population is determined to be a NEP, section 10(j)(C)(i) requires that we treat the experimental population as a species proposed to be listed, rather than a species that is listed (except when it occurs within a National Wildlife Refuge or National Park, in which case it is treated as listed). Section 7(a)(4) of the ESA requires Federal agencies to confer (rather than consult under ESA section 7(a)(2)) with NMFS on actions likely to jeopardize the continued existence of a species proposed to be

listed. The results of a conference are advisory recommendations, if any, on ways to minimize or avoid adverse effects rather than mandatory terms and conditions under ESA section 7(a)(2) consultations (compare 50 CFR 402.10(c) with 50 CFR 402.14(i)(1)(iv)).

NMFS has designated four experimental populations (78 FR 2893, January 15, 2013; 78 FR 79622, December 31, 2013; 79 FR 40004, July 11, 2014; 87 FR 79808, December 28, 2022) and promulgated regulations, codified at 50 CFR part 222, subpart E, to implement section 10(j) of the ESA (81 FR 33416, May 26, 2016). NMFS' implementing regulations include the following provisions:

The provision at 50 CFR 222.501(b) defines an "essential experimental population" as an experimental population that, if lost, the survival of the species in the wild would likely be substantially reduced. All other experimental populations are classified as nonessential.

The provision at 50 CFR 222.502(b) provides that, before authorizing the release of an experimental population, the Secretary must find by regulation that such release will further the conservation of the species. In addition, 50 CFR 222.502(b) provides that, in making such a finding, the Secretary shall utilize the best scientific and commercial data available to consider:

- Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;
- The likelihood that any such experimental population will become established and survive in the foreseeable future;

- The effects that establishment of an experimental population will have on the recovery of the species; and

- The extent to which the introduced population may be affected by existing or anticipated Federal or state actions or private activities within or adjacent to the experimental population area.

The provision at 50 CFR 222.502(c) describes 4 components that must be provided in any NMFS regulations designating an experimental population under ESA section 10(j):

- Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location; actual or anticipated migration; number of specimens released or to be released; and other criteria appropriate to identify the experimental population(s);

- A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental

population is, or is not, essential to the continued existence of the species in the wild;

- Management restrictions, protective measures, or other special management concerns of that population, as appropriate, which may include, but are not limited to, measures to isolate and/or to contain the experimental population designated in the regulation from nonexperimental populations and protective regulations established pursuant to section 4(d) of the ESA; and

- A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

In addition, as described above, ESA section 10(j)(1) defines an "experimental population" as any population authorized for release but only when, and at such times as, the population is wholly separate geographically from the non-experimental populations of the same species. Accordingly, we must establish that there are such times and places when the experimental population is wholly geographically separate. Similarly, the statute requires that we identify the experimental population; the legislative history indicates that the purpose of this requirement is to provide notice as to which populations of listed species are experimental (see Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 97-835, at 34 (1982)).

We discuss in more detail below how we considered each of these elements.

Status of the Species

Life history and the historical population trends of SR winter-run and CV spring-run Chinook salmon are summarized by Healy (1991), USFWS (1995), Yoshiyama *et al.*, (1998), Yoshiyama *et al.*, (2001), and Moyle (2002). Section 4(f) of the ESA requires the Secretary of Commerce to develop recovery plans for all listed species unless the Secretary determines that such a plan will not promote the conservation of a listed species. Prior to developing the Central Valley Recovery Plan (NMFS 2014), we assembled a team of scientists from Federal and State agencies, consulting firms, non-profit organizations and academia. This group, known as the Central Valley Technical Recovery Team (CVTRT), was tasked with identifying population structure and recommending recovery criteria (also known as delisting criteria) for ESA-listed salmon and steelhead in the Sacramento River and San Joaquin Rivers and their tributaries. The CVTRT recommended biological viability

criteria at the ESU level and population level (Lindley *et al.*, 2007) for recovery planning consideration. The CVTRT identified the current risk level of each population based on the gap between recent abundance and productivity and the desired recovery goals. The CVTRT concluded that the greatest risk facing the ESUs resulted from the loss of historical diversity following the construction of major dams that blocked access to historical spawning and rearing habitat (Lindley *et al.*, 2007).

The CVTRT also recommended spatial structure and diversity metrics for each population (Lindley *et al.*, 2004). Spatial structure refers to the geographic distribution of a population and the processes that affect the distribution. Populations with restricted distribution and few spawning areas are at a higher risk of extinction from catastrophic environmental events (*e.g.*, a volcanic eruption) than are populations with more widespread and complex spatial structure. A population with complex spatial structure typically has multiple spawning areas which allows the expression of diverse life history characteristics. Diversity is the combination of genetic and phenotypic characteristics within and between populations (McElhany *et al.*, 2000). Phenotypic diversity allows more diverse populations to use a wider array of environments and protects populations against short-term temporal and spatial environmental changes. Genotypic diversity, on the other hand, provides populations with the ability to survive long-term changes in the environment by providing genetic variations that may prove successful under different situations. The combination of phenotypic and genotypic diversity, expressed in a natural setting, provides populations with the ability to utilize the full range of habitat and environmental conditions and to have the resiliency to survive and adapt to long-term changes in the environment.

In 2016, NMFS completed a periodic review as required by ESA section 4(c)(2)(A) and on May 26, 2016 (81 FR 33468) announced the SR winter-run Chinook salmon ESU would remain listed as endangered. In 2023, NMFS completed the 2022 review of SR winter-run Chinook salmon that indicates the biological status of the SR winter-run Chinook salmon ESU has declined since the 2016 viability assessment (Williams *et al.* 2016), with the single spawning population on the mainstem Sacramento River now at a high risk of extinction (SWFSC 2022). Updated information indicates an increased extinction risk due to the

larger influence of the hatchery broodstock and low numbers of natural-origin returns in two consecutive years (SWFSC 2022). Analysis identified that the viability of the ESU would be improved by re-establishing this species in their historical spawning and rearing habitats through reintroduction efforts in Battle Creek and upstream from Shasta Reservoir.

In 2016, NMFS completed a periodic review as required by the ESA section 4(c)(2)(A), and concluded that the CV spring-run Chinook salmon ESU should remain listed as threatened (81 FR 33468, May 26, 2016). As part of the periodic review, NMFS' Southwest Fisheries Science Center conducted an analysis (Johnson and Lindley 2016) that indicated the extant independent populations of the CV spring-run Chinook salmon ESU remained at a moderate to low extinction risk. The NMFS Southwest Fisheries Science Center's recent viability analysis (2022) noted some improvements in the viability of the ESU, particularly with the increased spatial diversity of the dependent Battle Creek and Clear Creek populations. However, the analysis also identified as key threats recent catastrophic declines of many of the extant populations, high pre-spawn mortality during the 2012–2015 drought in California, uncertain juvenile survival as a result of drought and ocean conditions, as well as straying of CV spring-run Chinook salmon from the Feather River Fish Hatchery.

Analysis of the Statutory Requirements

1. Will authorizing release of experimental populations further the conservation of these species?

Section 3(3) of the ESA, 16 U.S.C. 1532(3), defines “conservation” as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary.” We discuss in more detail below each of the factors we considered in determining whether authorizing release of experimental populations in the NEP Area would further the conservation of SR winter-run and CV spring-run Chinook salmon.

Under 50 CFR 222.502(b), NMFS must consider several factors in finding whether authorizing release of an experimental population will further the conservation of the species, including any possible adverse effects on extant populations of the species as a result of removal of individuals for introduction elsewhere; the likelihood that the

experimental population will become established and survive in the foreseeable future; the effects that establishment of the experimental population will have on the recovery of the species; and the extent to which the experimental populations may be affected by existing or anticipated Federal or state actions or private activities within or adjacent to the experimental population area.

Regarding the likelihood that reintroduction efforts will be successful in the foreseeable future, an important question is: what are the most appropriate sources of broodstock to establish the experimental population, and are the sources available? Reintroduction efforts have the best chance for success when the donor population has life-history characteristics compatible with the anticipated environmental conditions of the habitat into which fish will be reintroduced (Araki *et al.*, 2008). Populations found in watersheds closest to the NEP Area are most likely to have adaptive traits that will lead to a successful reintroduction. Therefore, only SR winter-run and CV spring-run Chinook salmon populations found in Central Valley would be used in establishing the experimental populations in the NEP Area.

We have preliminarily identified donor sources for reintroduction into the NEP Area as SR winter-run from Livingston Stone NFH and CV spring-run Chinook salmon produced from the FRH. These fish are the geographically closest donor sources that could be used with minimal impact to the wild populations for reintroduction into the NEP Area. NMFS, in consultation with the California Department of Fish and Wildlife (CDFW), may later consider diversifying the donor stocks from other nearby streams if those populations can sustain removal of fish. Any collection of Chinook salmon would be subject to a Hatchery and Genetic Management Plan (HGMP) in relation to a hatchery source and approval of a permit under ESA section 10(a)(1)(A), which includes analysis under NEPA and ESA section 7.

Use of donor stocks from Livingston Stone NFH and the FRH for the initial phases of a reintroduction program will minimize the number of individuals needed from existing populations. Supplementation to the donor stock, if necessary, would be dependent upon genetic diversity needs and the extent of adverse effects to other populations. It is anticipated that over time, the Livingston Stone NFH and FRH would produce juveniles and adults in sufficient numbers to enable the return

of a sufficient number of adults to establish a self-sustaining population in the NEP Area. Once self-sustaining populations are established, it is anticipated that contributions of SR winter-run Chinook salmon from Livingston Stone NFH and CV spring-run Chinook salmon from FRH would be phased out.

We also consider the suitability of habitat available to the experimental populations. In 2014, the U.S. Bureau of Reclamation initiated a habitat assessment of the NEP Area and found conditions were suitable for Chinook salmon spawning, adult holding, and juvenile rearing. Habitat conditions in the Upper Sacramento and McCloud Rivers are described in the draft EA.

In addition, there are Federal and state laws and regulations that will help ensure the establishment and survival of the experimental populations by protecting aquatic and riparian habitat in the NEP Area. Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1344, establishes a program to regulate the discharge of dredged or fill material into waters of the United States, which generally requires avoidance, minimization, and mitigation for potential adverse effects of dredge and fill activities within the nation's waterways. Under CWA section 401, 33 U.S.C. 1341, a Federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state or authorized tribe where the discharge would originate issues a section 401 water quality certification verifying compliance with existing water quality requirements or waives the certification requirement. In addition, construction and operational storm water runoff is subject to restrictions under CWA section 402, 33 U.S.C. 1342, which establishes the National Pollutant Discharge Elimination System permit program, and state water quality laws.

The Federal Energy Regulatory Commission (FERC), pursuant to the Federal Power Act (FPA) and the U.S. Department of Energy Organization Act, is authorized to issue licenses for up to 50 years for the construction and operation of non-Federal hydroelectric developments subject to its jurisdiction. The FPA authorizes NMFS to issue mandatory prescriptions for fish passage and recommend other measures to protect salmon, steelhead, and other anadromous fish.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*) is the principal law governing marine fisheries conservation and management in the

United States. Chinook salmon Essential Fish Habitat (EFH) is identified and described to include all water bodies currently or historically occupied by Chinook salmon in California. Under the MSA, Federal agencies are required to determine whether a Federal action they authorize, fund, or undertake may adversely affect EFH (16 U.S.C. 1855(b)). Chinook salmon EFH does not occur in the NEP Area.

At the state level, the California Fish and Game Code (CFGF) Fish and Wildlife Protection and Conservation provisions (CFGF section 1600, *et seq.*), the CESA (CFGF section 2050, *et seq.*), and the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, *et seq.*) set forth criteria for the incorporation of avoidance, minimization, and feasible mitigation measures for on-going activities as well as for individual projects. The CFGF Fish and Wildlife Protection and Conservation provisions were enacted to provide conservation for the state's fish and wildlife resources and include requirements to protect riparian habitat resources on the bed, channel, or bank of streams and other waterways. The CESA prohibits the taking of listed species except as otherwise provided in State law. Under the CEQA, no public agency shall approve or carry out a project without identifying all feasible mitigation measures necessary to reduce impacts to a less than significant level, and public agencies shall incorporate such measures absent overriding consideration.

Regarding the effects that establishment of experimental populations will have on the recovery of the species, the Central Valley Recovery Plan (NMFS 2014) characterizes the NEP Area as having the potential to support viable populations of Chinook salmon. The Central Valley Recovery Plan establishes a framework for reintroduction of Chinook salmon and steelhead to historical habitats upstream of dams. The framework recommends that a reintroduction program should include feasibility studies, habitat evaluations, fish passage design studies, and a pilot reintroduction phase prior to implementation of the long-term reintroduction program. In addition, the Central Valley Recovery Plan contains specific management strategies for recovering SR winter-run and CV spring-run Chinook salmon that include securing existing populations and reintroducing these species into historically occupied habitats above rim dams in the Central Valley of California (NMFS 2014). The Central Valley Recovery Plan concludes, and we

continue to agree, that establishing experimental populations in the NEP Area that persist into the foreseeable future is expected to reduce extinction risk from natural and anthropogenic factors by increasing abundance, productivity, spatial structure, and diversity within California's Central Valley. These expected improvements in the overall viability of SR winter-run and CV spring-run Chinook salmon, in addition to other actions being implemented throughout the Central Valley, which are described next, will contribute to SR winter-run and CV spring-run Chinook salmon near-term viability and recovery.

Across the Central Valley, a number of actions are being undertaken to improve habitat quality and quantity for SR winter-run and CV spring-run Chinook salmon. Collectively, implementation of these will result in many projects that will improve habitat conditions. The San Joaquin River Restoration Program will improve passage survival and spatial distribution for CV spring-run Chinook salmon in the San Joaquin River corridor. The Battle Creek Salmon and Steelhead Restoration Project will improve passage and rearing survival, spawning opportunities and spatial distribution in Battle Creek. The Central Valley Flood Protection Plan (DWR 2011) will improve juvenile rearing conditions during outmigration by creating and improving access to high quality floodplain habitats.

Implementation of the action items identified in NMFS current 2022 5-year review of the listing factors and in the Species in the Spotlight 2021–2025 Priority Action Plan for SR winter-run Chinook salmon (NMFS 2021) include improving management of Shasta Reservoir cold-water storage to reduce water temperatures and provide flows to improve SR winter-run Chinook salmon productivity; restoring Battle Creek habitats and reintroducing SR winter-run Chinook salmon to historical spawning areas; reintroducing SR winter-run Chinook salmon into historical habitats above Shasta Dam; improving Yolo Bypass fish habitat and passage to increase juvenile survival and rearing opportunities; improving management of winter and early spring Delta conditions to improve juvenile survival; and continuing collaboration on science and fostering partnerships to build greater capacity to address recovery challenges.

Climate change is expected to exacerbate existing habitat stressors in California's Central Valley and increase threats to Chinook salmon and steelhead by reducing the quantity and quality of

freshwater habitat (Lindley *et al.*, 2007). Significant contraction of thermally suitable habitat is predicted, and as cold-water sources contract, access to cooler headwater streams is expected to become increasingly important for CV spring-run Chinook salmon in the Central Valley (Crozier *et al.*, 2018). For this reason and other reasons described above, we anticipate reintroduction of SR winter-run and CV spring-run Chinook salmon into headwater streams upstream of Shasta Dam will contribute to their conservation and recovery.

Existing or anticipated Federal or state actions or private activities within or adjacent to the NEP Area may affect the experimental populations. The NEP Area is sparsely populated and ongoing state, Federal and local activities include forest management, limited mining, highways and road maintenance, residential and municipal development, grazing, tourism and recreation. These activities will likely continue into the future and are anticipated to have minor impacts to SR winter-run and CV spring-run Chinook salmon in the NEP Area and adjacent areas. Potential impacts from these and other activities are further minimized through application of the aforementioned state and Federal regulations. Dams and water diversions in the NEP Area currently limit fish populations in some parts of the NEP Area. NMFS anticipates releases of SR winter-run and CV spring-run Chinook salmon will be specifically targeted into riverine reaches with abundant high-quality habitats that are not blocked by barriers to fish passage, or impaired by high water temperatures or inadequate flows. The habitat improvement actions called for in the Central Valley Recovery Plan, as well as compliance with existing Federal, state, and local laws, statutes, and regulations, including those mentioned above, are expected to contribute to the establishment and survival of the experimental populations in the NEP Area in the foreseeable future. Although the donor sources for reintroduction are anticipated to include hatchery-origin individuals from the Livingston Stone NFH and FRH, based on the factors discussed above, we conclude it is probable that self-sustaining experimental populations of SR winter-run and CV spring-run Chinook salmon will become established and survive in the NEP Area. Furthermore, we conclude that self-sustaining experimental populations of genetically compatible individuals will likely further the conservation of these species, as discussed above.

2. Identification of the Experimental Populations and Geographic Separation From Nonexperimental Populations of the Same Species

ESA section 10(j)(2)(B) requires that we identify experimental populations by regulation. ESA section 10(j)(1) also provides that a population is considered an experimental population only when, and at such times as, it is wholly separate geographically from the nonexperimental population of the same species. NMFS proposes that the NEP Area would extend upstream from Shasta Dam in the McCloud and Upper Sacramento Rivers as described above. Under this proposed rule, experimental populations would be identified as SR winter-run and CV spring-run Chinook salmon populations when geographically located anywhere in the NEP Area. Reintroduced SR winter-run and CV spring-run Chinook salmon would only be part of the experimental populations when they are present in the NEP Area, and would not be part of the experimental populations when they are outside the NEP Area, even if they originated within the NEP Area. When reintroduced juvenile SR winter-run and CV spring-run Chinook salmon pass downstream of Shasta and Keswick Dams into the Sacramento River, and when they migrate further downstream to the Sacramento River Delta and the Pacific Ocean, they would no longer be geographically separated from other extant SR winter-run and CV spring-run Chinook salmon populations, and thus the “experimental population” designations would not apply, unless and until they return as adults and re-enter the NEP Area.

The proposed NEP Area provides the requisite level of geographic separation because SR winter-run and CV spring-run Chinook salmon are currently extirpated from this area due to the presence of Shasta and Keswick Dams, which block their upstream migration. Straying of fish from other Chinook populations into the NEP Area is not possible due to the presence of these dams. As a result, the geographic description of the extant SR winter-run and CV spring-run Chinook salmon ESUs does not include the NEP Area.

NMFS anticipates that SR winter-run and CV spring-run Chinook salmon used for the initial stages of a reintroduction program would be marked, for example, with specific fin clips and/or coded-wire tags to evaluate stray rates and allow for brood stock collection of returning adults that originated from the experimental populations. Any marking of individuals of the experimental

populations, such as clips or tags, would be for the purpose of evaluating the effectiveness of a near-term and long-term fish passage program, and would not be for the purpose of identifying fish from the NEP Area other than for brood stock collection of returning adults. As discussed above, the experimental populations are identified based on the geographic location of the fish. Indeed, if the reintroductions are successful as expected, and fish begin reproducing naturally, their offspring would not be distinguishable from fish from other Chinook salmon populations. Outside of the NEP Area, *e.g.*, downstream of Shasta and Keswick Dams in the Sacramento River, or in the ocean, any such unmarked fish (juveniles and adults alike) would not be considered members of the experimental populations. They would be considered part of the SR winter-run Chinook salmon ESU or the CV spring-run Chinook salmon ESU currently listed under the ESA. Likewise, any fish that were marked for reintroduction in the NEP Area would not be considered part of the experimental populations once they left the NEP Area; rather, they would be considered part of the ESUs currently listed under the ESA.

3. Is the experimental population essential to the continued existence of the species?

As discussed above, ESA section 10(j)(2)(B) requires the Secretary to determine whether experimental populations would be “essential to the continued existence” of the listed species. The statute does not elaborate on how this determination is to be made. However, as noted above, Congress gave some further attention to the term when it described an essential experimental population as one whose loss “would be likely to appreciably reduce the likelihood of survival of that species in the wild.” (Joint Explanatory Statement, *supra*, at 34). NMFS regulations incorporated this concept into its definition of an essential experimental population at 50 CFR 222.501(b), which is an experimental population that, if lost, the survival of the species in the wild would likely be substantially reduced.

In determining whether the experimental populations of SR winter-run and CV spring-run Chinook salmon are essential, we used the best available information as required by ESA section 10(j)(2)(B). Furthermore, we considered the geographic location of the experimental populations in relation to other populations of SR winter-run and CV spring-run Chinook salmon, and the

likelihood of survival of these populations without the existence of the experimental populations.

The SR winter-run Chinook salmon ESU consists of a single extant population in the Sacramento River downstream of Shasta and Keswick Dams. The CV spring-run Chinook salmon ESU includes four independent populations and several dependent or establishing populations. Given current protections and restoration efforts, these populations are persisting without the presence of a population in the NEP Area. It is expected that the experimental populations will exist as separate populations from those in the Sacramento River basin and will not be essential to the survival of those populations. Based on these considerations, we conclude that the loss of experimental populations of SR winter-run or CV spring-run Chinook salmon in the NEP Area is not likely to appreciably reduce the likelihood of the survival of these species in the wild. Accordingly, NMFS is proposing to designate the experimental populations as nonessential. Under section 10(j)(2)(C)(ii) of the ESA we cannot designate critical habitat for nonessential experimental populations.

Additional Management Restrictions, Protective Measures, and Other Special Management Considerations

As indicated above, ESA section 10(j)(2)(C) requires that experimental populations be treated as threatened species, except that, for nonessential experimental populations, certain portions of ESA section 7 do not apply and critical habitat cannot be designated. Congress intended that the Secretary would issue regulations deemed necessary and advisable to provide for the conservation of experimental populations just as he or she does under ESA section 4(d) for any threatened species (Joint Explanatory Statement, *supra*, at 34). In addition, when amending the ESA to add section 10(j), Congress specifically intended to provide broad discretion and flexibility to the Secretary in managing experimental populations so as to reduce opposition to releasing listed species outside their current range (H.R. Rep. No. 567, 97th Cong. 2d Sess. 34 (1982)). Therefore, we propose to exercise the authority to issue protective regulations under ESA section 4(d) for the proposed experimental populations of SR winter-run and CV spring-run Chinook salmon to identify take prohibitions necessary to provide for the conservation of these species and otherwise provide assurances to the

people of the Upper Sacramento and McCloud River watersheds.

The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Concurrent with the proposed ESA section 10(j) experimental population designation, we propose protective regulations under ESA section 4(d) for the experimental populations that would prohibit take of SR winter-run and CV spring-run Chinook salmon in the NEP Area that are part of the experimental populations, except in the following circumstances:

1. Any take by authorized governmental entity personnel acting in compliance with 50 CFR 223.203(b)(3) to aid a sick, injured or stranded fish; dispose of a dead fish; or salvage a dead fish which may be useful for scientific study;

2. Any take that is incidental¹ to an otherwise lawful activity and is unintentional, not due to negligent conduct. Otherwise lawful activities include, but are not limited to, recreation, forestry, water management, agriculture, power production, mining, transportation management, rural development, or livestock grazing, when such activities are in full compliance with all applicable laws and regulations; and

3. Any take that is pursuant to a permit issued by NMFS under section 10 of the ESA (16 U.S.C. 1539) and regulations in 50 CFR part 222 applicable to such a permit.

Process for Periodic Review

Evaluation of the success of experimental populations will require new monitoring programs developed specifically for this purpose. To gauge the success of the program, NMFS anticipates that it will be necessary to monitor in the NEP Area for fish passage efficiency, spawning success, adult and smolt injury and mortality rates, juvenile salmon collection efficiencies, competition with resident species, predation, and disease among other things. We anticipate the status of reintroduced populations of SR winter-run and CV spring-run Chinook salmon in the NEP Area would be evaluated during NMFS’ five-year review process under ESA 4(c)(2). During the 5-year review, NMFS may evaluate whether the current designation under ESA section 10(j) as nonessential

experimental populations is still warranted.

Proposed Experimental Population Findings

Based on the best available scientific information, we have determined that the designations and authorization for the release of NEPs of SR winter-run and CV spring-run Chinook salmon in the NEP Area upstream of Shasta Dam will further the conservation of SR winter-run and CV spring-run Chinook salmon. SR winter-run Chinook salmon used to initiate the reintroduction are anticipated to come from Livingston Stone NFH. CV spring-run Chinook salmon used to initiate the reintroduction are anticipated to come from the FRH. The collection of donor stock will be permitted only after issuance of permits under section 10(a)(1)(A) of the ESA, which includes analysis under NEPA and ESA section 7. The experimental population fish are expected to remain geographically separate from fish in other populations of the SR winter-run and CV spring-run Chinook salmon ESUs during the life stages in which they remain in, or are returned to, the NEP Area. At all times when members of the experimental populations are downstream of Shasta and Keswick Dams, the experimental population designations will not apply. Establishing experimental populations of SR winter-run and CV spring-run Chinook salmon in the NEP Area would likely contribute to the viability of the ESUs. Reintroduction is a recommended recovery action in the Central Valley Recovery Plan (NMFS 2014).

Designation of SR winter-run and CV spring-run Chinook salmon in the NEP Area as nonessential experimental populations would ensure that their reintroduction does not impose undue regulatory restrictions on landowners and others because this proposed rule would apply only limited take prohibitions as compared to the prohibitions that typically apply to SR winter-run and CV spring-run Chinook salmon. In particular, this proposed rule expressly provides an exception for take of NEP fish in the NEP Area provided that the take is incidental to otherwise lawful activities and is unintentional, rather than due to negligent conduct.

We further determine, based on the best available scientific information, that the proposed experimental populations would not be essential to the continued existence of the SR winter-run Chinook salmon ESU or the CV spring-run Chinook salmon ESU, because absence of the experimental populations would not be likely to appreciably reduce the likelihood of the

survival of the ESUs in the wild. However, as described above, the experimental populations are expected to contribute to the recovery of the SR winter-run and CV spring-run Chinook salmon ESUs if reintroduction is successful. We therefore propose that the experimental populations would be nonessential experimental populations.

Public Comment

We want the final rule to be as effective and accurate as possible, and the final EA to evaluate the potential issues and reasonable range of alternatives. Therefore, we invite the public, state, tribal, and government agencies, the scientific community, environmental groups, industry, local landowners, and all interested parties to provide comments on the proposed rule and draft EA (see **ADDRESSES** section above). We request that submitted comments be relevant to the proposed designation of the experimental populations in the NEP Area. Comments should be as specific as possible, provide relevant information or suggested changes, the basis for the suggested changes, and any additional supporting information where appropriate. For example, comments should tell us the numbers or titles of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections in which lists or tables would be useful, etc.

Prior to issuing a final rule, we will take into consideration the comments and supporting materials received. The final rule may differ from the proposed rule based on this information and more recent data that becomes available. We are interested in all public comments, but are specifically interested in obtaining feedback on:

- (1) The best source of ESA-listed fish for establishing experimental populations of SR winter-run and CV spring-run Chinook salmon in the NEP Area and the scientific basis for such comments.

- (2) The proposed NEP Area (geographical scope) for the experimental population.

- (3) The extent to which the experimental populations would be affected by current or future Federal, State, Tribal, or private actions within or adjacent to the experimental population area.

- (4) Any necessary management restrictions, protective measures, or other management measures that we may not have considered.

- (5) The likelihood that the experimental populations will become established in the NEP Area.

¹ Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. 50 CFR 402.02.

(6) Whether the proposed experimental populations are essential or nonessential.

(7) Whether the proposed experimental population designations and release will further the conservation of the species and whether we have used the best available scientific information in making this determination.

Information Quality Act and Peer Review

Pursuant to the Information Quality Act (Section 515 of Pub. L. 106–554), the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, which was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this proposed rule that meet these criteria.

Classification

Executive Order 12866

This proposed rule has been determined to be not significant under Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposal would designate and authorize the release of nonessential experimental populations of SR winter-run and CV spring-run salmon in the NEP Area. While in the NEP Area, the experimental populations would be protected from some types of take, but this proposed action would impose no prohibitions on the take of the experimental population fish that is incidental to otherwise lawful activity and unintentional and not due to negligent conduct. The effect of this proposed action would not increase the regulatory burdens associated with the ESA on affected entities, including small entities, to conduct otherwise lawful activities as a result of reintroduction of SR winter-run and CV spring-run Chinook salmon to the NEP

Area. If this proposed action is adopted, the area affected by this rule includes the entire NEP Area. Land ownership includes Federal lands and private lands with the primary uses being recreation, forestry, water management, power production, mining, transportation management, rural and residential development, tourism and recreational fishing, and livestock grazing. A substantial portion of both Shasta and Siskiyou Counties are under the management of Federal or state resource management agencies. Small entities make up a portion of owners using the land for these uses and this proposed rule, if implemented, may impact those uses for all entities, including small entities.

However, this proposed rule would apply only limited take prohibitions as compared with the prohibitions that typically currently apply to listed SR winter-run and CV spring-run Chinook salmon; in particular, this proposed rule expressly provides an exception for the take of experimental population fish in the NEP Area provided that the take is incidental to otherwise lawful activity and unintentional and not due to negligent conduct. Based on the nonessential experimental population designations under this proposed rule, there would only be the requirement under ESA section 7 (other than section (a)(1) requiring Federal agencies, in consultation with NMFS as applicable depending on the species, to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species) for Federal agencies to confer with NMFS with respect to effects of agency actions on the experimental populations. This requirement to confer with NMFS is not as burdensome on Federal agencies as the requirement to consult, and no critical habitat could be designated for the experimental populations. Due to the minimal regulatory overlay provided by the nonessential experimental population designations, we do not expect this rule to have any significant effect on recreation, forestry, water management, power production, mining, transportation management, rural development, tourism and recreational fishing, livestock grazing or other lawful activities within the NEP Area. As such, we do not expect this rule to have any significant effect on any entities, including small entities that engage in these activities in the NEP area.

For the reasons described above, this proposed rule would not have a significant economic effect on a substantial number of small entities. Accordingly, no initial regulatory

flexibility analysis is required, and none has been prepared.

Executive Order 12630

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required because this proposed rule: (1) would not effectively compel a property owner to have the government physically invade their property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Executive Order 13132

In accordance with Executive Order 13132, we have determined that this proposed rule does not have federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact on the human environment and considered a reasonable range of alternatives for this proposed rule. We have prepared a draft EA on this proposed action and have made it available for public inspection (see **ADDRESSES** section above). All appropriate NEPA documents will be finalized before this rule is finalized.

Government-to-Government Relationship With Tribes (Executive Order 13175)

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal

interests. If we issue a regulation with tribal implications (defined as having 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) we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

There are no tribally owned or managed lands in the NEP Area. As part of NMFS's obligations under the National Historic Preservation Act, NMFS inquired with federally recognized and non-federally recognized tribes with potential interest in the NEP Area to inform them of the proposed rule and solicit information on cultural resources eligible for listing on the National Register of Historic Places (letters dated Feb. 5, July 14, and July 27, 2016, from Maria Rea, Central Valley Office Supervisor, NMFS). NMFS

invites tribes to meet with us to have detailed discussions that could lead to government-to-government consultation meetings with tribal governments. We will continue to coordinate with potentially affected tribes as we gather public comment on this proposed rule and consider next steps.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the National Marine Fisheries Service office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species.

Dated: May 5, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 223 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) under the heading for “Fishes” by adding the entries for “Salmon, Chinook (Central Valley spring-run ESU–XN Shasta)” and “Salmon, Chinook (Sacramento River winter-run ESU–XN Shasta)” after the entry for “Salmon, Chinook ((Central Valley spring-run ESU–XN Yuba)” and before the entry for “Salmon, Chinook (Lower Columbia River ESU)” to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species ¹			Citation(s) for listing determinations(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
FISHES					
*	*	*	*	*	*
Salmon, Chinook (Central Valley spring-run ESU–XNShasta).	<i>Oncorhynchus tshawytscha</i> .	Central Valley spring-run Chinook salmon only when, and at such times as, they are found in the NEP Area (from Shasta Dam up to Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River. All other tributaries flowing into Shasta Reservoir up to the ridge line, including tributaries below Pit 7 Dam, McCloud Dam, and Box Canyon Dam, up to the ridge line would be included in the NEP Area).	[Federal Register citation and date when published as a final rule].	NA.	
Salmon, Chinook (Sacramento winter-run ESU–XNShasta).	<i>Oncorhynchus tshawytscha</i> .	Sacramento winter-run Chinook salmon only when, and at such times as, they are found in the NEP Area (from Shasta Dam up to Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River. All other tributaries flowing into Shasta Reservoir up to the ridge line, including tributaries below Pit 7 Dam, McCloud Dam, and Box Canyon Dam, up to the ridge line would be included in the NEP Area).	[Federal Register citation and date when published as a final rule].	NA.	
*	*	*	*	*	*

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).

* * * * *

■ 3. In § 223.301, add paragraph (e) to read as follows:

§ 223.301 Special rules—marine and anadromous fishes.

* * * * *

(e) *McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook Salmon Experimental Populations (Oncorhynchus tshawytscha)*. (1) *Status of McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook salmon under the ESA*. The McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook salmon populations identified in paragraph (e)(2) of this section are designated as nonessential experimental populations under section 10(j) of the ESA and shall be treated as a “threatened species” pursuant to 16 U.S.C. 1539(j)(2)(C).

(2) *McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook Salmon Experimental Populations*. All Sacramento River winter-run and Central Valley spring-run Chinook salmon within the experimental population area in the McCloud and Upper Sacramento Rivers upstream of Shasta Dam, as defined here, are considered part of the McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook salmon experimental populations. The NEP Area extends from Shasta Dam up to Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River. All other tributaries flowing into Shasta Reservoir up to the ridge line, including tributaries below Pit 7 Dam, McCloud Dam, and Box Canyon Dam, up to the ridge line are included in the NEP Area. All other areas above Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River are not part of the NEP Area. The NEP Area extends up to the ridgelines to account for watershed processes and ends at the aforementioned dams because these dams lack fish passage facilities. The NEP Area is part of the species’ historical range. The NEPs are all SR winter-run and CV spring-run Chinook salmon, including fish released or propagated, naturally or artificially, within the NEP Area.

(3) Prohibitions. Except as expressly allowed in paragraph (e)(4) of this section, all prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538 (a)(1))

apply to fish that are part of the McCloud and Upper Sacramento Rivers Sacramento River winter-run and Central Valley spring-run Chinook salmon nonessential experimental populations identified in paragraph (e)(2) of this section.

(4) Exceptions to the Application of Section 9 Take Prohibitions in the Experimental Population Area. The following forms of take in the experimental population area identified in paragraph (e)(2) of this section are not prohibited by this section:

(i) Any taking of experimental populations of Sacramento River winter-run or Central Valley spring-run Chinook salmon by authorized governmental entity personnel acting in compliance with 50 CFR 223.203(b)(3) to aid a sick, injured or stranded fish; dispose of a dead fish; or salvage a dead fish which may be useful for scientific study.

(ii) Any taking of experimental populations of Sacramento River winter-run or Central Valley spring-run Chinook salmon that is unintentional, not due to negligent conduct, and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(iii) Any taking of experimental populations of Sacramento River winter-run or Central Valley spring-run Chinook salmon pursuant to a permit issued by NMFS under section 10 of the ESA (16 U.S.C. 1539) and regulations in part 222 of this chapter applicable to such a permit.

* * * * *

[FR Doc. 2023–09967 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 230504–0122]

RIN 0648–BM23

Atlantic Highly Migratory Species; Electronic Reporting Requirements

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: In this advance notice of proposed rulemaking, NMFS is considering management options to modify or expand reporting

requirements for Atlantic highly migratory species (HMS). All HMS reporting would require electronic submission using an online or mobile reporting application. Specific to commercial vessel reporting, NMFS is considering options for electronic submission of information required on the existing, paper logbooks, as well as a logbook requirement for owners of vessels with Atlantic Tunas General category permits, Atlantic Tunas Harpoon category permits, and/or Swordfish General Commercial permits. Specific to recreational vessel reporting, NMFS is considering a logbook requirement for owners of HMS Charter/Headboat permitted vessels, as well as expanding HMS Angling permit reporting requirements. NMFS is also considering measures to encourage reporting compliance for vessel owners with HMS open access permits. Specific to dealer reporting, NMFS is considering requiring dealers to enter certain fish individually in their dealer reporting programs and a technical change in bluefin tuna (BFT) reporting requirements. Finally, specific to the HMS Exempted Fishing Permit (EFP) Program, NMFS is considering offering an electronic reporting platform, as well as some technical changes to reporting requirements.

DATES: Written comments must be received by August 18, 2023. Public meetings and webinars will be held on the dates listed in Table 2 of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Comments may be submitted electronically via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2023–0047” 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).

Public meetings will be held at the locations listed in Table 2 of the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT:

Carrie Soltanoff (carrie.soltanoff@noaa.gov), Guy DuBeck (guy.dubeck@noaa.gov), Erianna Hammond (erianna.hammond@noaa.gov), or Ann Williamson (ann.williamson@noaa.gov) by email, or by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. The regulations specific to HMS reporting can be found at § 635.5.

Need for Action

In this advance notice of proposed rulemaking, NMFS is considering options to: streamline and modernize logbook reporting by converting existing commercial paper logbooks to electronic logbooks; expand logbook reporting to recreational and commercial vessel owners via electronic logbooks, to be consistent with Agency efforts in other fisheries and to augment data necessary for fishery management; collect additional information through existing electronic reporting mechanisms for dealers and recreational vessel owners to augment data collected for fishery management; and facilitate HMS reporting including considering ways to incentivize reporting compliance (or penalize non-compliance) and offering an electronic reporting platform for HMS EFP Program permit holders. Overall, the intent of this rulemaking is to streamline HMS reporting for recreational and commercial fisheries consistent with the “One Stop Reporting” initiative for HMS, Greater Atlantic Region, and Southeast Region fisheries. The intent of the “One Stop Reporting” initiative is to expand capabilities for the submission of a single electronic report to satisfy overlapping reporting requirements of vessels holding permits in multiple regions.

The need for each action is described in more detail below. Each management option under consideration is briefly characterized via background information on the topic and a description of the options including initial pros and cons for implementing the options. In any potential future

rulemaking, measures considered would be contingent on available funding.

A. Electronic Commercial Atlantic HMS and Southeast Coastal Fisheries Logbooks

Background

Owners of vessels with HMS commercial limited access permits (Atlantic Tunas Longline category, shark directed, shark incidental, swordfish directed, swordfish incidental, swordfish handgear) are required to report their fishing activities in a logbook. Logbooks typically require information on the gear used, the date a fishing trip occurred, the quantity of fish landed, and the fishing location. Because commercial vessel owners are reporting these data themselves, it is referred to as “self-reported” data. Different logbooks are required for the different fisheries and used depends on the data collection needs and requirements of the different fisheries. These logbooks (Atlantic HMS logbook and Southeast Coastal Fisheries Logbook Program) are described below.

Owners of HMS permitted vessels using pelagic longline gear are required to use the Atlantic HMS logbook; however, HMS vessel owners who are selected to report and who use other gears, including rod and reel, green-stick, and bottom longline gear, may also report fishing activities in this logbook. The vessels using the Atlantic HMS logbook primarily target swordfish and tunas.

There are three forms that must be submitted for an Atlantic HMS logbook report to be complete: the trip report form, the set report form, and individual dressed weights for all fish sold, which are provided on the weighout tally sheets. The trip report form provides information on the trip itself, such as the start and end dates, the vessel name and identification number, which dealers purchased landings, and port information. Economic information, such as the total cost of trip expenses (*e.g.*, groceries, fuel), is also collected on this form from those fishermen who are randomly selected on an annual basis. The set form provides information on an individual fishing set, including the specific latitude and longitude coordinates at which gear was set and hauled back, the amount of gear used, and the number and species of fish and protected species kept, released alive, and discarded dead. Each logbook submission will include only one trip form but may include numerous set forms. The weighout slips, or tally sheets, record the individual carcass weights of fish purchased by each dealer

purchasing landed product. These weighout slips are typically provided by the dealer to the fisherman.

If no fishing trips occurred during a given month, the No Fishing Reporting Form is required. The No Fishing Reporting Form confirms that vessel owners are not fishing, as opposed to not reporting.

The Southeast Coastal Fisheries Logbook Program (referred to here as the Coastal Fisheries logbook) is also used to collect HMS landings. It is primarily used by vessel owners with commercial shark permits who do not use pelagic longline gear and by vessel owners with permits in the South Atlantic and Gulf of Mexico regions to report fishing activity in the Gulf of Mexico reef fish, South Atlantic snapper/grouper, king and Spanish mackerel, shark, and Atlantic dolphinfish/wahoo fisheries. The Coastal Fisheries logbook is primarily used for bottom longline, gillnet, and vertical line (including bandit) gears, but other gears can also be reported here. The Coastal Fisheries logbook only has a trip report form, and if selected, fishermen have to complete a trip expense section on the trip report form and/or a separate discard form, as described below. Fishermen are also required to indicate if they have not fished for a given month by submitting a No Fishing Reporting Form.

The Coastal Fisheries logbook trip report form includes information specific to the trip, such as vessel name and identification number and dates of the trip. Unlike the reporting forms in the Atlantic HMS logbook, the Coastal Fisheries logbook collects information on the gear, location, and species encountered for an entire trip rather than on every set of the fishing trip. Gear effort information (*e.g.*, number of hooks, lines fished, length of longline) are reported as either totals or the average for an entire trip, rather than the specific number of hooks or length of line for each set. Fishermen also indicate their fishing area as a four digit code, in accordance with a statistical grid map where each species was caught. The grid numbers follow lines of latitude and longitude; the first two digits in the four digit grid numbers are latitude degrees, and the second two digits are longitude degrees. The “species kept” is also reported in total weight for the entire trip, not in numbers of fish per set like for the Atlantic HMS logbook. Economic information, such as the total cost of groceries and fuel, is collected on this form and is required for each trip from a group of fishermen representing 20 percent of the active fleet randomly selected annually.

Also unlike the Atlantic HMS logbook, the trip form does not record information on released or discarded fish or protected species; however, fishermen can write in these observations if desired. A separate discard logbook form, specific to recording released or discarded fish and protected species, is required for approximately 20 percent of those fishermen, selected at random each year. This discard form is also trip based and does not have specific location data available for each set. Additionally, this logbook form does not provide specific information on individual fish that are discarded dead or alive but instead are collected as a summary for the entire trip. For each species reported on the discard form, fishermen are required to report the following: whether all the fish were discarded dead, most were discarded dead, all were discarded alive, most were discarded alive, some were kept but not sold (e.g., if they used the fish as bait), or the fishermen was unable to determine which category to check. Fishermen may also report “no discards,” indicating that no individuals of any species were discarded during the fishing trip, when submitting a discard logbook form. If selected, this form must be submitted with each trip to remain in reporting compliance.

Both of these logbooks are administered by the NMFS Southeast Fisheries Science Center (SEFSC) and have historically required submission of paper forms. NMFS is currently working on creating an electronic reporting program to replace the paper logbooks. The South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council together with the NMFS Southeast Regional Office (SERO) are developing a joint FMP amendment addressing electronic reporting for commercial vessels that would maintain the reporting requirements for commercial vessels reporting through the Coastal Fisheries logbook but require electronic submission of reports using available software. For more information on the joint FMP amendment affecting the Coastal Fisheries logbook, see recent council meeting proceedings (<https://safmc.net/> and <https://gulfcouncil.org/>).

Any fisherman with a permit issued by the NMFS Greater Atlantic Regional Fisheries Office (GARFO) is required to submit an electronic Vessel Trip Report (eVTR) to report all fish landed, regardless of species. NMFS published a final rule requiring reporting via eVTR for commercial and for-hire vessels with GARFO permits, which became effective in November 2021 (85 FR 71575, November 10, 2020). Most non-HMS

fishermen from Mid-Atlantic states through Maine use eVTRs to report their landings. The gear frequently reported via eVTR includes trawls, dredges, or gillnet gear and these fishermen are primarily fishing for non-HMS such as scallops, squid, herring, groundfish, skates, and spiny dogfish. Vessel owners that are permitted with HMS permits as well as permits issued by GARFO that require eVTR reporting must use the eVTR.

Regarding current timing requirements for submission of logbooks, HMS vessel owners submitting logbooks (§ 635.5(a)(1)) must enter the required information on a day's fishing activities within 48 hours of completing that day's activities or before offloading, whichever is sooner. The vessel owner must submit the logbook form(s) postmarked within 7 days of offloading all HMS. GARFO permit holders must complete eVTRs to the extent possible prior to entering port and submit within 48 hours of offloading fish. SERO permit holders must submit fishing records to the SEFSC postmarked no later than 7 days after the end of each fishing trip (not including Individual Fishing Quota program requirements).

Under this action, NMFS is considering requiring HMS vessel owners reporting in the Atlantic HMS logbook or the Coastal Fisheries logbook to submit those reports electronically. It is expected that, once the electronic logbook system is fully developed and implemented, electronic logbook submission would replace paper submission. Electronic logbook reporting would also allow for the submission of a single electronic report that could be used to satisfy overlapping reporting requirements of vessels holding permits in multiple regions, as part of the NMFS “One Stop Reporting” initiative. NMFS is considering options for implementation of the electronic logbook.

Potential Management Options

NMFS is considering two options for implementation of electronic Atlantic HMS and Coastal Fisheries logbooks in this section:

- A1. Weighout slip requirement.
- A2. Reporting requirements for smoothhound shark permit holders.

In addition, NMFS is considering options for timing requirements associated with electronic logbook reporting. These options are described in Section D below and consider timing requirements for logbook programs described in Sections B and C as well.

Under Option A1, NMFS is considering how to address the current

weighout slip requirement (§ 635.5(a)(2)). Current weighout slip reporting is described above and involves tallies of individual fish unloaded by a vessel; these tallies are recorded on paper and are mailed by the vessel owner or operator with their logbooks to the SEFSC. Currently there is no standardized form for the weighout slips. NMFS is considering how to best collect the information currently received via paper weighout slips as the Agency moves to electronic logbook submission. In order to determine how to address weighout slips, NMFS solicits comments in response to the following questions:

- Which entity (e.g., the dealer, the captain, a crew member) currently creates the weighout slip?
- How are the weighout slips currently created?

• Are the weighout slips created only at the first port of offloading or at every port of offloading?

• Do the weighout slips include fish that are sold to dealers, fish of low quality (i.e., not sold to a dealer), and fish kept for personal consumption?

• Would a standardized format help with creating the weighout slips?

• What would ease the burden (in time and costs) associated with creating the weighout slips (e.g., a form filled out electronically with the logbook, a form that could be filled out and uploaded separate from the logbook)?

Under Option A2, NMFS is considering two sub-options for reporting requirements for smoothhound shark permit holders:

- A2a. Status quo.
- A2b. Including the smoothhound shark permit in the requirement to submit an electronic logbook.

There are currently 158 smoothhound shark permit holders, and 61 percent of those permit holders also have a GARFO permit. Those with GARFO permits are required to submit smoothhound shark data through an eVTR. Some other smoothhound shark permit holders are voluntarily reporting through an eVTR. Under Sub-Option A2a, NMFS would maintain the status quo, which would maintain consistency with current requirements for smoothhound shark permit holders with GARFO permits, described above. However, under this sub-option, NMFS would not receive smoothhound shark catch information from all permit holders, only from those with GARFO permits or those that voluntarily report.

Under Sub-Option A2b, NMFS would include the smoothhound shark permit in the requirement to submit an electronic logbook. This would increase reporting burden for those permit

holders, but would also improve catch information received by NMFS. This option would also make smoothhound shark reporting requirements consistent with other commercial shark permits.

B. Electronic Commercial Reporting for Atlantic Tunas General and Harpoon Category Permits and Swordfish General Commercial Permit

Background

Currently, vessel owners with Atlantic Tunas General or Harpoon category permits must call in or electronically report all BFT landings and dead discards to NMFS within 24 hours of completing a trip. These catch reports can be submitted via the HMS Permits website, an HMS Catch Reporting smartphone app, or via a telephone number designated by NMFS. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS representative can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. Regardless of how they are submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS representative.

Currently, owners of vessels with Atlantic Tunas General category permits, Atlantic Tunas Harpoon category permits, and/or Swordfish General Commercial permits are only required to maintain and submit paper logbook reports if selected to report in the Atlantic HMS logbook, a requirement that has not been exercised by NMFS for these sectors.

Owners of Atlantic Tunas General category permitted vessels are also required, as a condition of their permit, to cooperate with the Large Pelagics Survey (LPS) if selected for reporting. The LPS collects information regarding the rod and reel fishery directed at large pelagic species (e.g., tunas, billfishes, swordfish, sharks, wahoo, dolphinfish, greater amberjack) in the offshore waters from Maine through Virginia from June through October. The purpose of the LPS is to collect more precise estimates of fishing effort and catch for large pelagic species that are rarely encountered in the general Marine Recreational Information Program (MRIP) surveys. The LPS includes two independent surveys: the Large Pelagics Telephone Survey (LPTS), a phone survey of randomly selected vessel owners with HMS Angling or Atlantic Tunas General category permits, and the Large Pelagics Intercept Survey (LPIS), a

dockside survey of known offshore fishing access sites. These surveys provide effort and average catch-per-trip estimates needed to estimate total catch by species.

Any fisherman with a permit issued by GARFO is required to submit an eVTR to report all fish caught, regardless of species or location of fishing. Most non-HMS commercial fishermen from Mid-Atlantic states through Maine use eVTRs to report their landings. A recent permit overlap analysis identified 391 HMS commercial permit holders (approximately 15 percent), most of them Atlantic Tunas General category permit holders, that possessed at least one GARFO permit requiring them to submit eVTRs. Unlike the Atlantic HMS logbook and the Coastal Fisheries logbook, the eVTR is used by commercial vessel owners and by charter/headboat fishermen with GARFO-issued for-hire permits when fishing recreationally.

GARFO eVTRs include trip-level information, gear information, location by both grid and latitude and longitude coordinates, and, for commercial trips, the weight of each species kept or discarded. There is no indication whether the discards are alive or dead. An entry must be filled out when the fisherman moves to a new area or uses a different gear.

From 2000 through 2015, fishermen reporting via GARFO VTR were required to submit a monthly no-fishing report if they did not fish. These no-fishing reports are no longer required by GARFO.

NMFS is considering implementing a more comprehensive electronic logbook for vessel owners with Atlantic Tunas General category permits, Atlantic Tunas Harpoon category permits, and/or Swordfish General Commercial permits, beyond the current electronic catch reporting. Potential options for a logbook or other catch reporting, and associated requirements, are described below.

Potential Management Options

NMFS is considering three options for reporting by owners of vessels with Atlantic Tunas General category, Atlantic Tunas Harpoon category, and/or Swordfish General Commercial permits:

- B1. Maintain current reporting requirements.
- B2. Expanding trip reporting requirements related to currently reported species (e.g., BFT) via electronic logbook.

- B3. Expanding species and trip reporting requirements via electronic logbook.

In addition, NMFS is considering options for timing requirements associated with electronic logbook reporting. These options are described in Section D below and consider timing requirements for logbook programs described in Sections A and C as well.

Under Option B1, NMFS would maintain existing electronic reporting for Atlantic Tunas General and Harpoon category vessel owners via the HMS Permits website or the HMS Catch Reporting smartphone app. NMFS would eliminate the option to report via telephone. NMFS would continue to require reporting of BFT landings and dead discards only. Vessel owners would only report on trips where fish are caught. This option would, for the most part, maintain consistency with current requirements for these vessel owners and would modernize the reporting system and reduce administrative burden on NMFS by removing the telephone option. However, under this option, NMFS would not receive the additional information described under Options B2 and B3.

Under Option B2, NMFS would implement an expanded electronic logbook for vessel owners with Atlantic Tunas General category or Harpoon category permits. Vessel owners with these commercial permits would continue to be required to report BFT landings and dead discards; however, under this option they would do so via electronic logbook required for all trips with effort targeting BFT, regardless of if fish are caught. This sub-option would be a greater reporting burden and a greater administrative burden for NMFS. However, reporting all trips would have the advantage of providing the necessary information to determine catch-per-unit-effort (CPUE) in the BFT fishery. As noted above, vessel owners that hold both HMS and GARFO permits are already required to report on all trips. This sub-option could include reporting trips taken by an Atlantic Tunas General category permitted vessel when participating in a tournament, while indicating in the logbook which trips were associated with a tournament.

Under Option B3, NMFS would implement an expanded electronic logbook for vessel owners with Atlantic Tunas General category, Harpoon category, and/or Swordfish General Commercial permits. This logbook requirement would potentially expand the data elements collected, similar to the Atlantic HMS logbook, and the species and trips that would need to be

reported, as described below. NMFS is considering three sub-options for which species and trips would be reported:

- B3a. Require reporting of all HMS caught.
- B3b. Require reporting of all species caught, including non-HMS.
- B3c. Require reporting for all trips, regardless of if fish are caught.

Sub-Option B3a would require reporting for all HMS, including discards, but would not include non-HMS to be reported by HMS-only permit holders. This sub-option would increase the reporting burden and the administrative burden for NMFS. However, this sub-option would provide complete trip data for HMS science and management purposes.

Sub-Option B3b would require reporting for all species, including non-HMS, and including discards. This sub-option would be the greatest reporting burden and the greatest administrative burden for NMFS. However, this sub-option would provide the most complete data for science and management purposes across regions. As noted above, vessel owners with Atlantic Tunas General category, Atlantic Tunas Harpoon category, and/or Swordfish General Commercial permits that also hold GARFO permits are already required to report all species caught.

Sub-Option B3c would require reporting for all trips with effort, regardless of if fish are caught. This sub-option could apply with additional species being reported under either Sub-Option B3a or B3b. This sub-option would be a greater reporting burden and a greater administrative burden for NMFS. However, reporting all trips would have the advantage of providing the necessary information to determine CPUE in these fisheries. As noted above, vessel owners that hold both HMS and GARFO permits are already required to report on all trips. This sub-option could include reporting trips taken by an Atlantic Tunas General category or Swordfish General Commercial permitted vessel when participating in a tournament, while indicating in the logbook which trips were associated with a tournament.

Overall, implementing a logbook for vessel owners with Atlantic Tunas General, Atlantic Tunas Harpoon category, and/or Swordfish General Commercial permits under Option B2 or B3 would expand reporting requirements for these vessel owners, compared to Option B1. Options B2 and B3 would also increase the administrative burden for NMFS to develop and implement an expanded logbook program. However, Option B3

in particular would have the benefit of providing more detailed effort and catch data than what is currently collected by the LPS. Following a period of overlapping data collection to facilitate calibration of the catch data time series, this logbook could allow owners of Atlantic Tunas General category permitted vessels to be exempted from participation in the LPTS, and minimize their participation in the dockside LPIS to a simple validation survey. The latter may not even be needed for the General category as their commercial catch could also be validated with dealer landings data. In addition, Options B2 and B3 would allow NMFS to report more detailed effort and catch data to the International Commission for the Conservation of Atlantic Tunas (ICCAT), which could potentially contribute to improved stock assessments and management strategy evaluation.

C. HMS Charter/Headboat Electronic Logbook

Background

Currently, owners of HMS Charter/Headboat permitted vessels must call in or electronically report all BFT landings and dead discards, all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS within 24 hours of completing a trip. These catch reports can be submitted via the HMS Permits website, an HMS Catch Reporting smartphone app, or via a telephone number designated by NMFS. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS representative can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landings. Regardless of how catch reports are submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS representative.

Currently, owners of HMS Charter/Headboat permitted vessels are only required to maintain and submit paper logbook reports if selected to report in the Atlantic HMS logbook, a requirement that has not been exercised by NMFS for this sector. Owners of HMS Charter/Headboat permitted vessels are also required to report cost and earnings information if selected. In 2013, NMFS executed a logbook study to collect cost and earnings data on

charter boat and headboat trips targeting Atlantic HMS.

Owners of HMS Charter/Headboat permitted vessels are also required, as a condition of their permit, to cooperate with LPS if selected for reporting. A description of the LPS can be found in the background for Section B on the Atlantic Tunas General category. However, unlike vessel owners with Atlantic Tunas General category or HMS Angling permits, owners of HMS Charter/Headboat permitted vessels report their effort data to the For-Hire Survey (FHS), rather than the LPS, with an extra series of questions called "the LPS Add-on" asked of vessels that report fishing for HMS. The FHS is a telephone survey of known charter boat and headboat vessel owners used to collect data on the number of saltwater fishing trips taken by recreational anglers on for-hire vessels. To minimize recall bias, the FHS asks vessel owners to report vessel fishing activity for one-week periods, including the number of anglers fishing per trip, hours spent fishing, areas fished, and species targeted.

Mandatory electronic logbook reporting requirements have been established for all vessels possessing federal for-hire or party/charter permits issued by GARFO or SERO. Vessel trip reports are required by all vessels in Mid-Atlantic fisheries possessing their regional for-hire permits, since March 2018. Similar logbook reporting requirements were implemented in South Atlantic and Gulf of Mexico for-hire fisheries in January 2021, and in New England for-hire fisheries in November 2021. In addition, the Southeast Regional Headboat Survey began electronic submission in 2013. On February 23, 2023, the United States Court of Appeals for the Fifth Circuit set aside the final rule implementing the Southeast For-Hire Integrated Electronic Reporting Program in the Gulf of Mexico. This means the for-hire program in the Gulf of Mexico is currently not in effect; all other programs remain in effect. NMFS is reviewing the Court ruling to determine overall impacts. A permit overlap analysis revealed that approximately half of all HMS Charter/Headboat vessels held at least one federal permit for New England, Mid-Atlantic, South Atlantic, or Gulf of Mexico fisheries that require electronic logbook reporting.

Logbook reporting requirements vary from weekly for South Atlantic permit holders, to within 48 hours of trip completion for GARFO permit holders. In each case, permit holders are required to submit reports for each trip that include details on fishing effort,

catch, including fish retained and released for all species, and economic information. Requirements regarding the submission of no-fishing reports vary across council regions. Currently, GARFO permit holders are not required to submit no-fishing reports. South Atlantic permit holders are required to report weekly, and must submit a no-fishing report on weeks when no for-hire fishing activity takes place.

For-hire vessels have the option to choose between multiple electronic reporting platforms, including GARFO's eVTR platforms (*e.g.*, Fish Online), the Standard Atlantic Fisheries Information System (SAFIS) electronic trip-level reporting (eTRIPS) Mobile and Online platforms, and several platforms offered by private companies, although not all reporting platforms are approved for all regional permits. Currently, data elements necessary to meet HMS catch reporting requirements for recreational landings of BFT, billfish, and swordfish have been integrated into eTRIPS Mobile and eTRIPS Online software applications. The eTRIPS Mobile platform allows for "One Stop Reporting" capabilities.

In an effort to streamline reporting requirements across regions and the HMS Management Division, and because approximately half of all vessel owners with HMS Charter/Headboat permits hold multiple regional for-hire permits, NMFS is considering expanding HMS charter/headboat reporting to require vessel owners to submit electronic logbooks via a NMFS-approved system. The HMS charter/headboat electronic logbook would be part of the "One Stop Reporting" initiative by allowing one report to meet duplicative reporting requirements of vessels holding permits in multiple regions. NMFS is considering several management measures, described below, to modify reporting requirements for federally permitted for-hire vessels (charter vessels and headboats) when fishing with an HMS Charter/Headboat permit.

Potential Management Options

NMFS is considering four options for implementation of an HMS Charter/Headboat electronic logbook:

- C1. Species reporting requirements.
- C2. No-fishing reports.
- C3. Costs and earnings information.
- C4. Geospatial information.

In addition, NMFS is considering options for timing requirements associated with electronic logbook reporting. These options are described in Section D below and consider timing requirements for logbook programs described in Sections A and B as well.

Under Option C1, NMFS is considering three sub-options regarding what species must be reported on via electronic fishing reports for for-hire trips:

- C1a. Status quo.
- C1b. Requirement to report all HMS.
- C1c. Requirement to report all species.

Sub-Option C1a would require the owner of an HMS Charter/Headboat permitted vessel to report only BFT landings and dead discards and swordfish and billfish landings on all trips regardless of where the fish were caught. Sub-Option C1a would maintain the status quo for what species must be reported by HMS Charter/Headboat permitted vessel owners. However, limiting reporting to only BFT, swordfish, and billfish would allow some other species (*e.g.*, other tunas, sharks) to be caught but not reported. This limited reporting could reduce future management effectiveness, as events such as HMS range expansion, shark depredation, or developing fisheries for HMS, would be overlooked in the data system. This would hinder NMFS' ability to modify managed species in response to environmental, social, or economic changes that may occur in the future. In addition, with the adoption of electronic logbook reporting for all species caught by federal for-hire fisheries in New England, the Mid-Atlantic, and South Atlantic, the failure to expand HMS reporting requirements could leave NMFS reliant on lower quality and less timely data for management of the HMS for-hire fishery compared to those other fisheries.

Sub-Option C1b would require the owner of an HMS Charter/Headboat permitted vessel to report only HMS federally managed by the HMS Management Division (*i.e.*, all tunas, sharks, swordfish, and billfish) landed and discarded on all trips regardless of where the fish were caught. Sub-Option C1b would result in more comprehensive reporting of species landed and discarded in HMS fisheries compared to the status quo. However, limiting reporting to HMS would allow some species to be caught but not reported. The data gap this would create could undermine efforts by NMFS to fully understand for-hire fishing operations, and NMFS' ability to assess the impacts of potential management actions on the HMS for-hire fleet. This could reduce future management effectiveness, as events such as range expansion by, or developing fisheries for species not managed by the HMS Management Division but of interest to the Agency would be overlooked. This

would hinder the HMS Management Division's ability to modify species management in response to environmental, social, or economic changes that may occur in the future.

Sub-Option C1c would require the owner of an HMS Charter/Headboat permitted vessel to report all fish landed and discarded on all trips regardless of where the fish were caught. Sub-Option C1c is consistent with the electronic reporting requirements for for-hire fishing vessels with Federal permits in New England, the Mid-Atlantic, and South Atlantic. Mandatory reporting of all fish landed and discarded on for-hire trips would remove the need to develop survey-based estimates of catch and effort, and as the most inclusive sub-option, this sub-option would best prevent any gaps in catch reporting. Additionally, effort data reported via an electronic logbook could be used to substitute for effort data that HMS Charter/Headboat vessel owners would otherwise be required to report to the FHS. NMFS is already using eVTR data for this purpose to exempt for-hire vessels with council permits from reporting to the FHS to minimize redundant reporting burden. HMS Charter/Headboat vessel operators would need to participate in dockside surveys, such as through the LPIS or through the Access Point Angler Intercept Survey (APAIS), which could serve as a validation check for logbook reported data. A proposal has already been put forward by the Atlantic Coast Cooperative Statistics Program for MRIP certification to use the APAIS as a validation survey of for-hire logbook data collected in the Atlantic. Reporting all fish landed and discarded would increase reporting burden for charter/headboat owners as well as administrative burden for NMFS.

Under Option C2, NMFS is considering two sub-options to modify the requirement to submit no-fishing reports for for-hire trips:

- C2a. Status quo.
- C2b. Requirement to submit no-fishing reports.

Sub-Option C2a (status quo) would not require the owner of an HMS Charter/Headboat permitted vessel to submit no-fishing reports if no fishing activity occurred. Sub-Option C2a is consistent with the electronic reporting requirements for for-hire fishing vessels with Federal permits for species managed by GARFO. Not requiring no-fishing reports avoids further complicating the regulations and increasing the reporting burden for charter/headboat owners. However, no-fishing reports are required in the commercial Atlantic HMS logbook, and

excluding charter/headboat owners from this requirement would result in inequitable reporting burden between the fleets. Furthermore, no-fishing reports are a significant aid for facilitating regular compliance checks, as it is difficult to ascertain if a lack of reports over a given time period was due to non-compliance or the simple absence of fishing effort.

Sub-Option C2b would require owners of an HMS Charter/Headboat permitted vessel to submit no-fishing reports if no fishing activity occurred. These reports could be required on a weekly basis or on a monthly basis, similar to the commercial Atlantic HMS logbook. Sub-Option C2b is consistent with the electronic reporting requirements for for-hire fishing vessels with Federal permits in the South Atlantic, and submission of no-fishing reports improves data validation and increases accountability. However, this sub-option would increase the reporting burden for charter/headboat owners.

Under Option C3, NMFS is considering three sub-options for reporting cost and earnings information on for-hire trips:

- C3a. Mandatory submission of cost and earnings information for each trip.
- C3b. Mandatory submission of cost and earnings information if a vessel is selected for reporting.
- C3c. Collection of cost and earnings information separately via surveys.

Sub-Option C3a would require the owner of an HMS Charter/Headboat permitted vessel to submit costs and earnings information for all trips. Sub-Option C3a is consistent with the electronic reporting requirements for for-hire fishing vessels with Federal permits in the South Atlantic. Detailed economic data, collected in real time, will enhance NMFS ability to understand how the federally permitted for-hire industry is impacted when regulatory change is considered. These data will be used in cost-benefit and economic impact analyses for actions and amendments that propose regulatory changes. Additionally, improved characterization of the economic and social impacts of for-hire fishing will allow NMFS to better monitor the economic health of the industry over time and facilitate economic recovery from fishery disasters. However, some of this data may be collected more efficiently by a sample of the fleet (*e.g.*, fuel price), and too many additional mandatory fields on electronic fishing reports may reduce reporting compliance and stakeholder support. Furthermore, charter/headboat owners may not have some costs and earnings information (*e.g.*, if they sell

any catch from a commercial trip) available prior to landing.

Sub-Option C3b would require the owner of an HMS Charter/Headboat permitted vessel to submit costs and earnings information for trips when the charter vessel or headboat is selected for cost-earnings reporting. Sub-Option C3b is similar to a requirement in the Gulf of Mexico, where a subset of for-hire vessels that generally meet the criteria of a headboat are selected by the SEFSC to complete the Southeast Regional Headboat Survey. It is also consistent with the current cost-earnings reporting requirements for those vessels that report in the commercial Atlantic HMS logbook. However, collecting cost-earnings data from only a portion of permitted vessels would not provide as complete data as under Sub-Option C3a.

Sub-Option C3c would require the owner of an HMS Charter/Headboat permitted vessel to submit costs and earnings information separately via an annual survey. Because the for-hire industry is relatively consistent in trip duration, fishing location, and target species, a survey that collects data on annual expenses and average trip costs and earnings could be sufficient to characterize the economic impacts of for-hire fishing while minimizing duplicative reporting on charter/headboat owners. However, charter/headboat owners would likely need to set up an additional account to electronically report costs and earnings information through an approved NMFS survey.

Under Option C4, NMFS is considering two sub-options for the collection of geospatial information on for-hire trips:

- C4a. Status quo.
- C4b. Collection of geospatial information.

Sub-Option C4a (status quo) would not require the owner of an HMS Charter/Headboat permitted vessel to submit geospatial information, such as latitude and longitude associated with fishing effort or fishing areas. Sub-Option C4a maintains the status quo for not requiring the collection of geospatial information on for-hire trips. However, no geospatial information would be collected on for-hire trips. The collection of geospatial information would facilitate numerous analyses regarding the distribution of the HMS for-hire fishery. Such information could help inform stock assessments, economic analyses, impact assessments for offshore developments such as offshore wind and aquaculture, impacts of marine monuments or other changes in spatial management, *etc.*

Sub-Option C4b would require the owner of an HMS Charter/Headboat permitted vessel to report geospatial location information on primary fishing location via the electronic reporting program. The collection of geospatial information, such as latitude and longitude associated with fishing effort or fishing areas, would facilitate numerous analyses regarding the distribution of the HMS for-hire fishery. Such information could help inform stock assessments, economic analyses, impact assessments for offshore developments such as offshore wind and aquaculture, impacts of marine monuments or other changes in spatial management, *etc.* However, the collection of geospatial information would place added burden on charter/headboat owners.

D. Timing Requirements for Submission of Electronic Logbooks

Background

Current reporting requirements for HMS vessel owners reporting in the Atlantic HMS logbook or Coastal Fisheries logbook, as well as current requirements for SERO and GARFO commercial permit holders, are described in Section A. Current reporting requirements for owners of vessels with Atlantic Tunas General category permits, Atlantic Tunas Harpoon category permits, and/or Swordfish General Commercial permits are described in Section B. Current reporting requirements for owners of HMS Charter/Headboat permitted vessels, as well as for SERO and GARFO for-hire permit holders, are described in Section C.

Potential Management Options

NMFS is considering a range of timing requirements for electronic logbook submission, taking into account current requirements for vessel owners with HMS, GARFO, and/or SERO permits under different reporting programs. In the situation where HMS regulations would not align with GARFO or SERO regulations, HMS vessel owners with GARFO or SERO permits would likely need to follow the most stringent requirements.

For HMS vessel owners, options for potential timing requirements for logbook submission are:

- D1. Submit prior to landing.
- D2. Submit within 24 hours of offloading/completing a trip.
- D3. Submit within 48 hours of offloading/completing a trip.
- D4. Complete reports to the extent possible prior to landing and submit within 24 hours of offloading/completing a trip.

- D5. Complete reports to the extent possible prior to landing and submit within 48 hours of offloading/ completing a trip.

- D6. Submit within 7 days of offloading (commercial) or once per week (charter/headboat).

Timing Considerations Applicable to All Logbook Programs

Requiring logbook submission on a shorter timeframe (*i.e.*, Option D1) is the most efficient for NMFS to receive and analyze data. Requiring logbook submission on a shorter timeframe could improve data quality and accuracy by reducing recall bias, improving stakeholder confidence, and reducing uncertainty associated with these data when used in science or management applications. It could also expedite data availability for fisheries management purposes. However, some data elements may not be available prior to landing. In addition, those experiencing problems with their devices and/or otherwise unable to submit an electronic fishing report would have little opportunity to troubleshoot solutions prior to landing.

Requiring logbook submission on a longer timeframe (*i.e.*, Option D6) gives more flexibility to vessel owners to complete reports when they have the opportunity. However, allowing a longer timeframe for logbook submission may increase recall error, decrease the accuracy of information, delay the availability of data for management purposes, and may be less efficient for NMFS data processing.

Under Options D4 and D5, a hybrid requirement of completing some fields prior to landing and some at a later time could increase the accuracy of data while also allowing flexibility for data elements that may not be available prior to landing.

Options requiring all or some fields to be completed prior to landing (Options D1, D4, D5) would allow the ability for catch to be verified by an enforcement officer or port agent when the vessel returns to the dock and offloads fish.

Timing Considerations Specific to the Atlantic HMS and Coastal Fisheries Logbooks

Option D6, requiring logbook submission within 7 days of offloading, would maintain consistency with current HMS regulations and would also be consistent with SERO requirements described in Section A. Options D3 and D5, requiring logbook submission within 48 hours of offloading, would be consistent with GARFO requirements described in Section A. Options D1 through D5, requiring submission

sooner than within 7 days of offloading, would make HMS requirements stricter than SERO requirements (*e.g.*, the Coastal Fisheries logbook). Options D1, D2, and D4, requiring submission sooner than within 48 hours of offloading, would make HMS requirements stricter than GARFO requirements.

Timing Considerations Specific to Atlantic Tunas General and Harpoon Category Permits and Swordfish General Commercial Permit

Option D2 would maintain the requirement to report within 24 hours of completing a trip, which would maintain consistency with current requirements for vessel owners with Atlantic Tunas General or Harpoon category permits. Options requiring all or some fields to be completed prior to landing (Options D1, D4, D5) would be a stricter requirement for these vessel owners compared to the status quo.

Timing Considerations Specific to an HMS Charter/Headboat Electronic Logbook

Option D1, requiring submission prior to landing, would have been consistent with the original electronic reporting requirements for Gulf of Mexico federal permitted for-hire vessels. This was a requirement in the final rule recently set aside by the United States Court of Appeals for the Fifth Circuit referenced above and is no longer in effect. NMFS is including this option as an example of the shortest timeframe for submitting logbooks and believes that a requirement to submit prior to landing can be included in a future action consistent with Fifth Circuit's decision. This option offers charter vessel/ headboat owners the least flexibility in how and when they prepare and submit their fishing reports. This requirement could also be especially burdensome during peak season when the number of trips taken, the number of passengers carried, and catch are greatest.

Option D2 would maintain the requirement to report within 24 hours of completing a trip, which would maintain consistency with current requirements for vessel owners with HMS Charter/Headboat permits.

Option D3, requiring submission within 48 hours of completing a trip, would be consistent with the electronic reporting requirements for for-hire vessels with GARFO Federal permits. Option D5 would also meet the requirements for GARFO for-hire permits, but would be stricter by requiring some fields to be completed prior to landing.

Option D6, requiring logbook submission once per week on a set day, would be consistent with the electronic reporting requirements for South Atlantic federally permitted for-hire vessels. Compared to the other options, weekly reporting has the most flexibility in when charter/headboat owners prepare and submit their fishing reports. This could be especially beneficial during peak season when the number of trips taken, the number of passengers carried, and catch are greatest.

Options D1 through D5, requiring submission more frequently than once per week, would make HMS requirements stricter than requirements for South Atlantic federally permitted for-hire vessels. Options D1, D2, and D4, requiring submission sooner than within 48 hours of offloading, would make HMS requirements stricter than GARFO requirements, while weekly reporting under Option D6 would not meet GARFO requirements. Many for-hire vessels possess HMS Charter/ Headboat permits in case of incidental HMS catch, and may be tempted to drop their HMS permits to avoid the extra reporting burden under options where HMS reporting requirements would be stricter than council reporting requirements. This could have negative effects on HMS management efforts in these fisheries.

E. HMS Angling Permit Reporting Requirements

Background

Currently, HMS Angling permitted vessels must report all BFT landings and dead discards, as well as all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, Atlantic sailfish, and North Atlantic swordfish to NMFS within 24 hours of completing a trip. These catch reports can be submitted via the HMS Permits website, an HMS Catch Reporting smartphone app, or via a telephone number designated by NMFS. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS representative can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. Regardless of how catch reports are submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS representative.

NMFS is considering several management measures, described below, to modify species-specific

reporting requirements for owners of HMS Angling permitted vessels.

Potential Management Options

NMFS is considering five options regarding what species must be reported by recreational fishermen, in addition to existing requirements to report BFT, billfish, and swordfish:

- E1. Status quo.
- E2. Requirement to report pelagic sharks.
- E3. Requirement to report all sharks.
- E4. Requirement to report bigeye, albacore, yellowfin, and skipjack (BAYS) tunas.
- E5. Requirement to report all HMS including discards.

For Options E2 through E4, the status quo requirement to report BFT landings and dead discards, billfish landings, and swordfish landings would remain in place. Under Options E2 through E4, there would be an option to voluntarily report all HMS landings in addition to those required.

Option E1 (status quo) would require the owner of an HMS Angling permitted vessel to report all BFT, billfish, and swordfish landings and BFT dead discards.

Option E2 would require the owner of an HMS Angling permitted vessel to report all pelagic shark (*i.e.*, blue, porbeagle, shortfin mako, and thresher shark) landings. Option E2 would result in more comprehensive reporting of species landed in the HMS recreational sector compared to the status quo, including reporting ICCAT. In the event ICCAT reauthorizes the retention of shortfin mako sharks, it is likely the fishery would have to be managed under a strict quota that would necessitate catch reporting to enable timely monitoring. Although, reporting pelagic shark landings in addition to BFT, swordfish, and billfish could increase the reporting burden for recreational HMS vessel owners, limiting reporting to only BFT, swordfish, billfish, and pelagic sharks would allow some species to be caught but not reported (*e.g.*, other shark species). This could impact NMFS' ability to monitor recreational sector quotas and implement effective and responsive fisheries management measures. In Amendment 14 to the 2006 Consolidated Atlantic HMS FMP (Amendment 14), NMFS established a framework under which the Agency will actively manage recreational sector quotas for sharks (88 FR 4157, January 24, 2023). In addition, this option would be an additional administrative burden to the Agency compared to the status quo.

Option E3 would require the owner of an HMS Angling permitted vessel to report all shark landings. Option E3 would result in more comprehensive reporting of shark species landed in the HMS recreational sector compared to Options E1 and E2. Most coastal shark species are rare event species in the various catch and effort surveys (*e.g.*, MRIP) used to monitor the recreational catch of these species, resulting in estimates of catch with extremely low precision (*i.e.*, high PSE values greater than 50) which increases uncertainty for use in management and stock assessments. Requiring reporting of these species would provide much more accurate accounting of their landings, and facilitate better management of the recreational fishery. However, reporting all shark landings in addition to BFT, swordfish, and billfish could increase the reporting burden for recreational HMS vessel owners. This option would also be an increased administrative burden for the Agency compared to the status quo and Option E2. Additionally, reporting only BFT, swordfish, billfish, and sharks would allow some species to be caught but not reported (*e.g.*, BAYS tunas). This could impact NMFS' ability to implement effective and responsive fisheries management measures. Furthermore, the vast majority of recreational shark interactions are with state anglers fishing for sharks in state waters where an HMS Angling permit is not required. Since this reporting requirement would be tied to possession of an HMS Angling permit, it would not apply to most anglers actually catching coastal shark species. As such, this option would not capture all recreational shark landings in state waters.

Option E4 would require the owner of an HMS Angling permitted vessel to report all BAYS tunas landings. Option E4 would result in more comprehensive reporting of species landed in the HMS recreational sector compared to the status quo. However, reporting BAYS tunas landings in addition to BFT, swordfish, and billfish would increase the reporting burden for recreational HMS vessel owners. Additionally, reporting only BFT, swordfish, billfish, and BAYS tunas would allow some species to be caught but not reported (*e.g.*, shark species). This could impact NMFS' ability to monitor recreational sector quotas under Amendment 14, as described above. As mentioned above, most coastal shark species are rare event species in the various catch and effort surveys (*e.g.*, MRIP) used to monitor the recreational catch of these species, resulting in estimates of catch with

extremely low precision (*i.e.*, high PSE values greater than 50) which increases uncertainty for use in management and stock assessments. Under this option, NMFS would not receive accounting information for shark landings compared to Option E3, and that accounting could facilitate better management of the recreational fishery. In addition, this option would be an additional administrative burden to the Agency compared to the status quo.

Option E5 would require the owner of an HMS Angling permitted vessel to report all HMS catch (landings and discards). Option E5 would result in more comprehensive reporting of species landed and discarded in the HMS recreational sector compared to the other options, and this is the only option that would capture recreational catch-and-release and incidental catch data on HMS. Additionally, this option would increase NMFS' ability to monitor recreational sector quotas for sharks and implement effective and responsive fisheries management measures, as described in the above options. However, reporting all HMS landings and discards would significantly increase the reporting burden for owners of HMS Angling permitted vessels and the administrative burden on NMFS, especially considering the large number of vessels in this sector.

F. Measures To Improve Reporting Compliance for Vessel Owners With HMS Open Access Permits

Background

NMFS is considering ways to improve reporting compliance by vessel owners with HMS open access permits. Despite the requirement to self-report, NMFS does not receive complete catch reporting of relevant species from vessel owners with HMS Angling, HMS Charter/Headboat, Atlantic Tunas General category, or Atlantic Tunas Harpoon category permits. Non-compliance with reporting requirements presents a challenge for NMFS to track landings in real-time and to analyze trends. Potential new logbook reporting requirements discussed in this action may improve reporting rates. Commercial landings data are also received from dealer reports. Apart from those considerations, NMFS is considering providing reporting incentives to encourage reporting as well as using permit blocks to respond to reporting non-compliance.

A recent survey of recreational anglers in the BFT fishery, conducted by the American Saltwater Guides Association, Virginia Institute of Marine Science, and

The Nature Conservancy, asked anglers about the effectiveness of different strategies for improving reporting (see Goldsmith 2022, on the EM4.Fish website). Incentives were the highest ranked strategies, perceived by anglers as very or extremely effective. The incentives described in the survey were entering anglers who self-report into a low odds, high-value lottery for an item such as a fishing reel, or sending small items such as a hat or t-shirt to those who self-reported. Other examples of incentives are described below.

In order to renew an HMS limited access permit, the vessel owner must have complied with all logbook requirements. The same reporting compliance check is not currently done when renewing open access permits. However, submitting all required reports is currently a requirement in order to renew an HMS permit (see § 635.4(m)). NMFS is considering only issuing permit renewals to vessel owners renewing open access permits who have complied with all reporting requirements.

Potential Management Options

NMFS is considering two options to improve reporting compliance for vessel owners with HMS open access permits:

F1. Reporting incentives.

F2. Permit blocks for non-reporting.

Under Option F1, NMFS is soliciting public input on the use of and options for reporting incentives. Some examples of incentives are listed below, but other examples could be considered as well. The below examples could involve a threshold reporting level or be reserved for those who demonstrate exemplary reporting.

- Sending small items such as a hat or t-shirt to those who self-reported.
- Provide certificates to those who self-reported.
- Reward top reporters with recognition by NMFS or NOAA.
- Develop a reporting leaderboard that fishermen could join into and receive badges or in-app achievements.

This management option could encourage vessel owners to report all necessary information to receive incentives. This option could potentially increase reporting rates and therefore improve the data received by NMFS, which could in turn increase NMFS' ability to monitor sector quotas (e.g., BFT sectors) and implement effective and responsive fisheries management measures. This option would also be responsive to the BFT angler survey results showing that anglers believe incentives would be an effective method to increase reporting rates. However, making these kinds of

incentives available exclusively for vessel owners with open access permits could be seen by vessel owners with limited access permits as unfair. There could also be perceived disparity among those who receive prizes or recognition and those who do not.

Under Option F2, NMFS is also considering the use of permit blocks to deny permit renewals for vessel owners with open access permits who have not submitted all required catch reports. This option could increase the likelihood of vessel owners submitting all information required in a timely manner to prevent having a permit block. As with Option F1, this option could increase reporting rates and therefore improve the data received by NMFS, which could in turn increase NMFS' ability to accurately monitor sector quotas and implement effective and responsive fisheries management measures. This option could also increase perceived fairness between vessel owners with limited access and open access permits. However, this option would substantially increase the administrative burden on NMFS to track all reporting related to permit renewal requests due to the large number of permits, among other factors. This option could also increase Agency costs to create this capability in the permit system and administer the permit program, which could in turn increase the cost of permits. This option also has the potential to cause delays in processing permit renewals.

G. Individual Fish Reports in eDealer Program and Technical Change in BFT Reporting Requirements

Background

Landing weight and price for most HMS are collected from dealer reports submitted electronically from dealers residing in Maine through Texas, including the U.S. Caribbean. All HMS landings submitted on those dealer reports are then consolidated in an internal database referred to as "eDealer." For Atlantic BFT, landings weight and revenue are collected through SAFIS developed and maintained by the Atlantic Coast Cooperative Statistics Program. All HMS dealer reports are submitted on an individual trip basis, with most dealers providing information on the weight and price of purchased HMS from U.S. fishing vessels. In some cases, mostly for ICCAT-managed species such as swordfish and tunas, dealers may report the weight and price information for each individual fish instead of an aggregate weight for a given species. In the case of BFT, dealers are already

required to report individual fish weights through SAFIS.

As a quality control measure, NMFS regularly cross-validates the weight of fish and the purchase dates provided in dealer reports with the logbook trip information, including the weighout slips, to ensure all fish are accounted for in these fisheries. When discrepancies are found between the dealer reports, logbook, and weighout slips, NMFS works to ensure the fish are correctly entered in the appropriate dealer reporting system and in the logbook. Similarly for BFT, information in the dealer landings dataset is compared to the open-access vessel catch report data set for quality assurance.

Individual weight information for certain HMS stocks are important for future stock assessments to ensure NMFS receives the most accurate data to manage these stocks. NMFS is exploring changes that would result in more comprehensive individual weight and trip revenue information, particularly for species reported to ICCAT, across a wider range of gear types and regions than those currently reported on dealer reports. Because non-BFT dealer reports mostly provide an aggregate species weight instead of an individual weight for each fish, this type of inconsistency in reporting hinders the ability of the Agency to estimate trip revenue for certain landings, and necessary ICCAT-related reporting of individual fish weight. As such, NMFS is exploring ways to implement mandatory dealer reporting of individual carcass weight information for certain HMS.

Potential Management Options

NMFS is considering three options for federal HMS dealer reporting:

- G1. Status quo.
- G2. Require reporting of individual fish on dealer reports.
- G3. Removing the requirement to submit a bi-weekly report for BFT.

NMFS is considering implementing mandatory dealer reporting of individual non-BFT HMS on dealer reports. As described above, the electronic dealer reporting systems allow for the flexibility to report weight and price information at the species or individual fish level. In addition, there are currently some dealers already reporting individual carcass weights.

Under Option G1, NMFS would maintain the current reporting requirements for dealers as described above. This option would maintain the status quo for dealers with no additional effort and reporting requirements. However, this option causes some inconsistencies in how dealers submit data, with some weight values reported

at the aggregate level and others reported at the individual fish level. Additionally, NMFS would not get individual carcass weights, which would be important for some stock assessments, trip revenue estimation, and ICCAT reporting.

Under Option G2, NMFS would require reporting of individual fish on federal dealer reports. Under this option, NMFS is considering two sub-options regarding which species could be reported individually on dealer reports:

- G2a. Require all HMS to be reported individually on federal dealer reports.
- G2b. Require swordfish, BAYS tunas, and pelagic shark species to be reported individually on federal dealer reports.

Under Sub-Option G2a, NMFS would require all HMS to be reported individually on federal dealer reports. This sub-option would allow NMFS to gather individual weight for every HMS landed commercially with a federal dealer and to get important weight information on all HMS stocks along with consistency in reporting across dealers and species. This sub-option would cause an increase in the reporting time and burden on dealers on weighing and reporting all the HMS catch individually. There would be an increase in administrative burden for quality assurance and control of all associated databases that receive HMS dealer data. Under Sub-Option G2a, there would need to be an increase in outreach to dealers and associated partners that handle federal dealer data regarding the changes in reporting requirements.

Under Sub-Option G2b, NMFS would only require swordfish, BAYS tunas, and pelagic shark species to be reported individually on federal dealer reports. For pelagic sharks, commercial fishermen are currently only allowed to retain blue, common thresher, and porbeagle sharks. NMFS recently published a proposed rule that considers adding oceanic whitetip sharks to the prohibited sharks complex (88 FR 17171, March 22, 2023). No other HMS would be required to be reported as individual carcass weights on federal dealer reports. This sub-option would allow NMFS to get individual carcass weights for species reported to ICCAT. This sub-option would potentially put less burden on dealers and NMFS, and associated partners that handle HMS dealer data compared to Sub-Option G2a, but this would still be a significant change for dealers and would dramatically change how they report BAYS, swordfish, and some pelagic sharks. However, this sub-option could be more of a burden for those dealers

compared to Option G1. In addition, this sub-option would not require individual weight data on other shark species, which could be important for future stock assessments.

In addition to the management options related to eDealer, NMFS is considering a technical change to BFT dealer reporting to remove a redundancy in the requirements. Currently, each dealer with a valid Atlantic tunas dealer permit under § 635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels (§ 635.5(b)(2)(i)(B)). For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. Under Option G3, NMFS is considering removing the requirement to submit the bi-weekly report as the information submitted via bi-weekly report is already collected under other BFT reporting requirements at § 635.5(b)(2)(i)(A). This technical change would reduce the reporting burden for Atlantic tunas dealers and administrative burden on NMFS.

H. Electronic Reporting for the HMS EFP Program

Background

Under the HMS EFP Program, NMFS annually issues approximately 40 EFPs, scientific research permits (SRPs), display permits, and letters of acknowledgement under the authority of the Magnuson-Stevens Act and/or Atlantic Tunas Convention Act. EFPs, SRPs, and display permits may be required in situations where necessary research activities would normally be prohibited by regulations. This could include: possession of certain prohibited shark and billfish species; possession of billfishes onboard commercial fishing vessels; and fishing during closures in the BFT, swordfish, and shark commercial fisheries. EFPs, SRPs, and display permits can authorize collection of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display.

Written reports on fishing activities, and disposition of all fish captured under an EFP, SRP, or display permit must be submitted to NMFS within 5 days of return to port. If an individual issued an EFP, SRP, or display permit

captures no HMS in any given month, a “no-catch” report must be submitted to NMFS within 5 days of the last day of the month. Additionally, an annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, SRPs, and display permits within 30 days after the expiration date of the permit. Failure to comply with the recordkeeping and reporting requirements could result in the EFP, SRP, or display permit being revoked, suspended, or modified, and the denial of any future applications. See § 635.32(h) for more information.

This detailed reporting of catch information is important for quota management and stock assessment purposes. All sharks collected under the authority of an EFP, SRP, or display permit, subject to restrictions at § 635.32, are counted against the public display and non-specific research quotas at § 635.27(b)(4). All BFT collected under the authority of an EFP, SRP, or display permit are counted against the Reserve or school reserve category quotas (see § 635.27(a)(6)). Annually, NMFS allocates 50 metric tons dressed weight of the North Atlantic swordfish quota to the reserve category for fishery research, among other things (see § 635.27(c)(1)(i)(D)). Although NMFS does not implement a U.S. quota for bigeye, yellowfin, and skipjack tunas, or an EFP- or research-specific quota for albacore, all mortality for these species incurred under an EFP, SRP, or display permit are tracked for future stock assessments.

To facilitate this reporting, the HMS EFP Program currently requires the submission of interim (Excel spreadsheet) and annual (PDF) reports via email, consistent with the requirements at § 635.32(h). Those reporting forms are available on the HMS Management Division website and are shared with HMS EFP holders when their permit is issued. Once received, NMFS staff must then download and manually enter that data into an Excel database. This process is time consuming, can be error prone, and can cause problems in regard to quota monitoring and the timely publication of the annual notice of intent for these permits.

Potential Management Options

NMFS is considering three options to modify reporting under the HMS EFP Program:

- H1. A voluntary method of electronic reporting.
- H2. Revise requirement to submit interim reports within 5 days.

- H3. Remove requirement to notify NMFS OLE prior to a collection trip.

Under Option H1, NMFS is considering implementing a voluntary method of electronic reporting for the HMS EFP Program. Under this option, HMS EFP holders could enter interim report data into an online portal. Current methods of submitting reports (*i.e.*, via email as an attached Excel or PDF file) could still be available.

Creating an online portal for data submission and automated data management system could result in improved data quality and a more efficient and cost-effective process by removing the additional data processing steps that are currently required. An online portal could also streamline reporting for HMS EFP holders compared to submission of Excel files via email. HMS EFP holders that choose to submit interim reports via the online portal would not need to submit annual reports, since annual reports could be automatically generated from the backend database. However, with a voluntary electronic reporting system, HMS EFP holders may still submit data via current methods (*i.e.*, via email as an attached Excel or PDF file), increasing the administrative burden on NMFS staff to monitor two methods of reporting and consolidate data.

NMFS is also considering two technical changes to the reporting requirements for the HMS EFP Program.

As described above, interim reports on fishing activities, and disposition of all fish captured under an EFP, SRP, or display permit, must be submitted to NMFS within 5 days of return to port or within 5 days of the last day of the month for a “no-catch” report. However, given the extent of data collected on research trips, submitting interim reports within 5 days is often impractical, unrealistic, and unnecessarily burdensome to HMS EFP holders. As a result, in practice, interim reports are rarely submitted on time. Therefore, under Option H2, NMFS is considering revising the requirement to submit interim reports within 5 days of returning to port to a timeline as specified by NMFS in the terms and conditions of the EFP, SRP, or display permit.

Additionally, in accordance with § 635.32(d)(4), HMS EFP holders collecting HMS for public display must notify the local NMFS Office of Law Enforcement (OLE) at least 24 hours (excluding weekends and holidays) prior to departing on a collection trip and provide details on the collection plans, location, and number of animals to be collected. In the event that a NMFS OLE agent is not available, a message may be left. NMFS OLE has requested that this requirement be removed to eliminate the administrative burden of tracking HMS collection trips.

Therefore, under Option H3, NMFS is considering removing the requirement to notify NMFS OLE prior to a collection trip.

These technical changes under Options H2 and H3 would reduce the reporting burden for HMS EFP holders and administrative burden for NMFS.

Request for Comments

NMFS is requesting comments on this advance notice of proposed rulemaking, which may be submitted via www.regulations.gov or at a public hearing. NMFS solicits comments on this action by August 18, 2023 (see **DATES** and **ADDRESSES**).

The pros and cons for each management option described above should not be considered exhaustive. The pros and cons are intended to facilitate discussion of the merits of each management option. Interested members of the public are encouraged to provide specific suggestions and recommendations on the options, any additional pros and cons, or other options that NMFS should consider. The reader can consider the management options together, because multiple options can be analyzed and further developed through the regulatory process. Table 1 provides a summary of the management options presented above, on which NMFS is soliciting comments.

TABLE 1—SUMMARY OF MANAGEMENT OPTIONS FOR HMS ELECTRONIC REPORTING REQUIREMENTS

Section	Options and <i>Sub-options</i>
A. Electronic Commercial Atlantic HMS and Southeast Coastal Fisheries Logbooks.	A1. Weighout slip requirement. A2. Reporting requirements for smoothhound shark permit holders. A2a. <i>Status quo.</i> A2b. <i>Include smoothhound shark permit in electronic logbook.</i>
B. Electronic Commercial Reporting for Atlantic Tunas General and Harpoon Category Permits and Swordfish General Commercial Permit.	B1. Maintain current reporting requirements. B2. Expanding trip reporting requirements related to currently reported species via electronic logbook. B3. Expanding species and trip reporting requirements via electronic logbook. B3a. <i>Require reporting of all HMS caught.</i> B3b. <i>Require reporting of all species caught, including non-HMS.</i> B3c. <i>Require reporting for all trips, regardless of if fish are caught.</i>
C. HMS Charter/Headboat Electronic Logbook ..	C1. Species reporting requirements. C1a. <i>Status quo.</i> C1b. <i>Requirement to report all HMS.</i> C1c. <i>Requirement to report all species.</i> C2. No-fishing reports. C2a. <i>Status quo.</i> C2b. <i>Requirement to submit no-fishing reports.</i> C3. Costs and earnings information. C3a. <i>Mandatory submission of cost and earnings information for each trip.</i> C3b. <i>Mandatory submission of cost and earnings information if a vessel is selected for reporting.</i> C3c. <i>Collection of cost and earnings information separately via surveys.</i> C4. Geospatial information. C4a. <i>Status quo.</i> C4b. <i>Collection of geospatial information.</i>
D. Timing Requirements for Submission of Electronic Logbooks.	D1. Submit prior to landing. D2. Submit within 24 hours of offloading/completing a trip. D3. Submit within 48 hours of offloading/completing a trip.

TABLE 1—SUMMARY OF MANAGEMENT OPTIONS FOR HMS ELECTRONIC REPORTING REQUIREMENTS—Continued

Section	Options and <i>Sub-options</i>
E. HMS Angling Permit Reporting Requirements	D4. Complete reports to the extent possible prior to landing and submit within 24 hours of off-loading/completing a trip. D5. Complete reports to the extent possible prior to landing and submit within 48 hours of off-loading/completing a trip. D6. Submit within 7 days of offloading (commercial) or once per week (charter/headboat). E1. Status quo. E2. Requirement to report pelagic sharks. E3. Requirement to report all sharks. E4. Requirement to report BAYS tunas. E5. Requirement to report all HMS including discards. F1. Reporting incentives. F2. Permit blocks for non-reporting.
F. Measures to Improve Reporting Compliance for Vessel Owners with HMS Open Access Permits.	
G. Individual Fish Reports in eDealer Program and Technical Change in BFT Reporting Requirements.	G1. Status quo. G2. Require reporting of individual fish on dealer reports. G2a. <i>Require all HMS to be reported individually on federal dealer reports.</i> G2b. <i>Require swordfish, BAYS tunas, and pelagic shark species to be reported individually on federal dealer reports.</i> G3. Removing the requirement to submit a bi-weekly report for BFT.
H. Electronic Reporting for the HMS EFP Program.	H1. A voluntary method of electronic reporting. H2. Revise requirement to submit interim reports within 5 days. H3. Remove requirement to notify NMFS OLE prior to a collection trip.

In addition, NMFS is soliciting responses to the specific questions described in under Option A1:

- Which entity (*e.g.*, the dealer, the captain, a crew member) currently creates the weighout slip?
- How are the weighout slips currently created?
- Are the weighout slips created only at the first port of offloading or at every port of offloading?

- Do the weighout slips include fish that are sold to dealers, fish of low quality (*i.e.*, not sold to a dealer), and fish kept for personal consumption?
- Would a standardized format help with creating the weighout slips?
- What would ease the burden (in time and costs) associated with creating the weighout slips (*e.g.*, a form filled out electronically with the logbook, a form that could be filled out and uploaded separate from the logbook)?

During the comment period, NMFS will hold five public hearings and two public hearings via webinars for this advance notice of proposed rulemaking, as shown in Table 2. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301–427–8503, at least 7 days prior to the meeting.

TABLE 2—DATES, TIMES, AND LOCATIONS OF UPCOMING PUBLIC HEARINGS AND WEBINARS

Date and time	Location
June 6, 2023, 5 p.m.–8 p.m	Broward County Library—Imperial Point, 5985 North Federal Highway, Fort Lauderdale, FL 33308.
June 13, 2023, 2 p.m.–4 p.m	Information on the webinar will be posted at: https://www.fisheries.noaa.gov/action/advance-notice-proposed-rulemaking-electronic-reporting-requirements .
June 14, 2023, 5 p.m.–8 p.m	Ocean County Library—Toms River, 101 Washington Street, Toms River, NJ 08753.
June 21, 2023, 5:30 p.m.–8:30 p.m	Dare County Library—Manteo, 700 Highway 64/264, Manteo, NC 27954.
July 27, 2023, 2 p.m.–4 p.m	Information on the webinar will be posted at: https://www.fisheries.noaa.gov/action/advance-notice-proposed-rulemaking-electronic-reporting-requirements .
August 3, 2023, 5 p.m.–8 p.m	Belle Chasse Auditorium, 8398 LA–23, Belle Chasse, LA 70037.
August 9, 2023, 5 p.m.–8 p.m	Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). At the beginning of the webinar, the moderator will

explain how the webinar will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they may be asked to leave the hearing or may not be allowed to speak during the webinar.

Classification

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

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: May 5, 2023.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

[FR Doc. 2023–10073 Filed 5–10–23; 2:00 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 92

Friday, May 12, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TB–23–0023]

Tobacco Report: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension and revision of the currently approved information collection for Tobacco Report (OMB No. 0581–0004).

DATES: Comments received by July 11, 2023 will be considered.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at <https://www.regulations.gov>. All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT:

Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, Telephone (540) 361–2726 or Email: CottonRP@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Report.

OMB Number: 0581–0004.

Expiration Date of Approval: August 31, 2023.

Type of Request: Extension of a currently approved information collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of tobacco statistics by USDA with regard to quantities of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, and others, with the exception of the original growers of the tobacco.

Inventory information about different tobacco products is reported on a quarterly basis, as of January 1, April 1, July 1, and October 1 of each year, and is due within 15 days of those dates.

The information furnished under the provisions of this Act is used only for the statistical purposes for which it is supplied. No publication shall be made by USDA whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of USDA be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7 CFR part 30) issued under the Tobacco Statistics Act (7 U.S.C. 501–508) specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether it is stemmed or unstemmed. Tobacco in sheet form is segregated as to whether it is to be used for cigar wrappers, cigar binders, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. The Quarterly Report of Manufacture and Sales of Snuff, Smoking and Chewing Tobacco is voluntary. Information on

the manufacture and sale of snuff, smoking and chewing tobacco products is available from Treasury Department publications based on the collection of taxes, but not in the detail desired by the industry. All major tobacco manufacturers agreed to furnish information to AMS for this report.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes USDA to collect, tabulate and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality, condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.88 hours per response.

Respondents: Primarily tobacco dealers and manufacturers, including small businesses or organizations.

Estimated Number of Respondents: 44.

Estimated Total Annual Responses: 176.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 156.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–10167 Filed 5–11–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE**Submission for OMB Review;
Comment Request; Correction**

AGENCY: National Institute of Food and Agriculture, Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The National Institute of Food and Agriculture, Department of Agriculture, published a document in the **Federal Register** of May 3, 2023, concerning request for comments on Small Business Innovation Research Program. The document contained an incorrect number of respondents and total burden hours.

SUPPLEMENTARY INFORMATION:**Correction**

In the **Federal Register** of May 3, 2023, in FR Doc 2023–09324, on page 27857, in the second column, correct the *Number of Respondents*: to read 403 and correct the *Total Burden Hours*: to read 70.

Ruth Brown,

*Departmental Information Collection
Clearance Officer.*

[FR Doc. 2023–10186 Filed 5–11–23; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service**

[Docket No. FSIS–2023–0012]

**Notice of Request for a New
Information Collection: Consumer
Labeling Research: Focus Groups**

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to collect information using focus groups to test new labels for safe handling of raw and partially cooked meat and poultry products. This is a new information collection with 247 hours.

DATES: Submit comments on or before July 11, 2023.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability

to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2023–0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 937–4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 937–4272.

SUPPLEMENTARY INFORMATION:

Title: Consumer Labeling Research Focus Groups.

OMB Number: 0583–NEW.

Type of Request: Request for a new information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

Safe handling instructions (SHI) are required on the labels of raw or partially cooked (*i.e.*, not considered ready to eat) meat and poultry products if the product is destined for household consumers or institutional uses (9 CFR 317.2(l) and 9 CFR 381.125(b)). FSIS has required the SHI label for raw and partially cooked meat and poultry products since 1994 (59 FR 7217).

In response to inquiries from consumer groups and other stakeholders

about potential changes to SHI requirements, FSIS gathered input from members of academia, industry, and consumer stakeholders concerning the label in November 2013. FSIS presented the results of the input in the form of suggestions to the National Advisory Committee on Meat and Poultry Inspection (NACMPI) in January 2014. The NACMPI Subcommittee on Food Handling Labels recommended that FSIS pursue changes in the existing SHI label and conduct consumer research to determine the effectiveness of any revisions to the SHI label.

In 2015, FSIS conducted six consumer focus groups (OMB No. 0583–0166; 11/30/2017) to evaluate understanding of the current SHI label and responses to possible revisions. The results from the focus groups suggested that consumers would find certain revisions to the SHI label useful. Participants recommended changes to improve consumer comprehension and adherence to recommended safe handling practices (*e.g.*, add recommendations to use a food thermometer and endpoint temperatures for different cuts of meat and poultry). Based on the results of these focus groups, FSIS determined that additional research using more rigorous, quantitative approaches with a larger sample of consumers was needed. FSIS also surmised this research would help inform potential revisions to the current SHI label and assess whether a label revision would improve consumer food safety behaviors.

In 2020, FSIS completed a study that comprised a web-based experimental survey and an experimental behavior change study that included meal preparation in a test kitchen environment, eye tracking, and in-depth interviews to design and evaluate potential revised SHI labels (OMB No. 0583–0177; 4/30/2022). For this study, FSIS created new labels based on recommendations from NACMPI, which focused on updating the existing text and icons in the current SHI label and adding information on recommended internal minimum temperatures for different cuts of meat and poultry. This study found that the three labels tested did not perform better than the current SHI label with regard to visual saliency (*i.e.*, noticeability) and behavior change for the safe handling practices displayed on the label (*e.g.*, using a food thermometer or washing hands with soap and water for 20 seconds and then drying) (final report available at https://www.fsis.usda.gov/sites/default/files/media_file/2022-02/SHI_Behavior_Change_Study%20Final%20Report_9_23_20.pdf).

Consumer groups and other stakeholders have continued to advocate for improved labeling for raw and partially cooked meat and poultry products. In response, FSIS is pursuing research to create and assess consumer responses to new labeling not included in previous studies. FSIS plans to start with a “blank slate” (*i.e.*, freely develop the label with no restrictions, ideas, or characteristics instead of simply revising the current SHI label). To inform label creation for the current study, FSIS recently worked with a contractor to conduct listening sessions and a literature review.

In December 2022 and January 2023, listening sessions were conducted with consumer groups; representatives from the meat and poultry industry; and experts in health communications, food science, and food safety education to collect information on factors to consider when creating new labeling for raw and partially cooked meat and poultry products. Additionally, a literature review was conducted to identify and summarize best practices for label design for attracting attention and motivating behavior change and recommendations for label design based on human factors research. The findings from the listening sessions and literature review will be used in the current study to create new labels for safe handling of raw and partially cooked meat and poultry products.

FSIS plans to use an iterative approach with multiple rounds of consumer research to obtain feedback on the new label designs and make refinements during the study. In Phase 1, the new label designs will initially be tested in consumer focus groups to obtain qualitative feedback on the labels, and the findings will be used to refine the label design and messaging. In Phase 2, the revised label designs will be tested in an exploratory web survey, and the quantitative findings from this survey will be used to revise and

prepare the final labels for testing in a web-based experimental survey to identify the top three performing labels based on the outcomes of interest, such as noticeability, changed food safety-related beliefs, and induced thinking about the risks of contracting foodborne illness. In Phase 3, an observation study will be conducted to obtain empirical evidence on the label design that is most effective at encouraging consumers to follow recommended safe handling practices for raw and partially cooked meat and poultry products and will include the use of eye tracking to measure visual saliency for the new labels compared with the control, the current SHI label.

FSIS is requesting approval for a new information collection to conduct Phase 1, consumer focus groups. Phase 1 is a new information collection with 247 hours. As each round of consumer labeling research becomes available, FSIS plans to submit additional information collection requests for approval.

FSIS will use the focus groups to test the new labels and obtain qualitative feedback for refining the label design and messaging. FSIS has contracted with RTI International to conduct the phase 1 focus group study. A total of 12 focus groups will be conducted: three focus groups in four different locations (Northeast, South Atlantic, West South Central, and West). To provide homogeneity, the focus groups will be segmented by the populations of interest: Spanish-speaking individuals, individuals with limited literacy, individuals with limited cooking experience (*i.e.*, new cooks), parents or guardians of young children (≤ 5 years of age), older adults (≥ 65 years of age), and individuals who are considered the “sandwich generation” (*i.e.*, have responsibility for providing care for both children and older adults).

A local market research company in each location will recruit potential participants from their databases and

other sources. They will also provide the facilities for hosting the focus group discussions. Using convenience sampling, a nonprobability sampling technique where subjects are selected because of their convenient accessibility instead of random selection, the market research companies will recruit potential participants who meet the eligibility criteria as defined by the screening questionnaires.

An experienced moderator will conduct the focus group discussions and use a moderator guide, which will serve as an outline and provide structure for the focus group discussions. Each focus group discussion will be professionally audio and video recorded, and the audio-recordings will be transcribed. The moderators will review the video-recordings and transcripts of the focus group discussions and prepare a detailed summary of each discussion. The moderators will then systematically analyze the detailed summaries to identify common themes and any exceptions to these themes. The contractor will summarize these findings in a final report to FSIS. No statistical analyses will be conducted.

Estimate of Burden: For the 12 focus groups, it is expected that 768 individuals will complete the screening questionnaire. It is estimated that 144 individuals will be eligible and agree to participate. Among the 144 individuals recruited for the focus group study, it is estimated that 96 will show up and participate in the focus group study (eight people per group). Each screening questionnaire is expected to take 8 minutes (0.133 hour). Taking part in the focus group discussion will take a total of 90 minutes (1.5 hours). The estimated annual reporting burden is 246.14 hours, which is the sum of the burden estimates for the screening questionnaire and focus group discussion for respondents and nonrespondents.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE FOCUS GROUP STUDY

Study component	Sample size	Annual frequency per response	Respondents				Nonrespondents				Total hours
			Count	Freq × Count	Hours/resp	Burden hours	Count	Freq × count	Hours/resp	Burden hours	
Screening questionnaire.	768	1	144	144	0.133 (8 min.)	19.15	624	624	0.133 (8 min.)	82.99	102.14
Focus group discussion.	144	1	96	96	1.5 (90 min.)	144.00	48	48	0	0	144.00
Total ....	.....	.....	.....	.....	.....	163.15	.....	.....	.....	82.99	246.14

Respondents: Consumers.

Estimated No. of Respondents: 768.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Burden: 247 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 937-4272.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

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

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

option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410;

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

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Paul Kiecker,
Administrator.

[FR Doc. 2023-10145 Filed 5-11-23; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board will hold a public meeting according to the details shown below. The committee is authorized under the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Federal Public Lands Recreation Enhancement Act, and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire, insect and disease, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest-wide implications.

DATES: An in-person meeting will be held on June 14, 2023, 1:00 p.m.–4:30 p.m. Mountain Daylight Time (MDT).

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. MDT on June 9, 2023. Written public comments will be accepted by 11:59 p.m. MDT on June 9, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All board meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in person at the South Dakota Game Fish and Parks, Outdoor Campus—West, 4130 Adventure Trail, Rapid City, South Dakota 57702. Board information and meeting details can be found at the following website: <https://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to scott.j.jacobson@usda.gov or via mail (i.e., postmarked) to Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702. The Forest

Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MST, June 9, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to scott.j.jacobson@usda.gov or via mail (*i.e.*, postmarked) to Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.

FOR FURTHER INFORMATION CONTACT: Bryan Karchut, Designated Federal Officer (DFO), by phone at 605–673–9201 or email at bryan.karchut@usda.gov or Scott Jacobson, Committee Coordinator, at 605–440–1409 or email at scott.j.jacobson@usda.gov.

SUPPLEMENTARY INFORMATION: The meeting agenda will include:

1. Outfitter and Guide Program;
2. Integrated Vegetation Management Strategy; and
3. Forest Plan Revision update.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to seven days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression),

sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 8, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–10099 Filed 5–11–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nevada Advisory Committee (Committee) will hold a meeting via the web platform Zoom, on May 26, 2023, at 11:00 a.m. Pacific Time. The purpose of the meeting is for the committee to hold a public briefing on teacher shortages and related topics of concern in the state.

DATES: The link to the meeting: <https://www.zoomgov.com/j/1604563382>.

- Friday, May 26, 2023, 11:00 a.m. Pacific Time.

Find your local number: <https://www.zoomgov.com/j/1604563382>.

Access code: 1604563382.

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or (202) 656–8937.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided

to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email dbarreras@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at dbarreras@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Nevada Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- II. Chair's Comments
- III. Panel Discussions
- IV. Public Comment
- V. Adjournment

Dated: May 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–10137 Filed 5–11–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Government in Sunshine Act, the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of May.

DATES: Thursday, May 18, 2023, 10 a.m. EST.

ADDRESSES: Meeting to take place virtually and is open to the public via livestream on the Commission's YouTube page: <https://www.youtube.com/user/USCCR/videos>.

FOR FURTHER INFORMATION CONTACT:

Angelia Rorison: 202-376-8371; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Thursday, May 18, 2023, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

- I. Approval of Agenda
- II. Business Meeting
 - A. Discussion and Vote on Presidential Designation of Commissioner Rochelle Mercedes Garza as Chairperson and Victoria Frances Nourse as Vice Chair of the U.S. Commission on Civil Rights
- III. Adjourn Meeting

(Authority: 5 U.S.C. 552b)

Dated: May 10, 2023.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2023-10354 Filed 5-10-23; 4:15 pm]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the West Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom. The purpose of the briefing is to hear testimony on the civil rights impacts that exclusionary and punitive disciplinary policies, practices and procedures may have on students of color, students with disabilities and LGBTQ+ students in in West Virginia public schools.

DATES: Thursday, May 11, 2023, from 3:00 p.m.-4:00 p.m. ET

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1612272122>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 161 227 2122#.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at ero@usccr.gov or 1-202-376-7533.

SUPPLEMENTARY INFORMATION:

This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. Immediately after the briefing concludes the Committee Chair will recognize members of the public to make a brief statement to the Committee on the panel topic—not to exceed five minutes—as time allows. Per the Federal Advisory Committee Act, public minutes of these meetings will include a list of persons present at the meeting. If joining via phone, callers can expect to incur regular charges for calls initiated over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments.

Members of the public are entitled to submit written comments; the comments must be emailed within 30 days following the scheduled meeting. Please email written comments to t to Ivy Davis at and Sarah Villanueva at: ero@usccr.gov; svillanueva@usccr.gov. You may also call 1-202-376-7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, West Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Opening Remarks
- III. Panelist Testimony
- IV. Committee Q&A
- V. Public Comment
- VI. Closing Remarks
- VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting as the Committee's project needs to reach completion before their term ends.

Dated: May 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-10136 Filed 5-11-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Thursday, May 25, 2023 at 3:00 p.m.-4:00 p.m. Central time. To orient Iowa to begin brainstorming potential civil rights topics for their study of the 2021-2025 term.

DATES: The meeting will take place on Thursday, May 25, 2023 from 3:00 p.m.-4:00 p.m. Central time.

Join ZoomGov Meeting, <https://www.zoomgov.com/j/1601405813?pwd=Zko5dmhiWkN1Y1pwNmVCUk94NWVCQT09>.

Telephone (Audio Only): Dial 833-435 1820 USA Toll Free; Access code: 160 140 5813.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at dbarreras@usccr.gov or (312) 353-8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first

calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at csanders@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome from Iowa Advisory Committee Chair
- II. Administrative Announcements
- III. Discuss Civil Rights Topics
- IV. Public Comment
- V. Discuss Next Steps
- VI. Adjournment

Dated: May 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–10139 Filed 5–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2023]

Foreign-Trade Zone 128—Whatcom County, Washington; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lummi Indian Business Council, grantee of FTZ 128, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or “usage-driven” FTZ sites for operators/users located within a grantee’s “service area”

in the context of the FTZ Board’s standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 9, 2023.

FTZ 128 was approved by the FTZ Board on September 4, 1986 (Board Order 334, 51 FR 32237, September 10, 1986). The current zone includes the following sites: *Site 1* (123 acres)—Lummi Indian Reservation, 2830 Kwina Road, Bellingham.

The grantee’s proposed service area under the ASF would be all Lummi Nation property which encompasses the Lummi Indian Reservation plus all property owned by the Lummi Nation outside the exterior boundaries of the Lummi Indian Reservation in Washington, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies’ needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Bellingham Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include the existing site as a “magnet” site. The ASF allows for the possible exemption of one magnet site from the “sunset” time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board’s regulations, Qahira El-Amin of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is July 11, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 26, 2023.

A copy of the application will be available for public inspection in the “Online FTZ Information Section” section of the FTZ Board’s website, which is accessible via www.trade.gov/ftz. For further information, contact Qahira El-Amin at Qahira.El-Amin@trade.gov.

Dated: May 9, 2023.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2023–10210 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Virgil Griffith, Inmate Number: 79038–112, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887; Order Denying Export Privileges

On April 12, 2022, in the U.S. District Court for the Southern District of New York, Virgil Griffith (“Griffith”), was convicted of two counts of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (“IEEPA”). Specifically, Griffith was convicted of exporting services to North Korea without the required authorization from the Department of Treasury and evading and avoiding U.S. sanctions on North Korea. As a result of his conviction, the Court sentenced Griffith to 63 months of confinement, three years of supervised release, \$100 assessment and \$100,000 criminal fine.

Pursuant to section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Griffith’s conviction for violating IEEPA, and has provided notice and opportunity for Griffith to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”). 15 CFR 766.25.² BIS has received and considered a written submission from Griffith.

Based upon my review of the record, including Griffith’s submission, and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Griffith’s export

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

privileges under the Regulations for a period of ten years from the date of Griffith's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Griffith had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:
First, from the date of this Order until April 12, 2032, Virgil Griffith, with a last known address of Inmate Number: 79038–112, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted

acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Griffith by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Griffith may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Griffith and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 12, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–10105 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

**In the Matter of: Juan Marvin Garcia,
 Inmate Number: 23021–509, FCI
 Beaumont Medium, Federal
 Correctional Institution, P.O. Box
 26040; Beaumont, TX 77720; Order
 Denying Export Privileges**

On October 13, 2021, in the U.S. District Court for the Southern District of Texas, Juan Marvin Garcia (“Garcia”) was convicted of violating 18 U.S.C. 554(a). Specifically, Garcia was convicted of smuggling from the United States to Mexico approximately 12,800 rounds of 7.62 x 39mm ammunition, 150 rounds of 38 Special ammunition, 60 rounds of .223 caliber ammunition, and one Stoeger Cougar 9mm pistol without written approval from United States Department of Commerce. As a result of his conviction, the Court sentenced Garcia to 36 months of confinement, three years of supervised release and \$100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Garcia’s conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Garcia to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Garcia.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Garcia’s export privileges under the Regulations for a period of seven years from the date of Garcia’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Garcia had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 13, 2028, Juan Marvin Garcia, with a last known address of Inmate Number: 23021–509, FCI Beaumont Medium, Federal Correctional Institution, P.O. Box 26040, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Garcia by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Garcia may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Garcia and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 13, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–10104 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Juan Antonio Cepeda, 901 E Olive Street, Apartment Number 8, Laredo, Texas 78041; Order Denying Export Privileges

On March 25, 2021, in the U.S. District Court for the Southern District of Texas, Juan Antonio Cepeda (“Cepeda”) was convicted of violating 18 U.S.C. 554(a). Specifically, Cepeda was convicted of smuggling and attempting to smuggle from the United States to Mexico, firearms, ammunitions

and firearms magazines. As a result of his conviction, the Court sentenced Cepeda to 41 months confinement, three years of supervised release, and a \$100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Cepeda’s conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Cepeda to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Cepeda.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Cepeda’s export privileges under the Regulations for a period of seven years from the date of Cepeda’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Cepeda had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until March 25, 2028, Juan Antonio Cepeda, with a last known address of 901 E. Olive Street, Apartment Number 8, Laredo, Texas 78041, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Cepeda by ownership, control,

position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Cepeda may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Cepeda and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 25, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–10101 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Voluntary Self-Disclosure of Antiboycott Violations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 7, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Voluntary Self-Disclosure of Antiboycott Violations.

OMB Control Number: 0694–0132.

Form Number(s): None.

Type of Request: Extension of a current information collection.

Number of Respondents: 15.

Average Hours per Response: 10 to 600 hours.

Burden Hours: 4,220.

Needs and Uses: Voluntary self-disclosures allow BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. As a result, BIS is able to devote more of its resources to detecting non-disclosed violations. The information obtained through this collection may also provide leads to uncover other violations. In some cases, the information might be shared with other law enforcement agencies investigating suspected violations of the ECRA and the EAR or, in appropriate instances, agencies investigating violations of other statutes or with foreign governments.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Sections 4812(b)(7) and 4814(b)(1)(B) of the Export Control Reform Act (ECRA).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0132.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–10205 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Adriana Gabriela Guajardo-Cavazos, Calle Manuel Otiz #49, Matamoros, Tamaulipas, Mexico 87394; Order Denying Export Privileges

On November 12, 2020, in the U.S. District Court for the Southern District of Texas, Adriana Gabriela Guajardo-Cavazos (“Guajardo-Cavazos”) was convicted of violating 18 U.S.C. 554(a). Specifically, Guajardo-Cavazos was convicted of smuggling and attempting to smuggle from the United States to

Mexico, approximately one (1) .243 caliber rifle, one (1) .22 caliber rifle, one (1) 12 gauge shotgun, one (1) .223 caliber magazine and one (1) .22 caliber magazine. As a result of her conviction, the Court sentenced Guajardo-Cavazos to 36 months confinement, three years of supervised release, and a \$100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act ("ECRA"),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security ("BIS") licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Guajardo-Cavazos's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"), BIS provided notice and opportunity for Guajardo-Cavazos to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Guajardo-Cavazos.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Guajardo-Cavazos's export privileges under the Regulations for a period of seven years from the date of Guajardo-Cavazos's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Guajardo-Cavazos had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 12, 2027, Adriana Gabriela Guajardo-Cavazos, with a last known address of Calle Manuel Otiz #49, Matamoros, Tamaulipas, Mexico 87394, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives ("the Denied Person"), may not directly or indirectly participate in any way in any transaction involving any commodity,

software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation,

maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Guajardo-Cavazos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Guajardo-Cavazos may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Guajardo-Cavazos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 12, 2027.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023-10102 Filed 5-11-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Colby Stephan Skolseg, 94 Pleasant View, Drayton Valley, Alberta, Canada, T7A 1M9; Order Denying Export Privileges

On September 10, 2020, in the U.S. District Court for the District of Montana, Colby Stephan Skolseg ("Skolseg") was convicted of violating 18 U.S.C. 554(a). Specifically, Skolseg was convicted of knowingly and unlawfully attempting to export eight firearms from the United States to Canada. As a result of his conviction, the Court sentenced Skolseg to 12 months and one day in prison, one year of supervised release and a \$100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act ("ECRA"),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801-4852.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730-774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

¹ ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801-4852.

Security (“BIS”) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Skolseg’s conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Skolseg to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Skolseg.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Skolseg’s export privileges under the Regulations for a period of five years from the date of Skolseg’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Skolseg had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until September 10, 2025, Colby Stephan Skolseg, with a last known address of 94 Pleasant View, Drayton Valley, Alberta, Canada, T7A 1M9, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or

from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Skolseg by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Skolseg may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Skolseg and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 10, 2025.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–10103 Filed 5–11–23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWRPT) from Mexico to correct certain ministerial errors. The period of review is August 1, 2020, through July 31, 2021.

DATES: Applicable May 12, 2023.

FOR FURTHER INFORMATION CONTACT: John Conniff, 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) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2023, Commerce published the *Final Results* of the 2020–2021 administrative review of LWRPT from Mexico.¹ Additionally, on March 13, 2023, Commerce informed interested parties that it had disclosed all calculations for the *Final Results*, and provided them with the opportunity to submit ministerial error comments.² Subsequently, on March 20, 2023, Commerce received a timely filed allegation from Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa) regarding the calculation of its final weighted-average dumping margin.³ No other interested party submitted comments.

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2020–2021*, 88 FR 15665 (March 14, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum.

² See Memorandum, “Deadline for Ministerial Error Comments,” dated March 13, 2023.

³ See Regiopytsa’s Letter, “Ministerial Error Comments,” dated March 20, 2023.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

³ The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224(f) define a “ministerial error” as including “errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.” With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce “will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review”

Ministerial Error

Regiopytsa alleges that Commerce made a ministerial error in the *Final Results* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) by inadvertently basing average normal value and U.S. prices on quarterly weighted-average home market and U.S. prices, rather than on monthly weighted-average prices. Regiopytsa argues that Commerce’s practice is to based average normal value and average U.S. prices on monthly averages of home market and U.S. prices, respectively. This error resulted in an incorrect weighted-average dumping margin calculated for Regiopytsa.

We agree with Regiopytsa that Commerce made a ministerial error in its use of quarterly average prices for normal value and average U.S. prices. Pursuant to 777A(d)(2) of the Act, in an administrative review, a normal value based on comparison market prices must be limited to the period of a calendar month. By extension, when using the average-to-average comparison method, average U.S. prices must also be limited to U.S. market prices to the period of a calendar month. We have revised the margin calculations such that normal value and average U.S. price is based on monthly weighted-average home market and U.S. prices, respectively.

Details of Commerce’s analysis of Regiopytsa’s ministerial error allegation are included in the Ministerial Error Allegation Memorandum.⁴ The Ministerial Error Allegation Memorandum is a public document and is available via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).

⁴ See Memorandum, “Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico; 2020–2021: Ministerial Error Allegation,” dated concurrently with this notice (Ministerial Error Allegation Memorandum).

ACCESS is available to registered users at <https://access.trade.gov>. Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the weighted-average dumping margin for Regiopytsa, which changes from 1.56 percent to 1.44 percent.⁵ Furthermore, we are amending the weighted-average dumping margin for the companies not selected for individual examination in this review. The weighted-average dumping margin for the non-examined companies is based on the weighted-average dumping margins calculated for the mandatory respondents, which changes from 5.38 percent to 5.32 percent.⁶

Amended Final Results of Review

As a result of correcting the ministerial error, Commerce determines that the following weighted-average dumping margins exist for the period August 1, 2020, through July 31, 2021:

Producer or exporter	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V./ Tecnicas de Fluidos S.A. de C.V. ⁷	9.20
Regiomontana de Perfiles y Tubos S. de R.L. de C.V. ..	1.44
Perfiles LM, S.A. de C.V.	5.32
Productos Laminados de Monterrey S.A. de C.V.	5.32

Disclosure

We will disclose the calculations performed for these amended final results to parties to this segment of the proceeding within five days of the date of the publication of these amended final results, pursuant to 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

In accordance with 19 CFR 351.212(b)(1), for Maquilacero S.A. de

⁵ *Id.*
⁶ See Memorandum, “Amended Non-Examined Company Rate Calculation,” dated concurrently with this notice.

⁷ The weighted-average dumping margin for Maquilacero/TEFLU remains unchanged from the *Final Results*. See *Final Results*, 88 FR at 15666.

C.V. (Maquilacero) and Tecnicas de Fluidos S.A. de C.V. (TEFLU) (collectively, Maquilacero/TEFLU) and Regiopytsa, we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the sales for each importer. Where an importer-specific antidumping duty assessment rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce’s “automatic assessment” will apply to entries of subject merchandise during the period of review produced by either Maquilacero/TEFLU or Regiopytsa for which the examined company did not know that the merchandise that they sold to the intermediary company (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these amended final results.

The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.⁸

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the amended final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after March 14, 2023, the date of publication of the *Final Results* of this administrative review. As provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review;

⁸ See section 751(a)(2)(C) of the Act.

(2) for exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 3.76 percent established in the less-than-fair-value investigation.⁹

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections

751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: May 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-10213 Filed 5-11-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-826]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 27, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Wind Tower Trade Coalition v. United States*, Court No. 20-03692, sustaining the U.S. Department of Commerce's (Commerce) final results of redetermination pertaining to the countervailing duty (CVD) investigation of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam) covering the period of investigation January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation.

DATES: Applicable April 27, 2023.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie or Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6250 or (202) 482-4880, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2020, Commerce published its *Final Determination* in the CVD investigation of wind towers from Vietnam.¹ Commerce calculated a final subsidy rate for the mandatory respondent, CS Wind Vietnam Co., Ltd. (a.k.a. CS Wind Tower Co., Ltd.) (CS Wind Vietnam), and assigned the

subsidy rate calculated for CS Wind Vietnam as the all-others rate.² Commerce subsequently published the CVD order on wind towers from Vietnam.³

The Wind Tower Trade Coalition appealed Commerce's *Final Determination*. On March 24, 2022, the CIT remanded the *Final Determination* to Commerce, instructing Commerce to: (1) discuss and address certain evidence and arguments that the Wind Tower Trade Coalition raised pertaining to potential manipulation; and (2) substantiate its conclusion as to the import status of certain steel plate in light of evidence that detracts from its conclusions, and to further explain its subsidy calculations for the Import Duty Exemptions program.⁴

In its final results of redetermination, issued on July 21, 2022, Commerce provided further explanation and analysis of the evidence and arguments presented by the Wind Tower Trade Coalition concerning manipulation, and provided further explanation to substantiate our finding that certain steel plate imports were sourced from within Vietnam, rather than imported. Based on the results of these analyses, the CVD rates calculated in the *Final Determination* remain unchanged.⁵ The CIT sustained Commerce's final results of redetermination.⁶

Timken Notice

In its decision in *Timken*,⁷ as clarified by *Diamond Sawblades*,⁸ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 27, 2023, judgment constitutes a

² *Id.*

³ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders*, 85 FR 52543 (August 26, 2020).

⁴ See *Wind Tower Trade Coalition v. United States*, Court No. 20-03692, Slip. Op. 22-27 (CIT March 24, 2022).

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Wind Tower Trade Coalition v. United States*, Court No. 20-03692, Slip. Op. 22-27 (CIT March 24, 2022), dated July 21, 2022, available at <https://access.trade.gov/resources/remands/index.html>.

⁶ See *Wind Tower Trade Coalition v. United States*, Slip. Op. 23-63 (CIT April 27, 2023).

⁷ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁸ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008).

¹ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstance*, 85 FR 40229 (July 6, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum.

final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–10154 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review, 2020–2021; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On May 4, 2023, the U.S. Department of Commerce (Commerce) inadvertently published duplicate copies of a **Federal Register** notice. This notice serves as a notification of, and correction to, this inadvertent duplicate publication.

FOR FURTHER INFORMATION CONTACT:

Benjamin A. Luberda or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2185 or (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Correction

Commerce published in the **Federal Register** of May 4, 2023, in FR Doc 2023–09464, on page 28483, in the second column, a notice entitled, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review, 2020–2021.” Commerce has discovered that this notice was also inadvertently published to the **Federal Register** on May 4, 2023, in FR Doc 2023–09422, on page 28498, in the second column. The inadvertent duplicate publication of this notice does not constitute redetermination of this

proceeding. This notice serves as a notification of, and correction to, this inadvertent duplicate publication.

Dated: May 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–10147 Filed 5–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2023–0015]

Patent and Trademark Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for nominations for the Patent and Trademark Public Advisory Committees.

SUMMARY: The United States Patent and Trademark Office (USPTO)—America's Innovation Agency—seeks nominations for up to three members of its Patent Public Advisory Committee (PPAC) to advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on patent policy, and for up to three members of its Trademark Public Advisory Committee (TPAC) to advise the Director on trademark policy. Each new member, who can serve remotely, will serve a three-year term starting December 1, 2023. The members represent the interests of the public and the stakeholders of the USPTO.

DATES: Nominations must be electronically submitted on or before July 3, 2023.

ADDRESSES: Persons wishing to submit nominations will be required to electronically complete the appropriate Public Advisory Committee application form by entering detailed information and qualifications at <https://tinyurl.com/yna4a67> for the PPAC, and <https://tinyurl.com/hcux6462> for the TPAC.

FOR FURTHER INFORMATION CONTACT:

Shirin Bidel-Niyat, Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (Act). The Act established two Public Advisory Committees—the PPAC and TPAC—to review the policies, goals, performance, budget, and user fees of the USPTO. The America Invents Act

Technical Corrections set staggered terms for members of the Advisory Committees, with each term starting and ending on December 1.

The PPAC and TPAC members shall:

- Advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to the policies, goals, performance, budget, and user fees of the USPTO regarding patents and trademarks, respectively (35 U.S.C. 5); and
- Within 60 days after the end of each fiscal year: (1) prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce (Secretary), the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO. *Id.*

Public Advisory Committees

The Public Advisory Committees are each composed of nine voting members who are appointed by the Secretary and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States. Members must also certify that they are not required to register with the Department of Justice as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and that they are not a federally registered lobbyist. Members are chosen to represent the interests of diverse users of the USPTO and must represent small- and large-entity applicants located in the United States in proportion to the number of applications filed by such applicants. In no case, however, shall members who represent small-entity patent applicants, including small business concerns, independent inventors, and nonprofit organizations, constitute less than 25% of the members of the Patent Public Advisory Committee. There must also be at least one independent inventor on the Patent Public Advisory Committee. The Committees must include individuals with a “substantial background and achievement in finance, management, labor relations, science, technology, and office automation.” 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the PPAC and TPAC

Each newly appointed member of the PPAC and TPAC will serve for a three-year term that begins on December 1, 2023, and ends on December 1, 2026. As required by the 1999 Act, members of the PPAC and TPAC will receive compensation for each day (including travel time) they attend meetings or engage in the business of their Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under 5 U.S.C. 5314. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or their regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703.

Applicability of Certain Ethics Laws

Public Advisory Committee members are Special Government Employees within the meaning of 18 U.S.C. 202. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within 30 days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that comes before the member's Committee and that involves at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. Also, a member must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the PPAC and TPAC

Meetings of each Public Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, online, or by other appropriate means. The meetings of each Public Advisory Committee will be open to the public, except each Public Advisory Committee may, by majority

vote, meet in an executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Public Advisory Committee business through the internet.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023-10148 Filed 5-11-23; 8:45 am]

BILLING CODE 3510-16-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 product(s) and 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) previously furnished by such agencies.

DATES: Comments must be received on or before: June 11, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, 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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):

6140-01-624-2917—Battery, Storage, 12V,

Lead Acid, 15 Amp Hours

6140-01-619-9474—Battery, Storage, 12V,

Lead Acid, 8.5 Amp Hours

6140-01-237-8005—Battery, Storage, 12V,

Lead Acid, 1.2 Amp Hours

6135-01-370-2599—Battery,

Nonchargeable, 3.6V, Lithium

Designated Source of Supply: Eastern

Carolina Vocational Center, Inc.,

Greenville, NC

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME

Service(s)

Service Type: Document Destruction Service

Mandatory for: US Air Force, 82nd Medical Group, Sheppard AFB, TX

Designated Source of Supply: Work Services Corporation, Wichita Falls, TX

Contracting Activity: DEPT OF THE AIR FORCE, FA3020 82 CONS LGC

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7530-00-142-9037—Roll, Teletype Paper,

8.44" x 325', White

Designated Source of Supply: Cincinnati Association for the Blind and Visually Impaired, Cincinnati, OH

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

8420-01-540-0611—Undershirt, Man's,

Navy Blue, XX-Small

8420-01-540-0612—Undershirt, Man's,

Navy Blue, X-Small

8420-01-540-0614—Undershirt, Man's,

Navy Blue, Small

8420-01-540-1758—Undershirt, Man's,

Navy Blue, Medium

8420-01-540-1759—Undershirt, Man's,

Navy Blue, Large

8420-01-540-1760—Undershirt, Man's,

Navy Blue, X-Large

8420-01-540-1761—Undershirt, Man's,

Navy Blue, XX-Large

8420-01-540-1762—Undershirt, Man's,

Navy Blue, XXX-Large

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):

8420-01-540-0611—Undershirt, Man's,

Navy Blue, XX-Small

8420-01-540-0612—Undershirt, Man's,

Navy Blue, X-Small

8420-01-540-0614—Undershirt, Man's,

Navy Blue, Small

8420-01-540-1758—Undershirt, Man's,

Navy Blue, Medium

8420-01-540-1759—Undershirt, Man's,

Navy Blue, Large

8420-01-540-1760—Undershirt, Man's,

Navy Blue, X-Large

8420-01-540-1761—Undershirt, Man's,

Navy Blue, XX-Large

8420-01-540-1762—Undershirt, Man's,
Navy Blue, XXX-Large
Designated Source of Supply: The Arkansas
Lighthouse for the Blind, Little Rock, AR
Contracting Activity: DLA TROOP SUPPORT,
PHILADELPHIA, PA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-10180 Filed 5-11-23; 8:45 am]

BILLING CODE 6353-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of External Affairs of the Corporation for National and Community Service (operating as AmeriCorps) proposes to establish a new system of records titled “CNCS-05-OEA-SNPE Social Network and Public Engagement System of Records.” This system of records allows AmeriCorps to maintain information that individuals share voluntarily with AmeriCorps when they engage in activities promoted by AmeriCorps or interact with AmeriCorps via social networks channels. It also allows AmeriCorps to retain individuals’ user account information, when login is required for access to the services provided by AmeriCorps’ websites.

DATES: You may submit comments on or before June 12, 2023. Unless timely comments are received that would require a revision, this new system of records will become effective on June 12, 2023.

ADDRESSES: You may submit comments identified by system name and number by any of the following methods:

1. Electronically through *regulations.gov*. Once you access *regulations.gov*, find the web page for this SORN by searching for CNCS-05-OEA-SNPE. Follow the instructions on the website for submitting comments.
2. By email at *privacy@cns.gov*.
3. By mail: AmeriCorps, Attn: Bilal Razzaq, Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.
4. By hand delivery or courier to AmeriCorps at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov*, including any

personal information. Commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system of records, please contact ZhuoHong Liu at *zliu@cns.gov*, by phone at 202-938-7868, or mail them to the address in the **ADDRESSES** section above. Please include the system of records’ name and number.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, AmeriCorps’ Office of External Affairs proposes to establish a new agency-wide system of records titled “CNCS-5-OEA-SNPE Social Network and Public Engagement System of Records.” This system will help AmeriCorps interact with the public in meaningful ways, encourage the wide sharing of information about AmeriCorps’ programs, promote public engagement in AmeriCorps’ programs, and recruit more volunteers to participate in community service. The information will also be used for program analytics and administrative purposes to ensure quality control, performance, and improve program management processes.

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals’ records. The Privacy Act applies to information that is maintained in a “system of records.” A “system of records” is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

AmeriCorps will share information from the system in accordance with the requirements of the Privacy Act. A full list of routine uses is included in the routine uses section of the document published with this notice.

In accordance with 5 U.S.C. 552a(r), AmeriCorps has provided a report of this system of records to the Office of Management and Budget and to Congress.

Below is the description of CNCS-05-OEA-SNPE Social Network and Public Engagement System of Records.

SYSTEM NAME AND NUMBER:

CNCS-5-OEA-SNPE Social Network and Public Engagement.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of record is maintained by the Office of External Affairs, Department of Chief Executive Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525.

SYSTEM MANAGER(S):

(1) Deputy Director, Office of External Affairs, Department of Chief Executive Officer, 250 E Street SW, Washington, DC 20525; (2) Administrative Officer, Office of External Affairs, Department of Chief Executive Officer, 250 E Street SW, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National and Community Service Act of 1990, as amended (42 U.S.C. chapter 129), the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. chapter 66); and Executive Order 13571.

PURPOSE(S) OF THE SYSTEM:

The information is being collected in the system to support AmeriCorps’ external interactions concerning its programs. The Agency uses social network platforms and its websites to increase its collaboration and transparency with the public, as well as with employees, members, grantees, contractors, and others who are interested in AmeriCorps’ programs and services. The system will enable AmeriCorps to effectively expand its public outreach, interact with the public in meaningful ways, and encourage wide sharing of information about AmeriCorps’ programs. AmeriCorps will also use the information for program analytics, program segmentation research, and administrative purposes to ensure quality control, program performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records about these categories of individuals: users of social networks who interact with AmeriCorps through the Agency’s website, or through various social network outlets, including but not limited to third-party sites, services such as Meta, YouTube, LinkedIn, or other social media platforms. Other covered individuals may include those who sign on to various parts of AmeriCorps’ website with a user identity, including but not limited to

sites and services such as Meta and Twitter. These may be public individuals, members and grantees of AmeriCorps programs, and AmeriCorps employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This may include name, username, email address, IP addresses, location, passwords, authentication, business affiliation, demographic information, videos, photos, shipment address when the public individual requests free program promotion materials from AmeriCorps website, and other general user information.

RECORD SOURCE CATEGORIES:

The information in the records is obtained from individuals who voluntarily interact with AmeriCorps through its website or social network sites and services, or who engage in the public outreach programs run by AmeriCorps' Office of External Affairs.

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), all or a portion of the records or information contained in this system of records may be disclosed outside of AmeriCorps as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To the U.S. Department of Justice (DOJ), including the U.S. Attorneys Offices, or other Federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

- (1) AmeriCorps;
- (2) Any employee or former employee of AmeriCorps in his/her official capacity;
- (3) Any employee or former employee of AmeriCorps in his/her individual capacity, but only when DOJ or AmeriCorps has agreed to represent the employee; or
- (4) The United States or any agency thereof.

B. To a congressional office in response to an inquiry from that congressional office which is made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General

Services Administration, pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to the audit or oversight function.

E. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record, or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

F. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

G. To State, Territorial, and local governments and tribal organizations to provide information needed in response to a court order and/or for discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

H. To appropriate agencies, entities, and persons when:

- (1) AmeriCorps suspects or has confirmed that there has been a breach of the system of records;
- (2) AmeriCorps has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, AmeriCorps (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 AmeriCorps in connection with its efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

I. To another Federal agency or Federal entity, when AmeriCorps 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.

J. To an appropriate Federal, State, Tribal, local, international, or foreign

law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, when it is relevant and necessary to the litigation or proceeding.

L. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for AmeriCorps, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same requirements and limitations on disclosure as are applicable to AmeriCorps officers and employees.

M. To appropriate third parties contracted by AmeriCorps to investigate a complaint or appeal filed by an employee or applicant, or to facilitate and conduct mediation or other alternative dispute resolution (ADR) procedures or programs.

N. To any official or designee charged with the responsibility to conduct qualitative assessments at a designated statistical agency and other well established and trusted public or private research organizations, academic institutions, or agencies for an evaluation, study, research, or other analytical or statistical purpose.

Disclosure to Consumer Reporting Agencies: None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

AmeriCorps stores records in this system electronically. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by full-text search or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained indefinitely until they are scheduled

with the National Archives and Records Administration and are eligible for disposition under those schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

AmeriCorps safeguards records in this system according to applicable laws, rules, and policies, including all applicable AmeriCorps automated systems security and access policies. AmeriCorps has strict controls in place to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508—Implementation of the Privacy Act of 1974, as amended, individuals wishing to access their own records that are stored within the system of records may contact the FOIA Officer/Privacy Act Officer by sending (1) an email to FOIA@cns.gov or (2) a letter addressed to the System Manager, Attention: Privacy Inquiry. Individuals who make a request must include enough identifying information (*i.e.*, full name, current address, date, and signature) to locate their records, indicate that they want to access their records, and be prepared to confirm their identity, as required by 45 CFR part 2508.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information maintained in the system will be directed to the FOIA Officer/Privacy Act Officer. Individuals who make a request must include enough identifying information to locate their records, in the manner described above in the Record Access Procedures section. Requests should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

NOTIFICATION PROCEDURES:

Any individual desiring to contest or amend information not subject to exemption may contact the FOIA Officer/Privacy Act Officer via the contact information in the Record Access Procedures section. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Gina Cross,

Senior Agency Official for Privacy and Chief Operating Officer.

[FR Doc. 2023–10164 Filed 5–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Legislative Environmental Impact Statement Addressing Land Withdrawal Extension at Fort Wainwright, Alaska

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army (Army) announces the availability of a Draft Legislative Environmental Impact Statement (LEIS) to address continued military use of the Yukon Training Area, near Fort Wainwright, Alaska, and Donnelly Training Area East and Donnelly Training Area West, near Delta Junction, Alaska. The current land withdrawal will expire on November 6, 2026, unless Congress enacts legislation to extend it. The Draft LEIS evaluates reasonable alternatives, potential environmental impacts, and key issues of concern. The LEIS will inform proposed legislation presented to Congress and Congress' decision regarding the Proposed Action. Comments received on the Draft LEIS will be fully considered and submitted as part of the legislative proposal. The comment period will last 60 days and will include virtual or in-person public meetings.

DATES: Comments must be received by July 11, 2023.

ADDRESSES: Please send written comments to Mr. Matt Sprau, Environmental Planning Branch Chief, at: Directorate of Public Works, ATTN: AMIM–AKP–E (M. Sprau), 1046 Marks Road #4500, Fort Wainwright, AK 99703–4500; email: usarmy.wainwright.id-pacific.mbx.lwe-leis@army.mil.

FOR FURTHER INFORMATION CONTACT:

Please contact Mr. Grant Sattler, Public Affairs Office, at: AMIM–AKG–PA (Sattler), 1060 Gaffney Road #5900, Fort Wainwright, AK 99703–5900; telephone: (907) 353–6701; email: alan.g.sattler.civ@army.mil.

SUPPLEMENTARY INFORMATION: In October 1999, Congress—through the Military

Lands Withdrawal Act (Public Law (Pub. L.) 106–65)—withdrew 869,862 acres of public land comprising Yukon Training Area, Donnelly Training Area East, and Donnelly Training Area West from all forms of appropriation under public land laws and reserved the acreage for use by the Army. The withdrawal extended to November 6, 2026. The Army determined there is a continuing military need for this land and is requesting to extend its use of the three training areas, which are federal lands managed by the Bureau of Land Management (BLM) that Congress has withdrawn and reserved for military use.

The Engle Act (Pub. L. 85–337; title 43, sections 155–158, United States Code) requires land withdrawals in excess of 5,000 acres to be authorized by Congress through legislation. The U.S. Department of the Interior (DOI) has authority to process federal land withdrawal applications (title 43, part 2300, Code of Federal Regulations (CFR)). The Military Lands Withdrawal Act requires the Army to notify the Secretary of the Interior and Congress regarding whether there is a continuing military need for the withdrawn land. If there is such a need, the Army and DOI shall submit a legislative proposal to Congress no later than May 1, 2025. BLM, a subordinate agency within DOI, agreed to participate in the LEIS process as a cooperating agency.

Fort Wainwright is in the interior of Alaska. It is located in the Fairbanks North Star Borough and is home to U.S. Army Garrison—Alaska and to units of the 11th Airborne Division. The Yukon Training Area covers approximately 246,277 acres and is located approximately 16 miles east-southeast of Fairbanks and immediately east of Eielson Air Force Base. Donnelly Training Areas East and West are located near Fort Greely. These areas are situated in the Tanana River Valley in central Alaska, approximately 80 miles southeast of Fort Wainwright, near the city of Delta Junction in the Southeast Fairbanks Census Area. Donnelly Training Area East is approximately 51,590 acres and Donnelly Training Area West is approximately 571,995 acres.

The purpose of the Proposed Action is to obtain an extension of the land withdrawal of the three training areas for 25 years or more, until such time as the Army determines it no longer needs the land for military purposes. The Army requires the continued use of the training areas on withdrawn land to execute and fulfill its mission in Alaska. Access to the withdrawn land enables the Army to produce a force trained to

mobilize, deploy, fight, and win anywhere in the world. Army training conditions must match or closely resemble all possible environments throughout the world, including arctic and subarctic conditions. In addition to the Army's use of the withdrawn land, the U.S. Air Force plans, conducts, and coordinates air operations in the restricted airspace over the withdrawn land.

The Draft LEIS evaluates the reasonably foreseeable effects of multiple alternatives. The alternatives considered include: (1) requesting that Congress extend the land withdrawal for 25 years or more until such time as the Army determines it no longer needs the land for military purposes; and (2) a No-Action Alternative, under which the withdrawal would not be extended. Besides the first alternative above, there are no reasonable alternatives capable of meeting the project's purpose and need.

Resource areas and impacts analyzed in the Draft LEIS include, but are not limited to, the following: recreational uses of the withdrawn land; subsistence uses; air quality; noise; soil; water quality; biological resources; socioeconomic; public health and safety; archaeological sites and districts; traffic and transportation; land use; airspace; and hazardous materials. The Draft LEIS also identifies measures that would reduce or eliminate adverse impacts. BLM's findings regarding potential impacts on subsistence uses will—consistent with the requirements of section 810 of the Alaska National Interest Lands Conservation Act—be appended to the Draft LEIS. The Army coordinated with federal, state, and Tribal entities during development of the LEIS, including the U.S. Fish and Wildlife Service and BLM.

The No-Action Alternative could have significant economic impacts on the cities of Delta Junction and Fairbanks. Under the Proposed Action, there would be no change to training activities. The Draft LEIS identified ongoing, potential, moderate and minor adverse impacts on biological resources, cultural resources, water resources, air quality, and hazardous material levels resulting from the Proposed Action. The Army does not anticipate the Proposed Action causing any significant impacts.

The Army announced the release of the Draft LEIS through local media outlets, beginning a public comment period during which public meetings will be held in Delta Junction and Fairbanks. Pursuant to section 810(b) of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, title 16, section 3120, United States Code), the public meeting in Delta Junction

will also serve as a public hearing on BLM's finding of potential impacts on subsistence uses. Following the 60-day public comment period, the Army will consider all comments and append them to the Draft LEIS for inclusion in the legislative proposal. Under title 40, part 1506, CFR, a Final EIS is not required in the LEIS process, and the Army will not prepare a Final EIS for this Proposed Action.

Federal, state, and local agencies, Alaska Native Tribes, Alaska Native Tribal organizations, and the general public are invited to participate in a public meeting and/or submit written comments. Written comments must be received within 60 days of publication of this Notice of Availability in the **Federal Register**. Public meetings will be held in a virtual environment, in person, or both. Dates and times will be advertised in local newspapers and will be posted online at: <https://home.army.mil/alaska/index.php/fort-wainwright/NEPA>.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–10144 Filed 5–11–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

National Assessment Governing Board; Meeting; Correction

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice; correction.

SUMMARY: The National Assessment Governing Board (Governing Board) published a document in the **Federal Register** announcing the schedule and proposed agenda of the May 18–19, 2023 quarterly meeting of the Governing Board. The meeting agenda has been revised to reflect the following changes to the Thursday and Friday sessions of the Governing Board meeting.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu at (202) 357–6906.

SUPPLEMENTARY INFORMATION: The original published notice, volume 88, no. 83, pages 26530–26531 (2 pages), May, 1, 2023, FR Doc. 2023–09114 filed on Friday, April 28, 2023, announced that the Measuring Socioeconomic Status session would be held on Thursday, May 18, 2023, from 2:15 p.m. until 3:30 p.m., and the Linking Studies and NAEP session would be held on Friday, May 19, 2023, from 1:45 p.m. until 2:45 p.m. The agenda has been

revised to reflect new times for these meetings. The Linking Studies and NAEP session will now be held on Thursday, May 18, 2023, from 2:15 p.m. until 3:30 p.m., and the Measuring Socioeconomic Status session will be held on Friday, May 19, 2023, from 1:45 p.m. until 3:00 p.m. The meeting will end at 3:00 p.m. which is 15 minutes later than the originally published end time of 2:45 p.m.

Registration: Members of the public may attend all open sessions of the Governing Board's May 18–19, 2023, meetings in-person or virtually. A link to register for both the in-person and virtual attendance for the open sessions and instructions for how to register will be posted on the Governing Board's website at www.nagb.gov no later than 5 business days prior to each meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its committees may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (DFO) via email at Munira.Mwalimu@ed.gov no later than 10 business days prior to the meeting. Written comments should be directed to the DFO as they relate to committee and Board meeting work and should reference the relevant agenda item.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009(b), the public may inspect the May 18–19, 2023, meeting materials at www.nagb.gov, which will be made available no later than five business days prior to each meeting. The public may also inspect the meeting materials and other Governing Board records at 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing Munira.Mwalimu@ed.gov to schedule an appointment. The official verbatim transcripts of the open meeting sessions will be available for public inspection no later than 30 calendar days following each meeting and will be posted on the Governing Board's website. Requests for the verbatim transcripts may be made via email to the DFO noted above.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than ten working days prior to each meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary

aid or service because of insufficient time to arrange requests.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley A. Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2023–09984 Filed 5–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0079]

Agency Information Collection Activities; Comment Request; Application and Employment Certification for Public Service Loan Forgiveness

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: The Department requested emergency processing from OMB for this information collection request on May 3, 2023. As a result, the Department is providing the public with the opportunity to comment under the full comment period. Interested persons are invited to submit comments on or before July 11, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please

use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0079. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application and Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: 1845–0110.

Type of Review: Revision.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 913,713.

Total Estimated Number of Annual Burden Hours: 456,857.

Abstract: The Department of Education (Department) is requesting an emergency clearance for this renewal of the revision of the information collection, 1845–0110. Additionally, we are requesting that the full clearance package be filed at the same time and that the Department will initiate the 60-day public comment period upon notification of emergency approval. The PSLF program was revised during the Negotiated Rulemaking process in 2021 resulting in Final Rule for the Public Service Loan Forgiveness (PSLF) Program that were published in the **Federal Register** on November 1, 2022 (87 FR 65904) and continue to be codified in 34 CFR 685.219. Concurrent with these new regulations, the Department implemented the ability for the borrower and employer to digitally sign and submit the PSLF Form electronically through our Digital Platform. The PSLF form was redesigned to encourage the use of the new signature options and align the instructions on the form to mimic the user experience connected to the online submission. This new form will not be available until the regulations become effective on July 1, 2023.

Dated: May 9, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–10191 Filed 5–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0084]

Agency Information Collection Activities; Comment Request; Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of

1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 11, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0084. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Family Educational Loan Program (FFEL)—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lenders Trustees.

OMB Control Number: 1845–0085.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 35.

Total Estimated Number of Annual Burden Hours: 35.

Abstract: This request is for the extension of a current paperwork collection in the Office of Management and Budget (OMB) Control Number 1845–0085 for the reporting requirement contained in the regulations for States, not-for-profit lenders and eligible lender trustees under 34 CFR 682.302 for the Federal Family Education Loan (FFEL) Program. The regulations in § 682.302 require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit's Chief Executive Officer which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for-profit designation is being certified.

Dated: May 9, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–10165 Filed 5–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0086]

Agency Information Collection Activities; Comment Request; Written Application for the Independent Living Services for Older Individuals Who Are Blind Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 11, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0086. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicole Jeffords, 202–245–6387.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden.

It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Written Application for the Independent Living Services for Older Individuals Who Are Blind Program.

OMB Control Number: 1820-0660.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 19.

Total Estimated Number of Annual Burden Hours: 3.

Abstract: This application is used by States to request funds to administer the Independent Living Services for Older Individuals Who Are Blind (IL-OIB) program. The IL-OIB program is provided under Title VII, chapter 2, section 752 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), to assist individuals who are age 55 or older whose significant visual impairment makes competitive integrated employment difficult to attain, but for whom independent living goals are feasible.

Dated: May 9, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-10178 Filed 5-11-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Standard Drafting Team Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation Project 2021-07 Extreme Cold Weather Grid Operations, Preparedness, Coordination Standard Drafting Team Meetings:

May 18, 2023 (1:00 p.m.–3:00 p.m. eastern time)

May 23, 2023 (1:00 p.m.–3:00 p.m. eastern time)

May 25, 2023 (1:00 p.m.–3:00 p.m. eastern time)

Further information regarding these meetings may be found at: <https://www.nerc.com/Pages/Calendar.aspx>.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. RD23-1-000 Extreme Cold Weather Reliability Standards, EOP-011-3 and EOP-012-1

For further information, please contact Chanel Chasanov, 202-502-8569, or chanel.chasanov@ferc.gov.

Dated: May 8, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-10171 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14775-004]

Marine Renewable Energy Collaborative of New England; Notice Concluding Pre-Filing Process and Approving Process Plan and Schedule

a. *Type of Filing:* Notice of Intent to File an Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 14775-004.

c. *Date Filed:* September 7, 2021.

d. *Submitted By:* Marine Renewable Energy Collaborative of New England (MRECo).

e. *Name of Project:* Bourne Tidal Test Site.

f. *Location:* In the Cape Cod Canal near the Town of Bourne, in Barnstable

County, MA. The project would occupy land under the jurisdiction of the U.S. Army Corps of Engineers (Corps) and would be in the boundary of the Corps' Cape Cod Canal Navigation Project.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Applicant Contact:* Stephen Barrett, Barrett Energy Resources Group, LLC, P.O. Box 1004, Concord, MA 01742; Phone at (339) 234-2696; email at steve@barrettenergygroup.com.

i. *FERC Contact:* Robert Haltner at (202) 502-8612 or email at robert.haltner@ferc.gov.

j. *MRECo has filed with the Commission:* (1) a notice of intent to file an application for an original license for a pilot hydrokinetic hydropower project and a draft license application with monitoring plans; (2) a request for waivers of certain Integrated Licensing Process regulations necessary for expedited processing of a license application for a hydrokinetic pilot project; (3) a proposed process plan and schedule; and (4) a request to be designated as the non-Federal representative for section 7 of the Endangered Species Act (ESA) consultation and for section 106 consultation under the National Historic Preservation Act.

k. A notice was issued on September 20, 2021, soliciting comments on the draft license application from agencies and stakeholders. Comments were filed by Federal and State agencies and individuals.

l. On September 20, 2021, MRECo was designated as the non-Federal representative for section 7 consultation under the ESA and for section 106 consultation under the National Historic Preservation Act.

m. *The proposed Bourne Tidal Test Site Project would consist of:* (1) an existing 56.2-foot-high, 23-foot-wide steel support structure comprised of a platform mounted to three piles embedded in the Cape Cod Canal; (2) an existing vertical turbine mounting pole that is attached to the platform and equipped with an electric lift; (3) a tidal turbine-generator unit that would have a maximum installed capacity of 50 kW; (4) a proposed 50-kW inverter that would be located on the support structure and used to convert the generated power from Direct Current to Alternating Current; (5) an approximately 775-foot-long, 13.2-kilovolt overhead transmission line that would connect the project to the regional grid; (6) a proposed onshore station consisting of a 20-foot-long, 8-foot-wide modular steel structure that would house power control and data management equipment; and (7)

appurtenant facilities. A variety of turbine-generators would be tested at the project.

n. The pre-filing process has been concluded and the requisite regulations

have been waived such that the process and schedule indicated below can be implemented.

o. The post-filing process will be conducted pursuant to the following

schedule. Revisions to the schedule may be made as needed.

Milestones	Dates
Final license application expected	June 8, 2023.
Issue notice of acceptance and ready for environmental analysis and request for interventions	June 23, 2023.
Recommendations, conditions, comments and interventions due	July 23, 2023.
Issue notice of availability of environmental assessment	September 21, 2023.
Issue biological assessment	September 21, 2023.
Comments due and 10(j) resolution, if needed	October 21, 2023.

p. Register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: May 8, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-10175 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-1840-000]

Apollo Power Inc.; 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 Apollo Power Inc.'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 May 30, 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: May 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-10158 Filed 5-11-23; 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: PR23-50-000.

Applicants: Columbia Gas of Ohio, Inc.

Description: § 284.123 Rate Filing; COH SOC Rates effective May 1 2023 to be effective 5/1/2023.

Filed Date: 5/8/23.

Accession Number: 20230508-5031.

Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: RP23-763-000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing; Filing of Negotiated Rate, Conforming IW Agreements 5.8.2023 to be effective 5/8/2023.

Filed Date: 5/5/23.

Accession Number: 20230505-5227.

Comment Date: 5 p.m. ET 5/17/23.

Docket Numbers: RP23-764-000.

Applicants: Midwestern Gas

Transmission Company.

Description: § 4(d) Rate Filing; Revision to Part 8 Section 39 (LMSCRA) to be effective 6/9/2023.

Filed Date: 5/8/23.

Accession Number: 20230508-5048.

Comment Date: 5 p.m. ET 5/22/23.

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/fercensearch.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: May 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-10159 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-303-000]

Gulf South Pipeline Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on April 27, 2023, Gulf South Pipeline Company, LLC (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in the above referenced docket, a prior notice request to abandon the Index 139, also identified by the Bureau of Safety and Environmental Enforcement as pipeline segment number (PSN) 17007, located in offshore Louisiana. The proposed project consists of abandoning approximately 10.33 miles of 14-inch-diameter natural gas pipeline of which an approximately 48,297-foot segment is proposed for abandonment by removal and the remaining approximately 6,152 feet is proposed for abandonment in place. Also, the Eugene Island Block 51 Platform is proposed to be abandoned in place as part of the project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at

FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this prior notice request should be directed to Juan Eligio, Jr., Manager of Regulatory Affairs, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Houston, Texas 77046, by telephone at (713) 479-3480 or by email at juan.eligio@bwpipelines.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 7, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is July 7, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is July 7, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 7, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23-303-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's *eFiling* feature, which is located on the Commission's website (www.ferc.gov) under the link to

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Documents and Filings. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; first select “General” and then select “Protest”, “Intervention”, or “Comment on a Filing”; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–303–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Juan Eligio, Jr., Manager of Regulatory Affairs, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Houston, Texas 77046, or by email at juan.eligio@bwpipelines.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC website at FERC.gov using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. 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. For more information and to register, go to www.ferc.gov/docs-filing/subscription.asp.

Dated: May 8, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–10172 Filed 5–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1829–000]

Shady Oaks Wind 2, 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 Shady Oaks Wind 2, 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 May 30, 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 FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Dated: May 8, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–10160 Filed 5–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–86–000.

Applicants: FirstEnergy Corp., FirstEnergy Transmission, LLC, American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, Trans-Allegheny Interstate Line Company, Potomac-Appalachian Transmission Highline, LLC, North American Transmission Company II L.P., Platinum Compass B 2018 RSC Limited.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of FirstEnergy Corp., et al.

Filed Date: 5/5/23.

Accession Number: 20230505–5255.

Comment Date: 5 p.m. ET 5/26/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–148–000.

Applicants: Boomtown Solar Energy LLC.

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission’s website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Description: Boomtown Solar Energy LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/8/23.

Accession Number: 20230508–5133.
Comment Date: 5 p.m. ET 5/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1067–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing Capacity Interconnection Rights to ELCC in ER23–1067 to be effective 4/10/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5078.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1158–002.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to SA Filing, Original NSA, SA No. 6788; Queue No. AC2–136 to be effective 4/24/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5116.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1475–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2023–05–08 Amendment to Phasing Out Stored Energy Resources and SER–II to be effective 6/1/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5113.
Comment Date: 5 p.m. ET 5/18/23.

Docket Numbers: ER23–1839–000.

Applicants: Power Authority of the State of New York, Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Power Authority of the State of New York submits tariff filing per 35.13(a)(2)(iii): Joint 205 filing: TFIA among NYISO, Con Edison, NYPA, and CHPE LLC SA2772–CEII to be effective 4/21/2023.

Filed Date: 5/5/23.
Accession Number: 20230505–5192.
Comment Date: 5 p.m. ET 5/26/23.

Docket Numbers: ER23–1840–000.

Applicants: Apollo Power Inc.
Description: Baseline eTariff Filing: MBR to be effective 7/7/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5002.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1841–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6894; Queue No. AF1–122 to be effective 4/7/2023.

Filed Date: 5/8/23.

Accession Number: 20230508–5053.

Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1842–000.

Applicants: FPL Energy Stateline II, Inc.

Description: Tariff Amendment: FPL Energy Stateline II, Inc. Notice of Cancellation of MBR Tariff to be effective 5/9/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5057.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1843–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 2515; Queue No. U2–090 (amend) to be effective 7/8/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5058.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1844–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Guernsey Holdings LGIA Termination Filing to be effective 5/8/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5096.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1845–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6382; Queue No. AE1–061 re: withdrawal to be effective 6/26/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5098.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1846–000.

Applicants: Boomtown Solar Energy LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 7/8/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5105.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1847–000.

Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: The Potomac Edison Company submits tariff filing per 35.13(a)(2)(iii): Potomac submits Borderline Service Agreement, Service Agreement No. 6408 to be effective 6/1/2010.

Filed Date: 5/8/23.
Accession Number: 20230508–5130.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1848–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6901; Queue No. AF1–086 to be effective 4/7/2023.

Filed Date: 5/8/23.
Accession Number: 20230508–5136.
Comment Date: 5 p.m. ET 5/30/23.

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: May 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10157 Filed 5–11–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–62–000]

ISO New England, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On May 5, 2023, the Commission issued an order in Docket No. EL23–62–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether ISO New England, Inc.'s Transmission, Markets and Services Tariff is unjust and unreasonable or unduly discriminatory or preferential. *ISO New England, Inc.*, 183 FERC ¶ 61,091 (2023).

The refund effective date in Docket No. EL23–62–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–62–000 must file a notice of intervention or motion to

intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

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 FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. 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.

Dated: May 8, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-10176 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC19-57-002]

The Vanguard Group, Inc., Vanguard Global Advisors, LLC, Vanguard Asset Management, Ltd., Vanguard Investments Australia Ltd., Vanguard Fiduciary Trust Company; Notice of Filing Granted by Operation of Law

On November 7, 2022, The Vanguard Group, Inc. along with its subsidiaries (collectively, Vanguard), filed, pursuant

to section 203(a)(2) of the Federal Power Act (FPA),¹ and part 33 of the Commission's regulations,² a request for a three-year extension of blanket authorization to acquire securities on behalf of itself and 34 affiliated investment companies and their affiliated mutual funds.

Pursuant to section 203(a)(5) of the FPA,³ in the absence of Commission action on or before May 6, 2023, Vanguard's request for a three-year extension of blanket authorization to acquire securities is deemed granted by operation of law. Accordingly, Vanguard's request was deemed granted on May 7, 2023.

Dated: May 8, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-10173 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2544-052]

Hydro Technology Systems, Inc.; Meyers Falls; Notice of Waiver Period for Water Quality Certification Application

On May 1, 2023, Hydro Technology Systems, Inc submitted to the Federal Energy Regulatory Commission (Commission) evidence of the date on which the certifying agency received the certification request for a Clean Water Act section 401(a)(1) water quality certification filed with the Washington State Department of Ecology, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,¹ we hereby notify the Washington State Department of Ecology of the following:

Date of Receipt of the Certification Request: May 1, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (May 1, 2024).

If the Washington State Department of Ecology fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

¹ 16 U.S.C. 824b(a)(2).

² 18 CFR part 33 (2022).

³ 16 U.S.C. 824b(a)(5).

¹ 18 CFR 4.34(b)(5).

Dated: May 8, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-10174 Filed 5-11-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OLEM-2022-0933; FRL-10955-01-OLEM]

Recycling Infrastructure and Market Opportunities Map; Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has developed an interactive map of recycling markets that highlights existing recycling infrastructure, per capita generation and recycling of post-consumer materials, and other relevant market factors. The map visually presents data estimates across various phases of the recycling process, including generation, collection, sortation, and end use. Through this document, the Office of Land and Emergency Management (OLEM) is soliciting public comments on the accuracy and completeness of the data, ease of use, graphics, and recommendations on future updates of the map. EPA will collect and analyze the public comments to use as inputs for the next update of the map.

DATES: Comments must be received on or before June 26, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2022-0933, using the following method:

• *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Lawrence Doppelt, Office of Resource Conservation and Recovery, Office of Land and Emergency Management (Mail Code 5101T), Environmental Protection Agency, 1200 Pennsylvania Avenue

NW, Washington, DC 20460; telephone number: (202) 566-0283; email address: doppelt.lawrence@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this request for public comment is voluntary. Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2022-0933, at <https://www.regulations.gov/>. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Responses to this request for public comment may be submitted by a single party or a team. Responses will only be accepted using Microsoft Word (.docx) or Adobe PDF (.pdf) file formats. The response document should contain the following:

- *Two clearly delineated sections:* (1) Cover page with company name and contact information; and (2) responses should indicate which topic and specific questions are being addressed.
- 1-inch margins (top, bottom, and sides).
- Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Do not submit to EPA's docket at <https://www.regulations.gov/> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), 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). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

Privacy note: All comments received from members of the public will be available for public viewing on [Regulations.gov](https://www.regulations.gov). In accordance with Federal Acquisition Regulation 15.202(3), responses to this document are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely

responsible for all expenses associated with response preparation.

II. General Information

What is the purpose of this request for public comment?

EPA has developed an interactive map of recycling markets that highlights existing recycling infrastructure, per capita generation and recycling of post-consumer materials, and other relevant market factors. By providing a comprehensive resource for understanding opportunities related to post-consumer materials management, this map can help develop and strengthen primary and secondary markets for materials, support cleaner communities by reducing the amount of plastic and other waste entering landfills and the marine environment, and provide opportunities to address climate change by diverting more materials from landfills. The map visually presents data estimates across various phases of the recycling process, including generation, collection, sortation, and end use. This new resource supports implementation of the National Recycling Strategy (<https://www.epa.gov/recyclingstrategy>), the Save our Seas 2.0 Act, and the Solid Waste Infrastructure for Recycling (SWIFR) grant program funded by the Bipartisan Infrastructure Law, or BIL (<https://www.epa.gov/infrastructure>).

Using publicly available information, EPA populated the map with the locations of 15 different types of recycling and other municipal solid waste (MSW) infrastructure, such as material recovery facilities, anaerobic digesters, composting facilities, glass recycling facilities, MSW landfills, and transfer stations. Using publicly available data from the Ball Corporation, U.S. Census Bureau's American County Survey, EPA tools including the State Measurement Program and Wasted Food Report, and materials management reports from states and regions, the map also displays 16 types of recyclable material generated and recycled per U.S. zip code, including aluminum, cardboard, electronics, food waste, glass, paper, plastics #1-7, steel cans, tires, textiles, yard trimmings, and wood.

The map also includes specific, publicly available information about facilities in the recycling system, including facility names, addresses, counties, phone numbers, emails, websites, North American Industry Classification System (NAICS) codes, infrastructure types, and feedstocks for each facility, where available.

EPA is soliciting public comments on the accuracy and completeness of the data, ease of use, graphics, and recommendations on future updates of the map. EPA will analyze the public comments to use as inputs for the next update of the tool. The specific public comment questions are:

1. Accuracy and Completeness of the Data

- Do the data reflect recycling infrastructure, end markets and market factors in your location accurately?
- Are the recycled materials tonnage estimations consistent with your knowledge of your geographical area?
- Are there any missing facilities, end markets, or other layers within the scope of this map that EPA should add?

2. Ease of Use

- Does the structure of the map features, layers, and overlays make sense?
- Is the interface intuitive? How easy or difficult is it to navigate the various icons and features?
- Are the underlying datasets easy to access and download?

3. Graphics

- Is the map visually accessible, particularly with multiple icons and layers turned on?
- Do you have any recommendations on improving the visualization of the key features?

4. Future Updates

- What additional infrastructure, layers, or tools would you want to see in version 2.0 of this map?

If you have questions regarding this action, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: May 5, 2023.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2023-10152 Filed 5-11-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-069]

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 May 1, 2023 10 a.m. EST Through May 8, 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. 20230062, Draft, USA, AK, Draft Legislative Environmental Impact Statement for the Public Law 106–65 Land Withdrawal Extension, Comment Period Ends: 07/11/2023, Contact: Grant Sattler 907–353–6701

EIS No. 20230063, Final, USFS, AK, Mendenhall Glacier Visitor Facility Improvements, Review Period Ends: 06/26/2023, Contact: Monique Nelson 907–209–4090

Amended Notice

EIS No. 20230005, Draft, BLM, ND, North Dakota Resource Management Plan Revision, Comment Period Ends: 05/22/2023, Contact: Kristine Braun 701–227–7725

Revision to FR Notice Published 01/20/2023; Extending the Comment Period from 04/20/2023 to 05/22/2023.

Dated: May 8, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–10161 Filed 5–11–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2023–07]

Reports Analysis Division Legal Question Resolution Program

AGENCY: Federal Election Commission.

ACTION: Agency procedure.

SUMMARY: The Federal Election Commission (“Commission”) adopted a program in 2011, which was last revised in 2019, providing for a means by which persons may have a legal question considered by the Commission earlier in both the report review process and the audit process. Because the Commission is separately adopting a new audit process, it is revising the policy for the legal question program to narrow its scope to encompass only legal questions arising from requests for corrective action made by the Commission’s Reports Analysis Division.

FOR FURTHER INFORMATION CONTACT: Jessica Selinkoff, Assistant General Counsel, Policy Division, or Joshua Blume, Attorney, 1050 First Street NE,

Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 1, 2011, the Commission adopted a program providing for a means by which persons may have a legal question considered by the Commission earlier in both the report review process and the audit process (“Legal Question Resolution Program”).¹ Because the Commission is separately adopting a new audit process for committees that do not receive public funds, effective June 1, 2024, for audits that begin after that date, the Commission will be terminating the Legal Question Resolution Program for legal questions arising in the course of audits. The Legal Question Resolution Program will remain in full effect with respect to audits commenced before June 1, 2024. At the conclusion of the last audit to be commenced before June 1, 2024, the Legal Question Resolution Program will no longer apply for any purpose. The program announced here and set forth below (“RAD Legal Question Resolution Program”) will take effect on June 1, 2024, and will apply only to legal questions arising from the Reports Analysis Division’s (“RAD”) review process.²

I. Procedures

Within 15 business days of a determination by RAD that a person remains obligated to take corrective action to resolve an issue that has arisen during the report review process, the person may seek Commission consideration if a material dispute on a question of law exists with respect to the recommended corrective action.³ A “determination” for purposes of triggering the 15 business days is the notification to the person of legal guidance prepared by the Office of General Counsel (“OGC”) at the request of RAD recommending the corrective action.

Any request for consideration by a person during the report review process shall be limited to questions of law on

material issues, when: (1) the legal issue is novel, complex, or pertains to an unsettled question of law; (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue; or (3) the request to take corrective action is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue. The request must specify the question of law at issue and why it is subject to Commission consideration. It should discuss, when appropriate, prior Commission matters raising the same issue, relevant court decisions, and any other analysis of the issue that may assist the Commission in its decision making. The Commission will not consider factual disputes under this procedure, and any requests for consideration other than on questions of law on material issues will not be granted.

All requests, including any extension requests, must be received by the Commission within 15 business days of the determination of corrective action. All requests must be directed to the attention of the Commission Secretary via email at LegalRequestProgram@fec.gov.⁴ Upon receipt of a request, the Commission Secretary shall forward a copy of any request to each Commissioner, the General Counsel, and the Staff Director.

Any request for an extension of time to file a RAD Legal Question Resolution Program request will be considered on a case-by-case basis and will only be granted if good cause is shown, and the Commission approves the extension request by four or more affirmative votes within five business days of receipt of the extension request. Within five business days of notification to the Commissioners of a request for consideration of a legal question, if two or more Commissioners agree that the Commission should consider the request, OGC may, at that time, attempt to resolve the matter informally over the course of five business days. Within 15 business days from the date upon which RAD and OGC conclude that the matter cannot be resolved informally, or from the expiration of the five-business day period, whichever occurs first, OGC will prepare and circulate a recommendation in accordance with all applicable Commission Directives. If the matter is resolved informally, RAD and OGC will notify the Commission that the matter has been resolved and notify the

¹ 76 FR 45798 (Aug. 1, 2011). The Commission has revised the program three times since 2011, as explained in the last revision. See Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 84 FR 36602 (July 29, 2019).

² This superseding RAD Legal Request Program will not be available in the course of audits of committees that receive public funding. Audits of such committees are governed by extensive regulations set forth in 11 CFR, subchapters E and F that, in the Commission’s judgment, provide sufficient opportunity to present legal questions to the Commission.

³ Many disputes involving corrective action requests hinge on questions of fact rather than questions of law, and thus are not appropriate for this procedure.

⁴ Requestors are advised that if they submit a request, electronically or otherwise, to a different address than designated in this Procedure, the processing of the request may be delayed.

Requestor in writing of the notification to the Commission. Informal resolution of a matter does not prevent the Requestor from seeking Commission consideration, in an additional or subsequent determination, subject to the requirements of this program.

After the recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. 552b(g), and applicable Commission regulations in 11 CFR part 2. However, if within 60 business days of the filing of a request for consideration, the Commission has not resolved the issue or provided guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners, RAD may proceed with the matter. After the 60 business days have elapsed, any requestor will be provided a copy of OGC's recommendation memorandum and an accompanying vote certification, or if no such certification exists, a cover page stating the disposition of the memorandum. Confidential information will be redacted as necessary.

After the request review process has concluded, a copy of the request for consideration, as well as the recommendation memorandum and accompanying vote certification or disposition memorandum, will be placed with the Committee's filings on the Commission's website within 30 days. These materials will also be placed on the Commission's web page dedicated to legal questions considered by the Commission under this program.

This procedure is not intended to circumvent or supplant the Advisory Opinion process provided under 52 U.S.C. 30108 and 11 CFR part 112. Accordingly, any legal issues that qualify for consideration under the Advisory Opinion process are not appropriate for consideration under this procedure.

II. Annual Review

No later than July 1 of each year, the Office of Compliance and OGC shall jointly prepare and distribute to the Commission a written report containing a summary of the requests made under the program over the previous year and a summary of the Commission's consideration of those requests and any action taken thereon. The annual report shall also include the Chief Compliance Officer's and the General Counsel's assessment of whether, and to what extent, the program has promoted efficiency and fairness in both the Commission's report review process, as

well as their recommendations, if any, for modifications to the program.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–10111 Filed 5–11–23; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 2023–06]

Audit Process for Committees That Do Not Receive Public Funds

AGENCY: Federal Election Commission.

ACTION: Agency procedure.

SUMMARY: The Federal Election Commission is revising its procedures for how it conducts audits of political committees that do not receive public funds.

FOR FURTHER INFORMATION CONTACT:

Dayna C. Brown, Assistant Staff Director, Audit Division, or Jessica Selinkoff, Assistant General Counsel, Policy Division, 1050 First Street NE, Washington, DC 20463, (202) 694–1200, (202) 694–1650, or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, as amended, (the “Act”) provides that the Federal Election Commission (the “Commission”) “may conduct audits . . . of any political committee required to file a report under section 30104 [of the Act].” 52 U.S.C. 30111(b).¹ The Commission previously set forth its audit process for committees that do not receive public funds, in part, in Directives 69 and 70, Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 84 FR 36602 (Jul. 19, 2019) (the “Legal Question Resolution Program”), and Procedural Rules for Audit Hearing, 74 FR 33140 (Jul. 10, 2009), as amended, 74 FR 79535 (Aug. 7, 2009) (collectively, the “Previous Procedural Documents”).

The audit procedures set forth herein will take effect June 1, 2024, and will apply to all audits that begin after this

¹ The Commission also has the statutory authority to conduct an audit in instances which, based upon a complaint, “the Commission determines by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation” of the Act. 52 U.S.C. 30109(a)(2). The procedures set forth here do not apply to audits conducted under 52 U.S.C. 30109 after finding reason to believe a violation has occurred, which are instead governed by the Act's enforcement provisions. See generally 52 U.S.C. 30109; 11 CFR part 111; Guidebook for Complainants and Respondents on the FEC Enforcement Process, available at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

date. An audit begins when committees receive an audit notification;² thus, any committee that receives an audit notification on or after June 1, 2024 will be audited under these new audit procedures. Audits that began before these procedures went into effect—*i.e.*, a committee received an audit notification before June 1, 2024—will continue to be conducted according to the processes set forth in the Previous Procedural Documents.

The Previous Procedural Documents are hereby sunset as follows. Directive 70, The Legal Question Resolution Program,³ and the Procedural Rules for Audit Hearings will remain in full effect with respect to audits commenced before June 1, 2024.⁴ At the conclusion of the last audit to be commenced before June 1, 2024, Directive 70, the Legal Question Resolution Program, and the Procedural Rules for Audit Hearings will no longer apply.

On January 9, 2023, the Commission published a notice of public hearing and request for public comments on its policies and procedures regarding the auditing of political committees that do not receive public funds.⁵ On February 14, 2023, the Commission held a hearing.⁶ In adopting the process set forth below, the Commission took into consideration the comments and testimony received during that process.⁷

The goal of the new audit process is to strike the appropriate balance, within the constraints of the Act, among efficiency, procedural protections for audited committees, orderly development of the law, transparency, and the Commission's statutory authority to seek voluntary compliance with the Act.

I. Revised Audit Process

A. Overview

The audit process begins with a review of a committee's reports by the Commission's Reports Analysis Division (“RAD”). If RAD determines that a committee's reporting errors exceed Commission-approved compliance thresholds, RAD will refer the

² See *infra*, Section I.C (explaining the audit notification).

³ The Commission is publishing in the **Federal Register** a new version of the Legal Question Resolution Program that will not apply to questions from audited committees.

⁴ Directive 69, which concerns, among other things, staff deadlines in audits, is being amended.

⁵ Notice of Public Hearing and Request for Public Comments, 88 FR 1228 (Jan. 9, 2023).

⁶ For the recording of the hearing, as well as witness testimony, see <https://www.fec.gov/updates/february-14-2023-public-hearing/>.

⁷ For a complete list of comments, see <https://www.fec.gov/legal-resources/policy-other-guidance/>.

committee to the Commission's Audit Division. The Audit Division will recommend that the Commission authorize audits of committees within the resource limitations of the Division. If the Commission votes to authorize an audit, Audit staff will send a notification letter to the audited committee explaining the process, informing the committee of its right to be represented by counsel, setting forth the basis upon which the Commission initiated the audit, and requesting records.

Following an Entrance Conference and audit fieldwork, Audit staff will prepare an Exit Conference Report containing proposed findings and recommended corrective action. The Exit Conference Report, which will attach OGC's written legal analysis of each proposed finding, will be provided to the committee at the Exit Conference. The committee may submit a written response to the Exit Conference Report addressing any factual or legal issue. Audit staff and OGC will work diligently to informally resolve any issues identified in the audited committee's response. If any issue remains unresolved, the committee may request an Audit Hearing to present arguments directly before the commissioners.

Following the response period and Audit Hearing, if any, Audit staff will prepare an Audit Division Recommendation Report, which will contain Audit's proposed findings, incorporate OGC's legal analysis of each proposed finding, document informal efforts to resolve issues raised by the audited committee, and note any corrective action the committee has taken since the exit conference. Audit staff will also prepare a proposed Final Audit Report of the Commission as an attachment. The Commission will vote on the proposed audit findings and approve a Final Audit Report of the Commission. Following the conclusion of the audit, the Commission will publish the audit documents on the Commission's website, as outlined in Section III below. Commission-approved audit findings may be referred to the Commission's Alternative Dispute Resolution Office ("ADRO"), Administrative Fine Program ("AF") or OGC pursuant to Commission-approved thresholds.

B. RAD Audit Referral

Pursuant to the Act, the Commission "shall perform an internal review of reports filed by select committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance

with the Act. Such thresholds for compliance shall be established by the Commission."⁸ 52 U.S.C. 30111(b). RAD issues Requests for Additional Information ("RFAs") to committees based on these Commission-approved thresholds for compliance when additional clarification is needed or a potential error, omission, or possible prohibited activity is identified. A committee's failure to respond, and inadequate or late responses to RFAs, may result in a committee accruing one or more audit points. When a committee accumulates audit points that meet Commission-established thresholds for an election cycle, RAD will refer the committee to the Audit Division for an audit ("RAD Audit Referral"), consistent with the Commission-approved RAD Procedures. Audit staff review the RAD Audit Referrals and submit a request to the Commission to authorize an audit of committees meeting the thresholds subject to the Audit Division's resource limitations. Audits must be authorized by an affirmative vote of four or more commissioners. The Act provides that "audit[s] shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate . . . shall be commenced within 6 months of the election for which such committee is authorized." *Id.*

C. Notification to the Audited Committee

The audit process begins with a notification letter to the committee that the Commission has authorized an audit of the committee ("Notification"). The Notification sets forth the basis upon which the Commission initiated the audit, requests records, informs the committee of its right to be represented by counsel, directs the committee to appropriate Commission resources, and advises the committee that any records and/or correspondence the committee provides to the Commission are subject to the Commission's disclosure policies, set forth below in Section III, and may also be shared with other law enforcement agencies.

The initial request for records will be relevant to Audit's gathering of background information about the committee (such as its organization and compliance contacts), initial review of the committee's disclosure reports for

mathematical and other errors, reconciliation of bank records and committee databases to reported activity to ensure activity has been reported accurately, reconciliation of committee databases to bank records, and determination of a testing plan based on the noncompliance identified in the RAD Audit Referral. The initial request for records may include the following: bank statements, committee reconciliations, documentation for all accounts (including the federal and Levin account, if applicable), receipt and disbursement databases, credit card merchant statements, invoices, canceled checks, committee credit card records, contributor check copies, communications soliciting and receiving contributions, signed contracts, payroll journals, deposit batches, debit and credit memos, source documentation for contributions, and loan/line of credit information.⁹

Committees are expected to provide all requested records in an electronic format that can be accessed and read by Audit staff, except that committees may submit paper records to the extent the committee maintained the records in paper format and it is impractical to convert the records to an electronic format.

The committee has 30 calendar days from the date of the Notification to provide the records requested in the Notification.¹⁰ Audit staff will grant a 15-calendar day extension upon the written request of the committee, for a total of 45 days. Extensions sought for longer than 15 calendar days may be granted by Audit staff subject to the committee agreeing, in writing, to toll the applicable statute of limitations for the duration of the extension granted. Audit staff will attempt, for a period of no more than 30 calendar days, to resolve informally with the committee any disputes over the production of records as early as possible in the process.

If any disputes over records requests remain upon the expiration of the 30-calendar day informal resolution period, Audit staff may request that OGC draft subpoenas, requests for written answers, or other compulsory process for Commission approval. Audit staff will make such request by memorandum within 5 days of the expiration of the informal resolution period. Within 10 calendar days of Audit staff's request, OGC shall circulate to the Commission

⁸ The Commission publishes criteria for substantial compliance on its website, via redacted versions of the RAD Review and Referral Procedures ("RAD Procedures"). See FEC, Documents on enforcement and compliance practices, Reports Analysis Division documents, <https://www.fec.gov/legal-resources/enforcement/procedural-materials/>.

⁹ The list of records is not exhaustive.

¹⁰ For this and all deadlines discussed herein, if the deadline falls on a weekend or legal holiday, as defined at 11 CFR 111.2, the deadline will be the next business day.

a recommendation memorandum, attaching Audit's memorandum to OGC, all communications with the audited committee relevant to the records dispute, and drafts of the compulsory process documents OGC requests that the Commission authorize, on a 48-hour no objection basis. If any commissioner objects, the Commission shall consider the recommendation memorandum in the next executive session. If a committee does not comply with approved compulsory process, the Commission shall consider any recommendation to initiate civil enforcement of such compulsory process on a 48-hour no objection basis. If any commissioner objects, the Commission shall consider the request for civil enforcement of compulsory process in the next executive session.

D. Entrance Conference and Fieldwork

Within 60 days of the date by which the committee provides Audit staff with requested documents, an Entrance Conference shall be held between representatives of Audit, RAD, OGC, and the committee. At the Entrance Conference, Audit staff will explain the Commission's audit process. Additional meetings between Commission staff and committee personnel may be held during fieldwork to discuss possible audit findings and to resolve issues arising during the audit.

If, during fieldwork, Audit staff discover, in the normal course of their review, evidence suggesting additional instances of material non-compliance, Audit staff will circulate a request to approve an expanded audit scope to the Commission on a 48-hour no objection basis. The request will include a brief summary of the evidence and the relevant Commission-approved compliance thresholds. If any commissioner objects, the Commission shall consider the request in executive session. If the request is approved by an affirmative vote of four or more commissioners, Audit staff shall send the committee a Supplemental Notification that sets forth the expanded scope of the audit and basis therefore, and a supplemental request for records commensurate with the expanded scope.

In the event of a Supplemental Notification, the committee must provide the requested records, in the format described above, within 30 calendar days. The committee may request a 15-calendar day extension to provide the additional records, for a total of 45 calendar days. Extensions sought for longer than 15 calendar days may be granted by Audit staff subject to the committee agreeing, in writing, to

toll the applicable statute of limitations for the duration of the extension granted. Audit staff shall attempt to informally resolve with the committee any disputes over supplemental records requests in the same manner as set forth above. If the committee has not provided the additional records requested within 45 calendar days of the Supplemental Notification, Audit staff may request that OGC draft subpoenas, requests for written answers, or other compulsory process for Commission approval, pursuant to the process described above.

E. Exit Conference & Response

At the conclusion of fieldwork, Audit staff will assess whether the audit has uncovered apparent findings of noncompliance.

For audits in which Audit staff preliminarily identify at least one finding, Audit staff will provide OGC a preliminary Exit Conference Report, setting forth Audit's preliminary findings for legal review. OGC shall provide Audit its legal analysis of the preliminary findings, in writing, which shall be incorporated, with redactions as appropriate (but to the least extent possible), into the Exit Conference Report as an attachment. Thereafter, Audit staff, OGC, RAD, and the committee will meet for an Exit Conference. During this meeting, the committee will receive the Exit Conference Report, setting forth Audit's preliminary findings and recommended corrective actions, if any.

Absent a dispute about any proposed finding or recommended corrective action, committees are encouraged to take the recommended corrective action promptly, and to the extent they do, the Commission may take those actions into account in any subsequent OGC enforcement action, including reducing the civil penalty if the findings are referred for enforcement. To receive these benefits, the committee must take the recommended corrective action within 30 calendar days of receipt of the Exit Conference Report, or within 30 calendar days following the resolution of a dispute over a recommended corrective action, whichever occurs later.

Within 30 calendar days of the Exit Conference, the committee may file a response to the Exit Conference Report ("Response"), addressing any factual or legal issues, including any recommended corrective action. The committee may request a 15-calendar day extension to respond to the Exit Conference Report, for a total of 45 calendar days. Extensions sought for longer than 15 calendar days may be

granted by Audit staff subject to the committee agreeing, in writing, to toll the applicable statute of limitations for the duration of the extension granted. If the committee's Response disputes any factual finding, question of law, or recommended corrective action set forth in the Exit Conference Report, Audit staff, in consultation with OGC for disputes over questions of law, shall attempt to resolve the issue informally with the committee for a period of no more than 30 calendar days. If any issue of fact, law, or recommended corrective action remains unresolved at the end of the informal resolution period, the committee may request an Audit Hearing as described further below.

For audits in which Audit staff, in accordance with Commission-approved thresholds, determine (1) at the conclusion of fieldwork, or (2) after receipt of the Exit Conference Report Response, that the committee is in substantial compliance with the Act and there are no proposed findings, Audit staff will circulate to the Commission an Audit Division Recommendation Report stating that the committee is in substantial compliance with the Act and attach a proposed Final Audit Report of the Commission on a 72-hour no-objection basis no later than 15 calendar days from the Exit Conference or after Audit staff determines that the committee is in substantial compliance, whichever occurs earlier. If a commissioner objects, the Audit Division Recommendation Report shall be considered at the next open meeting. After the Commission has approved the Final Audit Report of the Commission by the affirmative vote of four or more commissioners, Audit staff will publish the file pursuant to the process described in Section III below, but will include on the public record only the Audit Division Recommendation Report, Final Audit Report of the Commission, the Exit Conference Report (if applicable), Response (if applicable), and the Vote Certification for the Final Audit Report of the Commission.

F. Audit Hearing

The Commission is continuing to provide audited committees with the opportunity to address the Commission directly before the Commission considers adopting any finding that the committee has not complied with the Act or Commission regulations.

Committees may, within 10 calendar days of the conclusion of the informal resolution period following the Exit Conference Report Response, submit a written request to the Commission Secretary for an Audit Hearing. The request should be sent to

secretary@fec.gov. The Commission Secretary's Office shall notify commissioners, Audit staff, and OGC of any such request within five calendar days of receipt. All timely requests for an Audit Hearing shall be granted, and the Audit Hearing will be scheduled as soon as practicable, but no later than 60 calendar days following receipt of the request. Late requests for an Audit Hearing will not be accepted absent good cause to be determined by the affirmative votes of four or more commissioners, and unless the committee agrees to toll the applicable statute of limitations. Audit Hearings are voluntary, and the Commission will not draw an adverse inference based on the committee's request for, or lack of request for, an Audit Hearing.

Any request for an Audit Hearing shall specify what issue(s) the committee expects to address and should include citations to any authorities (including prior Commission actions) on which the committee is relying or intends to rely at the Audit Hearing. The committee may incorporate by specific reference any information or arguments set forth in its Response to the Exit Conference Report. Audit staff will provide to the Commission prior to the Audit Hearing the committee's request for an Audit Hearing, the Exit Conference Report and attached OGC legal analysis, the Response, and Audit and OGC's analysis of the Response. If the committee discovers new information after submission of their request for an Audit Hearing, it should provide the new information to Audit staff as soon as possible, prior to the Audit Hearing. Audit staff will, in turn, notify the Commission. If the committee submits documents within 48 hours of the Audit Hearing, the Commission may ask the committee to toll the applicable statute of limitations so that it may consider such late-submitted documents.

The purpose of the Audit Hearing is to provide a committee undergoing an audit with an opportunity to present its arguments directly to the commissioners when the Audit Division proposes a finding that the committee has not complied with the Act or Commission regulations, but before the Commission adopts a Final Audit Report of the Commission containing any findings of non-compliance. A committee may be represented by counsel, at the committee's own expense, or may appear *pro se* at the hearing. A committee (or its counsel) will have the opportunity to present arguments. Commissioners will have the opportunity to pose questions to the audited committee or their counsel, if

represented. At the Audit Hearing, absent prior notice to the Audit Division and for good cause shown, committees may raise only issues that were identified in their Response to the Exit Conference Report or request for an Audit Hearing. Similarly, absent good cause, committees may not introduce any new documents at the Audit Hearing that were not previously provided to Audit staff at least 48 hours prior to the Audit Hearing. Good cause will be decided by the Commission at its sole discretion. If the Commission determines that there is good cause to allow the committee to raise additional issues or to introduce new documents, the committee may be asked to agree to toll the applicable statute of limitations to allow time for the Commission and Audit to consider the new information or issues.

The Commission will conduct the Audit Hearing in an executive session and will have a transcript made of the hearing. The transcript will become part of the record of that audit and may be relied upon for Commission determinations. Committees may be bound by any representations made by the committee or its counsel at the Audit Hearing. The Commission will make the transcript available to the committee for inspection as soon as is practical after the hearing. A committee may purchase copies of its Audit Hearing transcript from the court reporter.

Committees should notify the Commission Secretary at least one week prior to the scheduled date of the Audit Hearing if they intend to use charts, handouts, or audio-visual aids during their presentation to the Commission, to allow the Commission time to coordinate the handling of these arrangements.

The Commission will determine the format and time allotted for each hearing at its discretion. Among the non-exclusive factors that the Commission may consider are agency time constraints and the complexity of the issues to be raised. The Commission will determine the amount of time allocated for each portion of the hearing; the time limit may vary between Audit Hearings. The Commission anticipates that most Audit Hearings will begin with a brief opening statement by the committee or its counsel. Thereafter, commissioners will have the opportunity to pose questions to the audited committee, Audit staff and OGC representatives, as necessary, to clarify any issue of fact or question of law. Audit Hearings will normally conclude with closing remarks from the committee or its counsel. Third-party

witnesses may not be called to testify at the Audit Hearing. However, any commissioner may invite the committee to submit supplementary information or briefing after the Audit Hearing. The Commission discourages voluminous submissions. Supplementary information shall be submitted no more than 10 calendar days after the Audit Hearing unless the request for information imposes a different deadline. Requests to supplement the record may be made by the audited committee within 10 calendar days of the Audit Hearing, but no supplemental information will be accepted absent Commission approval of such a request by four or more affirmative votes. Materials requested by the Commission and materials considered by the Commission in making its determination may be made part of the public record.

G. Audit Division Recommendation Report and Proposed Final Audit Report of the Commission

No later than 60 calendar days after the Exit Conference Report Response deadline, the expiration of the 30 calendar day period for informal resolution of disputes, the Audit Hearing, or the expiration of the committee's opportunity to request an Audit Hearing, whichever occurs later, Audit staff will circulate to the Commission an Audit Division Recommendation Report. The Audit Division Recommendation Report is a consolidated and updated (to the extent necessary) presentation of Audit's proposed findings and OGC's legal analysis, prepared for Commission consideration prior to voting on any recommended findings. Specifically, the Audit Division Recommendation Report will include, for each proposed finding, Audit staff's factual findings, OGC's legal analysis, and whether the committee implemented Audit's recommended corrective actions. The Audit Division Recommendation Report will also include, as an attachment, a proposed Final Audit Report of the Commission. The proposed Final Audit Report of the Commission shall contain any proposed findings and legal analysis that Audit staff recommend that the Commission adopt and shall include, as attachments, any non-financial materials relevant to the Commission's decision and not otherwise incorporated into the proposed Final Audit Report (such as copies of materials produced by the

committee).¹¹ The Audit Division Recommendation Report and proposed Final Audit Report of the Commission will be circulated to the Commission for a vote on a one-week tally. If any commissioner objects during the tally vote, the Audit Division Recommendation Report shall be placed on the Commission's next open session agenda.

II. Final Audit Report of the Commission

The Final Audit Report of the Commission will include all findings receiving four or more affirmative votes of the commissioners. If no findings are approved, the Final Audit Report of the Commission shall so state.

Any proposed audit finding that is rejected by four or more votes will not be included in the Final Audit Report of the Commission. Any proposed audit finding the disposition of which does not receive four or more votes will be included in the Final Audit Report of the Commission under the heading "Issues Not Agreed Upon by a Majority of the Commission." Any commissioner may issue a statement describing the reasons for their vote on any recommendation made by the Audit staff. Any such statement of reasons shall be made part of the file.

III. Publication of the Audit File

Within 30 calendar days of the conclusion of the audit by adoption of a Final Audit Report of the Commission, the Commission will publish the audit file on its website. The Commission will disclose the following audit materials as a matter of regular practice, subject to redactions, as necessary, for confidentiality under 52 U.S.C. 30109 and applicable privileges: (1) the Exit Conference Report and accompanying OGC legal analysis, (2) the Audit Division Recommendation Report, (3) memoranda requesting compulsory process, (4) the Final Audit Report of the Commission, (5) committee responses, including attached declarations and affidavits but not including any financial materials, (6) the committee request for an Audit Hearing, (7) the transcript of the Audit Hearing, (8) Vote Certifications, (9) Statements of any commissioners, and (10) any other non-financial materials

¹¹ As used here and in Section III, below, "non-financial materials" include, but are not limited to, public communications described in 11 CFR 100.26 and solicitations for contributions. "Financial materials" include, but are not limited to, bank records, committee databases and spreadsheets, cancelled checks, loan documentation, credit card merchant statements, invoices, contributor check copies, credit card receipts, signed contracts, payroll journals, and deposit batches.

and documents upon which commissioners relied.

IV. Potential Enforcement

Within 30 calendar days of the adoption of the Final Audit Report of the Commission, Audit staff will assess whether any Commission-approved audit findings meet Commission approved thresholds for referral to one of the Commission's enforcement processes in OGC, ADRO, or AF. Such referrals are considered "information ascertained in the ordinary course of the Commission's supervisory responsibilities." 52 U.S.C. 30109(a)(2). To the extent the committee took the recommended corrective action as set forth in Section I.E., the Commission may reduce the civil penalty in an OGC enforcement action. To receive this benefit, the committee must have taken the recommended corrective action within 30 calendar days of receipt of the Exit Conference Report, or within 30 calendar days following the resolution of a dispute over a recommended corrective action, whichever occurs later.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023-10110 Filed 5-11-23; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Wednesday, July 12, 2023, from 11:15 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT:

Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427-1456. For press-related information, please contact Bruce Seeman at (301)

427-1998 or Bruce.Seeman@AHRQ.hhs.gov.

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827-4840, no later than Wednesday, May 31, 2023. The agenda, roster, and minutes will be available from Jenny Griffith, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Jenny Griffith's phone number is (240) 446-6799.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). 5 U.S.C. 1009. The Council is authorized by section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Wednesday, July 12, 2023, NAC members will meet to conduct preparatory work prior to convening the Council meeting at 11:15 a.m., with the call to order by the Council Chair, an introduction of NAC members, and approval of previous Council summary notes. The NAC members will then receive an update from the AHRQ Director. The agenda will also include an update on AHRQ's aging initiatives and a discussion of consumer experience measurements. The meeting is open to the public and will adjourn at 3:30 p.m. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to <https://www.ahrq.gov/news/events/nac/>. The

final agenda will be available on the AHRQ website no later than Wednesday, June 28, 2023.

Dated: May 8, 2023.

Marquita Cullom,
Associate Director.

[FR Doc. 2023-10140 Filed 5-11-23; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day-23-0063]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled “Human Health Effects of Drinking Water Exposures to Per- and Polyfluoroalkyl Substances (PFAS): A Multi-site Cross-sectional Study (The Multi-site Study)” to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on January 11, 2023, to obtain comments from the public and affected agencies ATSDR did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Human Health Effects of Drinking Water Exposures to Per- and Polyfluoroalkyl Substances (PFAS): A Multi-site Cross-sectional Study (The Multi-site Study) (OMB Control No. 0923-0063, Exp. Date 05/31/2023)—Revision—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 Revision of the Paperwork Reduction Act (PRA) Information Collection Request (ICR) titled “Human Health Effects of Drinking Water Exposures to Per- and Polyfluoroalkyl Substances (PFAS): A Multi-site Cross-sectional Study (The Multi-site Study)” (OMB Control No. 0923-0063, Exp. Date 05/31/2023).

Per- and polyfluoroalkyl substances (PFAS) are a family of chemicals used in industrial applications and consumer products. PFAS contamination of drinking water is widespread in the U.S. Some estimates indicate that at least sixty million residents were served by 66 public water supplies that had at least one sample at or above the U.S. Environmental Protection Agency (EPA) Lifetime Health Advisory for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) (individually or combined), which is 70 nanograms per liter (ng/L) of water. Industrial facilities that manufacture or use PFAS have contaminated drinking water in surrounding communities in several states. In addition, PFOS, PFOA, perfluorohexane sulfonic acid (PFHxS) and other PFAS chemicals are constituents in aqueous film-forming foam (AFFF), used to extinguish

flammable liquid fires. The use of AFFF at military bases and other sites may have resulted in the migration of PFAS chemicals through soils to ground water and/or surface water sources of drinking water for the bases and/or surrounding communities around the country.

In response to growing awareness of the extent of PFAS contamination across the U.S., the section 316(a) of the 2018 National Defense Authorization Act (Pub. L. 115-91), as amended by section 315 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), first authorized and appropriated funds for ATSDR to conduct this study on the human health effects of PFAS contamination in drinking water. The existence of widespread contamination at many sites across the U.S. makes this a paramount effort in addressing the health effects of exposures to PFAS from contaminated drinking water. Currently, the study is funded through section 337 of the William M. (Mac) Thornberry National Defense Authorization Act for fiscal years 2019 through 2023 (Pub. L. 116-283).

The Multi-site Study builds on research methods and activities developed for the proof-of-concept study at the Pease International Tradeport in Portsmouth, New Hampshire (the Pease Study) (OMB Control No. 0923-0061; Discontinued 08/31/2022). These methods and activities included developing data management systems and community engagement materials, modifying the childhood neurobehavioral test battery, adjusting blood collection volume, and modifying data collection materials such as the childhood questionnaire and medical records abstraction forms.

ATSDR is conducting this cooperative research program under Notice of Funding Opportunity (NOFO) No. CDC-RFA-TS-19-002, titled “Multi-site Study of the Health Implications of Exposure to PFAS-Contaminated Drinking Water.” The seven research recipients are University of Colorado School of Public Health, Michigan State Department of Health and Human Services, Pennsylvania Department of Health and RTI International, Rutgers School of Public Health, Silent Spring Institute, SUNY at Albany and the New York State Department of Health, and the University of California at Irvine.

Under the cooperative agreement, each recipient proposed candidate study sites at communities whose drinking water was impacted by AFFF use or by industrial PFAS releases. Site selection considered the documented levels of PFAS drinking water concentrations. The aim was to include sites so that a

wide range in PFAS exposures levels were included in the study. This will enable the evaluation of exposure-response trends including effects at the lower range of exposures. Ground water contaminant fate and transport models and water distribution system models may be necessary to identify the areas with contaminated drinking water, to determine the period when the drinking water was contaminated, and to reconstruct historical PFAS contaminant concentrations.

The Multi-site Study is designed to aggregate data across all recipient sites. The main goal of this cross-sectional study is to evaluate associations between measured and reconstructed historic serum levels of PFAS including PFOA, PFOS, and PFHxS, and selected health outcomes. The health outcomes of interest include lipids, renal function and kidney disease, thyroid hormones and disease, liver function and disease, glycemic parameters and diabetes, as well as immune response and function in both children and adults. In addition, the study will investigate PFAS differences in sex hormones and sexual maturation, vaccine response, and neurobehavioral outcomes in children. In adults, additional outcomes of interest include cardiovascular disease, osteoarthritis and osteoporosis, endometriosis, and autoimmune disease.

For exposure estimation, participants will be categorized based on their measured serum concentration of PFAS compounds or on modeled estimated historical serum levels (*e.g.*, referent or low, medium, high). Measured and estimated PFAS serum levels will also be evaluated as continuous variables. At sites with prior PFAS biomonitoring data, the study will evaluate changes in PFAS concentration over time.

Each recipient is reconstructing historic serum PFAS concentrations. This is being done by estimating half-lives and elimination rates as well as by water contamination modeling to inform pharmacokinetic (PK) or physiologically based pharmacokinetic (PBPK) models. Historical serum PFAS reconstruction will enable the evaluation of exposure lags and vulnerable periods as well as statistical analyses that can control for confounding and reverse causation due to physiological factors. Over the first three years of the five-year cooperative agreement program, the recipients have prepared working group support documents describing the methods used by sites for the historical reconstruction and for the whole consortium for the PBPK modeling. Both documents are undergoing external peer review as required by ATSDR.

If feasible, each recipient is identifying and enumerating all households served by the contaminated drinking water supply in the selected community to recruit potential participants and to meet the sample size requirements for children and adults. If the selected community is served by a PFAS-contaminated public water system, then the recipient will obtain a list of households served by the water purveyor from its billing records. ATSDR estimates that up to 14 public water purveyors will spend 10 hours each to retrieve lists of households they serve per year ($n=140$ hours total). If the community is served by contaminated private wells, then the recipient will obtain a list of households with contaminated wells from the local and/or State health and environmental agencies. ATSDR estimates that up to seven environmental protection agencies will spend seven hours each to retrieve lists of households with contaminated private wells per year ($n=49$ hours total).

Statistical sampling methods (*e.g.*, a two-stage cluster sample) may be used for recruitment of study participants if all the affected households can be enumerated. If the PFAS drinking water concentrations vary widely across the community, then the recipient can use targeted sampling approaches—including oversampling of areas with higher PFAS concentrations—to ensure a sufficiently wide distribution of exposure levels among study participants to evaluate exposure-response trends. If enumeration of all households is not feasible, or if participation rates are expected to be low, then the recipient can consider non-probabilistic sampling approaches such as “judgment” and “snowball” sampling approaches.

The recipients should consider requesting assistance from local and State health departments in their recruitment efforts. In addition, the recipients should engage community organizations to assist in conducting outreach about the study and recruitment of participants and consider establishing a community assistance panel (CAP). The CAP could provide comments on any additional investigator-initiated research questions and hypotheses and facilitate the involvement of the affected community in decisions related to outreach about the study, participant recruitment strategies, and study logistics. The CAP could also assist the recipient in the dissemination of study findings to the community.

In total, ATSDR seeks to cumulatively enroll approximately 9,100 participants

(7,000 adults and 2,100 children and their parents) from communities exposed to PFAS-contaminated drinking water. In total, each recipient will attempt to meet a target recruitment of 1,000 adults and 300 children. Annualized estimates are 3,033 participants (2,333 adults and 700 children). Over the first three years of the five-year cooperative agreement program, the recipients have enrolled over 3,000 adults and over 300 children (as of 03/08/2023). The child enrollment has been especially challenging during and following major closure and obstacles and of access to schools and other educational facilities due to the COVID-19 pandemic.

To restrict this study to drinking water exposures, adults occupationally exposed to PFAS are not eligible for the study (*e.g.*, firefighters or workers in an industry using PFAS chemicals in its manufacturing process). Likewise, children whose birth mothers were occupationally exposed will not be eligible.

Assuming a 95% eligibility rate and a 40% response rate, ATSDR estimates that the recipients will screen 7,982 people (6,140 adults and 1,842 children) each year across all sites to recruit the target sample size of 3,033 participants (2,333 adults and 700 children), using an annual time burden of 1,330 hours. The recipients will provide appointment reminder calls for each eligible person who agrees to be enrolled ($n=3,033$ per year).

At enrollment, each recipient will obtain adult consent, parental permission, and child assent before data collection begins. For each participant, the recipient will take body measures, collect blood samples to measure PFAS serum levels and several effect biomarkers such as lipids, and thyroid, kidney, immune and liver function. The recipient will also obtain urine samples from participants to measure PFAS levels and kidney function biomarkers. The study will archive leftover serum and urine samples for additional analyses of PFAS chemicals and specific effect biomarkers. The National Center for Environmental Health (NCEH) laboratory will perform blood and urine PFAS analyses for all Multi-site Study participants. Thus, issues of inter-laboratory variability for exposure measures will be eliminated.

Adult participants and a parent of child participants will complete a questionnaire that includes residential history, medical history, occupational history, and water consumption habits ($n=3,033$ adults and 700 children per year). Ideally, the parent will be the child's birth mother, as ATSDR will ask

details about the child's exposure, pregnancy, and breastfeeding history. For purposes of time burden estimation, ATSDR assumes that 20 percent of parents (n=140 per year) will also enroll as adults and can take the child short form questionnaire; therefore, 560 parents will take the child long form questionnaire per year. Parents and children, with administration by trained professionals, will also complete neurobehavioral assessments of the child's attention and behaviors (n=700 per year). The time burden for responding to questionnaires is 1,482

hours, and for neurobehavioral assessments is 1,225, per year.

To facilitate access to medical and school records, each recipient will reach out to local medical societies, public school systems, and private schools, to enlist their cooperation with the study. The recipient will ask for permission to verify participants' medical conditions to confirm self-reported health outcomes. The recipient will also seek permission to obtain information from the children's school records to supplement their behavioral assessment results. Based on ATSDR's experience from the Pease Study (OMB

Control No. 0923-0061; Discontinued 08/31/2022), ATSDR estimates that it will take 30 school administrators, 48 education specialists, 70 medical office administrators, and 150 adult and 50 pediatric medical record specialists to complete health condition and school information verification and abstractions across all study sites. The annual time burden for medical and educational record abstraction is estimated to be 2,506 hours.

The total annualized time burden requested is 8,149 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Water Purveyors	Drinking Water Information Collection Form ..	14	1	10
Environmental Protection Agencies	Drinking Water Information Collection Form ..	7	1	7
Multi-site Study Participants	Eligibility Screening Script	7,982	1	10/60
	Appointment Reminder Telephone Script	3,033	1	5/60
	Update Contact Information Hardcopy Form	3,033	1	5/60
	Medication List	3,033	1	3/60
	Body and Blood Pressure Measures Form ...	3,033	1	5/60
	Blood Draw and Urine Collection Form	3,033	1	10/60
	Adult Questionnaire	2,333	1	30/60
	Child Questionnaire—Long Form	560	1	30/60
	Child Questionnaire—Short Form	140	1	15/60
	Parent Neurobehavioral Test Battery	700	1	15/60
	Child Neurobehavioral Test Battery	700	1	90/60
Medical Office Administrators	Request for Medical Record Abstraction	70	43	20/60
Medical Records Specialists	Medical Record Abstraction Form—Adult	150	16	20/60
	Medical Record Abstraction Form—Child	50	14	20/60
School Administrators	Request for Child School Record Abstraction	30	23	20/60
Education Specialists	Child School Record Abstraction Form	48	15	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2023-10189 Filed 5-11-23; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of End to Requirement for Air Passengers To Provide Proof of COVID-19 Vaccination Before Boarding a Flight to the United States

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human

Services (HHS), announces that CDC's Amended Order: *Implementing Presidential Proclamation on Safe Resumption of Global Travel During the COVID-19 Pandemic* no longer will be in effect beginning at 12:01 a.m. eastern daylight time on May 12, 2023.

Consequently, noncitizen, nonimmigrant air passengers will no longer be required to show proof of being fully vaccinated with an accepted COVID-19 vaccine before boarding a flight to the United States.

DATES: Starting at 12:01 a.m. Eastern Daylight Time on May 12, 2023, noncitizen, nonimmigrant air passengers will no longer need to show proof of being fully vaccinated with an accepted COVID-19 vaccine to board a flight to the United States.

FOR FURTHER INFORMATION CONTACT: Candice Swartwood, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16-4, Atlanta, GA 30329. Telephone: 1-800-232-4636.

SUPPLEMENTARY INFORMATION:

Proclamation 10294 of October 25, 2021, suspended, subject to certain exceptions, the entry of nonimmigrant noncitizens into the United States by air travel without full vaccination for COVID-19. Section 4 of the Proclamation directed CDC to implement the Proclamation as it applies to public health. Pursuant to that direction, CDC issued an order on October 30, 2021, and an amended order on April 4, 2022, implementing the Proclamation.

On May 9, 2023, the President issued a Proclamation revoking Proclamation 10294's vaccination requirement for noncitizen nonimmigrants entering the United States by air travel, effective at 12:01 a.m. eastern daylight time on May 12, 2023. The Proclamation explained that, considering progress in public health and based on the latest guidance from public health experts, international air travel restrictions imposed in October 2021 were no longer necessary.

Pursuant to the May 9, 2023, Proclamation, and the President's revocation of the vaccination requirements contained in Proclamation 10294, CDC has reviewed its Amended Order *Implementing Presidential Proclamation on Safe Resumption of Global Travel During the COVID-19 Pandemic* and has determined that termination of this Amended Order is warranted. CDC's Amended Order, which implemented Proclamation 10294's vaccination requirements, is terminated and no longer remains in effect as of 12:01 a.m. eastern daylight time on May 12, 2023.

This means that as of 12:01 a.m. eastern daylight time on May 12, 2023, noncitizen, nonimmigrant air passengers no longer need to show proof of being fully vaccinated with an accepted COVID-19 vaccine to board a flight to the United States.¹

Kathryn L. Wolff,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2023-10276 Filed 5-10-23; 11:15 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-22DI; Docket No. CDC-2023-0036]

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 Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry. This information collection is designed to evaluate oil and gas extraction workers' noise and chemical exposures and hearing.

DATES: CDC must receive written comments on or before July 11, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0036 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; phone: 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

Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Oil and gas extraction (OGE) workers play an important role in supporting the United States economy and help fulfill the energy needs of Americans and American businesses. OGE workers have significant risks for a variety of exposures at oil and gas well sites, and there has been no significant occupational noise exposure research in the United States onshore upstream OGE sector. This proposed project will characterize relationships between noise exposure, chemical exposures, hearing loss, and hearing loss prevention practices within the onshore OGE industry.

Primary data will be collected using three approaches. First, researchers will collect direct measurements of noise and ototoxic chemicals on job sites, including personal exposure assessments of OGE workers. Second, researchers will use a questionnaire to collect information on noise and chemical exposures, hearing loss, and associated factors among OGE workers. Third, audiometry tests performed by NIOSH will be offered to industry partners to further understand extent of hearing loss amongst OGE workers.

Data will be used to understand noise exposures, ototoxic chemical exposures, self-reported hearing loss, and hearing loss prevention practices in the OGE industry. Subsequently, the data and

¹ This Notice, like CDC's April 2022 Amended Order that no longer will be in effect as of 12:01 a.m. eastern daylight time on May 12, is not a substantive rule within the meaning of the Administrative Procedure Act (APA) because it implements the President's revocation of the vaccination requirements contained in the October 2021 Proclamation (which in turn was the basis for the CDC's Amended Order). In any event, the APA's requirement of a 30-day delay in the effective date of certain "substantive rule[s]," 5 U.S.C. 553(d), would not apply to this notice, as this notice "relieves a restriction" contained in the Amended Order, *id.* Section 553(d)(1). Independently, were the APA applicable, CDC finds good cause for its termination of the April 2022 Amended Order to take effect at 12:01 a.m. on May 12, 2023, which coincides with the end of the COVID-19 public health emergency, given the latest public health conditions and the latest guidance from public health experts. See 5 U.S.C. 553(b), (d).

analysis will be used to create evidence-based interventions and recommendations, which will be

communicated to the spectrum of OGE industry stakeholders.
CDC requests OMB approval for an estimated 65 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)
Oil and gas workers	Noise and Hearing Questionnaire	167	1	17/60	47
	Audiometry Testing	33	1	30/60	17
	Exposure Monitoring Results Notification Form.	40	1	2/60	1
Total .....	.....	.....	.....	.....	65

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023-10188 Filed 5-11-23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-23-1243]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Rapid Response Suicide Investigation Data Collection” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on October 28, 2022 to obtain comments from the public and affected agencies. There were no comments to the 60-day

Federal Register Notice. This notice serves to allow an additional 30 days for public and affected agency comments. CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Rapid Response Suicide Investigation Data Collection (OMB Control No. 0920-1243, Exp. 5/31/2023)—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is frequently called upon to respond to urgent requests from one or more external partners (e.g., local, State, Territory, and Tribal health authorities; other Federal agencies; local and State leaders; schools; or other partner organizations) to conduct investigations of suicide. Supporting rapid investigations to inform the implementation of effective suicide prevention strategies is one of the most important ways CDC can serve to protect and promote the health of the public.

Rapid Response Suicide Investigation Data Collections are specifically designed to inform the implementation of prevention strategies in a state, county, community, or vulnerable population where a possible suicide cluster or increasing trend has been observed. This Generic Clearance will not be used to conduct research studies or to collect data designed to draw conclusions about the United States or areas beyond the defined geographic location or vulnerable population that is the focus of the investigation. CDC, in collaboration with external partners, will identify the respondent universe for each Rapid Response Suicide Investigation Data Collection. The respondent universe will be determined based on the information needed to understand potential suicide clusters, significant increases in suicidal behavior and suicide, risk and protective factors, and vulnerable populations, in order to inform the implementation of suicide prevention strategies.

CDC requests OMB approval for an estimated 1,000 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Rapid Response Suicide Investigation Data Collection Participants.	Rapid Response Suicide Investigation Protocol.	2,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2023–10190 Filed 5–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9142–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2023

AGENCY: Centers for Medicare &
Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists
CMS manual instructions, substantive

and interpretive regulations, and other
Federal Register notices that were
published in the 3-month period,
relating to the Medicare and Medicaid
programs and other programs
administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is
possible that an interested party may
need specific information and not be
able to determine from the listed
information whether the issuance or
regulation would fulfill that need.
Consequently, we are providing contact
persons to answer general questions
concerning each of the addenda
published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the Federal Register	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	William Parham	(410) 786–4669
VII Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786–2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786–7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786–3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners

(NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and “real time” accessibility. In addition, many of the

websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the

subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at <http://www.cms.gov/manuals>.

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell,

having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the **Federal Register Liaison**, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: May 8, 2023.

Trenesha Fultz-Mimms,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120-01-P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: May 13, 2022 (87 FR 29327), August 4, 2022 (87 FR 47751) November 14, 2022 (87 FR 68161) and February 1, 2023 (88 FR 6729). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (January through March 2023)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency’s official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: <http://cms.gov/manuals>.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at <http://www.gpo.gov/libraries/>

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government

publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and Additional Claims Modifier for Audio-only Services (CMS-Pub. 100-02) Transmittal No. 11792.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For-Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For-Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
11790	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11791	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Benefit Policy (CMS-Pub. 100-02)	
11792	Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and Additional Claims Modifier for Audio-only Services
11803	Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) Medicare Benefit Policy Manual Chapter 13 Update
11824	An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule, Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening – Full Agile Pilot CR
11866	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

11901	Update to the Manual to Clarify Supervision Requirements for Diagnostic Tests	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11809	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11905	Revisions to Medicare Part B Coverage of Pneumococcal Vaccinations for the Medicare Policy Manual Chapter 15, Section 50.4.2	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11810	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11824	Medicare National Coverage Determination (CMS Pub. 100-03) An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule, Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening - Full Agile Pilot CR	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11811	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11865	An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule, Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening - Full Agile Pilot CR	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11815	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11875	National Coverage Determination (NCD) 50.3 - Cochlear Implantation Manual Update	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11816	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11892	Technical Revisions Only to the National Coverage Determination (NCD) Manual	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11817	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11929	National Coverage Determination (NCD) 50.3 - Cochlear Implantation Manual Update	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11824	An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule, Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening - Full Agile Pilot CR
11777	Medicare Claims Processing (CMS Pub. 100-04) Home Health Prospective Payment System (HH PPS) Rate Update for Calendar Year (CY) 2023	Correction of Split (or Shared) Critical Care Billing Requirement in Section 30.6.12.5 of Chapter 12 of the Medicare Claims Processing Manual	11828	Correction of Split (or Shared) Critical Care Billing Requirement in Section 30.6.12.5 of Chapter 12 of the Medicare Claims Processing Manual
11778	Clinical Laboratory Fee Schedule - Medicare Travel Allowance Fees for Collection of Specimens and New Updates for 2023	Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment	11829	Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
11780	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions	11831	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
11781	January 2023 Integrated Outpatient Code Editor (IOCE) Specifications Version 24.0	New Biweekly Interim Payments for Domestic N95 Respirator Procurement Cost Reimbursement	11836	New Biweekly Interim Payments for Domestic N95 Respirator Procurement Cost Reimbursement
11786	January 2023 Update of the Ambulatory Surgical Center (ASC) Payment System	Internet-Only Manual (IOM) Updates to Pub. 100-04, Chapter 12 for the New Hospital Inpatient or Observation Care Code Family, Nursing Facility Visits Code Family, Billing the Substantive Portion of a Split (or Shared) Visit, Changes for Prolonged Services, and Updates to the IOM with Policies Finalized for Office/Outpatient E/M Visits in the CY2020 and CY2021 Final Rules	11842	Internet-Only Manual (IOM) Updates to Pub. 100-04, Chapter 12 for the New Hospital Inpatient or Observation Care Code Family, Nursing Facility Visits Code Family, Billing the Substantive Portion of a Split (or Shared) Visit, Changes for Prolonged Services, and Updates to the IOM with Policies Finalized for Office/Outpatient E/M Visits in the CY2020 and CY2021 Final Rules
11789	Update to the Internet Only Manual (IOM) For Alpha-Numerical Order in Publication (Pub.) 100-04, Chapter 32, Index, Sections 40.2.1 and 40.2.4	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 18, Section 10.2.2.1, to Clarify the Payment Method on Vaccines for Critical Access Hospitals (CAHs)	11843	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 18, Section 10.2.2.1, to Clarify the Payment Method on Vaccines for Critical Access Hospitals (CAHs)
11792	Updates to Medicare Benefit Policy Manual and Medicare Claims Processing Manual for Opioid Treatment Programs and Additional Claims Modifier for Audio-only Services	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2023 Update	11848	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2023 Update
11793	Internet-Only Manual [IOM] Updates for Ambulatory Surgical Centers [ASCs]	April 2023 Quarterly Update to HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CIB) Enforcement	11849	April 2023 Quarterly Update to HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CIB) Enforcement
11794	Preventing Submission of Cross-Reference Document Control Numbers on Original Claims General Rules for Submitting Adjustment Requests Identifying Institutional Providers Reporting of Taxonomy Codes (Institutional Providers)	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11851	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11795	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11861	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11796	Revisions to Processing of Home Health Disaster Related Claims and Contractor-Initiated Adjustments	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11863	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11799	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11865	An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule, Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening - Full Agile Pilot CR
11800	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11867	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11801	January 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS)	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction	11868	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11802	Home Health Prospective Payment System (HH PPS) Rate Update for Calendar Year (CY) 2023	Confidentiality of Instruction	11871	Confidentiality of Instruction
11807	Correction to the Manual Instructions Update Established under Change Request 10971 (Implementation of the Medicare Performance Adjustment (MPA) for the Maryland Total Cost of Care (MD TCCOC) Model)	July 2023 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder	11873	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
		National Coverage Determination (NCD) 50.3 - Cochlear Implantation	11875	National Coverage Determination (NCD) 50.3 - Cochlear Implantation

	Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Manual Update
11930	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - July 2023
11936	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11937	April 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS) Comprehensive APCs Use of Modifiers Where to Report Modifiers on the Hospital Part B Claim Modifier 50 Modifiers LT and RT Modifiers 73 and 74 Modifiers 76 and 77 Modifiers for Radiology Services Modifier CA Modifier FB Modifier FC Modifier PO Modifier PN Modifier CI Modifier FX Modifier FY Modifier JG Modifier TB Modifier ER Modifier CG Complete List of Device Pass-through Category Codes Hospital and CMHC Reporting Requirements for Services Performed on the Same Day
Medicare Secondary Payer (CMS-Pub. 100-05)	
11782	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11783	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11788	Electronic Correspondence Referral System (ECRS) Updates to the Check Amount Screens, Removal of the Insurer Phone Number, Batch Processing Error Code Updates, Removal and Relocation of Excluded ICD-10 Diagnosis Codes and Clarification of Action Code II
11844	Online Electronic Correspondence Referral System (ECRS) Added Edits Checking for Medicare Entitlement and Part D Enrollment For Specific Group Health Plan (GHP) Types and Batch Edits, Effective April, 2023, Hierarchy Rules Will Be Applied to Primary and Supplemental Part D Records
11874	Significant Updates to Internet Only Manual (IOM) Publication (Pub.) 100-05 Medicare Secondary Payer (MSP) Manual, Chapter 3
Medicare Financial Management (CMS-Pub. 100-06)	
11784	Notice of New Interest Rate for Medicare Overpayments and Underpayments -2nd Qtr Notification for FY 2023
11787	Publication (Pub.) 100-06, Chapter 4, Section 70 Revision (Removal of Debt Collection System References and Corresponding Updates) and Inclusion of Existing Debt Close-Out (Termination of Collection Action) Instructions
11913	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

	Manual Update
11876	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11877	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
11880	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11881	Calendar Year (CY) 2023 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
11882	Instructions for Downloading the Medicare ZIP Code File for July 2023 Files
11883	April 2023 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
11885	Claim Status Category and Claim Status Codes Update
11886	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
11887	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
11900	Implementation of Rural Emergency Hospital (REH) Provider Type TOC Payment Adjustment for Rural Emergency Hospitals Outpatient Provider Specific File
11902	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 18 Sections 50.3-50.4, and Chapter 32 Sections 130.1, 170.2 for Coding Revisions to National Coverage Determinations (NCDs)—July 2023 Change Request (CR) 13070 Payment Method - A/B MACs (A) and (B) HCPCS, Revenue, and Type of Service Codes Billing and Payment Requirements Carrier Billing Requirements
11903	April 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
11908	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11909	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 29.2, Effective July 1, 2023
11910	April Quarterly Update for 2023 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
11911	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11917	Inflation Reduction Act Section 11407: Limitations on Monthly Coinsurance and Adjustments to Supplier Payment Under Medicare Part B for Insulin Furnished Through Durable Medical Equipment (DME) – IMPLEMENTATION
11918	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11919	Indian Health Services (IHS) Hospital Payment Rates for Calendar Year 2023
11920	July 2023 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
11921	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11927	April 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
11929	National Coverage Determination (NCD) 50.3 - Cochlear Implantation Billing Requirements for Expanded Coverage of Cochlear Implantation A/B MACs (Part A) Billing Procedures Special Billing Requirements for A/B MACs (A) for Inpatient Billing A/B MACs (Part B) Billing Procedures Healthcare Common Procedural Coding System (HCPCS)

11923	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11924	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11925	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11933	Update to Process and Responsibility for Tracking Medicare Contractors' Prepayment and Post Payment Reviews in the RAC Data Warehouse (RACDW)
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
11798	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
11870	Supplemental Security Income (SSI) Medicare Beneficiary Data for Fiscal Year (FY) 2021 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long Term Care Hospitals (LTCs)
Medicare Quality Improvement Organization (CMS-Pub. 100-10)	
None	
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
None	
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
None	
Medicare Managed Care (CMS-Pub. 100-16)	
126	Update to Section 20.2.4.1 on Special Cost Sharing Requirements for D-SNPs
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
None	
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
None	
Demonstrations (CMS-Pub. 100-19)	
11823	Prospective Change Requests for Making Care Primary (MCP) Model Analysis and Design
11898	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
One Time Notification (CMS-Pub. 100-20)	
11776	Direct Mailing Notification to Hospice Providers Regarding the Value-Based Insurance Design (VBID) Model, Hospice Benefit Component, Participating Medicare Advantage Organizations
11812	Shared System Support Hours for Application Programming Interfaces (APIs) - July 2023
11813	Update to Change Request (CR) 12636 Payment for Critical Access Hospitals (CAHs) Ancillary Services Submitted on 12X Type of Bill (TOB) Claim
11814	Update to Change Request (CR) 12636 Payment for Critical Access Hospitals (CAHs) Ancillary Services Submitted on 12X Type of Bill (TOB) Claim
11825	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11832	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) July 2023 Update
11833	Patient Responsibility Reporting with Medicare Secondary Payer (MSP)
11837	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) Comment Screen
11838	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Allow a Mass Load of Full Procedure Code Inquiry Screen (PL Segments)
11860	User Enhancement Change Request (UECR): Update the Multi-Carrier

Medicare State Operations Manual (CMS-Pub. 100-07)	
210	Revisions to the State Operations Manual (SOM) Appendix M – Hospice
211	Revisions to State Operations Manual (SOM), Appendix PP
213	Revisions to State Operations Manual (SOM), Chapter 7
Medicare Program Integrity (CMS-Pub. 100-08)	
11804	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11805	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11806	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11808	Incorporation of Recent Provider Enrollment Regulatory Changes into Chapter 10 of CMS Publication (Pub.) 100-08
Definitions	
Skilled Nursing Facilities (SNFs)	
Denial Reasons	
Revocation Reasons	
Risk-Based Screening	
Miscellaneous Enrollment Topics	
11818	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11819	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11820	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instructions
11821	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11822	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11826	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11827	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11839	First Policy Change Request Regarding Implementation of the Provider Enrollment, Chain and Ownership System (PECOS) 2.0
11840	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11841	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11859	Eighth General Update to Provider Enrollment Instructions in Chapter 10 of CMS Publication (Pub.) 100-08
11872	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11891	Second Policy Change Request (CR) Regarding Implementation of the Provider Enrollment, Chain and Ownership System (PECOS) 2.0
11906	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11907	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11914	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11915	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11916	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions

	System (MCS) Procedure Maintenance Screen PG Segment
11862	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Reason Code 10404 Assigns on Accrete Claims
11864	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Automate Inpatient/Skilled Nursing Facility Common Working File (CWF) Alerts Received on the L1001 and L1002 Reports
11869	User Enhancement Change Request (UECR): VIPS Medicare System (VMS) - Create an Audit Record for Manual Denials on Claim Edit Audit Trail (BUD805)
11878	Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) Provided by the Further Continuing Appropriations and Extensions Act, 2023, and the Consolidated Appropriations Act, 2023
11879	Enhancements to Patient Driven Payment Model (PDPM) Claim Edits to Improve Claim Processing
11884	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)—July 2023 Update
11889	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11890	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11894	User Enhancement Change Request (UECR): VIPS Medicare System (VMS) - Update Beneficiary Information Tracking System (BITS) Edit BT06 to allow the Response Date to be equal to the Receipt Date+
11899	Upload of Notice Program Reimbursement (NPR) Letters, Interim Rate Reviews, and Tentative Settlement Documentation into the System for Tracking Audit and Reimbursement (STAR)
11904	Implementation of Consolidated Appropriations Act (CAA) of 2023, Section 4143: Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments
11912	Instructions Relating to the Evaluation of Section 1115 Waiver Days in the Calculation of Disproportionate Share Hospital Reimbursement
11928	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) Procedure Code Lookup Screen and the Procedure Maintenance Screen
11931	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11932	Enhancements to Patient Driven Payment Model (PDPM) Claim Edits to Improve Claim Processing
11935	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
Medicare Quality Reporting Incentive Programs (CMS-Pub. 100-22)	
	None
State Payment of Medicare Premiums (CMS-Pub. 100-24)	
	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (January through March 2023)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register**, contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at <http://www.gpoaccess.gov/ft/index.html>. The following website <http://www.archives.gov/federal-register/> provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: <https://www.cms.gov/files/document/regs1q23qpu.pdf>

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (January through March 2023)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings>. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (January through March 2023)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in

some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
An Omnibus CR to Implement Policy Updates in the CY 2023 PFS Final Rule.	NCD 160.22	R11865	02/16/2023	01/01/2023
Including (1) Removal of Selected NCDs (NCD 160.22 Ambulatory EEG Monitoring), and, (2) Expanding Coverage of Colorectal Cancer Screening	NCD 210.3	R11865	02/16/2023	01/01/2023
Cochlear Implantation	NCD 50.3	R11929	03/27/2023	03/24/2023

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (January through March 2023)
(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (January through March 2023)

All approval numbers are available to the public at [Reginfo.gov](https://www.reginfo.gov). Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (January through March 2023)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency.

All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: <http://www.cms.gov/MedicareApprovedFacilities/CASF/list.asp#TopOfPage>. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Robert Wood Johnson University Hospital Hamilton ("RWJUH") 1 Hamilton Health Place Hamilton, NJ 08690	31-0110	12/20/2022	NJ
City of Wooster dba Wooster Community Hospital 1761 Beall Avenue Wooster, OH 44691	360036	01/24/2023	OH
Providence Medford Medical Center 1111 Crater Lake Avenue Medford OR 97504	380075	02/07/2023	OR
Riverview Regional Medical Center 601 South 3rd Street Gadsden, AL 35901	010046	01/30/2023	AL
Virtua West Jersey Hospital Marlton 90 Brick Road Marlton, NJ 08053	310022	02/07/2023	NJ
Margaret R. Pardee Memorial Hospital 800 North Justice Street Hendersonville, NC 28791 Other Information: Henderson County Hospital Corporation	340017	02/07/2023	NC
Coffee Regional Medical Center Inc 1101 Ocilla Road Douglas, GA 31533	110089	02/14/2023	GA
Protestant Memorial Medical Center 4500 Memorial Drive Belleville, IL 62226	140185	02/14/2023	IL
Licking Memorial Hospital 1320 W. Main Street Newark, OH 43035	360218	02/14/2023	OH
Oklahoma Surgical Hospital 2408 81st Street, Suite 300 Tulsa, OK 74137	1487651857	03/07/2023	OK
Memorial Hermann Cypress 27800 Northwest Freeway Cypress, TX 77433	1982666111	03/07/2023	TX
Johnston Health Services Corporation 509 N. Brightleaf Boulevard Smithfield, NC 27577	340090	07/15/2022	NC
The following facilities have editorial changes (in bold).			
Heart Hospital of Austin 3801 N. Lamar Boulevard	450431	08/04/2005	TX

Facility	Provider Number	Date Approved	State
Austin, TX 78756			

Addendum VIII:
American College of Cardiology’s National Cardiovascular Data Registry Sites (January through March 2023)

The initial data collection requirement through the American College of Cardiology’s National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (January through March 2023)

CMS issued a guidance document on November 20, 2014 titled “Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document”. Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS’s implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at <http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27>. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X:
List of Special One-Time Notices Regarding National Coverage Provisions (January through March 2023)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at <http://www.cms.gov>. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (January through March 2023)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission

tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography (PET)** scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at <http://www.cms.gov/Medicare/ApprovedFacilities/NOPR/list.asp#TopOfPage>. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (January through March 2023)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at <http://www.cms.gov/MedicareApprovedFacilities/VAD/list.asp#TopOfPage>. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities are new listings for this quarter.				
Novant Health New Hanover Regional Medical Center 2131 South 17th Street Wilmington, NC 28401	340141	02/02/2023		NC
Other information:				

03/08/2016; 03/13/2018; 4/14/2021	050348	12/16/2019	12/17/2022	CA
UCI Medical Center 101 The City Dr. South; Building 53, Suite 304A Orange, CA 92868 Other information: DNV ID #: C569686 Previous Re-certification Dates: 12/16/2019	050327	02/07/2012	11/23/2022	CA
Loma Linda University Medical Center 11234 Anderson Street Loma Linda, CA 92354 Other information: Joint Commission ID # 9898 Previous Re-certification Dates: 02/07/2012; 01/23/2014; 02/23/2016; 04/10/2018; 05/15/2021	390111	05/22/2008	11/24/2022	PA
Hospital of the University of Pennsylvania 3400 Spruce Street Philadelphia, PA 19104 Other information: Joint Commission ID# 6129 Previous Re-certification Dates: 05/22/2008; 06/08/2010; 05/25/2012; 04/15/2014; 06/15/2016; 05/06/2021	050047	12/08/2009	11/09/2022	CA
California Pacific Medical Center-Van Ness Campus 1101 Van Ness Avenue San Francisco, CA 94109 Other information: Joint Commission ID # 5152 Previous Re-certification Dates: 12/08/2009; 11/11/2011; 01/07/2014; 02/09/2016; 03/20/2018; 02/20/2021	340091	01/07/2014	12/03/2022	NC
Moses H. Cone Memorial Hospital Operating Corporation 1200 North Elm Street Greensboro, NC 27401-1020 Other information:				

DNV ID#: C534547				
Previous Re-certification n/a				
The following facilities have editorial changes (in bold).				
Medical City Dallas 7777 Forest Lane Dallas, TX 75230 Other information: Joint Commission ID # 9008	450647	09/09/2008	10/20/2022	TX
Previous Re-certification Dates: 09/09/2008; 08/10/2010; 07/17/2012; 06/27/2014; 07/12/2016; 04/03/2021	340002	05/17/2016	11/16/2022	NC
Mission Hospital 509 Biltmore Avenue Asheville, NC 28801-4690 Other information: Joint Commission ID # 6468	330182	11/08/2016	12/14/2022	NY
Previous Re-certification Dates: 05/17/2016; 04/14/2021	490024	12/29/2019	12/30/2022	VA
St. Francis Hospital 100 Port Washington Blvd Roslyn, NY 11576 Other information: Joint Commission ID # 5860	050017	02/11/2014	11/18/2022	CA
Previous Re-certification Dates: 11/08/2016; 05/08/2021				
Carilion Roanoke Memorial Hospital 1906 Bellview Ave Roanoke, VA 24014 Other information: DNV ID # C564108				
Previous Re-certification Dates: 12/29/2019				
Mercy General Hospital 4001 J Street Sacramento, CA 95819 Other information: Joint Commission ID # 10053				
Previous Re-certification Dates: 02/11/2014;				

University of Cincinnati Medical Center 3188 Bellevue Avenue Cincinnati, OH 45219 Other information: Joint Commission ID# 6988 Previous Re-certification Dates: 12/13/2011; 01/07/2014; 02/23/2016; 03/13/2018; 05/19/2021	360003	12/13/2011	03/16/2023	OH
Piedmont Hospital, Inc. 1968 Peachtree Rd. NW Atlanta, GA 30309 Other information: DNV ID# C599369 Previous Re-certification Dates: 06/09/2011; 02/08/2017; 03/19/2020	110083	06/09/2011	03/19/2023	GA
University of Mississippi Medical Center 2500 North State Street Jackson, MS 39216 Joint Commission ID# 8064 Previous Re-certification Dates: 08/16/2016; 08/08/2018; 5/20/21	250001	08/16/2016	02/04/2023	MS

Addendum XIII: Lung Volume Reduction Surgery (LVRS)

(January through March 2023)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery.

Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. For the purposes of this quarterly notice, there were no additions, deletions, or editorial changes to a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. This information is available at

Joint Commission ID # 6504 Previous Re-certification Dates: 01/07/2014; 02/09/2016; 02/13/2018; 4/17/2021; 10/24/2012; 10/21/2014; 11/01/2016; 05/05/2021	440039	10/28/2003	12/07/2022	TN
Vanderbilt University Medical Center 1211 Medical Center Drive Nashville, TN 37232-2101 Other information: Joint Commission ID # 7892 Previous Re-certification Dates: 04/20/2012; 03/11/2014; 04/05/2016; 05/08/2018; 04/28/2021				
CHI St. Luke's Health Baylor College of Medicine Medical Center 6720 Bertner Avenue Houston, TX 77030 Other information: Joint Commission ID # 9098 Previous Re-certification Dates: 10/07/2008; 11/17/2010; 11/06/2012; 10/16/2014; 11/22/2016; 06/05/2021	450193	10/28/2003	02/11/2023	TX
Indiana University Health, Inc. 1701 North Senate Boulevard Indianapolis, IN 46202 Other information: Joint Commission ID # 188549 Previous Re-certification Dates: 08/12/2008; 08/17/2010; 08/17/2012; 08/19/2014; 10/04/2016; 05/29/21	150056	11/25/2003	01/20/2023	IN

www.cms.gov/MedicareApprovedFacilities/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (January through March 2023)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilities/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (January through March 2023)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilities/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

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BILLING CODE 4120-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Home-Based Child Care Practices and Experiences Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Planning, Research, and Evaluation is proposing a new primary data collection to examine the experiences, strengths, resources, and strategies used by home-based child care providers to serve and support equitable outcomes for children and families. The Home-Based Child Care Practices and Experiences study will explore the experiences of a particular group of home-based child care providers who are legally exempt from state licensing or other state

regulations that apply to non-custodial care of children in the provider's own home; these providers are commonly referred to as family, friend, and neighbor providers.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The study will use semi-ethnographic, open-ended methods

(including semi-structured interviews, and photo and audio journals) to generate rich information about the experiences of study respondents. The study will be conducted in four sites across the United States and will involve one round of data collection. Data collection will be conducted virtually and is planned to occur over a 5-month period. The study results are intended to inform future research and federal programs by contributing rich data on the ways family, friend, and neighbor providers think about and enact quality for children and families. The study will address substantial gaps in the existing evidence around "why" and "how" family, friend, and neighbor providers care for and educate children, and it will provide the foundation for future research on home-based child care. Study findings can also inform efforts to better align quality improvement efforts with the aspects of quality that providers and families find the most important in these settings.

Respondents: Family, friend, and neighbor child care providers, family members of the children cared for by the providers, and community members who support the providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
1. Provider screener	120	1	0.33	40
2. Provider interview #1	60	1	1.5	90
3. Provider logistics call	60	1	1	60
4. Provider photo journals	60	8	0.10	48
5. Provider audio journals	60	8	0.15	72
6. Provider interview #2	60	1	1.5	90
7. Family member interview	120	1	1	120
8. Community member interview	60	1	0.5	30
9. Provider feedback focus group	20	1	1	20

Estimated Total Annual Burden Hours: 570.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023-10100 Filed 5-11-23; 8:45 am]

BILLING CODE 4184-23-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Proposed Collection; Public Comment Request; of the Annual SMP/SHIP/MIPPA National Training Conference Survey OMB Control Number 0985-0068

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This IC Extension solicits comments on the information collection requirements relating to the Annual SMP/SHIP/MIPPA National Training Conference Survey.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by July 11, 2023.

ADDRESSES: Submit electronic comments on the collection of

information to: *Katherine.Glendenning@acl.hhs.gov*. Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Katherine Glendenning.

FOR FURTHER INFORMATION CONTACT:

Katherine Glendenning, Administration for Community Living, Washington, DC 20201, (202) 795-7350 or *Katherine.Glendenning@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA 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, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including using automated collection techniques when appropriate, and other forms of information technology.

The Office of Healthcare Information and Counseling (OHIC) hosts an annual national training conference for the federally funded programs that it administers. The audience for this training conference includes attendees from State Health Insurance Assistance Program (SHIP), Senior Medicare Patrol (SMP) programs and Medicare Improvements for Patients and Providers Act (MIPPA) programs, which are three nationally recognized programs that provide Medicare information and counseling to Medicare beneficiaries and help, fight Medicare fraud through prevention and education. Grantee leadership is required to attend this training annually to ensure they receive critical information and technical assistance needed to help them successfully meet the requirements of their grant awards. Grantees are encouraged to bring up to three (3) people from each program. Programs operate in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Section 4360(f) of OBRA 1990 created the State Health Insurance Assistance Program (SHIP) and requires the Secretary to support a national network of grantees to provide outreach and assistance to Medicare beneficiaries. In addition, under Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997, Congress established the Senior Medicare Patrol Projects to further curb losses to the Medicare program. The Senate Committee noted that retired professionals, with appropriate training,

could serve as educators and resources to assist Medicare beneficiaries and others to detect and report error, fraud, and abuse.

This tool provides ACL an opportunity to assess the success and impact of the training provided to the SHIP and SMP grantees by ACL along with determining the future training needs of the program grantees. Section 301 of the Public Health Service Act (42 U.S.C. 241) is the authorizing law for data collections within the Department of Health and Human Services (HHS). Specifically, agencies within HHS should “collect and make available through publications and other appropriate means . . . research and other activities.”

The March 3, 1998, White House Memorandum, “Conducting Conversations with America to Further Improve Customer Service,” directs agencies “to track customer service measurements, then take necessary actions to change or improve how the

agency operates, as appropriate. Integrate what your agency learns from its customers with your agency’s strategic plans, operating plans, and performance measures required by the Government Performance and Results Act of 1993, reporting on financial and program performance under the Chief Financial Officers Act of 1990, and the Government Management Reform Act of 1994.” The information collected in this survey is necessary to ensure that ACL is meeting the technical assistance needs of the attendees and to capture valuable feedback to be used for future training meetings. By gathering feedback on the quality of the training and content provided, we can ensure attendee satisfaction and gather information for future planning. ACL administers a contract to develop and provide the training conference evaluation tool for ACL’s approval. The proposed data collection tools may be found on the ACL website for review at:

<https://www.acl.gov/about-acl/public-input>.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

ACL will collect data once following the Annual SMP/SHIP/MIPPA National Training Conference. This evaluation will be sent to all event attendees, which is estimated to include maximum 486 participants, each survey is estimated at .25 hours to complete. This time estimate is based on research performed by ACL with the existing survey instrument and in consideration of previous survey content and length. The target number 486 is a result of 54 states/territories, each sending up to 9 conference participants who may be eligible to complete a survey ($54 * 9 = 486$). Factoring in an additional 40 non-grantee, non-federal partner event participants ($486 + 40 = 526$). 526 respondents taking 15 minutes to complete for a total of 131.5 annual burden hours.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Responses per respondent	Average burden hours per response (minutes)	Total burden hours
526	1	15	131.5

Dated: May 8, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–10120 Filed 5–11–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1211]

Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions To Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to

Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.” The guidance document provides blood establishments that collect blood or blood components, including Source Plasma, with FDA’s revised donor deferral recommendations for individuals with increased risk for transmitting human immunodeficiency virus (HIV) infection. FDA is also recommending that these blood establishments make corresponding revisions to donor educational materials, donor history questionnaires and accompanying materials, along with revisions to donor requalification and product management procedures. The guidance announced in this notice finalizes the draft guidance of the same title issued January 2023. This guidance also supersedes the guidance entitled “Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry” dated April 2020 and updated August 2020.

DATES: The announcement of this guidance is published in the **Federal Register** on May 12, 2023.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2015-D-1211 for “Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to Reduce the Risk of Human

Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance document to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Andrew Harvan, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled “Recommendations for Evaluating Donor Eligibility Using Individual Risk-Based Questions to Reduce the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.” This guidance document provides blood establishments that collect blood or blood components, including Source Plasma, with FDA’s revised donor deferral recommendations for individuals with increased risk for transmitting HIV infection. FDA is also recommending that these blood establishments make corresponding revisions to donor educational materials, donor history questionnaires and accompanying materials, along with revisions to donor requalification and product management procedures.

In this guidance, based on FDA’s review of the available science, FDA recommends eliminating the screening questions specific to men who have sex

with men (MSM) and women who have sex with MSM. Instead, FDA recommends assessing donor eligibility using the same individual risk-based questions relevant to HIV risk for every donor regardless of sex or gender. In addition, FDA recommends deferral of any individual taking medications to treat or prevent HIV infection. FDA does not expect that implementation of these revised recommendations will be associated with any adverse effect on the safety or availability of the blood supply.

In the **Federal Register** of January 30, 2023 (88 FR 5894), FDA announced the availability of the draft guidance of the same title. FDA considered comments received on this draft guidance as the guidance was being finalized and revised the guidance as appropriate in response to the comments. For instance, we clarified that all donors, regardless of their sex or gender, will be asked the same screening questions with respect to HIV risk. We have provided additional information to explain why undetectable does not equal untransmissible for blood transfusion regarding medication used to treat or prevent HIV infection, and we added a recommendation that individuals should not stop taking their prescribed medication, including PrEP or PEP, in order to donate blood. In response to questions about deferral recommendations for anal sex, we clarified that scientific data demonstrate the risk of HIV infection is significantly greater for anal sex when compared to other sexual exposures. In response to comments requesting clarification on a screening question, we included examples of who a “new partner” may include. Additionally, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance of the same title dated January 2023 and supersedes the guidance entitled “Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry” dated April 2020 and updated August 2020.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on evaluating donor eligibility using individual risk-based questions to reduce the risk of HIV transmission by blood and blood products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.121 and parts 610 and 630 have been approved under OMB control number 0910–0116; and the collections of information for consignee notification have been approved under OMB control number 0910–0681.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: May 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10252 Filed 5–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Enhancing HIV Care of Women, Infants, Children and Youth Building Capacity Through Communities of Practice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and

approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than June 12, 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 Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 594–4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Enhancing HIV Care of Women, Infants, Children and Youth Building Capacity through Communities of Practice, OMB No. 0915–xxxx—New.

Abstract: HRSA aims to increase delivery of evidence-based interventions that enhance client outcomes, increase the skill level of the HIV workforce providing care and treatment to Women, Infants, Children and Youth, and involve partnerships for dissemination of best practices to Ryan White HIV/AIDS Program (RWHAP) Part D participants. To that end, HRSA seeks to implement a Communities of Practice (CoP) platform for RWHAP Part D recipients. A CoP engages recipient teams in improvement learning sessions using subject matter experts along with application experts who help recipient teams select, test, and implement changes on the front line of care. Through organizational self-assessments, didactic learning on specific care topics, goals setting, and work plan development, each team can strategically benefit their organization. CoPs afford participants the opportunity to work in a group to solve a recognized challenge related to a CoP domain and support dialogue among participants and the consultant/subject matter experts. Recipient teams commit to working over a period of 12 months, alternating between Learning Sessions in which teams come together to learn about the chosen topic and to plan changes, and Action Periods in which the teams return to their respective organizations and test those changes in their clinic settings. The domains for the proposed CoPs are trauma informed care, pre-conception counseling, and

youth transitioning into adult HIV care services.

A 60-day notice published in the **Federal Register** on February 27, 2023, vol. 88, No. 38; pp. 12386–12387. The one comment received was outside the scope of the ICR, and therefore no changes to the information collection were made as a result of this comment.

Need and Proposed Use of the Information: Process and outcome evaluations are a critical part of ensuring that CoP initiatives were implemented as planned and met their intended outcome. Evaluation of technical assistance (TA) depends on establishing clear goals and plans from the beginning of the process. This includes specifying the intended impact of the TA with concrete, measurable objectives. To judge performance against goals, HRSA will administer TA evaluation surveys following TA and training, webinars, teleconferences, and meetings. Findings will drive quality improvement activities and reports.

The evaluation plan focuses on process and impact evaluation of all CoP Teams (Pre-Conception Counseling and Sexual Health, Trauma-Informed Care, and Transitioning Adolescents to Adult Care) over the duration of the 4-year period of performance. The evaluation plan components will be operationalized to include TA satisfaction measures (reaction), change in knowledge after the TA (learning), and change in behavior or practice after the introduction of evidence-based interventions (behavior). More specifically, the evaluation plan includes (1) post TA satisfaction measures, (2) pre-post measures of CoP staff knowledge about effective practices, (3) retrospective measures to gather measures of CoP staff knowledge for the first community of practice only, and (4) measures of TA usefulness and impact on CoP performance.

Likely Respondents: Up to 90 RWHAP Part D Women, Infants, Children and Youth recipients will participate in the CoPs. Each recipient may have up to six staff members who may complete the survey.

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
Pre-conception Counseling Community of Practice Retrospective Pretest-Post Assessment	90	1	90	.4733	42.6
Community of Practice Pre-Assessment	180	1	180	.2900	52.2
Community of Practice Post-Assessment	180	1	180	.3767	67.8
Community of Practice Session Assessment	270	6	1,620	.0767	124.3
Targeted and Intensive TA Assessment	120	1	120	.0833	10.0
Foundational TA Assessment	150	1	150	.0616	9.2
Total	990	.....	2,340	.....	306.1

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–10192 Filed 5–11–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection

Activities: Submission to OMB for Review and Approval; Public Comment Request; Delta States Rural Development Network Grant Program, OMB No. 0915–0386—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than June 12, 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 Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 594–4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Delta States Rural Development Network Grant Program—OMB No. 0915–0386—Revision.

Abstract: The Delta States Rural Development Network Grant (Delta) Program is authorized by the Public Health Service Act, section 330A(f) (42 U.S.C. 254c(f)). The Delta Program supports projects that demonstrate evidence based and/or promising approaches around cardiovascular disease, diabetes, acute ischemic stroke, or obesity in order to improve health status in rural communities throughout the Delta Region. Key features of Delta Program-supported projects are collaboration, adoption of an evidence-based approach, demonstration of health outcomes, program replicability, and sustainability. HRSA collects information from Delta Program award recipients using an OMB-approved set of performance measures and seeks to extend that approved information collection.

A 60-day notice published in the **Federal Register** on February 02, 2023, vol. 88, No. 22; pp. 7095–96. There were no public comments. Since the publication of the 60-day notice, HRSA

has updated the estimated average burden per response from 1.66 hours to 2 hours, with a corresponding increase in the estimated total annual burden for this ICR.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to HRSA including the following: (a) access to care, (b) population demographics, (c) staffing, (d) sustainability, (e) project specific domains, and (f) health related clinical measures. These measures encompass HRSA's progress toward meeting the goals set.

Likely Respondents: Grant recipients of the Delta Program.

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
Delta States Rural Development Network Program Performance Improvement Measurement System	12	1	12	2	24
Total	12	1	12	2	24

These estimates were determined following consultations with three current Delta Program grantees. HRSA sent these grantees a draft of the questions that pertain to their projects. HRSA asked the grantees to estimate how much time it would take to answer the questions. HRSA expects the burden will vary across the grantees. This variation is tied primarily to the type of program activities specific to each grantee's project and current data collection system.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-10163 Filed 5-11-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Eleventh Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19

ACTION: Notice of amendment.

SUMMARY: The Secretary issues this amendment pursuant to section 319F-3 of the Public Health Service Act to update the determination of a public health emergency and clarify the disease threat, add two new limitations on distribution, extend the time period of coverage for certain Covered Countermeasures and Covered Persons, clarify the time period of coverage for Covered Persons authorized under the Declaration, extend the duration of the Declaration to December 31, 2024, and to republish the Declaration in full.

DATES: This amendment is effective as of May 11, 2023.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Office of the Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; 202-260-0365, paige.ezernack@hhs.gov.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving "willful misconduct" as defined in the PREP Act. Under the PREP Act, a Declaration may be amended as circumstances warrant.

The PREP Act was enacted on December 30, 2005, as Public Law 109-148, Division C, § 2. It amended the Public Health Service (PHS) Act, adding section 319F-3, which addresses liability immunity, and section 319F-4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d-6d and 42 U.S.C. 247d-6e, respectively. Section 319F-3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113-5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

On January 31, 2020, the former Secretary, Alex M. Azar II, declared a public health emergency pursuant to section 319 of the PHS Act, 42 U.S.C. 247d, effective January 27, 2020, for the entire United States to aid in the response of the nation's health care community to the COVID-19 outbreak. Pursuant to section 319 of the PHS Act, the declaration was renewed effective April 26, 2020, July 25, 2020, October 23, 2020, January 21, 2021, April 21, 2021, July 20, 2021, October 15, 2021, January 14, 2022, April 12, 2022, July 15, 2022, October 13, 2022, January 11, 2023, and February 11, 2023. The public health emergency declared under section 319 of the PHS Act is anticipated to no longer be in effect as

of the end of the day on May 11, 2023. Nonetheless, as stated in section I of this amended PREP Act Declaration, I have determined there is a credible risk that COVID-19 may in the future constitute such an emergency and am thus amending this Declaration to prepare for and mitigate that risk.

On March 10, 2020, former Secretary Azar issued a Declaration under the PREP Act for medical countermeasures against COVID-19 (85 FR 15198, Mar. 17, 2020) (the Declaration). On April 10, 2020, the former Secretary amended the Declaration under the PREP Act to extend liability immunity to covered countermeasures authorized under the CARES Act (85 FR 21012, Apr. 15, 2020). On June 4, 2020, the former Secretary amended the Declaration to clarify that covered countermeasures under the Declaration include qualified countermeasures that limit the harm COVID-19 might otherwise cause. (85 FR 35100, June 8, 2020). On August 19, 2020, the former Secretary amended the Declaration to add additional categories of Qualified Persons and amend the category of disease, health condition, or threat for which he recommended the administration or use of the Covered Countermeasures. (85 FR 52136, Aug. 24, 2020).

On December 3, 2020, the former Secretary amended the Declaration to incorporate Advisory Opinions of the General Counsel interpreting the PREP Act and the Secretary's Declaration and authorizations issued by the Department's Office of the Assistant Secretary for Health as an Authority Having Jurisdiction to respond, added an additional category of qualified persons under Section V of the Declaration *i.e.*, healthcare personnel using telehealth to order or administer Covered Countermeasures for patients in a state other than the state where the healthcare personnel are permitted to practice; made explicit that the Declaration covers all qualified pandemic and epidemic products as defined under the PREP Act; added a third method of distribution to provide liability protections for, among other things, private distribution channels;

made explicit that there can be situations where not administering a covered countermeasure to a particular individual can fall within the PREP Act and the Declaration's liability protections; made explicit that there are substantive federal legal and policy issues and interests in having a unified whole-of-nation response to the COVID-19 pandemic among federal, state, local, and private-sector entities; revised the effective time period of the Declaration; and republished the Declaration in full. (85 FR 79190, Dec. 9, 2020).

On February 2, 2021, the Acting Secretary Norris Cochran amended the Declaration to add additional categories of Qualified Persons authorized to prescribe, dispense, and administer COVID-19 vaccines that are covered countermeasures under the Declaration (86 FR 7872, Feb. 2, 2021). On February 16, 2021, the Acting Secretary amended the Declaration to add additional categories of Qualified Persons authorized to prescribe, dispense, and administer COVID-19 vaccines that are covered countermeasures under the Declaration (86 FR 9516, Feb. 16, 2021) and on February 22, 2021, the Department filed a notice of correction to the February 2 and February 16 notices correcting effective dates stated in the Declaration, and correcting the description of qualified persons added by the February 16, 2021 amendment. (86 FR 10588, Feb. 22, 2021). On March 11, 2021, the Acting Secretary amended the Declaration to add additional Qualified Persons authorized to prescribe, dispense, and administer covered countermeasures under the Declaration. (86 FR 14462, Mar. 16, 2021).

On August 4, 2021, I amended the Declaration to clarify categories of Qualified Persons and to expand the scope of authority for certain Qualified Persons to administer seasonal influenza vaccines to adults. (86 FR 41977, Aug. 4, 2021). On September 14, 2021, I amended the Declaration to expand the scope of authority for certain Qualified Persons to administer COVID-19 therapeutics subcutaneously, intramuscularly, or orally (86 FR 51160, Sept. 14, 2021) and on September 30, 2021, the Department filed a notice of correction to the September 14 notice clarifying the terms "ACIP recommendations" and "ACIP's standard immunization schedules." (86 FR 54696, Oct. 4, 2021). On January 7, 2022, I amended the Declaration to expand the scope of authority for licensed pharmacists to order and administer and qualified pharmacy interns to administer seasonal influenza vaccines. (87 FR 982, January 7, 2022).

I am now amending section I of the Declaration to update the determination of a public health emergency to state that COVID-19 presents a credible risk of a future public health emergency. While the Public Health Emergency declared pursuant to section 319 of the PHS Act is anticipated to no longer be in effect as of the end of the day on May 11, 2023, COVID-19 continues to present a credible risk of a future public health emergency. Continued coverage under the PREP Act, as provided in this Declaration, is intended to prepare for and mitigate that credible risk.

I am amending section VII of the Declaration to add a new limitation on distribution to provide coverage under this PREP Act Declaration through December 31, 2024 for manufacturing, distribution, administration and use of Covered Countermeasures while they are authorized for emergency use (EUA) by the Food and Drug Administration (FDA) pursuant to section 564 of the Federal Food, Drug & Cosmetic (FD&C) Act, regardless of any federal agreement related to manufacturing, distribution, administration or use of the countermeasures, and regardless of any federal, regional, state, or local emergency Declaration. This extended PREP Act coverage extends to manufacturers, distributors, program planners, qualified persons authorized under state law to administer the Covered Countermeasures, and qualified persons who are licensed pharmacists, pharmacy interns, and pharmacy technicians authorized under this Declaration to order and/or administer the Covered Countermeasures, when consistent with the terms of the EUA and is intended to allay any concerns about liability risks arising from continued manufacturing, distribution, administration or use of Covered Countermeasures while they are authorized under an EUA.

I am also amending section VII of the Declaration to add a new limitation on distribution to provide coverage under this PREP Act Declaration through December 31, 2024 for manufacturing, distribution, administration and use of Covered Countermeasures that are COVID-19 vaccines licensed by FDA, and any FDA approved or cleared in vitro diagnostic product or other device used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom regardless of any federal agreement related to manufacturing, distribution, administration or use of the vaccines or devices, and regardless of any federal, regional, state, or local emergency Declaration. This extended PREP Act coverage is intended to ensure

that COVID-19 vaccines and devices remain eligible for coverage under the Countermeasures Injury Compensation Program and to ensure consistency in coverage for approved/cleared and authorized devices.

I am amending section VIII of the Declaration to clarify that the category of disease, health condition or health threat includes the burden on healthcare providers caused by coterminous seasonal influenza infections and COVID-19 infections.

I am also amending section XII of the Declaration to extend the time period of PREP Act coverage through December 31, 2024 to Qualified Persons who are licensed pharmacists to order and administer, and pharmacy interns and qualified pharmacy technicians to administer, Covered Countermeasures that are COVID-19 vaccines, seasonal influenza vaccines, and COVID-19 tests regardless of any federal agreement related to manufacturing, distribution, administration or use of these Covered Countermeasures and regardless of any federal, regional, state or local emergency Declaration or other limitations on distribution stated in section VII of the Declaration. Extending the time period for PREP Act coverage for licensed pharmacists, pharmacy interns, and qualified technicians allows for continued access by the recipient Population to Covered Countermeasures that are COVID-19 vaccines, seasonal influenza vaccines and COVID-19 tests.

As stated in prior amendments to this Declaration,¹ licensed pharmacists, pharmacy interns and qualified pharmacy technicians are well positioned to provide continued access to Covered Countermeasures, particularly in certain areas or for certain populations that have too few primary-care providers or that are otherwise medically underserved. As of 2022, nearly 90 percent of Americans lived within five miles of a community pharmacy.² During the COVID-19 pandemic, the majority of Americans have received their COVID-19 vaccines and tests from a pharmacy. In addition, continued access by the Population to seasonal influenza vaccines mitigates risks that seasonal influenza infections, in conjunction with COVID-19 infections, could overwhelm healthcare providers.

As qualified persons, these licensed pharmacists, pharmacy interns, and qualified pharmacy technicians will be afforded liability protections in accordance with the PREP Act and the terms of this amended Declaration. To the extent that any State law would otherwise prohibit these healthcare

professionals who are a “qualified person” from prescribing, dispensing, or administering Covered Countermeasures that are COVID–19 vaccines, seasonal influenza vaccines or COVID–19 tests, such law is preempted.³

Finally, I am amending section XII of this Declaration to clarify the time period of coverage for other qualified persons authorized under section V of the Declaration, and to extend the duration of the Declaration to December 2024 to coincide with the duration of other COVID–19 response programs.⁴

Other conforming changes and technical corrections are made throughout the Declaration for consistency and clarity.

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Medical Countermeasures Against COVID–19

To the extent any term previously in the Declaration, including its amendments, is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling. This Declaration must be construed in accordance with the Advisory Opinions of the Office of the General Counsel (Advisory Opinions).⁵ I incorporate those Advisory Opinions as part of this Declaration. This Declaration is a “requirement” under the PREP Act.

I. Determination of Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that the spread of SARS–CoV–2 or a virus mutating therefrom and the resulting disease COVID–19 constitutes a credible risk of a future public health emergency. I further determine that use of any respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, is a priority for use during the public health emergency that former Secretary Azar declared on January 31, 2020 under section 319 of the PHS Act for the entire United States to aid in the response of the nation’s healthcare community to the COVID–19 outbreak.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

IV. Liability Protections

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability protections as prescribed in the PREP Act and conditions stated in this Declaration are in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are “manufacturers,” “distributors,” “program planners,” “qualified persons,” and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

“Order” as used herein and in guidance issued by the Office of the Assistant Secretary for Health⁶ means a provider medication order, which includes prescribing of vaccines, or a laboratory order, which includes prescribing laboratory orders, if required.

“Qualified person” includes (A) a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed; or (B) “a person within a category of persons so identified in a Declaration by the Secretary” under subsection (b) of the PREP Act. 42 U.S.C. 247d–6d(i)(8)

In addition, I have determined that the following additional persons are qualified persons:

(a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in Section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an Emergency, as that term is defined in Section VII of this Declaration;⁷

(b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use

Authorization in accordance with Section 564 of the FD&C Act.

(c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

(d) A State-licensed pharmacist who orders and administers, and pharmacy interns and qualified pharmacy technicians who administer (if the pharmacy intern or technician acts under the supervision of such pharmacist and the pharmacy intern or technician is licensed or registered by his or her State board of pharmacy),⁸ (1) vaccines that the Centers for Disease Control and Prevention (CDC)/Advisory Committee on Immunization Practices (ACIP) recommend⁹ to persons ages three through 18 according to CDC’s/ACIP’s standard immunization schedule or (2) seasonal influenza vaccine administered by qualified pharmacy technicians and interns that the CDC/ACIP recommends to persons aged 19 and older according to CDC’s/ACIP’s standard immunization schedule; or (3) FDA authorized or FDA licensed COVID–19 vaccines to persons ages three or older. Such State-licensed pharmacists and the State-licensed or registered interns or technicians under their supervision are qualified persons only if the following requirements are met:

i. The vaccine must be authorized, approved, or licensed by the FDA.

ii. In the case of a COVID–19 vaccine, the vaccination must be ordered and administered according to CDC’s/ACIP’s COVID–19 vaccine recommendation(s).

iii. In the case of a childhood vaccine, the vaccination must be ordered and administered according to CDC’s/ACIP’s standard immunization schedule.

iv. In the case of seasonal influenza vaccine administered by qualified pharmacy technicians and interns, the vaccination must be ordered and administered according to CDC’s/ACIP’s standard immunization schedule.

v. In the case of pharmacy technicians, the supervising pharmacist must be readily and immediately available to the immunizing qualified pharmacy technician.

vi. The licensed pharmacist must have completed the immunization training that the licensing State requires for pharmacists to order and administer vaccines. If the State does not specify training requirements for the licensed pharmacist to order and administer vaccines, the licensed pharmacist must complete a vaccination training program of at least 20 hours that is approved by the ACPE to order and administer vaccines. Such a training program must include hands on injection technique,

clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines.

vii. The licensed or registered pharmacy intern and qualified pharmacy technician must complete a practical training program that is approved by the ACPE. This training program must include hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines.

viii. The licensed pharmacist, licensed or registered pharmacy intern and qualified pharmacy technician must have a current certificate in basic cardiopulmonary resuscitation;¹⁰

ix. The licensed pharmacist must complete a minimum of two hours of ACPE-approved, immunization-related continuing pharmacy education during each State licensing period.

x. The licensed pharmacist must comply with recordkeeping and reporting requirements of the jurisdiction in which he or she administers vaccines, including informing the patient's primary care provider when available, submitting the required immunization information to the State or local immunization information system (vaccine registry), complying with requirements with respect to reporting adverse events, and complying with requirements whereby the person administering a vaccine must review the vaccine registry or other vaccination records prior to administering a vaccine;

xi. The licensed pharmacist must inform his or her childhood-vaccination patients and the adult caregiver accompanying the child of the importance of a well-child visit with a pediatrician or other licensed primary care provider and refer patients as appropriate; and

xii. The licensed pharmacist, the licensed or registered pharmacy intern and the qualified pharmacy technician must comply with any applicable requirements (or conditions of use) as set forth in the Centers for Disease Control and Prevention (CDC) COVID-19 vaccination provider agreement and any other federal requirements that apply to the administration of COVID-19 vaccine(s).

(e) Healthcare personnel using telehealth to order or administer Covered Countermeasures for patients in a state other than the state where the healthcare personnel are licensed or otherwise permitted to practice. When ordering and administering Covered Countermeasures by means of telehealth

to patients in a state where the healthcare personnel are not already permitted to practice, the healthcare personnel must comply with all requirements for ordering and administering Covered Countermeasures to patients by means of telehealth in the state where the healthcare personnel are permitted to practice. Any state law that prohibits or effectively prohibits such a qualified person from ordering and administering Covered Countermeasures by means of telehealth is preempted.¹¹ Nothing in this Declaration shall preempt state laws that permit additional persons to deliver telehealth services.

(f) Any healthcare professional or other individual who holds an active license or certification permitting the person to prescribe, dispense, or administer vaccines under the law of any State as of the effective date of this amendment, or a pharmacist or pharmacy intern as authorized under the section V(d) of this Declaration, who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies, other than the State in which the license or certification is held, in association with a COVID-19 vaccination effort by a federal, State, local Tribal or territorial authority or by an institution in the State in which the COVID-19 vaccine covered countermeasure is administered, so long as the license or certification of the healthcare professional has not been suspended or restricted by any licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General, subject to Documentation of completion of the Centers for Disease Control and Prevention COVID-19 (CDC) Vaccine Training Modules¹² and, for healthcare providers who are not currently practicing, documentation of an observation period by a currently practicing healthcare professional experienced in administering intramuscular injections, and for whom administering intramuscular injections is in their ordinary scope of practice, who confirms competency of the healthcare provider in preparation and administration of the COVID-19 vaccine(s) to be administered.

(g) Any member of a uniformed service (including members of the National Guard in a Title 32 duty status) (hereafter in this paragraph "service member") or Federal government,

employee, contractor, or volunteer who prescribes, administers, delivers, distributes or dispenses a Covered Countermeasure. Such Federal government service members, employees, contractors, or volunteers are qualified persons if the following requirement is met: The executive department or agency by or for which the Federal service member, employee, contractor, or volunteer is employed, contracts, or volunteers has authorized or could authorize that service member, employee, contractor, or volunteer to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasure as any part of the duties or responsibilities of that service member, employee, contractor, or volunteer, even if those authorized duties or responsibilities ordinarily would not extend to members of the public or otherwise would be more limited in scope than the activities such service member, employees, contractors, or volunteers are authorized to carry out under this Declaration.

(h) The following healthcare professionals and students in a healthcare profession training program subject to the requirements of this paragraph:

1. Any midwife, paramedic, advanced or intermediate emergency medical technician (EMT), physician assistant, respiratory therapist, dentist, podiatrist, optometrist or veterinarian licensed or certified to practice under the law of any state who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies in association with a COVID-19 vaccination effort by a State, local, Tribal or territorial authority or by an institution in which the COVID-19 vaccine covered countermeasure is administered;

2. Any physician, advanced practice registered nurse, registered nurse, practical nurse, pharmacist, pharmacy intern, midwife, paramedic, advanced or intermediate EMT, respiratory therapist, dentist, physician assistant, podiatrist, optometrist, or veterinarian who has held an active license or certification under the law of any State within the last five years, which is inactive, expired or lapsed, who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies in association with a COVID-19 vaccination effort by a State, local, Tribal or territorial authority or by an institution in which the COVID-19

vaccine covered countermeasure is administered, so long as the license or certification was active and in good standing prior to the date it went inactive, expired or lapsed and was not revoked by the licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General;

3. Any medical, nursing, pharmacy, pharmacy intern, midwife, paramedic, advanced or intermediate EMT, physician assistant, respiratory therapy, dental, podiatry, optometry or veterinary student with appropriate training in administering vaccines as determined by his or her school or training program and supervision by a currently practicing healthcare professional experienced in administering intramuscular injections who administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies in association with a COVID-19 vaccination effort by a State, local, Tribal or territorial authority or by an institution in which the COVID-19 vaccine covered countermeasure is administered;

Subject to the following requirements:

- i. The vaccine must be authorized, approved, or licensed by the FDA;
- ii. Vaccination must be ordered and administered according to CDC's/ACIP's COVID-19 vaccine recommendation(s);
- iii. The healthcare professionals and students must have documentation of completion of the Centers for Disease Control and Prevention COVID-19 Vaccine Training Modules and, if applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering COVID-19 vaccines;
- iv. The healthcare professionals and students must have documentation of an observation period by a currently practicing healthcare professional experienced in administering intramuscular injections, and for whom administering vaccinations is in their ordinary scope of practice, who confirms competency of the healthcare provider or student in preparation and administration of the COVID-19 vaccine(s) to be administered and, if applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering COVID-19 vaccines;

v. The healthcare professionals and students must have a current certificate in basic cardiopulmonary resuscitation;¹³

vi. The healthcare professionals and students must comply with recordkeeping and reporting requirements of the jurisdiction in which he or she administers vaccines, including informing the patient's primary-care provider when available, submitting the required immunization information to the State or local immunization information system (vaccine registry), complying with requirements with respect to reporting adverse events, and complying with requirements whereby the person administering a vaccine must review the vaccine registry or other vaccination records prior to administering a vaccine; and

vii. The healthcare professionals and students comply with any applicable requirements (or conditions of use) as set forth in the Centers for Disease Control and Prevention (CDC) COVID-19 vaccination provider agreement and any other federal requirements that apply to the administration of COVID-19 vaccine(s).

(i) A State-licensed pharmacist who orders and administers, and pharmacy interns and qualified pharmacy technicians who administer (if the pharmacy intern or technician acts under the supervision of such pharmacist and the pharmacy intern or technician is licensed or registered by his or her State board of pharmacy)¹⁴ FDA authorized, approved, or licensed COVID-19 therapeutics. Such State licensed pharmacists and the State licensed or registered interns or technicians under their supervision are qualified persons only if the following requirements are met:

i. The COVID-19 therapeutic must be authorized, approved, or licensed by the FDA;

ii. In the case of a licensed pharmacist ordering a COVID-19 therapeutic, the therapeutic must be ordered for subcutaneous, intramuscular, or oral administration and in accordance with the FDA approval, authorization, or licensing;

iii. In the case of licensed pharmacists, qualified pharmacy technicians, and licensed or registered pharmacy interns administering the COVID-19 therapeutic, the therapeutic must be administered subcutaneously, intramuscularly, or orally in accordance with the FDA approval, authorization, or licensing;

iv. In the case of qualified pharmacy technicians, the supervising pharmacist must be readily and immediately

available to the qualified pharmacy technician;

v. In the case of COVID-19 therapeutics administered through intramuscular or subcutaneous injections, the licensed pharmacist, licensed or registered pharmacy intern and qualified pharmacy technician must complete a practical training program that is approved by the ACPE. This training program must include hands-on injection technique, clinical evaluation of indications and contraindications of COVID-19 therapeutics, the recognition and treatment of emergency reactions to COVID-19 therapeutics, and any additional training required in the FDA approval, authorization, or licensing;

vi. The licensed pharmacist, licensed or registered pharmacy intern and qualified pharmacy technician must have a current certificate in basic cardiopulmonary resuscitation;¹⁵

vii. The licensed pharmacist must comply with recordkeeping and reporting requirements of the jurisdiction in which he or she administers COVID-19 therapeutics; including informing the patient's primary-care provider when available and complying with requirements with respect to reporting adverse events; and

viii. The licensed pharmacist, the licensed or registered pharmacy intern and the qualified pharmacy technician must comply with any applicable requirements (or conditions of use) that apply to the administration of COVID-19 therapeutics.

(j) Any pharmacist who holds an active license or certification permitting the person to prescribe, dispense, or administer vaccines under the law of any State or who is authorized under Section V(d) of this Declaration who prescribes, dispenses, or administers seasonal influenza vaccines, or a pharmacy intern as authorized under the section V(d) of this Declaration who administers seasonal influenza vaccines, in any jurisdiction where the PREP Act applies, other than the State in which the license or certification is held, so long as the license or certification of the pharmacist or pharmacy intern has not been suspended or restricted by any licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General.

Nothing in this Declaration shall be construed to affect the National Vaccine Injury Compensation Program, including an injured party's ability to obtain compensation under that program. Covered countermeasures that

are subject to the National Vaccine Injury Compensation Program authorized under 42 U.S.C. 300aa–10 *et seq.* are covered under this Declaration for the purposes of liability immunity and injury compensation only to the extent that injury compensation is not provided under that Program. All other terms and conditions of the Declaration apply to such covered countermeasures.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are:

(a) Any antiviral, any drug, any biologic, any diagnostic, any other device, any respiratory protective device, or any vaccine manufactured, used, designed, developed, modified, licensed, or procured:

i. To diagnose, mitigate, prevent, treat, or cure COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom; or

ii. to limit the harm that COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom, might otherwise cause;

(b) a product manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by a product described in paragraph (a) above;

(c) a product or technology intended to enhance the use or effect of a product described in paragraph (a) or (b) above; or

(d) any device used in the administration of any such product, and all components and constituent materials of any such product.

To be a Covered Countermeasure under the Declaration, a product must also meet 42 U.S.C. 247d–6d(i)(1)'s definition of "Covered Countermeasure."

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability protections are afforded to Covered Persons only for Recommended Activities involving:

(a) Covered Countermeasures that are related to present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements;

(b) Covered Countermeasures that are related to activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe,

administer, deliver, distribute or dispense the Covered Countermeasures following a Declaration of Emergency;

(c) Covered Countermeasures other than those described in subsection (e) that are:

i. Licensed, approved or cleared by the FDA (or that are permitted to be used under an Investigational New Drug Application or an Investigational Device Exemption) under the FD&C Act or PHS Act to treat, diagnose, cure, prevent, mitigate, or limit the harm from COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom; or

ii. a respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, that the Secretary determines to be a priority for use during a public health emergency declared under section 319 of the PHS Act to prevent, mitigate, or limit the harm from COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom.

To qualify for this third distribution channel, a Covered Person must manufacture, test, develop, distribute, administer, or use the Covered Countermeasure pursuant to the FDA licensure, approval, or clearance (or pursuant to an Investigational New Drug Application or Investigational Device Exemption), or the NIOSH approval;

(d) Covered Countermeasures that are authorized by the FDA under section 564 of the FD&C Act to treat, diagnose, cure, prevent, mitigate, or limit the harm from COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom. To qualify for this fourth distribution channel, a Covered Person must manufacture, test, develop, distribute, administer, or use the Covered Countermeasure pursuant to the FDA authorization; or

(e) Covered Countermeasures that are COVID–19 vaccines licensed by the FDA to prevent, mitigate, or limit the harm from COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom and any approved or cleared in vitro diagnostic product or other device used to treat, diagnose, cure, prevent, or mitigate COVID–19, or the transmission of SARS–CoV–2 or a virus mutating therefrom. To qualify for this fifth distribution channel, a Covered Person must manufacture, test, develop, distribute, administer, or use the Covered Countermeasure pursuant to the FDA license, clearance, or approval.

As used in this Declaration, the terms "Authority Having Jurisdiction" and "Declaration of Emergency" have the following meanings:

(i) The Authority Having Jurisdiction means the public agency or its delegate

that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.*, city, county, tribal, state, or federal boundary lines) or functional (*e.g.*, law enforcement, public health) range or sphere of authority.

(ii) A Declaration of Emergency means any declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal declaration in support of an Emergency Use Authorization under Section 564 of the FD&C Act unless such declaration specifies otherwise.

I have also determined that, for governmental program planners only, liability protections are afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (a) donation; (b) commercial sale; (c) deployment of Covered Countermeasures from federal stockpiles; or (d) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is not only COVID–19 caused by SARS–CoV–2, or a virus mutating therefrom, but also other diseases, health conditions, or threats that may have been caused by COVID–19, SARS–CoV–2, or a virus mutating therefrom, including the threat of increased burden on the healthcare system due to seasonal influenza infections occurring at the same time as COVID–19 infections, which will lead to an increase in the rate of infectious diseases.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for the purpose of distributing and dispensing countermeasures. Where there are limited Covered

Countermeasures, *not* administering a Covered Countermeasure to one individual in order to administer it to another individual can constitute “relating to . . . the administration to . . . an individual” under 42 U.S.C. 247d–6d. For example, consider a situation where there is only one dose¹⁶ of a COVID–19 vaccine, and a person in a vulnerable population and a person in a less vulnerable population both request it from a healthcare professional. In that situation, the healthcare professional administers the one dose to the person who is more vulnerable to COVID–19. In that circumstance, the failure to administer the COVID–19 vaccine to the person in a less-vulnerable population “relat[es] to . . . the administration to” the person in a vulnerable population. The person in the vulnerable population was able to receive the vaccine only because it was not administered to the person in the less-vulnerable population. Prioritization or purposeful allocation of a Covered Countermeasure, particularly if done in accordance with a public health authority’s directive, can fall within the PREP Act and this Declaration’s liability protections.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals to whom the liability protections of this Declaration extend include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability protections are afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability protections are afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability protections are afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability protections are afforded to manufacturers and distributors without regard to whether the Covered Countermeasure is used by or administered in any designated geographic area; liability protections are afforded to program planners and

qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

COVID–19 is a global challenge that requires a whole-of-nation response. There are substantial federal legal and policy issues, and substantial federal legal and policy interests within the meaning of *Grable & Sons Metal Products, Inc. v. Darue Eng’g. & Mfg.*, 545 U.S. 308 (2005), in having a unified, whole-of-nation response to the COVID–19 pandemic among federal, state, local, and private-sector entities. The world faced an unprecedented pandemic. To effectively respond, there needed to be a more consistent pathway for Covered Persons to manufacture, distribute, administer or use Covered Countermeasures across the nation and the world. Thus, there are substantial federal legal and policy issues, and substantial federal legal and policy interests within the meaning of *Grable & Sons Metal Products, Inc. v. Darue Eng’g. & Mfg.*, 545 U.S. 308 (2005), in having a uniform interpretation of the PREP Act. Under the PREP Act, the sole exception to the immunity from suit and liability of covered persons under the PREP Act is an exclusive Federal cause of action against a covered person for death or serious physical injury proximately caused by willful misconduct by such covered person. In all other cases, an injured party’s exclusive remedy is an administrative remedy under section 319F–4 of the PHS Act. Through the PREP Act, Congress delegated to me the authority to strike the appropriate Federal-state balance with respect to Covered Countermeasures through PREP Act Declarations.¹⁷

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

The effective time period for Covered Countermeasures and Covered Persons depends on the means of distribution identified in Section VII of this Declaration as applied to categories of Countermeasures and Qualified Persons:

(a) Liability protections for any respiratory protective device approved by NIOSH under 42 CFR part 84, or any successor regulations, through the means of distribution identified in Section VII(a) of this Declaration, begin on March 27, 2020 and extend through December 31, 2024.

(b) Liability protections for all other Covered Countermeasures identified in Section VI of this Declaration, through

means of distribution identified in Section VII(a) of this Declaration, begin on February 4, 2020 and extend through December 31, 2024.

(c) Liability protections for all Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction, as identified in Section VII(b) of this Declaration, begin with a Declaration of Emergency as that term is defined in Section VII (except that, with respect to qualified persons who order or administer a routine childhood vaccination that CDC/ACIP recommends to persons ages three through 18 according to CDC’s/ACIP’s standard immunization schedule, liability protections began on August 24, 2020), and last through (a) the final day the Declaration of Emergency is in effect, or (b) December 31, 2024, whichever occurs first.

(d) Liability protections for all Covered Countermeasures identified in Section VII(c) of this Declaration that are licensed, approved or cleared by the FDA begin on December 9, 2020, and last through the final day the Declaration of Emergency is in effect or December 31, 2024 whichever occurs first. Liability protections for all Covered Countermeasures identified in Section VII(c) of this Declaration that are approved by NIOSH last for the time period stated in section (a) of this Section XII.

(e) Liability protections for all Covered Countermeasures identified in Section VII(d) of this Declaration begin on December 9, 2020, and last until December 31, 2024, regardless of any Declaration of Emergency that might otherwise terminate the time period of coverage under paragraphs (c) or (d) of this Section XII.

(f) Liability protections for all Covered Countermeasures identified in Section VII(e) of this Declaration begin on December 9, 2020, and last until December 31, 2024, regardless of any Declaration of Emergency that might otherwise terminate the time period of coverage under paragraphs (c) or (d) of this Section XII.

(g) Liability protections for Manufacturers, Distributors, and Program Planners, as defined at 42 U.S.C. 247d–6d(i), begin on February 4, 2020, and last through the time periods stated in paragraphs (a)–(f) of this Section XII.

(h) Liability protections for Qualified Persons who are a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the

countermeasure was prescribed, administered, or dispensed begin on February 4, 2020, and last through the time periods stated in paragraphs (a)–(f) of this Section XII.

(i) Liability protections for Additional Qualified Persons identified under section V of the Declaration and in Guidance implementing section V of the Declaration begin on the dates listed below, and last through the time periods stated in paragraphs (a)–(d) of this section XII of the Declaration, unless otherwise stated in this paragraph (i).

i. Liability protections for Qualified Persons under section V(d) of the Declaration who are licensed pharmacists to order and administer, and licensed or registered pharmacy interns and qualified pharmacy technicians to administer CDC/ACIP recommended vaccines for persons aged three through 18 (other than seasonal influenza vaccines and COVID–19 vaccines) begins on August 24, 2020.

ii. Liability protections for Qualified Persons under section V(d) of the Declaration who are licensed pharmacists to order and administer, and licensed or registered pharmacy interns and qualified pharmacy technicians to administer CDC/ACIP recommended seasonal influenza vaccines for persons aged three through 18 begins on August 24, 2020, and lasts through December 31, 2024 regardless of the time periods stated in paragraphs (c)–(d) of this section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

iii. Liability protections for Qualified Persons under section V(d) of the Declaration who are licensed pharmacists to order and administer, and pharmacy interns and qualified pharmacy technicians to administer, COVID–19 vaccines to individuals aged three and above begins on February 4, 2020 and lasts through December 31, 2024 regardless of the time periods stated in paragraphs (c)–(d) of this section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

iv. Liability protections for Qualified Persons under section V(d) of the Declaration who are licensed pharmacists to order and administer, and pharmacy interns and qualified pharmacy technicians to administer, seasonal influenza vaccines to individuals aged nineteen and above begins on August 4, 2021 and lasts through December 31, 2024, regardless of the time periods stated in paragraphs (c)–(d) of this section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

v. Liability protections for Qualified Persons under section V(e) of the Declaration begin on February 4, 2020.

vi. Liability protections for Qualified Persons under section V(f) of the Declaration begin on February 2, 2021.

vii. Liability protections for Qualified Persons under section V(g) of the Declaration begin on February 16, 2021, and last through December 31, 2024.

xiii. Liability protections for Qualified Persons who are physicians, advanced practice registered nurses, registered nurses, or practical nurses under section V(h) of the Declaration begin on February 2, 2021 with additional conditions effective as of March 11, 2021 and liability protections for all other Qualified persons under section V(h) begin on March 11, 2021.

ix. Liability protections for Qualified Persons under section V(i) of the Declaration who are licensed pharmacists to order and administer and qualified pharmacy technicians and licensed or registered pharmacy interns to administer COVID–19 therapeutics identified in Section VII(d) of the Declaration begin on September 9, 2021 and last through December 31, 2024 regardless of time periods stated in paragraphs (c)–(d) of this section or limitations on distribution stated in section VII (a)–(b) of this Declaration.

x. Liability protections for Qualified Persons under section V(i) of the Declaration who are licensed pharmacists to order and administer and qualified pharmacy technicians and licensed or registered pharmacy interns to administer COVID–19 therapeutics identified in Section VII(c) of the Declaration begin on September 9, 2021.

xi. Liability protections for Qualified Persons under section V(j) of the Declaration begin on December 30, 2021.

xii. Liability protections for Qualified Persons authorized under Guidance issued by this Department as an Authority Having Jurisdiction to respond to a declared emergency, incorporated into this Declaration by reference,¹⁸ to administer COVID–19 tests who are licensed pharmacists begin April 8, 2020 and last until December 31, 2024 regardless of any limitations stated in paragraphs (c)–(d) of this Section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

xiii. Liability protections for Qualified Persons authorized under Guidance issued by this Department as an Authority Having Jurisdiction to respond to a declared emergency, incorporated into this Declaration by reference,¹⁹ to administer COVID–19 tests who are licensed or registered

pharmacy interns or qualified pharmacy technicians begin October 20, 2020 and last until December 31, 2024 regardless of any limitations stated in paragraphs (c)–(d) of this Section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

xiv. Liability protections for Qualified Persons authorized under Guidance issued by this Department as an Authority Having Jurisdiction to respond to a declared emergency, incorporated into this Declaration by reference,²⁰ who are pharmacies when their staff pharmacists order and administer, or their pharmacy interns and pharmacy technicians administer COVID–19 vaccines to individuals aged three and above, seasonal influenza vaccines to individuals aged three through eighteen, seasonal influenza vaccines to individuals aged nineteen and above, COVID–19 tests, and COVID–19 therapeutics identified in Section VII(d) of the Declaration begin October 29, 2020 and last until December 31, 2024 regardless of any limitations stated in paragraphs (c)–(d) of this Section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

xv. Liability protections for Qualified Persons authorized under Guidance issued by this Department as an Authority Having Jurisdiction to respond to a declared emergency, incorporated into this Declaration by reference,²¹ who are pharmacies when their staff pharmacists order and administer, or their pharmacy interns and pharmacy technicians administer CDC/ACIP recommended vaccines for persons aged three through 18 (other than seasonal influenza vaccines and COVID–19 vaccines) and countermeasures identified in Section VII(c) of the Declaration begin October 29, 2020.

xv. Liability protections for Qualified Persons authorized under Guidance issued by this Department as an Authority Having Jurisdiction to respond to a declared emergency, incorporated into this Declaration by reference²² to prescribe or administer point-of-care COVID–19 tests, using anterior nares specimen collection or self-collection, for screening in congregate facilities across the Nation who are licensed healthcare practitioners begin August 31, 2020 and last until December 31, 2024 regardless of any limitations stated in paragraphs (c)–(d) of this Section XII or limitations on distribution stated in section VII (a)–(b) of this Declaration.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or <http://www.hrsa.gov/cicp/>.

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Amendments to this Declaration will be published in the **Federal Register**, as warranted.

Authority: 42 U.S.C. 247d–6d.

Dated: May 9, 2023.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

¹ Third Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19, 85 FR 53126 (August 24, 2020); Tenth Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical

Countermeasures Against COVID–19, 87 FR 982 (April 14, 2022).

² Gallagher, A. “Study: 88.9% of US Population Lives Within 5 Miles of a Community Pharmacy,” *Pharmacy Times* (August 4, 2022) available at: <https://www.pharmacytimes.com/view/study-88-9-of-us-population-lives-within-5-miles-of-a-community-pharmacy> (last visited Apr. 21, 2023).

³ Department of Health and Human Services General Counsel Advisory Opinion on the Public Readiness and Emergency Preparedness Act, May 19, 2020, available at: <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/advisory-opinion-20-02-hhs-ogc-prep-act.pdf>. (last visited April 14, 2023). See also, Department of Justice Office of Legal Counsel Advisory Opinion for Robert P. Charrow, General Counsel of the Department of Health and Human Services, January 12, 2021, available at: <https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/19/2021-01-19-prep-act-preemption.pdf> (last visited April 14, 2023).

⁴ Section 4113, Consolidated Appropriations Act, 2023, Public Law 117–328 (December 29, 2022).

⁵ See, e.g., Advisory Opinion on the Public Readiness and Emergency Preparedness Act and the March 10, 2020 Declaration under the Act, Apr. 17, 2020, as Modified on May 19, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-advisory-opinion-hhs-ogc.pdf> (last visited Apr. 3, 2023); Advisory Opinion 20–02 on the Public Readiness and Emergency Preparedness Act and the Secretary’s Declaration under the Act, May 19, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/advisory-opinion-20-02-hhs-ogc-prep-act.pdf> (last visited Apr. 3, 2023); Advisory Opinion 20–03 on the Public Readiness and Emergency Preparedness Act and the Secretary’s Declaration under the Act, Oct. 22, 2020, as Modified on Oct. 23, 2020, available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/AO3.1.2_Updated_FINAL_SIGNED_10.23.20.pdf (last visited Apr. 3, 2023); Advisory Opinion 20–04 on the Public Readiness and Emergency Preparedness Act and the Secretary’s Declaration under the Act, Oct. 22, 2020, as Modified on Oct. 23, 2020, available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/AO%204.2_Updated_FINAL_SIGNED_10.23.20.pdf (last visited Apr. 3, 2023).

⁶ Guidance for Licensed Pharmacists, COVID–19 Testing, and Immunity Under the PREP Act, OASH, Apr. 8, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf> (last visited Apr. 3, 2023); Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID–19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Apr. 3, 2023).

⁷ See, e.g., Guidance for Licensed Pharmacists, COVID–19 Testing, and Immunity Under the PREP Act, OASH, Apr. 8, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf> (last visited Apr. 3, 2023); Guidance for PREP Act Coverage for COVID–19 Screening Tests at Nursing Homes, Assisted-Living Facilities, Long-Term-Care Facilities, and other Congregate Facilities, OASH, Aug. 31, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-coverage-for-screening-in-congregate-settings.pdf> (last visited Apr. 3, 2023); Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID–19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Apr. 3, 2023); Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID–19 Vaccines, and COVID–19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-guidance.pdf> (last visited Apr. 3, 2023); PREP Act Authorization for Pharmacies Distributing and Administering Certain Covered Countermeasures, Oct. 29, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-authorization-pharmacies-administering-covered-countermeasures.pdf> (last visited Apr. 3, 2023) (collectively, OASH PREP Act Authorizations). Nothing herein shall suggest that, for purposes of the Declaration, the foregoing are the only persons authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction.

⁸ Some states do not require pharmacy interns to be licensed or registered by the state board of pharmacy. As used herein, “State-licensed or registered intern” (or equivalent phrases) refers to pharmacy interns authorized by the state or board of pharmacy in the state in which the practical pharmacy internship occurs. The authorization can, but need not, take the form of a license from, or registration with, the State board of pharmacy. Similarly, states vary on licensure and registration requirements for pharmacy technicians. Some states require certain education, training, and/or certification for licensure or registration; others either have no prerequisites for licensure or registration or do not require licensure or registration at all. As used herein, to be a “qualified pharmacy technician,” pharmacy technicians working in states with licensure and/or registration requirements must be licensed and/or registered in accordance with state requirements; pharmacy technicians working in states without licensure and/or registration requirements must have a CPhT certification from either the Pharmacy Technician Certification Board or National Healthcareer

Association. See Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020 at 2, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

⁹ Where the term CDC/ACIP recommendations, standard immunization schedules, or similar language is used, this includes both direct CDC recommendations as well as recommendations adopted by the CDC Director after recommendation by ACIP, which are commonly referred to as ACIP recommendations or schedules.

¹⁰ This requirement is satisfied by, among other things, a certification in basic cardiopulmonary resuscitation by an online program that has received accreditation from the American Nurses Credentialing Center, the ACPE, or the Accreditation Council for Continuing Medical Education. The phrase “current certificate in basic cardiopulmonary resuscitation,” when used in the September 3, 2020 or October 20, 2020 OASH authorizations, shall be interpreted the same way. See Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Apr. 3, 2023); Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

¹¹ See, e.g., Advisory Opinion 20-02 on the Public Readiness and Emergency Preparedness Act and the Secretary's Declaration under the Act, May 19, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//advisory-opinion-20-02-hhs-ogc-prep-act.pdf> (last visited Apr. 3, 2023).

¹² See COVID-19 Vaccine Training Modules, available at <https://www.cdc.gov/vaccines/covid-19/training.html>.

¹³ This requirement is satisfied by, among other things, a certification in basic cardiopulmonary resuscitation by an online program that has received accreditation from the American Nurses Credentialing Center, the ACPE, or the Accreditation Council for Continuing Medical Education. The phrase “current certificate in basic cardiopulmonary resuscitation,” when used in the September 3, 2020 or October 20, 2020 OASH authorizations, shall be interpreted the same way. See Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Apr. 3, 2023); Guidance for PREP

Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

¹⁴ Some states do not require pharmacy interns to be licensed or registered by the state board of pharmacy. As used herein, “State-licensed or registered intern” (or equivalent phrases) refers to pharmacy interns authorized by the state or board of pharmacy in the state in which the practical pharmacy internship occurs. The authorization can, but need not, take the form of a license from, or registration with, the State board of pharmacy. Similarly, states vary on licensure and registration requirements for pharmacy technicians. Some states require certain education, training, and/or certification for licensure or registration; others either have no prerequisites for licensure or registration or do not require licensure or registration at all. As used herein, to be a “qualified pharmacy technician,” pharmacy technicians working in states with licensure and/or registration requirements must be licensed and/or registered in accordance with state requirements; pharmacy technicians working in states without licensure and/or registration requirements must have a CPhT certification from either the Pharmacy Technician Certification Board or National Healthcareer Association. See Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020 at 2, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

¹⁵ This requirement is satisfied by, among other things, a certification in basic cardiopulmonary resuscitation by an online program that has received accreditation from the American Nurses Credentialing Center, the ACPE, or the Accreditation Council for Continuing Medical Education. The phrase “current certificate in basic cardiopulmonary resuscitation,” when used in the September 3, 2020 or October 20, 2020 OASH authorizations, shall be interpreted the same way. See Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Apr. 3, 2023); Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

¹⁶ For simplicity, this example assumes a patient only requires one dose of the vaccine.

¹⁷ 42 U.S.C. 247d-6d(b)(7) provides that “[n]o court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this subsection.”

¹⁸ See, Guidance for Licensed Pharmacists, COVID-19 Testing, and Immunity Under the PREP Act, OASH, Apr. 8, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf> (last visited Apr. 3, 2023).

¹⁹ Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-guidance.pdf> (last visited Apr. 3, 2023).

²⁰ PREP Act Authorization for Pharmacies Distributing and Administering Certain Covered Countermeasures, OASH, Oct. 29, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-authorization-pharmacies-administering-covered-countermeasures.pdf> (last visited Apr. 14, 2023).

²¹ PREP Act Authorization for Pharmacies Distributing and Administering Certain Covered Countermeasures, OASH, Oct. 29, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-authorization-pharmacies-administering-covered-countermeasures.pdf> (last visited Apr. 14, 2023).

²² Guidance for PREP Act Coverage for COVID-19 Screening Tests at Nursing Homes, Assisted-Living Facilities, Long-Term-Care Facilities, and other Congregate Facilities, OASH, August 31, 2023, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//prep-act-coverage-for-screening-in-congregate-settings.pdf> (last visited April 14, 2023).

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BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 6–7, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301-435-0696, barnasg@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: June 8–9, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435-1712, ryansj@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—1 Study Section.

Date: June 12–13, 2023.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, sultanaa@mail.nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: June 12–13, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-0510, mollie.manier@nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: June 12–13, 2023.

Time: 10:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vanessa Dawn Sher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 801C, Bethesda, MD 20892, (301) 594-3218, sherkv2@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: June 13–14, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jordan M. Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 451-0293, jordan.moore@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10155 Filed 5–11–23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Evaluation of the Enhancing the Diversity of the NIH-Funded Workforce Program (National Institute of General Medical Sciences); Revision

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS) will publish periodic summaries of proposed projects to be submitted to the Office of Management

and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Alison Gammie, Director, Division of Training, Workforce Development, and Diversity, NIGMS, 45 Center Drive, Room 2AS43J, Bethesda, MD 20892, or call non-toll-free number (301) 496-7301 or email your request, including your address to: alison.gammie@nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Evaluation of the Enhancing the Diversity of the NIH-funded Workforce Program Consortium (DPC), 0925–0747, 06/30/2024, REVISION, National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH).

Need and Use of Information

Collection: This request is for a Revision of a currently approved collection. The goal of the DPC is to address a unique and compelling need identified by NIH, namely to enhance the diversity of well-trained biomedical research scientists who can successfully compete for NIH research funding and/or otherwise contribute to the NIH-funded scientific workforce. The DPC is a national collaborative through which awardee institutions, in partnership with NIH, aim to enhance diversity in the biomedical research workforce through the development, implementation, assessment and dissemination of

innovative and effective approaches to: (a) student outreach, engagement, training, and mentoring, (b) faculty development, and (c) institutional research training infrastructure. The Coordination and Evaluation Center (CEC) will evaluate the efficacy of the training and mentoring approaches implemented across a variety of contexts and populations and will disseminate information to the broader research community. The planned consortium-wide data collection and evaluation will provide comprehensive information about the multi-dimensional factors (individual, institutional, and faculty/mentor) that

influence student and faculty success, professional development, and persistence within biomedical research career paths across a variety of contexts. The planned data collection, and the resulting findings, is projected to have a sustained, transformative effect on biomedical research training and mentoring nationwide.

OMB approval is requested for an extension of 13 months beyond the currently approved collection, until June 2024, to complete the final portions of the approved data collection. There are no costs to respondents other than their time. The total estimated annualized burden hours are 22,980.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Student Annual Follow-up survey (Attachment 11).	BUILD and Non-BUILD Student	15,000	1	45/60	11,250
2019 College Senior Survey (Attachment 12).	BUILD and Non-BUILD Student	15,000	1	45/60	11,250
BUILD Institutional Research & Program Data Requests (Attachment 13).	Personnel and Administrators at BUILD Institutions.	10	3	16	480
Total .....	.....	30,010	30,030	.....	22,980

Dated: May 9, 2023.

David N. Bochner,

Project Clearance Liaison, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 2023-10198 Filed 5-11-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2023-0296]

National Maritime Security Advisory Committee; June 2023 Virtual Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of federal advisory committee virtual meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will meet virtually to review and discuss matters relating to national maritime security, including enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and State, local, and tribal governments; relevant public safety and emergency response agencies; relevant law

enforcement and security organizations; maritime industry; port owners and operators, and; terminal owners and operators. The virtual meeting will be open to the public.

DATES:

Meeting: The Committee will meet virtually on Monday, June 5, 2023, from 1 p.m. until 2:30 p.m. Eastern Daylight Time (EDT). The virtual meeting may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than June 1, 2023.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on June 1, 2023, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending the virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Maritime Security Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Mr. Ryan Owens at ryanf.owens@uscg.mil or call (202) 302-6565 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than June 1, 2023. We are particularly interested in comments on the topics in the "Agenda" section below. We encourage you to submit comments through Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG-2023-0296]. Comments received will be posted without alteration at <https://www.regulations.gov> including any personal information provided. You may wish to view the Privacy and Security Notice and the User Notice, which are both available on the homepage of [https://](https://www.regulations.gov)

www.regulations.gov and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: 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.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593-7581; telephone 202-302-6565 or email at ryan.f.owens@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act*, (Pub. L. 117-286, 5 U.S.C., ch. 10). The Committee was established on December 4, 2018, by § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018*, Public Law 115-282, 132 Stat. 4190, and is codified in 46 U.S.C. 70112. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Maritime Security Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda

The agenda for the National Maritime Security Advisory Committee meeting is as follows:

Monday, June 5, 2023

- (1) Call to Order.
- (2) Introduction.
- (3) Designated Federal Official Remarks.
- (4) Roll call of Committee members and determination of quorum.
- (5) Remarks from Committee Leadership.
- (6) Discussion of Tasks. The Committee will provide a final report of recommendations on the following task:
 - a. *Task T-2021-2:* Provide input to support further development of the Maritime Cyber Risk Assessment Model.

(7) Public Comment Period.

(8) Adjournment of Meeting.

A copy of all meeting documentation will be available at <https://homeport.uscg.mil/NMSAC> no later than June 1, 2023. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION** section above.

There will be a public comment period at the end of meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: May 8, 2023.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2023-10156 Filed 5-11-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2022-0018]

Extension of the Comment Period

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Extension of comment period.

SUMMARY: The Infrastructure Security Division (ISD) within the Cybersecurity and Infrastructure Security Agency (CISA) is extending the comment period for the Information Collection Request (ICR) 1670-0007, Request to Revise and Extend the Chemical Security Assessment Tool (CSAT), published in the *Federal Register* on April 20, 2023. CISA is extending the comment period through May 26, 2023.

DATES: Comments are due by May 26, 2023.

ADDRESSES: Written comments and recommendations for this ICR should be sent to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review-Open for Public Comments" or by using the search function. All submissions received must include the agency name "CISA" and docket number CISA-2022-0018.

Comments that include protected information such as trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),¹

¹ For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at www.dhs.gov/publication/safeguarding-cvi-manual.

Sensitive Security Information (SSI),² or Protected Critical Infrastructure Information (PCII)³ should not be submitted to the public docket. Comments containing protected information should be appropriately marked and packaged in accordance with all applicable requirements and submission must be coordinated with the point of contact for this notice provided in **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Annie Hunziker Boyer, 703-603-5000, CISARegulations@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: On Thursday April 20, 2023, CISA published a *Federal Register* notice requesting comments for 30 days through www.reginfo.gov/public/do/PRAMain.⁴ The ability to submit comments was not available through the designated website until Monday April 24, 2023, a delay of four days.

Under 5 CFR 1320.10(b), the public must be provided at least 30 days for public comment after OMB's receipt of the proposed collection of information. To ensure that the public can take advantage of the full 30-days required under 5 CFR part 1320 to provide comment, CISA is extending the comment period stated in its prior notice to match the closure of the 30-day comment period on the designated website.

Robert Costello,

Chief Information Officer, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023-10151 Filed 5-11-23; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500170709]

Public Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of

² For more information about SSI see 49 CFR part 1520 and the SSI Program web page at www.tsa.gov/for-industry/sensitive-security-information.

³ For more information about PCII see 6 CFR part 29 and the PCII Program web page at www.dhs.gov/pcii-program.

⁴ See 88 FR 24435.

Land Management's (BLM) Steens Mountain Advisory Council (SMAC) will meet as follows.

DATES: The SMAC will hold a field tour of the Steens Mountain Cooperative Management and Protection Area, Thursday, June 15, 2023, from 10 a.m. to 4:30 p.m. PT, and an in-person business session on Friday, June 16, from 8:30 a.m. to 12:30 p.m. PT.

ADDRESSES: The meeting will be held at the Frenchglen School at 39235 Highway 205 in Frenchglen, Oregon. Field tour participants will meet at the Frenchglen school on Thursday to caravan. Virtual attendance through the Zoom for Government platform will be available on Friday. The final meeting agenda and Zoom link will be published on the SMAC web page at least 10 days in advance at <https://on.doi.gov/2PnZRcl>.

FOR FURTHER INFORMATION CONTACT: Tara Thisell, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738; telephone: (541) 573-4519; email: tthisell@blm.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 SMAC was established on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106-399). The SMAC provides recommendations to the BLM regarding new and unique approaches to management of the public lands within the bounds of the Steens Mountain Cooperative Management and Protection Area, recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on potential maintenance and improvement of the ecological and economic integrity of the area.

Agenda items for the 2-day meeting include a field tour of the Steens Mountain area. Tour stops may vary depending on road, weather, and access conditions, but could include Riddle Brothers Ranch, Page Springs Weir, or fuels treatment project sites. The public is welcome to attend but must provide their own transportation and personal amenities, such as appropriate clothing and footwear, food, and water. High-clearance, four-wheel drive vehicles are recommended.

The June 16 business session includes information sharing from the Designated Federal Official and the Andrews/Steens Field Manager, a brief recreation program update, discussion of the Bridge Creek Area Allotment Management Plan Environmental Impact Statement, a review of the Steens Act and reasonable access, and an opportunity for committee members to share information from their constituents or present research. Any other matters that may reasonably come before the SMAC may also be included.

A public comment period will be available at 11 a.m. on Friday, June 16. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Burns District Office listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All comments received at least 1 week prior to the meeting will be provided to the SMAC prior to the meeting. The meeting may end early if all business items are completed ahead of schedule or may be extended if discussions warrant more time. All meetings, including virtual sessions, are open to the public in their entirety.

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 7 business days prior to the meeting to give the BLM 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, phone number, email address, or other personal identifying information in your comments, please 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)

Bruce Loranger,

Deputy District Manager.

[FR Doc. 2023-10118 Filed 5-11-23; 8:45 am]

BILLING CODE 4331-24-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500169318]

Public Meetings for the John Day-Snake Resource Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as follows.

DATES: The John Day-Snake RAC Planning Subcommittee will meet from 6 to 8 p.m. Pacific Time (PT) on Wednesday, September 13, 2023, via the Zoom for Government platform. The full John Day-Snake RAC will meet Thursday and Friday, October 19 and 20, 2023. On October 19, the meeting will be from 8 a.m. to 4:30 p.m. PT. The October 20 meeting will be from 8 a.m. to noon PT in person in Maupin, Oregon, at the Maupin Civic Center located in Maupin City Hall, with a virtual participation option available.

Thirty-minute public comment periods will be offered at 7:20 p.m. PT Wednesday, September 13, 2023; at 4 p.m. PT Thursday, October 19, 2023; and at 11:30 a.m. PT Friday, October 20, 2023.

ADDRESSES: Final agendas for each meeting and contact information regarding Zoom participation details will be published on the RAC web page at least 10 days in advance at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac>.

Comments to the RAC can be mailed to: BLM Prineville District; Attn. Amanda Roberts; 3050 NE 3rd St., Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Kaitlyn Webb, Public Affairs Officer, 3050 N 3rd St., Prineville, OR 97754; telephone: (541) 416-6700; email: kwebb@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their countries to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member RAC was chartered and

appointed by the Secretary of the Interior. Its diverse perspectives are represented in commodity, conservation, and local interests. The RAC provides advice to BLM and, as needed, to U.S. Forest Service resource managers regarding management plans and proposed resource actions on public land in the John Day-Snake area. All meetings are open to the public in their entirety. Information to be distributed to the RAC must be provided to its members prior to the start of each meeting.

Standing agenda items include management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review of recommendations regarding proposed actions by the Vale or Prineville BLM Districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco, and Deschutes National Forests; and any other business that may reasonably come before the RAC. The Designated Federal Officer will attend the meeting, take minutes, and publish the minutes on the RAC web page at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac>.

For sign language interpreter services, assistive listening devices, or other reasonable accommodations, please contact (**FOR FURTHER INFORMATION CONTACT**) 7 business days before the meeting to ensure there is sufficient time to process the request. The Department of the Interior manages accommodation requests on a case-by-case basis.

The public may send written comments to the subcommittee and RAC in response to material presented (see **ADDRESSES**).

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

(Authority: 5 U.S.C. 10)

Amanda Roberts,

Prineville District Manager.

[FR Doc. 2023–10196 Filed 5–11–23; 8:45 am]

BILLING CODE 4331–24–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–023]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 18, 2023 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 731–TA–847, and 849 (Fourth Review) (Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania). The Commission currently is scheduled to complete and file its determinations and views of the Commission on May 26, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 9, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–10262 Filed 5–10–23; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that, on March 15, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), MLCommons Association (“MLCommons”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose

of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Calvin Risk, Kloten, SWITZERLAND; Radoyeh Shojaei (individual member), Davis, CA; Kurt Bollacker (individual member), Austin, TX; Sanghyun Son (individual member), Seoul, SOUTH KOREA; Colby Banbury (individual member), Boston, MA; Matthew Stewart (individual member), Cambridge, MA; Optimizing Mind Inc., Palo Alto, CA; and Untether AI, Toronto, CANADA, have been added as parties to this venture.

Also, Kalray, Montbonnot, FRANCE; Grai Matter Labs, San Jose, CA; Landing AI, Palo Alto, CA; LTech Korea, Seoul, SOUTH KOREA; and Siliconeuro, Inc., San Jose, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on December 23, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 24, 2023 (88 FR 4213).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–10208 Filed 5–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—World Wide Web Consortium, Inc.

Notice is hereby given that, on March 15, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), World Wide Web Consortium, Inc. (“W3C”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development

organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: World Wide Web Consortium, Inc., Wakefield, MA. W3C was formed as a Delaware non-stock member corporation, organized exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law). The nature and scope of W3C's standards development activities are: In furtherance of such purposes, W3C is organized and will be operated primarily to continue the work of the unincorporated World Wide Web Consortium, with the charitable purpose of inclusively developing interoperability standards for the infrastructure of the World Wide Web ("Web"), so that all people may safely and productively use the Web to participate in society and improve their lives. W3C seeks to achieve its purpose by creating open, consensus-based Web standards and guidelines to ensure that the Web remains open, accessible, and interoperable for everyone around the globe, through processes intended to promote fairness, transparency, and accountability, and enable progress and greater responsiveness to change. Without limiting the foregoing, W3C, through its member-driven approach, will work to (a) foster a consistent architecture accommodating the rapid pace of progress in Web standards for websites, browsers, data-sharing applications, and devices to experience all that the Web has to offer; (b) provide a neutral forum where organizations around the world come together to create the technologies to most fully realize the potential of the Web; (c) ensure that all foundational Web technologies meet the needs of civil society, in areas such as accessibility, internationalization, security, and privacy; (d) provide standards that undergird the infrastructure for modern businesses leveraging the Web in areas such as entertainment, communications, digital publishing, and financial services; (e) promote advances of important associated social and economic value; and (f) promote the emergence of current and future transformative phenomena, such as

social media, e-commerce, video on the web, and video conferencing.

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-10207 Filed 5-11-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on March 20, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ODVA, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inexbot Technology Co. Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

Also, Asyrl SA, Fribourg, SWITZERLAND; and Telsonic AG, Bronschhofen, SWITZERLAND, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on January 5, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 25, 2023 (88 FR 4851).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-10209 Filed 5-11-23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Asim A. Hameedi, M.D.; Stay of Decision and Transmittal Order

On April 4, 2023, the Agency issued a Decision and Order revoking, effective May 11, 2023, Certificate of Registration No. BH6407919 issued to Asim A. Hameedi, M.D.¹ *Asim A. Hameedi, M.D.*, 88 FR 21,715 (April 11, 2023). By letter dated May 1, 2023 (letter), addressed to the Drug Enforcement Administration Administrator, Dr. Hameedi requested that the April 4, 2023 Order be vacated² because, among other reasons, he was never served with the underlying Order to Show Cause. Letter, at 1. Given the content of the letter and its attachments, I hereby stay the revocation of Certificate of Registration No. BH6407919 issued to Asim A. Hameedi, M.D., pending further proceedings. *Asim A. Hameedi, M.D.*, 88 FR 21,715 (April 11, 2023).

This matter is transmitted to the Office of Administrative Law Judges to conduct any and all appropriate proceedings (for example, to determine the sufficiency of notice and/or whether good cause exists to justify any delay).

It is so ordered.

Signing Authority

This document of the Drug Enforcement Administration was signed on May 9, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023-10212 Filed 5-11-23; 8:45 am]

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¹ The Order also denied any pending application to renew or modify this registration and denied any other pending application by Dr. Hameedi for registration in New York.

² Dr. Hameedi also seeks to "excuse his default" citing to 21 CFR 1301.43(c)(1) and (f)(3). Letter, at 1. The default procedures Dr. Hameedi references did not become effective until December 14, 2022, and do not apply to his Order to Show Cause. 87 FR 73,246 (Nov. 29, 2022).

DEPARTMENT OF LABOR**Employee Benefits Security Administration****[Exemption Application No. D–12089]****Proposed Exemption for Certain Prohibited Transaction Restrictions Involving UBS AG (UBS) and Credit Suisse Group AG (CSAG), Located in Zurich, Switzerland****AGENCY:** Employee Benefits Security Administration, Labor.**ACTION:** Notice of proposed exemption.

SUMMARY: The Department previously issued several temporary individual prohibited transaction exemptions (PTEs) that allow certain asset managers related to UBS and CSAG (the UBS QPAMs, CS Affiliated QPAMs, and the CS Related QPAMs, as further defined below) to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption (PTE) 84–14, notwithstanding five judgments of convictions involving entities within the UBS and CSAG corporate umbrellas, as described below (the Convictions). The most recent individual exemptions are PTE 2020–01 (for UBS) and PTE 2022–01 for (CSAG). Those individual exemptions will no longer be available following the upcoming merger between CSAG and UBS (the Merger). This exemption would allow the UBS QPAMs, CS Affiliated QPAMs and the CS Related QPAMs to continue to rely on PTE 84–14 as of the date of the Merger if certain conditions are met. As described below, this individual exemption is necessary to preserve the ability of the QPAMs to engage in the transactions permitted by PTE 84–14, which would be lost due solely to the impending merger of UBS and Credit Suisse (and not because of a new conviction for either UBS or Credit Suisse or their affiliates). If granted, the exemption will be for one year. This limited duration reflects the lack of information before the Department regarding the effects the Merger will have on the UBS QPAMs and CS Affiliated and Related QPAMs.

DATES:

Applicability Date: If granted, this proposed exemption will be in effect for one year beginning on the date of the Merger.

Comments due: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by May 18, 2023.

ADDRESSES: All written comments and requests for a hearing should be sent to

the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12089 via email to EOED@dol.gov or online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT:

Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:**Comments**

It is the Department's understanding that the Merger is due to occur by the end of May 2023. Due to this time constraint, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request the Department to hold a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but **DO NOT** submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <https://www.regulations.gov> website is an “anonymous access” system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

UBS and CSAM have represented that they are unable to provide the Department with a complete exemption application due to the exigent circumstances giving rise to the Merger. Accordingly, this proposed exemption would require UBS, as the entity surviving the Merger, to provide the Department with a written report every 120 days following the Merger (the Merger Report), containing full and complete updates regarding the Merger. In the Merger Report, UBS must identify any material omissions and correct any inaccuracies in the Summary of Facts and Representations as set forth below. The Merger Report will be available to the public through EBSA's Public Disclosure Office, and to Covered Plan fiduciaries via a link provided by the relevant Affiliated QPAM.¹

¹ The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which an Affiliated QPAM relies on PTE 84–14, or with respect to which an Affiliated QPAM (or any CSAG or UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–

Additionally, in its first Merger Report to the Department, UBS must: (1) identify the QPAMs using this exemption as the date of the Report; (2) provide details regarding the extent to which the Credit Suisse Affiliated QPAMs have been integrated into UBS's operations and any other relevant changes with respect to any QPAMs that are using this exemption; (3) any operational or other changes that impact any requirements under this exemption; and (4) detailed information regarding the costs to ERISA-covered Plans and IRAs (together, Covered Plans) that would arise if this one-year exemption is not renewed.

Department Warning: The Department notes that this proposed exemption's abridged notice and comment period is due to the exigent circumstances that are necessitating the Merger and the fact that the parties to the Merger have existing QPAM exemptions in place. The Department clarifies that future QPAM applicants should expect to provide a full notice and comment period to ensure that ERISA-covered plans and their participants and beneficiaries are adequately protected.

This proposed exemption would provide relief from certain of the restrictions set forth in ERISA Sections 406 and 407. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein. The Department stresses that this proposed exemption would provide Covered Plans and Affiliated QPAMs and Related QPAMs with the ability to rely on PTE 84-14 for one year and that this proposed exemption, if granted, will terminate at the end of that one-year period.

Covered Plan fiduciaries are strongly cautioned that the Department might not extend this one-year exemption following its expiration due to the significant number of convictions and the seriousness of the underlying conduct of the tainted entities that will now reside together within the UBS corporate umbrella following the

Merger. In this regard, Covered Plan fiduciaries should be aware that the Department will not extend this exemption beyond the proposed one-year term unless, among other things, UBS submits an application with detailed written information to the Department substantially in advance of the expiration of this one-year term that is sufficient for the Department to make its findings under ERISA Section 408(a) that an extension of this exemption is in the interest and protective of affected Covered Plans, and administratively feasible.

The Department cautions that the relief in this proposed exemption would terminate immediately if an affiliate of UBS's (as defined in Section VI(d) of PTE 84-14) is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to propose such an exemption. The Department might also consider developing an individual exemption on its own motion that would protect affected Covered Plans by permitting some, but not all, of the transactions covered by PTE 84-14. If the Department took that approach, the UBS/CSAG affiliated entities would no longer rely on or reference PTE 84-14 for relief, but rather would rely on the new individual exemption for any relief, which would not be based on their status as QPAMs status under PTE 84-14. The Department invites comments regarding this possible individual exemption.

The terms of this proposed one-year exemption have been designed to permit plans to terminate their relationships with the Affiliated QPAMs and the Related QPAMs in an orderly and cost-effective fashion in the event of an additional conviction or a determination by a plan that it is otherwise prudent to do so.

Summary of Facts and Representations²

Credit Suisse Group AG

1. CCSG is currently a publicly-traded corporation headquartered in Zurich,

² The Summary of Facts and Representations is based on UBS and CSAM's representations and does not reflect factual findings or opinion of the Department, unless indicated otherwise. The Department notes that availability of this exemption is subject to the express condition that the material facts and representations made by UBS and CSAM are true, complete, and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a

Switzerland that owns a 100% interest in Credit Suisse AG (CSAG). Currently, two Credit Suisse asset management affiliates, Credit Suisse Asset Management, LLC (CSAM LLC) and Credit Suisse Asset Management Limited (CSAM Ltd.) (together, the CS Affiliated QPAMs), manage the assets of ERISA-covered plans and IRAs (together, Covered Plans, as further defined below) on a discretionary basis.

2. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans but that are not affiliates of CSAG (the CS Related QPAMs).

UBS AG

3. UBS AG (UBS) is a Swiss-based global financial services company organized under the laws of Switzerland. UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, and UBS O'Connor LLC are currently the four UBS affiliates that rely on PTE 84-14 (the UBS QPAMs).

Relevant ERISA Provisions and PTE 84-14

4. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain "prohibited transactions" between plans and related parties with respect to those plans. Under ERISA section 3(14), such parties are known as "parties in interest" with respect to a plan, and include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.³

5. The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or

material fact or representation that is part of the record attributable to D-12089, the exemption will cease to apply as of the date of the change. The record attributable to D-12089 include the representations in paragraph 18 below. As discussed above and below, the exemption requires UBS and/or CSAG to submit a Merger Report to the Department every 120 days following the Merger, containing all relevant details of the Merger. In the report, UBS and/or CSAG must identify any material omissions in this Summary and correct any inaccuracies in the Summary. The Merger Report will be available to the public through EBSA's Public Disclosure Office and to Covered Plan fiduciaries via a link provided by the relevant Affiliated QPAM.

³ Under the Code, such parties, or similar parties, are referred to as "disqualified persons."

14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

a transfer of plan assets to, a party in interest.⁴ Under ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the authority to grant exemptions from such “prohibited transactions” in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) if the Department finds that an exemption is (i) administratively feasible; (ii) in the interests of the plan and of its participants and beneficiaries; and (iii) protective of the rights of participants and beneficiaries. PTE 84–14 reflects the Department’s conclusion that it could provide broad relief from the prohibited transaction provisions of ERISA Section 406(a) and Code Section 4975(c)(1) only if the commitments and the investments of plan assets and the negotiations leading thereto, are the sole responsibility of an independent discretionary manager the meets the exemption’s conditions.

6. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84–14 for itself and its client plans, if that entity or an “affiliate” thereof,⁵ or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

7. The inclusion of Section I(g) in PTE 84–14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself but also to those who may be in a position to influence the policies of the QPAM.

⁴ The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA section 406(b) and Code section 4975(c)(1)(E) and (F). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84–14 provides only very narrow conditional relief for transactions described in ERISA section 406(b).

⁵ Section VI(d) of PTE 84–14 defines the term “affiliate” for purposes of Section I(g) as “(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.”

The CSAG Conviction

8. On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney’s Office for the Eastern District of Virginia filed a one-count criminal information (the CSAG Information) in the District Court for the Eastern District of Virginia charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18, United States Code, Section 371. According to the Statement of Facts, for decades before and through approximately 2009 CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts that concealed offshore assets and income from the IRS. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The District Court entered a judgment of conviction against CSAG on November 21, 2014.

The CSSEL Conviction

9. On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney’s Office for the Eastern District of New York, filed a criminal information in the District Court for the Eastern District of New York charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349. CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL Information (the CSSEL Plea). On October 19, 2021, in connection with the CSSEL Plea, the ultimate parent of CSSEL, CSG, entered into a Deferred Prosecution Agreement (the DPA) with the Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section of the DOJ and the United States Attorney’s Office for the Eastern District of New York.

The District Court entered a judgment of conviction against CSSEL on July 22, 2022.

The 2013 and 2018 UBS Convictions

10. UBS Securities Japan was previously convicted (2013 Conviction) of a crime arising out of its fraudulent submission of Yen London Interbank Offer Rate (Yen LIBOR) rates between 2006 and 2009, and its participation in a scheme to defraud counterparties to interest rate derivatives trades executed

on its behalf, by secretly manipulating certain benchmark interest rates to which the profitability of those trades was tied.

11. Although UBS and the United States Department of Justice (DOJ) entered into a Non-Prosecution Agreement (the LIBOR NPA) related to UBS’s misconduct involving its submission of Yen LIBOR rates and other benchmark rates between 2001 and 2010, the DOJ subsequently determined that UBS had breached the LIBOR NPA, among other things, by engaging in deceptive currency trading and sales practices with respect to certain foreign exchange (FX) market transactions and collusive conduct in certain FX markets (FX Misconduct). UBS entered a guilty plea and was convicted (the 2018 Conviction) of a crime arising out of UBS’s scheme to defraud counterparties to interest rate derivatives transactions by secretly manipulating benchmark interest rates to which the profitability of those transactions was tied.

The 2019 UBS French Conviction

12. In 2013, France opened an investigation into UBS, UBS France, and certain former employees of UBS France S.A. The investigation centered on the maintenance of foreign (“cross-border”) UBS bank accounts held for private citizens. Following a trial in the French First Instance Court, UBS and UBS France were convicted of illegally soliciting clients from 2004 to 2012 and laundering the proceeds of tax fraud from 2004 to 2012.

Prior Exemptions

13. To protect Covered Plans from the costs and harms that could arise if the UBS QPAMs and the Credit Suisse Affiliated and CS Related QPAMs lost their ability to engage in potentially beneficial transactions on behalf of the Covered Plans due to the convictions identified above (the Convictions), the Department issued a number of temporary individual exemptions. Several of these exemptions were extensions of prior temporary exemptions. In connection with the Credit Suisse-related convictions, the Department issued the following exemptions: PTE 2022–01 (87 FR 1186 (Jan. 10, 2022)); PTE 2019–07 (84 FR 61928 (Nov. 14, 2019)); PTE 2015–14 (80 FR 59817 (Oct. 2, 2015)); PTE 2014–11 (79 FR 68716 (Nov. 18, 2014)). In connection with the UBS-related convictions, the Department issued: PTE 2020–01 (85 FR 8020 (Feb. 12, 2020)); PTE 2019–01 (84 FR 6163 (Feb. 26, 2019)); PTE 2017–07 (82 FR 61903 (Dec. 29, 2017)); PTE 2016–17 (81 FR 94049

(Dec. 22, 2016)); PTE 2013–09 (78 FR 56740 (Sep. 13, 2013)).

Proposed Merger

14. The Department learned from recent news reports that UBS was acquiring CSAG in a stock purchase. Representatives of CSAM and UBS confirmed the impending Merger in a telephone call with the Department on March 21, 2023, but the representatives stated that few additional details were available at that time. The Department understands through these representatives that the Merger will involve UBS acquiring CSAG in a stock sale that will occur on or about May 31, 2023.

15. The most recent exemption the Department granted for UBS, PTE 2020–01, permits the UBS QPAMs to continue to rely on PTE 84–14 only if, among other things, UBS and its affiliates have not been convicted of a crime described in Section I(g) of PTE 84–14 over the prior 10 years, other than the UBS-related convictions described above. The Department expects that, following the Merger, UBS will be affiliated with CSAG and CSSEL, and the convictions attributable to UBS and CSAG (which are covered by PTE 2022–01) will result in a violation of PTE 2020–01. It is therefore the Department's expectation that following the Merger, UBS will no longer be able to rely on PTE 2020–01. In order to protect Covered Plans that could be harmed from the sudden loss of PTE 2020–01 and PTE 2022–01 due to the Merger, the relief in this exemption is effective as of the date of the Merger. Accordingly, if the Merger occurs prior to the date this exemption is granted, the relief in the exemption will be retroactive to the date of the Merger.

16. On April 17, 2023, UBS and CSAM (and their affiliated QPAMs) submitted a request to modify their existing exemptions. In their request, UBS and CSAM stated that, following the Merger, “it is important that the combined bank be able to continue the asset management businesses that the two banks currently maintain independently, including their subsidiaries’ QPAM services.” UBS and CSAM proposed “separate somewhat harmonized, exemptions because at this time it is not clear when, and how, the Credit Suisse QPAMs will be restructured within the UBS structure after closing.” The modifications sought by UBS and CSAM would have allowed the affected QPAMs to rely on their existing exemptions subject to essentially the same conditions, while expanding the number of Convictions covered by each exemption. UBS and

CSAM state that, among other things, “The largely ministerial modifications [CSAM and UBS] are proposing are essential given the change in [UBS and CSAM’s] circumstances to ensure that these exemptions remain administratively feasible and available for the QPAMs’ use as they serve plans and participants and beneficiaries.”

17. Similarly, following the Merger, the Department does not expect that the CS Affiliated QPAMs and the CS Related QPAMs would be able to rely on PTE 2022–01, because that individual exemption permits them to continue to rely on PTE 84–14 only if, among other things, CSAG and its affiliates are not convicted of a crime described in Section I(g) of PTE 84–14 other than the CSAG and CSSEL convictions described above during the prior 10 years. The Department understands that following the Merger, CSAG will be affiliated with UBS, UBS Securities Japan, and UBS France, and will be accountable for the convictions attributable to those entities in violation of PTE 2022–01. Therefore, the Department is proposing this exemption to protect Covered Plans from the costs and harms that could arise if the CS QPAMs and CS Related QPAMs can no longer rely on PTE 2022–01 as of the date of the Merger, solely as a result of the Merger and not due to any new convictions. As noted above, if this exemption is granted after the date of the Merger, the relief in the exemption will be retroactive to the date of the Merger. The Department notes that this proposal is contingent on there being a Merger, and if the Merger does not happen, any granted exemption will have no effect.

Harm to Covered Plans in the Absence of QPAM Relief⁶

18. CSAM represents that if the Credit Suisse QPAMs lose the ability to rely upon PTE 84–14, the Covered Plan clients of those QPAMs would suffer the time and expense of finding replacement asset managers where they otherwise might not choose to do so. Further, transactions currently dependent on the QPAM Exemption

would be in default, and counterparties may provide less advantageous pricing or not bid at all, because the plan’s investment manager is not a QPAM. Credit Suisse submits that Covered Plans that choose to remain with CSAM following CSAM’s loss of QPAM relief would have a circumscribed set of transactions available to them, or their transactions could be more expensive because of the preference that counterparties have for transacting business with QPAMs.

CSAG states that CSAM’s Commodities team provides exposure to a variety of commodity benchmarks, and CSAM’s Credit Investment Group manages leveraged loans and special situations credit across a broad spectrum of products. For CSAM’s credit strategy, the loans purchased by plans contain representations that the QPAM Exemption is applicable to the transaction. According to CSAG, all loan documentation would have to be changed if QPAM relief is lost, and all of the loan agents would have to agree to accept another applicable exemption. For the commodities strategy, the guidelines for this strategy include cleared derivatives, which also depend upon PTE 84–14 for exemptive relief.

CSAG submits that Covered Plans who have hired CSAM are managed by fiduciaries acting in the best interest of their respective plans. Those fiduciary obligations and the decisions to use CSAM for the plans’ asset management needs are based on a number of factors, including investment performance, the perceived skill of CSAM’s portfolio managers, and risk management.

In its request for modifications to its existing exemption, UBS states that the requested modifications will help ensure that the QPAMs continue to operate without disruption to their plan clients, which in turn is necessary for UBS and CSAM to successfully complete the merger.

19. The Department is proposing this exemption to protect Covered Plans from the costs and harms that could arise if the UBS QPAMs were no longer able to rely on PTE 2020–01 as of the date of the Merger.

Department’s Note: The Department is requesting detailed information from UBS and CSAG regarding the costs and harms to Covered Plans, if any, that could arise if the UBS QPAMs and the CS QPAMs can no longer rely on PTE 2020–01 and PTE 2022–01 following the Merger. The Department cautions Covered Plan fiduciaries that if UBS and CSAG do not submit detailed and reliable information in this regard, the Department will not extend the relief in this exemption beyond one year.

⁶ CSAM submitted these representations to the Department on March 16, 2023, in connection with an exemption application submitted by CSAM (the CSAM Application), for the CS Affiliated and Related QPAMs to continue to rely upon PTE 84–14 beyond the one-year term of their current individual exemption (PTE 2022–01), which expires on the earlier of July 21, 2023, or the date of the Merger. The CSAM Application was submitted to the Department before the Merger was announced. The Department closed the CSAM Application upon receipt of the CSAM and UBS modification request discussed herein. The CSAM Application and supporting documents are available to the public through EBSA’s Public Disclosure Office, by referencing D–12089.

Covered Plan fiduciaries are also cautioned that the purpose of the one-year exemption would be to allow Covered Plans to avoid the costs and disruption to investment strategies that may suddenly arise if the Covered Plans are forced to hire a different QPAM or asset manager on short notice, because their current QPAM is no longer able to rely on the relief provided by PTE 84–14 due to the Merger/Convictions. The Department's decision to propose this exemption is in no way an indication that the UBS QPAMs and the CS Affiliated QPAMs will receive additional exemptive relief. As the Department stated above, considering the number of Convictions and the severity of the associated misconduct, it is possible that the Department will not grant additional relief if UBS is convicted of another crime that is not covered under this exemption, or if evidence of additional misconduct is forthcoming.

This Proposed Exemption

20. Upon learning of the impending Merger and given the lack of information immediately available from CSAG and UBS, in the interest of protecting plans, participants and beneficiaries, the Department began developing this proposed exemption on its own motion. UBS submitted an exemption modification request on April 17, 2023. However, the Department was unable to determine that the terms of the modifications sought by Credit Suisse and UBS would be sufficiently protective of affected Covered Plans. Accordingly, the Department has developed this exemption primarily on its own motion, based on its understanding of the facts associated with the Merger made by Credit Suisse and UBS representatives.

Summary of the Exemption's Protective Conditions

21. In developing administrative exemptions under ERISA section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective of, and in the interest of, affected plans and IRAs. The Department is proposing this exemption with protective conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to benefit from the transactions described in PTE 84–14. The Department notes that this exemption includes all the conditions imposed upon CSAG and UBS in their most recent individual exemptions and expands on some conditions by making certain that conditions previously applicable only to the UBS QPAMs also

apply to the CS Affiliated QPAMs and vice versa. This proposed exemption also includes certain stronger conditions that the Department has included in its most recent QPAM exemptions that were not included in the prior UBS and CS exemptions and the reporting requirement mentioned above and described below.

22. For the remainder of this preamble, the CS Affiliated QPAMs and the UBS QPAMs are collectively referred to as the Affiliated QPAMs, and the CS Related QPAMs are referred to as the Related QPAMs. This proposed exemption requires the Affiliated QPAMs and the Related QPAMs to comply with substantially the same conditions they were subject to before the Merger under the applicable individual exemption, although as discussed above, several of those conditions have been expanded and a reporting requirement has been added that is described below.

23. It is a material condition of this exemption that the Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents (with very narrow exceptions), employees of such QPAMs, and CSAG and UBS employees that do work for Affiliated or Related QPAMs) must not have known, have reason to know of, nor participated in the criminal conduct of that is the subject of any of the Convictions. Each Affiliated and Related QPAM (and their officers, directors, etc.) must meet this condition with respect to each Conviction regardless of whether the misconduct occurred within the QPAM's corporate umbrella at the time it occurred. Further, any other party engaged on behalf of the Affiliated QPAMs and Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets must not have known, had reason to know of, nor participated in the criminal conduct that is the subject of any of the Convictions. Again, each Affiliated and Related QPAM (and their officers, directors, etc.) must comply with this prohibition, regardless of whether the criminal misconduct occurred within the QPAM's corporate umbrella at the time the Conviction occurred.

24. The protective conditions contained in this proposed exemption include a requirement that precludes each Affiliated QPAM from currently and in the future employing or knowingly engaging any of the individuals who participated in the criminal conduct of an entity that is the subject of any of the Convictions (*i.e.*, UBS and UBS Securities Japan, UBS France, CSG, CSAG, and CSSEL;

hereinafter, a Misconduct Entity). This means that no individual who participated in criminal misconduct at a Misconduct Entity may be employed by any Affiliated QPAM, regardless of whether the Misconduct Entity was outside the QPAM's corporate umbrella at the time of the misconduct.

25. Under this exemption, no Affiliated QPAM may use its authority or influence to direct a Covered Plan to enter into any transaction with a Misconduct Entity, or to engage a Misconduct Entity to provide any service to such Covered Plan, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. In other words, no Affiliated QPAM may enter into a transaction on behalf of a Covered Plan with any Misconduct Entity. Further, other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, a Misconduct Entity may not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

26. Each Affiliated QPAM must continue to maintain, adjust to the extent necessary, implement, and follow written policies and procedures (the Policies) that are reasonably designed to ensure that: (a) the asset management decisions of the Affiliated QPAM are conducted independently of each Misconduct Entity's corporate management and business activities; (b) the Affiliated QPAMs fully comply with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction provisions; (c) the Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (d) any filings or statements made by the Affiliated QPAMs to regulators on behalf of, or in relation to, Covered Plans are materially accurate and complete; (e) the Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with such regulators, or in their communications with Covered Plans; and (f) the Affiliated QPAMs comply with the terms of the exemption.

27. This proposed exemption requires each Affiliated QPAM to maintain, adjust to the extent necessary, and implement a training program (the Training) that will be conducted at least annually for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must cover, at a minimum, the Policies, ERISA and Code compliance,

ethical conduct, the consequences that would result from not complying with the proposed exemption conditions, and the requirement to promptly report wrongdoing.

28. This proposed exemption requires each Affiliated QPAM to engage an independent auditor annually to evaluate the adequacy of, and the QPAM's compliance with, the Policies and Training required by the exemption. The independent auditor must be prudently selected by the Affiliated QPAMs and have appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by the exemption. The Affiliated QPAMs must grant the auditor unconditional access to their business, and the auditor's engagement must specifically require the auditor to test each Affiliated QPAM's operational compliance with the Policies and Training.

29. The independent auditor must issue a written audit report (the Audit Report) to CSAG, UBS and the Affiliated QPAM to which the audit applies, that describes the procedures performed by the auditor in connection with its examination.⁷ Further, the Affiliated QPAMs must promptly address any instance of noncompliance identified by the auditor, and must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations, if any, with respect to strengthening the Policies and Training of the respective Affiliated QPAM. The Audit Report must be provided to the Department by the Affiliated QPAM, and the Department will make the Audit Report part of the public record regarding this one-year exemption.

30. This proposed exemption further requires the General Counsel, or one of the three most senior executive officers of the Affiliated QPAM to which the Audit Report applies, to certify in writing and under penalty of perjury that the officer has reviewed the Audit Report and the exemption, and the Affiliated QPAM has addressed, corrected, and remedied (or has an appropriate written plan to address) any identified instance of noncompliance or inadequacy regarding the Policies and Training identified in the Audit Report.

31. With respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, this proposal requires each Affiliated

QPAM to agree and warrant: (a) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA section 404; (b) to refrain from engaging in prohibited transactions that are not otherwise exempt; (c) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from, among other things, the Affiliated QPAM's violation of ERISA's fiduciary duties; (d) with narrow exceptions, to not restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM; (e) with narrow exceptions, to not impose any fees, penalties, or charges for such termination or withdrawal; and (f) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the Affiliated QPAM for a violation of such agreement's terms.

32. Each Affiliated QPAM must provide a notice of its obligations under this exemption to each applicable Covered Plan. Each Affiliated QPAM also must provide to each applicable sponsor and beneficial owner of a Covered Plan a copy of the proposal and final notice of the exemption as published in the **Federal Register**, a separate summary describing the facts that led to each Conviction (the Summary), and a prominently displayed statement (the Statement) that each Conviction each results in a failure to meet a condition in PTE 84–14 and an individual exemption, which must be identified.

33. This proposed exemption requires each Affiliated QPAM to maintain a designated senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described in this proposed exemption. The Compliance Officer must conduct a review, for the twelve-month period specified below (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training and issue a written report (the Exemption Report) on the findings.

34. This proposed exemption requires UBS to impose internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions.

35. Additional New Conditions. This proposed exemption requires UBS to submit a written report to the Department every 120 days following the merger of UBS and Credit Suisse

that provides updates regarding the progress of the Merger. This report must also be provided to Covered Plan fiduciaries (including via an electronic link). Additionally, in its first report to the Department, UBS must: (1) identify the QPAMs using this exemption as the date of the Report; (2) provide details regarding the extent to which the CS Affiliated QPAMs have been integrated into UBS's operations and any other relevant changes with respect to any QPAMs that are using this exemption; (3) any other changes, whether operational or otherwise, that impact any requirements under this exemption. As noted above, the first Merger Report must identify any material omission and/or error set forth in this Summary of Facts and Representations.

Further, the proposed exemption clarifies that the "best knowledge" standard described herein and used elsewhere in the exemption includes matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual's due diligence required under the circumstances. The Department further notes that, with respect to an entity other than a natural person, the term "best knowledge" includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

Statutory Findings

36. ERISA section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. These criteria are discussed below.

37. "*Administratively Feasible.*" The Department has tentatively determined that the proposal is administratively feasible, because among other things, a qualified independent auditor will be engaged by the Affiliated QPAM to perform an in-depth annual audit covering each Affiliated QPAM's compliance with the terms of the exemption, and a corresponding written audit report will be provided to the Department and be made available to the public. Further, detailed periodic reports will be made to the Department and to Covered Plan fiduciaries.

38. "*In the interest of.*" The Department has tentatively determined that the proposed exemption is in the interests of the participants and

⁷ CSAG must provide the audit to UBS Board and if a CS Affiliated QPAM is not in operation at the time of certification, the report must be certified by UBS (see operative (i)(7) and (8)).

beneficiaries of affected Covered Plans. The Department understands based on representations, that if the requested exemption is denied, Covered Plans may be forced to find other managers, at significant costs to the Covered Plans, including the costs associated with terminating, unwinding, or modifying existing transactions. It is also the understanding of the Department that ineligibility under Section I(g) of PTE 84–14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers and could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans, even after the disclosures of the earlier convictions pursuant to the individual exemptions the managers previously received.

39. “*Protective of.*” The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans. As described above, the proposed exemption imposes a suite of affirmative requirements and obligations upon the QPAMs that include but are not limited to: (a) the maintenance of the Policies; (b) the maintenance of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the Affiliated QPAMs; (e) specific notices and disclosures concerning the circumstances necessitating the need for exemptive relief and the Affiliated QPAMs’ obligations under this proposed exemption; and (f) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer’s completion of an Exemption Review and corresponding Exemption Report. The Department notes that this exemption includes all conditions imposed upon Credit Suisse and UBS in their most recent individual exemptions, and expands upon several of them, and includes also certain stronger conditions that the Department has included in its most recent QPAM exemptions.

Summary

40. This proposed one-year exemption provides relief from certain of the restrictions set forth in ERISA section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed one-year exemption would terminate

immediately if, among other things, an entity within the UBS corporate structure is convicted of any crime covered by Section I(g) of PTE 84–14 (other than a Conviction). While such an entity could request a new exemption in that event, the Department is not obligated to grant the request. Consistent with this proposed exemption, the Department’s consideration of additional exemptive relief is subject to the findings required under ERISA section 408(a) and Code section 4975(c)(2).

41. When interpreting and implementing this exemption, the Applicant and the relevant QPAM should resolve any ambiguities considering the exemption’s protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA’s Office of Exemption Determinations, at 202–693–8540.

42. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

UBS will provide notice of this proposed exemption to its Covered Plan clients by email within two business days after the publication of the notice of proposed exemption in the **Federal Register**. CSAM will provide notice of this proposed exemption to its Covered Plan clients via overnight carrier within one business day after the publication of the notice of proposed exemption in the **Federal Register**. Written comments and hearing requests are due within six days after publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed One-Year Exemption

The Department is considering granting this one-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).⁸ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5

⁸ For purposes of this one-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) Names of Certain Corporate Entities:

(1) The term “CSG” means Credit Suisse Group AG, a publicly-traded corporation organized under the laws of Switzerland.

(2) The term “CSAG” means Credit Suisse AG and is 100% owned by CSG.

(3) The term “CSAM Ltd.” means Credit Suisse Asset Management Limited and is a Credit Suisse asset management affiliate, together with CSSAM LLC are the CS Affiliated QPAMs.

(4) The term “CSSAM LLC” means Credit Suisse Asset Management, LLC and is a Credit Suisse asset management affiliate, together with CSAM Ltd. are the CS Affiliated QPAMs.

(5) The term “CSSEL” means Credit Suisse Securities (Europe) Limited and is headquartered in London, United Kingdom and indirectly a wholly owned subsidiary of CSG.

(6) The term “UBS” means UBS AG, a publicly traded corporation organized under the laws of Switzerland.

(7) The term “UBS Americas” means UBS Asset Management (Americas) Inc. and is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(8) The term “UBS France” means UBS (France) S.A. and is a wholly owned subsidiary of UBS incorporated under the laws of France.

(9) The term “UBS Hedge Fund Solutions LLC” was formerly known as UBS Alternative and Quantitative Investments, LLC is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(10) The term “UBS O’Connor LLC” is one of four UBS affiliates and is wholly owned by UBS Americas Holding LLC, a wholly owned subsidiary of UBS AG.

(11) The term “UBS Realty Investors LLC” is one of the four UBS affiliates and is wholly owned by UBS Americas, Inc., a wholly owned subsidiary of UBS AG.

(12) The term “UBS Securities Japan” means UBS Securities Japan Co. Ltd, a wholly owned subsidiary of UBS incorporated under the laws of Japan.

(b) The term “Affiliated QPAM” means: (1) the “CS Affiliated QPAMS,” which are Credit Suisse Asset Management, LLC (“CSAM LLC”) and

Credit Suisse Asset Management Limited (“CSAM Ltd.”); and (2) the “UBS QPAMs,” which are UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O’Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) and that relies on the relief provided by PTE 84–14, and with respect to which UBS is an “affiliate” (as defined in Part VI(d) of PTE 84–14). The term Affiliated QPAM excludes a Misconduct Entity.

(c) The term “Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “CSAG Conviction”); (2) the judgment of conviction against CSSEL in Case Number 1:21-cr-00520-WFK (the “CSSEL Conviction”); (3) the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12-cr-00268-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates; (4) the judgment of conviction against UBS in case number 3:15-cr-00076-RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS’s submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010; and (5) the judgment of conviction on February 20, 2019, against UBS and UBS France in case Number 1105592033 in the French First Instance Court (the 2019 French Conviction).

(d) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which an Affiliated QPAM relies on PTE 84–14, or with respect to which an Affiliated QPAM (or any CSAG or UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Affiliated QPAM has expressly disclaimed

reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, an Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client’s attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client’s assets, the Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(e) The term “Exemption Period” means the one-year period that begins on the closing date of the acquisition of CSAG by UBS (hereinafter, the Merger).

(f) The term “FX Misconduct” means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15-cr-00076-RNC filed in the US District Court for the District of Connecticut.

(g) The term “Misconduct Entity” means an entity subject to one of the Convictions described above, *i.e.*, UBS, UBS Securities Japan, UBS France, CSAG and CSSEL.

(h) The term “Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CS or UBS owns a direct or indirect five (5) percent or more interest, but with respect to which a Misconduct Entity is not an “affiliate” (as defined in section VI(d)(1) of PTE 84–14). The term “Related QPAM” excludes a Misconduct Entity.

(i) The term “best knowledge,” “to the best of one’s knowledge,” “best knowledge at that time,” and other similar “best knowledge” terms shall include matters that are known to the applicable individual or should be known to such individual upon the exercise of such individual’s due diligence required under the circumstances, and, with respect to an entity other than a natural person, such term includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals’ due diligence required under the circumstances.

Section II. Covered Transactions

If this proposed exemption is granted, the Affiliated QPAMs and the Related QPAMs would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14)⁹ during the Exemption Period, notwithstanding the “Convictions,” provided that the definitions in Section I and the conditions in Section III are satisfied.

Section III. Conditions

(a) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and employees of Misconduct Entities that do work for Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of and did not participate in the conduct underlying the Convictions and the FX Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with, the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct underlying the Convictions described in Section I(c)(1) and (2) and the 2019 French Conviction.

For all purposes of this exemption, the “conduct” of any person or entity that is the “subject of the Convictions” encompasses any misconduct of CSAG, CSSEL, UBS, UBS France, UBS Securities Japan, and/or their personnel: (i) that is described in Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15-cr-00076-RNC; (ii) that is described in Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12-cr-00268-RNC; (iii) that is the basis of the 2019 French Conviction; and (iv) that is the subject of the CSAG and CSSEL convictions described in Section I(c)(1) and (c)(2); and for purposes of the exemption as well as the avoidance of doubt, the term “participate in” (as included paragraph (c) below), refers not only to active participation in the criminal conduct but includes an individual or entity’s knowledge or approval of the criminal

conduct, without taking active steps to prohibit such conduct, such as reporting the conduct to the individual’s supervisors, and to the Board of Directors.

(b) The Affiliated QPAMs and the Related QPAMs (including their officers, directors, agents other than the Misconduct Entities, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions and the UBS FX Misconduct. Further, any other party engaged on behalf of the Affiliated QPAMs and the Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the subject of the Convictions;

(c) The Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct underlying the Convictions;

(d) At all times during the Exemption Period, no Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. An Affiliated QPAM will not fail this condition solely because:

(1) A CSAG (or successor) affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than an Affiliated QPAM or Related QPAM;

(2) CSAG (or a successor) provides only necessary, non-investment related, non-fiduciary services that support the operations of an Affiliated QPAMs, at an Affiliated QPAM’s own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment

fund managed by an Affiliated QPAM or Related QPAM; or

(3) CSAG (or successor) employees are double-hatted, seconded, supervised, or subject to the control of an Affiliated QPAM;

(e) Any failure of an Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(f) An Affiliated QPAM or a Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct underlying the Convictions; or cause the Affiliated QPAM or Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct underlying the Convictions;

(g) No Misconduct Entity will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii) or Code section 4975(e)(3)(A) and (C) with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. No Misconduct Entity will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (Policies).¹⁰ The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the QPAM are conducted independently of the corporate and management and business activities of each Misconduct Entity, and without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude an Affiliated QPAM, as defined in Section I(b)(1), from receiving publicly available research and other widely available information from a CSAG affiliate, other than CSSEL, or from a UBS affiliate;

(ii) The QPAM fully complies with ERISA’s fiduciary duties, and with ERISA and the Code’s prohibited transaction provisions, in each case as applicable with respect to each Covered

⁹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

¹⁰ This exemption does not preclude the UBS QPAMs and CS Affiliated QPAM from maintaining separate Policies provided that the Policies comply with this exemption.

Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The QPAM complies with the terms of this one-year exemption, and CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, if it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training) that is conducted at least annually for all relevant Affiliated QPAM asset/portfolio management, trading, legal, compliance,

and internal audit personnel.¹¹ The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM (as defined in Section I(b)(1) submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described above in Section III(h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and must be completed no later than 180 days after the Exemption Period. The prior exemption audits required pursuant to PTE 2019–07 and PTE 2022–01 must be completed for the prior period of November 21, 2021, through the beginning date of the Exemption Period of this one-year exemption within 180 days of the beginning of the Exemption Period of this one-year exemption. These prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(i)(9) below;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials;

¹¹ This exemption does not preclude an Affiliated QPAM from maintaining separate training programs provided each training program complies with this exemption.

and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audits, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed before to the certification described in Section III(i)(7) below). In

the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(o) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM or successor to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who

knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.

(8) A copy of the Audit Report must be provided to CSAG's Board of Directors or its successor and either the Risk Committee or the Audit Committee of CSAG's Board of Directors or its successor; and a senior executive officer or chairperson of either the Risk Committee or the Audit Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such person has reviewed each Audit Report. The Audit Report under this section III(i) must comply with the delivery and certification requirements in section III(j)(8) below;

(9) Each CS Affiliated QPAM provides its certified Audit Report to the Department by regular mail addressed to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001, or via email to *e-OED@dol.gov*. The delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j)(1) Each UBS QPAM (as defined in Section I(b)(2) submits to an audit

conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described above in Section (h). The audit requirement must be incorporated in the Policies. The audit must cover the Exemption Period and it must be completed no later than 180 days after the end of the Exemption Period. The prior exemption audits required pursuant to PTE 2020–01 must be completed for the prior periods of: (1) March 20, 2022 through March 19, 2023; and (2) March 20, 2023 through the beginning date of the Exemption Period for this one-year exemption, and each must be provided within 180 days of the beginning of the Exemption Period. These prior exemption audits and coinciding audit reports can be combined into one audit and report for the prior exemption audits. The prior exemption audit report(s) must be submitted in accordance with section III(j)(9) below;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(k)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(j)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that each UBS QPAM has implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(j)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(n);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Washington, DC 20001; or via email to *e-OED@dol.gov*. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(k) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between an Affiliated QPAM and a Covered Plan, the QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA Section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from the QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than a Conviction covered under this exemption. This condition applies only to actual losses caused by the QPAM's violations. The term Actual Losses includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the QPAM for violating ERISA or the Code for engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the QPAM, with respect to any investment in a

separately-managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS (and affiliates) or CSAG (and affiliates), or damages arising from acts outside the control of the Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each QPAM must provide a notice of its obligations under this Section III(k) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a QPAM on or after a date that is 120 days after the effective date of this exemption, the QPAM must agree to its obligations under this Section III(k) in an updated investment management agreement between the QPAM and such clients or other written contractual agreement. Notwithstanding

the above, a QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (k) within ten (10) business days after receipt of the signed agreement.

(l) Within 60 days after the effective date of this one-year exemption, each Affiliated QPAM provides notice of the proposed and final exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with an Affiliated QPAM, or the sponsor of an investment fund in any case where an Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with an Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM or the UBS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(m) The Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the CSAG or UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions), relief in this exemption would terminate immediately;

(n)(1) Within 60 days after the effective date of this exemption, each QPAM must designate a senior

compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (n), each relevant line of business within a CS Affiliated QPAM or UBS Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, the appointed Compliance Officer may not be a person who: (i) participated in the criminal conduct underlying the Convictions, or knew of, or (ii) had reason to know of, the criminal conduct without taking active documented steps to stop the misconduct;

The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training.¹² With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the time period; the most recent Audit Report issued pursuant to this exemption or PTE

¹² Pursuant to PTE 2020–01 and PTE 2022–01 the Compliance Officer must conduct an exemption review (annual review) for each period corresponding to the audit periods set forth in those exemptions and the Compliance officer's written report submitted to the Department within three (3) months of the end of the period to which it relates. Accordingly, the final exemption review pursuant to PTE 2020–01 must cover the period March 19, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates. Also, the final exemption review pursuant to PTE 2022–01 must cover the period November 21, 2022 through the beginning date of the Exemption Period of this one-year exemption and must be completed within three (3) months from the end of the period to which it relates.

2020–01 or PTE 2022–01; any material change in the relevant business activities of the Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAG and UBS and to each Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAG, UBS, the relevant Affiliated QPAM. The Exemption Report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the Exemption Period, and The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(o) UBS imposes its internal procedures, controls, and protocols on each Misconduct Entity to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(p) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that UBS or CSAG or an affiliate of either failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions;

(q) Each Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the Affiliated QPAM relies upon the relief in this exemption;

(r) During the Exemption Period, UBS must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or CSAG or any of their affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(s) Within 60 days after the effective date of this exemption, each Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹³ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(t) An Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (m), (s) or

¹³ If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

(u); or if the independent auditor described in Section III(i) or (j) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11) and (j)(11), provided that such failure did not result from any actions or inactions of CSAG or UBS or its affiliates; and

(u) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

(v) Every 120 days following the merger of UBS and Credit Suisse, UBS must submit a written report to the Department that updates the progress of the Merger. This report must also be provided to Covered Plan fiduciaries (including via an electronic link). Additionally, in its first report to the Department, UBS must: (1) identify the QPAMs using this exemption as the date of the Report; (2) provide details regarding the extent to which the CS Affiliated QPAMs have been integrated into UBS's operations and any other relevant changes with respect to any QPAMs that are using this exemption; (3) any other changes, whether operational or otherwise, that impact any requirements under this exemption; and (4) detailed information regarding the costs to ERISA-covered Plans and IRAs (together, Covered Plans) that would arise if this one-year exemption is not renewed.

Applicability Date: This exemption will be in effect for one (1) year, beginning on the date of the closing of the acquisition of CSAG by UBS.

Signed at Washington, DC, this 10th day of May 2023.

George Christopher Cosby,

Director, U.S. Department of Labor, Employee Benefits Security Administration, Office of Exemption Determinations.

[FR Doc. 2023–10289 Filed 5–11–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benefit Appeals Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 June 12, 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 is authorized under the Social Security Act, section 303(a)(6). The ETA 5130, Benefit Appeals Report, contains information on the number of appeals and the resultant decisions classified by program, appeal level, workload flow, and decisions by level, appellant, and issue. The data on this form are used by DOL to monitor the benefit appeals process in the state workforce agencies (SWAs). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2023 (88 FR 8475).

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–ETA.

Title of Collection: Benefit Appeals Report.

OMB Control Number: 1205–0172.

Affected Public: State, local, and Tribal governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 1,272.

Total Estimated Annual Time Burden: 1,272 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Dated: May 8, 2023.

Mara Blumenthal,
Senior PRA Analyst.

[FR Doc. 2023–10106 Filed 5–11–23; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Computer and Information Science and Engineering (#1115).

Date and Time: June 8, 2023—12:00 p.m.–5:30 p.m. (Eastern); June 9, 2023—8:30 a.m.–12:30 p.m. (Eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Hybrid).

To attend in person or virtually, please send your request to the following email: kmayberr@nsf.gov.

Type of Meeting: Open.

Contact Persons: KaJuana Mayberry, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8900; email: kmayberry@nsf.gov.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Computer and Information Science and Engineering programs and activities.

Agenda: The agenda includes updates on NSF and CISE activities, as well as a discussion of education and workforce development, expanding the geography of innovation, artificial intelligence, and semiconductors.

Dated: May 9, 2023.

Crystal Robinson,
Committee Management Officer.

[FR Doc. 2023–10197 Filed 5–11–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Comment Request; Data Security Requirements for Accessing Confidential Data

AGENCY: National Center for Science and Engineering Statistics, National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NCSES is forwarding the proposed Data Security Requirements for Accessing Confidential Data information collection to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: <http://www.reginfo.gov/public/do/PRAMain>.

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.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments

regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703-292-7556.

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) 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 should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION: NCSES 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.

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the NSF, including whether the information will have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Data Security Requirements for Accessing Confidential Data.

OMB Control Number: 3145-NEW.

Summary of Collection: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (44 U.S.C. 3583; hereafter referred to as the Evidence Act) mandates that OMB

establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA), it is recognized that other agencies and organizational units within the Executive Branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP.

The SAP Portal is a single web-based common application designed to collect information from individuals requesting access to confidential data assets from federal statistical agencies and units. When an application for confidential data is approved through the SAP Portal, NCSES will collect information to fulfill its data security requirements. This is a required step before providing the individual with access to restricted use microdata for the purpose of evidence building. NCSES's data security agreements and other paperwork, along with the corresponding security protocols, allow NCSES to maintain careful controls on confidentiality and privacy, as required by law. NCSES' collection of data security information will occur outside of the SAP Portal.

The following bullets outline the major components and processes in and around the SAP Portal, leading up to NCSES' collection of security requirements.

- *SAP Policy:* At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The SAP Policy was submitted to the public for comment in January 2022 (87 FR 2459) and has since been issued by OMB (M-23-04).

- *The SAP Portal:* The SAP Portal is an application interface connecting applicants seeking data with a catalog of metadata for data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential

data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process.

- *Data Discovery:* Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP metadata catalog, maintained by federal statistical agencies at www.researchdatagov.org.

- *SAP Application:* Individuals who have identified and wish to access confidential data assets are able to apply for access through the SAP Portal. Applicants must create an account and follow all steps to complete the application. Applicants enter personal, contact, and institutional information for the research team and provide summary information about their proposed project.

- *Submission for Review:* Agencies approve or reject an application within a prompt timeframe. Agencies may also request applicants to revise and resubmit their application.

- *Access to Confidential Data:* Approved applicants are notified through the SAP Portal that their proposal has been accepted. This concludes the SAP Portal process. Agencies will contact approved applicants to initiate completion of their security documents. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

- *Collection of Information for Data Security Requirements:* In the instance of a positive determination for an application requesting access to an NCSES-owned confidential data asset, NCSES will contact the applicant(s) to initiate the process of collecting information to fulfill its data security requirements. This process allows NCSES to place the applicant(s) in a trusted access category.

Estimate of Burden: The amount of time to complete the agreements and other paperwork that comprise NCSES's security requirements will vary based on the confidential data assets requested. To obtain access to NCSES confidential data assets, it is estimated that the average time to complete and submit NCSES's data security agreements and other paperwork is 60 minutes. This burden estimate has changed from the time of the 60-day FRN submission to account for 30 minutes of CIPSEA training required for each applicant. This estimate does not include the time needed to complete and submit an application within the SAP Portal. An additional burden

estimate for application renewals has also been added to account for 35 minutes of annual burden when renewing an application. All efforts related to SAP Portal applications occur prior to and separate from NCSSES's effort to collect information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from NCSSES in a given year may vary. Overall, per year, NCSSES estimates it will collect data security information for 20 application submissions, with two applicants per application, that received a positive determination within the SAP Portal. NCSSES estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 120 hours and, as a result, an average annual burden of 40 hours.

In addition, individuals must renew applications annually and take annual CIPSEA training. An average of 90 applicants per year renew their applications, taking an average of 35 minutes for training and completion of the amendment form for a total of 157.5 total burden hours over the course of the three-year OMB clearance and an annual burden of 52.5 hours.

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through the publication of a 60-Day Notice in the **Federal Register** at 87 FR 65611. NCSSES received no comments.

Updates: The 30-day FRN specified 30 minutes of burden per applicant to complete security paperwork. This estimate has been updated to reflect an additional 30 minutes of required CIPSEA training, for a total of 60 minutes of burden per applicant. In addition, the burden estimate has been updated to account for application renewals, for a total of 35 minutes of burden per applicant.

Dated: May 8, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-10121 Filed 5-11-23; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-1051; NRC-2018-0052]

Holtec International; HI-STORE Consolidated Interim Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: License; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Materials License No. SNM-2516 to Holtec International (Holtec) to construct and operate the HI-STORE Consolidated Interim Storage Facility (CISF) as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel at the HI-STORE CISF in Lea County, New Mexico. Holtec will be required to operate under the conditions listed in Materials License No. SNM-2516. The NRC staff has published a record of decision (ROD) that supports the NRC's decision to approve Holtec's license application for the HI-STORE CISF Facility and to issue the license.

DATES: May 12, 2023.

ADDRESSES: Please refer to Docket ID NRC-2018-0052 when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0052. 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.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- **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.

FOR FURTHER INFORMATION CONTACT: Jose Cuadrado, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0606; email: Jose.Cuadrado-Caraballo@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued a license to Holtec for its HI-STORE CISF in Lea County, New Mexico (ADAMS Package Accession No. ML23075A179). Materials License No. SNM-2516 authorizes Holtec to construct and operate its facility as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel at the HI-STORE CISF. The license authorizes Holtec to store up to 8,680 metric tons of uranium [9,568 short tons] of spent nuclear fuel for a license period of 40 years. Holtec will be required to operate under the conditions listed in Materials License No. SNM-2516.

The NRC staff's ROD that supports the NRC's decision to approve Holtec's license application for the HI-STORE CIS Facility and to issue Materials License No. SNM-2516 is available in ADAMS under Accession No. ML23061A129. The ROD satisfies the regulatory requirement in section 51.102 paragraph (a) of title 10 of the *Code of Federal Regulations* (10 CFR), which requires that a Commission decision on any action for which a final environmental impact statement (EIS) has been prepared be accompanied by or include a concise public ROD. As discussed in the ROD, the final EIS for Holtec's license application for a CISF for spent nuclear fuel in Lea County, New Mexico (ADAMS Accession No. ML22181B094), and Supplement 1 (ADAMS Accession No. ML22299A238), the NRC staff considered a range of reasonable alternatives that included the No-Action alternative, as required by the National Environmental Policy Act of 1969, as amended; storage at a government-owned CISF; alternative design and storage technologies; and alternative locations. The final EIS documents the environmental review, including the NRC staff's recommendation to issue an NRC license to Holtec to construct and operate a CISF for spent nuclear fuel at the proposed location, subject to the determinations in the NRC staff's safety review of the application. The final EIS conclusion is based on the NRC staff's

independent environmental review, as well as (i) the license application, which includes the environmental report and supplemental documents and Holtec's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local agencies and input from other stakeholders, including members of the public; and (iii) the assessments provided in the final EIS.

The NRC staff prepared a final safety evaluation report that documents the staff's safety and security review of the application (ADAMS Accession No. ML23075A183). The staff's safety and security review found that the application met applicable NRC regulations in 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste."

Documents related to the application carry Docket ID NRC-2018-0052 and NRC-2018-0055. These documents for the Holtec license include the license application, the applicant's safety analysis report, emergency plan,

physical security plan, environmental report, updates to these documents, and applicant supplements and responses to NRC staff requests for additional information, and the NRC staff's final safety evaluation report, final EIS, and ROD.

Holtec's request for a materials license was previously noticed in the **Federal Register** on March 19, 2018 (83 FR 12034). A notice with an opportunity to request a hearing and to petition for leave to intervene was published in the **Federal Register** on July 16, 2018 (83 FR 32919). Six groups of petitioners filed petitions to intervene. An Atomic Safety and Licensing Board considered the petitions and its corresponding contentions. The Board determined that none of the petitions met the criteria for admissibility and terminated the adjudicatory proceeding. Intervenor appealed the decisions to the Commission, and the Commission, in several orders, affirmed all of the Board decisions.

In issuing a materials license to Holtec for the HI-STORE CISF, the NRC has determined based on its review of this application that there is reasonable

assurance that: (i) the activities authorized by the license can be conducted without endangering the health and safety of the public; and (ii) these activities will be conducted in compliance with the applicable regulations of 10 CFR part 72. The NRC has further determined that the issuance of the license will not be inimical to the common defense and security.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," the details with respect to this action, including the final safety evaluation report and accompanying documentation and license, are available electronically in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. From this site, you can access ADAMS, which provides text and image files of the NRC public documents.

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

	Document description	ADAMS accession No.
1	Initial license application, dated March 30, 2017	ML17115A431 (package).
2	Applicant response to request for supplemental information, dated October 6, 2017	ML17310A218 (package).
3	Applicant response to request for supplemental information, dated December 21, 2017	ML17362A097 (package).
4	Applicant response to request for supplemental information, dated December 22, 2017	ML18011A158.
5	License application, dated February 23, 2018	ML18058A617 (package).
6	Applicant response to first round request for additional information, part 1, dated May 24, 2018	ML18150A319 (package).
7	Applicant response to first round request for additional information, part 1, dated July 27, 2018	ML18213A206 (package).
8	Applicant supplemental response to first round request for additional information, part 1, dated May 11, 2021.	ML21131A199 (package).
9	Applicant response to first round request for additional information, part 2, dated November 30, 2018	ML18345A153 (package).
10	Applicant response to first round request for additional information, part 2, dated January 31, 2019	ML19037A280 (package).
11	Applicant response to first round request for additional information, part 3, dated March 30, 2019	ML19094A271.
12	Applicant response to first round request for additional information, part 3, dated March 30, 2019	ML19106A183 (package).
13	Applicant safeguards information, supplemental response to request for additional information, dated March 2, 2020.	ML20065H155.
14	Applicant response to first round request for additional information, part 4, dated March 15, 2019	ML19081A083 (package).
15	Applicant response to first round request for additional information, part 4, July 19, 2019, follow-up, dated August 26, 2019.	ML19248C140 (package).
16	Applicant response to December 26, 2019, emergency response plan clarification request for additional information, dated June 1, 2020.	ML20153A783 (package).
17	Applicant response to first round request for additional information, part 5, dated June 1, 2020	ML20153A777 (package).
18	Applicant response to first round request for additional information, part 5, dated September 16, 2020	ML20260H139 (package).
19	Applicant response to first round request for additional information, part 6, dated October 9, 2020	ML20283A789 (package).
20	Applicant response, supporting information, to first round request for additional information, part 6, dated October 9, 2020.	ML20290A465.
21	Applicant response to first round request for additional information, part 6, dated November 20, 2020	ML20326A005 (package).
22	Applicant response to first round request for additional information, part 6, dated January 4, 2021	ML21004A241 (package).
23	U.S. Army Corps of Engineers, Regulatory Program, Approved Jurisdictional Determination Form (Interim), Navigable Waters Protection Rule, dated April 1, 2021.	ML21155A229.
24	Applicant response to second round request for additional information, part 1, dated June 30, 2021	ML21224A105 (package).
25	Applicant response to second round request for additional information, part 2, dated August 16, 2021	ML21228A201 (package).
26	Applicant response to second round request for additional information, part 2, dated August 31, 2021	ML21243A525 (package).
27	Applicant supplemental response to second round request for additional information, dated October 29, 2021.	ML21304A003 (package).
28	Applicant response to third round request for additional information, dated April 15, 2022	ML22108A114 (package).
29	Applicant response to third round request for additional information, dated August 15, 2022	ML22227A156 (package).
30	Applicant supplemental response to third round request for additional information, dated November 23, 2022.	ML22331A002 (package).
31	Applicant supplemental response to third round request for additional information, dated December 23, 2022.	ML22357A117 (package).

	Document description	ADAMS accession No.
32	Applicant supplemental response to third round request for additional information, dated January 20, 2023.	ML23020A128 (package).
33	NUREG-2237, "Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel and High Level Waste" Draft Report for Comment, dated March 2020.	ML20069G420.
34	Overview of the Draft Environmental Impact Statement, dated March 2020	ML20073P254.
35	Overview of the Draft Environmental Impact Statement (Spanish language version), dated April 2020 ..	ML20120A522.
36	NUREG-2237 "Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Lea County, New Mexico" Final Report, dated July 2022.	ML22181B094.
37	NUREG-2237, Supplement 1, "Environmental Impact Statement for Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Lea County, New Mexico", dated October 2022.	ML22299A238.
38	Final Safety Evaluation Report for the HI-STORE Consolidated Interim Storage Facility Independent Spent Fuel Storage Installation Specific Materials License No. SNM-2516, dated May 2023.	ML23075A183.
39	NRC Staff's Record of Decision, dated May 9, 2023	ML23061A129.
40	Materials License for Holtec International, dated May 9, 2023	ML23075A179 (package).

For the Nuclear Regulatory Commission.

Dated: May 9, 2023.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023-10162 Filed 5-11-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

706th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on June 7-9, 2023. The Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301-576-2978, passcode 363920031#. A more detailed agenda including the MSTeams link may be found at the ACRS public website at <https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html>. If you would like the MSTeams link forwarded to you, please contact the Designated Federal Officer as follows: Quynh.Nguyen@nrc.gov, or Lawrence.Burkhart@nrc.gov.

Wednesday, June 7, 2023

1:00 p.m.-1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.-5:00 p.m.: General Atomic (GA) Fast Modular Reactor Principal

Design Criteria/Commission Meeting Preparation/Report Preparation/Retreat Follow-up Items (Open/Closed)—The Committee will have presentations and discussions with representatives from GA and the NRC staff regarding the subject topic.

[**Note:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Thursday, June 8, 2023

8:30 a.m.-5:00 p.m.: Planning and Procedures Session/Future ACRS Activities/Reconciliation of ACRS Comments and Recommendations/Preparation of Reports/Commission Meeting Preparation/Retreat Follow-up Items (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman and preparation of upcoming Commission meeting. [**Note:** Pursuant to 5 U.S.C. 552b(c)(2), a portion of this session may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS.] [**Note:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed to discuss and protect information designated as proprietary.]

Friday, June 9, 2023

1:00 p.m.-5:00 p.m.: Preparation of Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301-415-5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least one day before the meeting.

In accordance with subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at pdr.resource@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is

accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html> or <https://www.nrc.gov/reading-rm/doc-collections/#ACRS/>.

Dated: May 9, 2023.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2023–10169 Filed 5–11–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 15, 22, 29, June 5, 12, 19, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Wendy.Moore@nrc.gov or Tyesha.Bush@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of May 15, 2023

Tuesday, May 16, 2023

9:00 a.m. Update on 10 CFR part 53 Licensing and Regulation of Advanced Nuclear Reactors (Public Meeting); (Contact: Scott Tonsfeldt: 301–415–1783).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via

webcast at the Web address—<https://video.nrc.gov/>.

Thursday, May 18, 2023

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Jeffrey Lynch: 301–415–5041).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of May 22, 2023—Tentative

There are no meetings scheduled for the week of May 22, 2023.

Week of May 29, 2023—Tentative

There are no meetings scheduled for the week of May 29, 2023.

Week of June 5, 2023—Tentative

Friday, June 9, 2023

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Larry Burkhart: 301–287–3775).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of June 12, 2023—Tentative

Tuesday, June 13, 2023

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting); (Contact: Angie Randall: 301–415–6806).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of June 19, 2023—Tentative

Tuesday, June 20, 2023

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting); (Contact: Nicole Fields: 630–829–9570).

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike,

Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 10, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–10346 Filed 5–10–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–146 and CP2023–149]

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:* May 16, 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:

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)*: MC2023–146 and CP2023–149; *Filing Title*: USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 12 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: May 8, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: May 16, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–10204 Filed 5–11–23; 8:45 am]

BILLING CODE 7710–FW–P

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–144 and CP2023–147; MC2023–145 and CP2023–148]

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:* May 15, 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:

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)*: MC2023–144 and CP2023–147; *Filing Title*: USPS Request to Add Priority Mail Contract 780 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: May 5, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: May 15, 2023.

2. *Docket No(s)*: MC2023–145 and CP2023–148; *Filing Title*: USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: May 5, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: May 15, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–10117 Filed 5–11–23; 8:45 am]

BILLING CODE 7710–FW–P

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97459; File No. SR-CboeEDGX-2023-032]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.8 Regarding Certain Cancel-Replace Messages

May 8, 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 April 25, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend Rule 21.8. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed 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 Rule 21.8 to describe the impact on option order priority of a cancel/replace message, including a “no-change” order³ (i.e., an order submitted to cancel or replace a resting order that does not change any terms of an order). The Rules are currently silent regarding how the System handles a cancel-replace message (that either changes or does not change any terms of the resting order). The Exchange recently determined that if the System receives a no-change order, the resting order will lose its priority position; however, if the System receives a “no-change” bid or offer in a bulk message, the resting bid or offer will not lose its priority position. The Exchange proposes to harmonize the handling of all no-change orders and quotes so that any “no-change” order or bulk message bid or offer will lose priority and describe this behavior in the Exchange’s Rules.

Additionally, the Exchange proposes to describe in the Exchange’s Rules how the System in general handles all cancel/replace messages submitted by users, including those that change or do not change the price and size of a resting order’s terms. Specifically, the Exchange proposes to codify current System functionality that causes a resting order to lose its priority position (including if the price of an order is changed or the quantity is increased) if any cancel/replace message is submitted if any term other than a decrease to the quantity, the Max Floor (if a Reserve

Order),⁴ or the stop price (if a Stop or Stop Limit Order)⁵ is modified.

Therefore, the proposed rule change amends Rule 21.8 to add that if a user submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the user only (1) decreases the quantity of an order, (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁷ 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

⁴ “Reserve Orders” are limit orders that have both a portion of the quantity displayed (“Display Quantity”) and with a reserve portion of the quantity (“Reserve Quantity”) that is not displayed. Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the user’s instruction, replenish the Display Quantity from the Reserve Quantity using one of the replenishment instructions set forth in the Rules. If the remainder of an order is less than the replenishment amount, the Exchange will replenish and display the entire remainder of the order. A user must instruct the Exchange as to the quantity of the order to be initially displayed by the System (“Max Floor”) when entering a Reserve Order, which is also used to determine the replenishment amount. A new timestamp is created for both the Display Quantity and the Reserve Quantity of the order each time it is replenished from reserve. See Rule 21.1(d)(1).

⁵ “Stop Orders” are orders that become market orders when the stop price is elected. “Stop Limit Orders” are orders that become limit orders when the stop price is elected. A Stop or Stop Limit Order to buy is elected when the consolidated last sale in the option occurs at or above, or the NBB is equal to or higher than, the specified stop price. A Stop or Stop Limit Order to sell is elected when the consolidated last sale in the option occurs at or below, or the NBO is equal to or lower than, the specified stop price. See Rule 21.1(d)(11) and (12).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

³ In this context, the term “order” includes bids and offers submitted in bulk messages. A bulk message means a bid or offer included in a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the user may enter, modify, or cancel up to an Exchange-specified number of bids and offers. See Rule 16.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to the Rules regarding how the System handles all cancel/replace messages, including those that change no order terms. The Exchange believes consistency in handling of all no-change orders and quotes will simplify order handling, which will promote just and equitable principles of trade and thus further benefit investors. The Exchange believes it is reasonable for a user's resting order to lose priority if that user submits a cancel/replace order, including a no-change order, to replace that resting order (other than the three proposed exceptions). Ultimately, the purpose of a cancel and replace message is to replace a resting order with a new order; therefore, it is appropriate for the System to treat that replacement order as a new order for purposes of priority. Despite the fact that a cancel/replace message may not modify the price or size of a resting order (and thus has no investment purpose), a user elected to send that new order to the Exchange despite having an identical order resting on the Exchange's book and used System capacity to do so. Therefore, the Exchange believes it promotes just and equitable principles of trade to treat that replacement order as a new order for priority purposes. The Exchange believes the proposed rule change encourages users to submit to the Exchange only bona fide cancel/replace orders that have legitimate investment purposes and discourages use of System capacity to send unnecessary message traffic.

The Exchange believes it will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to codify current System functionality regarding all cancel/replace messages, including those that do not cause a loss of priority position. Under current System functionality, a cancel/replace order that changes the price of a resting order or increases the size of a resting order the order loses its priority position and is placed in a

priority position based on the time the System receives the cancel/replace message, as increasing the price or quantity of a resting order could cause it to gain priority over other resting orders if it did not otherwise get a new timestamp. Additionally, under current System functionality, cancel/replace order that decreases the size of a resting order (and changes no other terms) does not result in a loss of priority position. Unlike a no-change order, an order to reduce the size of a resting order may have a legitimate investment purpose, such as to reduce execution risk, but would not impact its priority compared to other resting orders (e.g., resting orders are often decreased in size if they receive partial execution, and the remainders retain their priority status; unlike an increase in size, a decrease in size would not cause a resting order to otherwise gain priority over other resting orders).

Additionally, under current System functionality, a cancel/replace message that changes the Max Floor (if a Reserve Order) or the stop price (if a Stop or Stop-Limit order) and no other terms will not cause a resting order to lose priority because it is unnecessary given the handling of those orders and the fact that at that time there is no priority to lose. Such handling is consistent with the definitions and handling of both of those order types. Specifically, as set forth in the definition of a Reserve Order, the Max Floor amount is relevant for replenishment of the Display Quantity of the order after execution, and once replenished, the System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve (i.e., prioritizes it in the book at the time of replenishment). Therefore, there is no need for a loss in priority due to a change in the Max Floor amount because that order will have its priority reset once it is replenished with that new amount. Similarly, as set forth in the definitions of Stop and Stop-Limit orders, those orders become market or limit orders, respectively, once triggered and thus placed on the book as market or limit orders and prioritized based on that time. The stop price is the piece of information that determines when these orders will be triggered. As a result, there is no need for an order to lose priority due to a change in the stop price given that those orders have not yet been prioritized on the Book and will be prioritized once triggered and entered into the Book for potential execution.

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 change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the System will handle all cancel/replace orders from all users in the same manner. All cancel/replace orders, including all no-change orders, except for the three exceptions, will cause the resting order to lose priority. The three types of cancel/replace orders that will not cause a resting order to lose priority are consistent with current order handling rules.

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 change only impacts priority of orders resting on the Exchange's book and thus will have no impact on terms of an order that are disseminated to market participants or on trading outside of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

⁸ *Id.*

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2023-032. 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 offices of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeEDGX-2023-

032, and should be submitted on or before June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-10124 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-794, OMB Control No. 3235-0737]

Submission for OMB Review; Comment Request; Extension: Rule 22e-4

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, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 22(e) of the Investment Company Act of 1940 ("Investment Company Act") provides that no registered investment company shall suspend the right of redemption or postpone the date of payment of redemption proceeds for more than seven days after tender of the security absent specified unusual circumstances. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption for any amount of time, absent certain specified circumstances or a Commission order.

Rule 22e-4 under the Act [17 CFR 270.22e-4] requires an open-end fund and an exchange-traded fund that redeems in kind ("In-Kind ETF") to establish a written liquidity risk management program that is reasonably designed to assess and manage the fund's or In-Kind ETF's liquidity risk. This program includes policies and procedures that incorporate certain

program elements, including: (i) for funds and In-Kind ETFs, the assessment, management, and periodic review of liquidity risk (with such review occurring no less frequently than annually); (ii) for funds, the classification of the liquidity of a fund's portfolio investments, as well as at-least-monthly reviews of the fund's liquidity classifications; (iii) for funds that do not primarily hold assets that are highly liquid investments, the determination of and periodic review of the fund's highly liquid investment minimum and establishment of policies and procedures for responding to a shortfall of the fund's highly liquid investment minimum, which includes reporting to the fund's board of directors; (iv) for funds and In-Kind ETFs, the limitation of the fund's or In-Kind ETF's investment in illiquid investments that are assets to no more than 15% of the fund's or In-Kind ETF's net assets; and (v) for funds and In-Kind ETFs, the establishment of policies and procedures regarding redemptions in kind, to the extent that the fund engages in or reserves the right to engage in redemptions in kind. The rule also requires board approval and oversight of a fund's or In-Kind ETF's liquidity risk management program and recordkeeping.

Rule 22e-4 also requires a limited liquidity review, under which an unit investment trust's ("UIT") principal underwriter or depositor determines, on or before the date of the initial deposit of portfolio securities into the UIT, that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues and retains a record of such determination for the life of the UIT and for five years thereafter.

The requirements under rule 22e-4 that a fund and In-Kind ETF, as applicable, adopt a written liquidity risk management program, report to the board, maintain a written record of how the highly liquid investment minimum was determined and written policies and procedures for responding to a shortfall of the fund's highly liquid investment minimum, which includes reporting to the fund's board of directors (for funds that do not primarily hold highly liquid investments), establish written policies and procedures regarding how the fund will engage in redemptions in kind, and retain certain other records are all collections of information. In addition, the requirement under rule 22e-4 that the principal underwriter or depositor of a UIT assess the liquidity of the UIT on or before the date of the initial deposit

¹¹ 17 CFR 200.30-3(a)(12).

of portfolio securities into the UIT and retain a record of such determination for the life of the UIT, and for five years thereafter, is also a collection of information.

The Commission staff estimates that 11,659 funds, 603 newly-registered funds, and 8 UITs are subject to rule 22e-4. The internal annual burden estimate is 16 hours for a fund, 11 for a newly-registered fund, and 8 hours for an UIT. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 193,241 hours. The estimated burden hours associated with rule 22e-4 have increased by 165,091 hours from the current allocation of 28,150 hours. This increase is due to an increase in the estimated number of affected entities, as well as revisions in the manner of calculation. The external cost associated with this collection of information is approximately \$3,124 per fund and \$2,000 per newly-registered fund, and the total annual external cost burden is \$37,628,716. The estimated external cost has increased by \$37,628,716 from the current estimate of \$0. This increase is due to the staff's determination to revise the manner in which it calculates these estimates.

The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the cost of Commission rules. The collection of information required by rule 22e-4 is necessary to obtain the benefits of the rule. Information regarding a fund's monthly position-level liquidity classification and its highly liquid investment minimum reported on Form N-PORT will be kept confidential. Other information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 22e-4 is reviewed by the Commission's examination staff, it is accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. 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 control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the

search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by June 12, 2023 to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: May 8, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10113 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-455, OMB Control No. 3235-0514]

Submission for OMB Review; Comment Request; Extension: Rule 8c-1

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") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 8c-1 (17 CFR 240.8c-1), under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*).

Rule 8c-1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, Rule 8c-1 states three main principles: (1) a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; (2) a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and (3) a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. Additionally, Rule 8c-1 requires broker-dealers to make certain written notifications to pledgees in connection

with such use of customer securities as collateral.¹

The information required by Rule 8c-1 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent broker-dealers from hypothecating or arranging for the hypothecation of any securities carried for the account of any customer under certain circumstances. In addition, the information required by Rule 8c-1 provides important investor protections.

There are approximately 43 respondents as of the end of 2022 (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year). Each respondent makes an estimated 45 annual responses, for an aggregate total of approximately 1,935 responses per year.² Each response takes approximately 0.5 hours to complete. Therefore, the total third-party disclosure burden per year is approximately 968 hours.³

The retention period for the recordkeeping requirement under Rule 8c-1 is three years. The recordkeeping requirement under Rule 8c-1 is mandatory to ensure that broker-dealers do not commingle their securities or use them to finance the broker-dealers' proprietary business. This rule does not involve the collection of confidential or personal identifiable information.

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.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by June 12, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

¹ See Exchange Act Release No. 2690 (November 15, 1940); Exchange Act Release No. 9428 (December 29, 1971).

² 43 respondents × 45 annual responses = 1,935 aggregate total of annual responses.

³ 1,935 responses × 0.5 hours = 967.5 hours, rounded up to 968 hours.

Dated: May 8, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10114 Filed 5–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97456; File No. SR–C2–2023–011]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.32 Regarding Certain Cancel-Replace Messages

May 8, 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 April 25, 2023, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the “Exchange” or “C2 Options”) proposes to amend Rule 5.32. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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 Rule 5.32(e) to describe the impact on priority of a “no-change” order³ (*i.e.*, an order submitted to cancel or replace a resting order that does not change any terms of an order) and of a cancel/replace message that does not change the price or size of a resting order but changes another term of an order. Current Rule 5.32(e) describes whether a resting order’s priority position may change if it is modified with a cancel/replace message. Specifically, current Rule 5.32(e) states if the price of an order is changed, the order loses position and is placed in a priority position as if the System received the order at the time the order was changed. If the quantity of an order is decreased, it retains its priority position. If the quantity of an order is increased, it loses its priority position and is placed in a priority position as if the System received the order at the time the quantity of the order is increased.

Rule 5.32(e), however, is currently silent regarding how the System handles a cancel-replace message comprised of a no-change order or an order that changes terms other than price and size. The Exchange recently determined that if the System receives a no-change order, the resting order would lose its priority position; however, if the System receives a “no-change” bid or offer in a bulk message, the resting bid or offer would not lose its priority position. The Exchange proposes to harmonize the handling of all no-change orders and quotes so that any “no-change” order or bulk message bid or offer will lose priority, as well as add to the Rules how the System handles no-change orders. Additionally, the Exchange proposes to codify current System functionality that causes a resting order to lose its priority position if any cancel/replace message is submitted if any term other than the Max Floor (if a Reserve Order)⁴ or the

stop price (if a Stop or Stop-Limit order⁵) is modified. Therefore, the proposed rule change amends Rule 5.32(e) to state if a User submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the User only (1) decreases the quantity of an order (as is currently set forth in the Rules), (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

Quantity”) and a reserve portion of the quantity (“Reserve Quantity”) not displayed. Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. When entering a Reserve Order, a User must instruct the Exchange as to the quantity of the order to be initially displayed by the System (“Max Floor”). If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the User’s instruction, replenish the Display Quantity from the Reserve Quantity using one of the below replenishment instructions. If the remainder of an order is less than the replenishment amount, the System will display the entire remainder of the order. The System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve. A User may attach an instruction for random replenishment (where the System randomly replenishes the Display Quantity for the order with a number of contracts not outside a replenishment range, which equals the Max Floor plus and minus a replenishment value established by the User when entering a Reserve Order with a Random Replenishment instruction) or fixed replenishment (the System will replenish the Display Quantity of an order with the number of contracts equal to the Max Floor). See Rule 5.6(c).

⁵ A “Stop (Stop-Loss)” order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A “Stop-Limit” order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. See Rule 5.6(c).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

³ In this context, the term “order” includes bids and offers submitted in bulk messages. A bulk message means a bid or offer included in a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. See Rule 1.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

⁴ A “Reserve Order” is a limit order with both a portion of the quantity displayed (“Display

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to the Rules regarding how the System handles cancel/replace messages that change no order terms or change order terms other than price and size. The Exchange believes consistency in handling of all no-change orders and quotes will simplify order handling and thus further benefit investors. The Exchange believes it is reasonable for a user's resting order to lose priority if that user submits a cancel/replace order, including a no-change order, to replace that resting order (other than the three exceptions). Ultimately, the purpose of a cancel and replace message is to replace a resting order with a new order; therefore, it is appropriate for the System to treat that replacement order as a new order for purposes of priority. Despite the fact that a cancel/replace message does not modify the price or size of a resting order (and thus has no investment purpose), a user elected to send that new order to the Exchange despite having an identical order resting on the Exchange's book and use System capacity to do so. Therefore, the Exchange believes it promotes just and equitable principles of trade to treat that replacement order as a new order for priority purposes. The Exchange believes the proposed rule change encourages users to submit to the Exchange only bona fide cancel/replace orders that have legitimate investment purposes and discourages use of System capacity to send unnecessary message traffic.

As set forth in the current Rule 5.32(e), a cancel/replace order that decreases the size of a resting order would continue to not result in a loss of priority position is an order. The Exchange believes it is appropriate to continue to not have this type of cancel/

replace order cause a loss of priority because it is consistent with a partial execution of that order, which would similarly not cause a loss of priority.⁹ Unlike a no-change order, an order to reduce the size of a resting order may have a legitimate investment purpose, such as to reduce execution risk. Additionally, the Exchange believes it will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to codify that a change to the Max Floor (if a Reserve Order) or the stop price (if a Stop or Stop-Limit order) will not cause a resting order to lose priority because it is unnecessary given the handling of those orders and the fact that at that time there is no priority to lose. Such handling is consistent with the definitions and handling of both of those order types. Specifically, as set forth in the definition of a Reserve Order, the Max Floor amount is relevant for replenishment of the Display Quantity of the order after execution, and once replenished, the System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve (*i.e.*, prioritizes it in the book at the time of replenishment). Therefore, there is no need for a loss in priority due to a change in the Max Floor amount because that order will have its priority reset once it is replenished with that new amount. Similarly, as set forth in the definitions of Stop and Stop-Limit orders, those orders become market or limit orders, respectively, once triggered and thus placed on the book as market or limit orders and prioritized based on that time. The stop price is the piece of information that determines when these orders will be triggered. As a result, there is no need for an order to lose priority due to a change in the stop price given that those orders have not yet been prioritized on the Book and will be prioritized once triggered and entered into the Book for potential execution.

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 change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act

because the System will handle all cancel/replace orders from all users in the same manner. All cancel/replace orders, except for the three exceptions, will cause the resting order to lose priority. The three types of cancel/replace orders that will not cause a resting order to lose priority and are consistent with current order handling rules. 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 change only impacts priority of orders resting on the Exchange's book and thus will have no impact on terms of an order that are disseminated to market participants or on trading outside of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

⁸ *Id.*

⁹ See Rule 5.32(d).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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-C2-2023-011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2023-011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-C2-2023-011, and should be submitted on or before June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10123 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34909; 812-15454]

SEI Alternative Income Fund, et al.

May 8, 2023.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and/or service fees with respect to certain classes.

APPLICANTS: SEI Alternative Income Fund, SEI Investments Distribution Co. and SEI Investments Management Corporation.

FILING DATE: The application was filed on April 10, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on June 2, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Timothy D. Barto, tbarto@seic.com and Sean Graber, sean.graber@morganlewis.com.

FOR FURTHER INFORMATION CONTACT:

Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated April 10, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10132 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97455; File No. SR-ICC-2023-008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures

May 8, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4,² notice is hereby given that on May 02, 2023, ICE Clear Credit LLC ("ICC") 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 primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICC proposes a rule change to update the ICC Clearing Participant ("CP") Default Management Procedures (the "ICC Default Management Procedures"). These revisions do not require any changes to the ICC Clearing Rules (the "Rules").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 17 CFR 200.30-3(a)(12).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to update the ICC Clearing Participant Default Management Procedures (the "ICC Default Management Procedures"). The ICC Default Management Procedures set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default of its obligations to ICC under the Rules, as well as the actions taken by ICC in connection with the close-out of the defaulter's portfolio (the "Close-Out"). The proposed revisions are designed to address Commission regulatory examination findings related to the annual testing of the ICC Recovery Plan and the ICC Wind-Down Plan (collectively, the "Plans").³ The proposed revisions are limited to providing additional details with respect to ICC's testing of the Plans included in the ICC Default Management Procedures. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed updates are described in detail as follows.

Specifically, ICC purposes to revise the ICC Default Management Procedures by adding Section 4.6 Recovery and Wind-Down Tests. Section 4.6 adds detailed procedures with respect to ICC's annual Recovery and Wind-Down testing. ICC conducts Recovery and Wind-Down testing at least every twelve

months demonstrating ICC's readiness to execute the Plans as applicable (i) to address uncovered credit losses, liquidity shortfalls and general business risk, operational risk, or any other risk that threatens ICC's viability as a going concern, and (ii) in the event recovery actions fail to preserve ICC's viability as a going concern or ICC makes a business decision to exit all clearing activities, to wind-down ICC in an orderly manner (the "Recovery and Wind-Down Test").

Proposed Section 4.6 also includes details on how the scope of each Recovery and Wind-Down Test is determined. It is the responsibility of the ICC Risk Oversight Officer ("ROO") to plan and coordinate the execution of the Recovery and Wind-Down Test, including the determination of the scope of the Recovery and Wind-Down Test which includes coordination with the ICC Close-Out Team.⁴ Such scope will include which recovery and wind-down scenarios will be tested, the selected stress scenario(s), and the recovery tools to be tested. In the determination of which scenarios and tools are to be tested, ICC will give consideration to scenarios, business processes, and tools which have not been recently tested. In addition, ICC will consider the applicability of new Rules, procedures, or newly implemented ICC capabilities (e.g., new cleared contracts). The scope also will include all three wind-down options set forth in the ICC Wind-Down Plan. Section 4.6 further provides that with respect to the testing of business processes and tools to address CP default scenarios, ICC may choose to include such testing in ICC's default management tests, and testing of non-CP default scenarios will be conducted through a separate table-top exercise.

Furthermore, proposed Section 4.6 assigns responsibility for the execution of the Recovery and Wind-Down Test to the ICC Close-Out Team, capturing results, and making them available to the ROO. The ROO collates the results and, identifies any issues or lessons learned, including any revisions that should be made to the ICC Recovery Plan or ICC Wind-Down Plan. The ROO collates the information from the Recovery and Wind-Down Test into a presentation which is reviewed with the Close-Out Team, the ICC Risk Committee and the ICC Board of Managers. The ROO maintains a list of work items for the future development and/or enhancement of the business processes and capabilities necessary to

execute the ICC Recovery Plan and ICC LLC Wind-Down Plan.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁵ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed additional procedural details to ICC's Default Management Procedures included in the proposed rule change are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to section 17A(b)(3)(F),⁶ because ICC believes that the proposed additional procedural details to ICC's Default Management Procedures enhances policies, practices and procedures with respect to the testing of ICC Recovery Plan and the ICC Wind-Down Plan. Such sound policies, practices and procedures are important to enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of section 17A(b)(3)(F) of the Act.⁷

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad-22.⁸ Rule

³ The ICC Recovery Plan and ICC Wind-Down Plan are the plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or other losses.

⁴ The ICC Close-Out Team is comprised of ICC management, the ROO, and the most senior member of the ICC Treasury Department.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ *Id.*

⁷ *Id.*

⁸ 17 CFR 240.17Ad-22.

17Ad–22(b)(3)⁹ requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that such changes enhance ICC's ability to manage a default by providing additional detail, transparency and clarity with respect to ICC's default management rules and procedures, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).¹⁰

Rule 17Ad–22(e)(2)(i) and (v)¹¹ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The Recovery and Wind-down Testing updates to the ICC Default Management Procedures enhance the clarity and transparency of such procedures by providing additional information relating to the assignment of responsibilities in the determination of the scope of the annual Recovery and Wind-down Test, and the assignment of responsibilities in the execution of the annual Recovery and Wind-Down Test, consistent with the requirements of Rule 17Ad–22(e)(2)(i) and (v).¹²

Rule 17Ad–22(e)(3)(ii)¹³ requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which includes plans for the recovery and orderly wind-down of ICC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The Default Management Procedures continue to establish ICC's actions to maintain its viability as a going concern to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness that threatens

ICC's viability. The proposed changes to the Default Management Procedures provide additional detailed procedures with respect to the annual Recovery and Wind-Down testing, improving both the comprehension and transparency of ICC's Recovery and Wind-Down testing. In ICC's view, such proposed changes will improve ICC's Default Management Procedures and ensure they remain comprehensive and useful in providing for ICC's written policies and procedures related to ICC's recovery and orderly wind-down, consistent with the requirements of Rule 17Ad–22(e)(3)(ii).¹⁴

Rule 17Ad–22(e)(13)¹⁵ requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto. The proposed changes to the Default Management Procedures enhance the clarity and transparency of such procedures by providing additional information relating to the assignment of responsibilities in the determination of the scope of the annual Recovery and Wind-down Test, and the assignment of responsibilities in the execution of the annual Recovery and Wind-Down Test. Such proposed changes, therefore, improve the design of ICC's annual Recovery and Wind-Down Testing, consistent with the requirements of Rule 17Ad–22(e)(13).¹⁶

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed rule change to update the ICC Default Management Procedures will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–ICC–2023–008 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–008. 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

⁹ 17 CFR 240.17Ad–22(b)(3).

¹⁰ *Id.*

¹¹ 17 CFR 240.17Ad–22(e)(2)(i) and (v).

¹² *Id.*

¹³ 17 CFR 240.17Ad–22(e)(3)(ii).

¹⁴ *Id.*

¹⁵ 17 CFR 240.17Ad–22(e)(13).

¹⁶ *Id.*

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICC-2023-008 and should be submitted on or before June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10129 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97454; File No. SR-PEARL-2023-21]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2622, Limit Up-Limit Down Plan and Trading Halts

May 8, 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 May 3, 2023, MIAX PEARL, LLC ("MIAX Pearl" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a correction to a recently filed proposal to amend Exchange Rule 2622, which sets forth common criteria and procedures for halting and resuming trading in equity securities on the Exchange's equity trading platform (referred to herein as "MIAX Pearl Equities") in the event of regulatory or operational issues.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX Pearl'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

In conjunction with the adoption of an amended Nasdaq UTP Plan proposed by its participants ("Amended Nasdaq UTP Plan"),³ the Exchange recently amended Exchange Rule 2622 to integrate several definitions and concepts from the Amended Nasdaq

UTP Plan and to reorganize the rule in light of the Exchange's experience with applying the rule over the past few years as a national securities exchange.⁴ In sum, the proposal amended Exchange Rule 2622 to set forth common criteria and procedures for halting and resuming trading in equity securities on MIAX Pearl Equities in the event of regulatory or operational issues. As part of that proposal, the Exchange adopted paragraph (h)(3)(C)(ii) of Exchange Rule 2622, which provides that "orders entered during the Operational Halt⁵ will not be accepted, unless subject to instructions that the order will be directed to another Trading Center." The text of paragraph (h)(3)(C)(ii) of Exchange Rule 2622 was adopted in error since the Exchange does accept orders during an Operational Halt, as set forth under Exchange Rule 2615(e),⁶ described below. Paragraph (h)(3)(C)(ii) of Exchange Rule 2622, therefore, conflicts with existing provisions in Exchange Rule 2615(e). The Exchange proposes to amend paragraph (h)(3)(C)(ii) of Exchange Rule 2622 to clarify how the Exchange handles orders during an operational halt and to be consistent with current Exchange Rule 2615(e).

Exchange Rule 2615(e) describes the Exchange's Re-Opening Process and provides, in sum, that while an equity security is subject to a halt, other than a halt initiated pursuant to Exchange Rule 2622(b)(2) following a Level 3 Market Decline, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Exchange Rule 2615(e)(1) further provides, in sum, that the Re-Opening Process will occur in the same manner as the Exchange's Opening Process,⁷ and enumerates certain exceptions. One exception is set forth under Exchange Rule 2615(e)(1)(A), which provides that

³ On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. See Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The Commission approved the amendments on May 28, 2021. See Securities Exchange Act Release No. 34-92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7-24-89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations ("SROs") to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the "CTA/CQS Plan"), include provisions similar to the changes proposed by the Exchange in this filing.

⁴ See Securities Exchange Act Release No. 97093 (March 9, 2023), 88 FR 16045 (March 15, 2023) (SR-PEARL-2023-11).

⁵ Exchange Rule 2622(h)(1)(D) defines "Operational Halt" as having the same meaning as in Section X.A.7 of the Amended Nasdaq UTP Plan. Specifically, the Exchange defined Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; other markets are not required to halt trading in the impacted securities. See also *id.*

⁶ See Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR-PEARL-2020-03) (adopting Exchange Rule 2615(e)).

⁷ See Exchange Rule 2615(a)-(c) for a description of the Exchange's Opening Process.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Intermarket Sweep Orders (“ISOs”)⁸ and orders that include a time-in-force of Immediate-or-Cancel (“IOC”)⁹ will be cancelled or rejected, as applicable.¹⁰ These provisions conflict with recently adopted paragraph (h)(3)(C)(ii) of Exchange Rule 2622. The Exchange, therefore, proposes to amend paragraph (h)(3)(C)(ii) of Exchange Rule 2622 to be consistent with Exchange Rule 2615(e)(1).¹¹

As amended, paragraph (h)(3)(C)(ii) of Exchange Rule 2622 would provide that, “[d]uring any Operational Halt, the System will accept all orders, except orders designated as ISO and orders that include a time-in-force of IOC, for queuing and participation in the Re-Opening Process pursuant to Rule 2615(e).” As amended, paragraph (h)(3)(C)(ii) of Exchange Rule 2622 would reflect current functionality that is currently set forth under Exchange Rule 2615(e) and the proposed amendments would remove any chance for potential investor confusion regarding how the Exchange handles orders in equity securities during an Operational Halt. The Exchange does not propose any other changes to Exchange Rule 2622.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.¹² Specifically, the proposal is consistent with section 6(b)(5) of the Act¹³ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest because it proposes to correct paragraph (h)(3)(C)(ii) of Exchange Rule

2622 to reflect current functionality that is set for under Exchange Rule 2615(e) and remove any conflict between the two rules. The Exchange does not propose any other changes to Exchange Rule 2622. The proposed rule change would prevent any potential investor confusion by providing clarity within the rule text and make the Exchange’s rules easier to understand, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change would not have any impact on inter-market competition or intra-market competition because it simply updates paragraph (h)(3)(C)(ii) of Exchange Rule 2622 to reflect current functionality that is set forth under Exchange Rule 2615(e) and removes any conflict between the two rules. The proposed rule change does not propose any new functionality, products, or services, and thus, would not have any impact on competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after

the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that the proposed rule change would remove potential investor confusion regarding how the Exchange handles orders in equity securities during an Operational Halt. For this reason, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

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-PEARL-2023-21 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-PEARL-2023-21. This file number should be included on the subject line if email is used. To help the

⁸ See Exchange Rule 2614(d) for a description of ISOs.

⁹ See Exchange Rule 2614(b)(1) for a description of the IOC time-in-force.

¹⁰ Exchange Rule 2615(e)(1)(A) also provides that Orders with a time-in-force of Regular Hours Only (“RHO”) that include a Post Only instruction or a Minimum Execution Quantity instruction will be accepted and retained during a halt but are not eligible to participate in the Re-Opening Process. See Exchange Rule 2614(b)(2) for a description of the RHO time-in-force. See Exchange Rule 2614(c)(2) for a description of the Post Only instruction. See Exchange Rule 2614(c)(7) for a description of the Minimum Execution Quantity instruction.

¹¹ MIAX Pearl Equities has not experienced an Operational Halt since the proposed amendments to Exchange Rule 2622 were filed on February 28, 2023.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-PEARL-2023-21 and should be submitted on or before June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10127 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-275, OMB Control No. 3235-0310]

Submission for OMB Review; Comment Request; Extension: Rule 22d-1

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 ("Paperwork Reduction Act") (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the

Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 22d-1 under the Investment Company Act of 1940 (the "1940 Act") (17 CFR 270.22d-1) provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the 1940 Act (15 U.S.C. 80a-22(d)) to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 3,776 series of funds that might rely on the rule is estimated to be 944 hours.¹

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is based on communications with industry representatives, and is not derived from a comprehensive or even a representative survey or study.

Responses will not be kept confidential. 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 public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by June 12, 2023 to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: May 8, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10116 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97457; File No. SR-CboeBZX-2023-029]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.8 Regarding Certain Cancel-Replace Messages

May 8, 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 April 25, 2023, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX Options") proposes to amend Rule 21.8. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ This estimate is based on the following calculation: 3,776 series × 0.25 burden hours = 944 total annual burden hours.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12), (59).

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 Rule 21.8 to describe the impact on option order priority of a cancel/replace message, including a “no-change” order³ (i.e., an order submitted to cancel or replace a resting order that does not change any terms of an order). The Rules are currently silent regarding how the System handles a cancel-replace message (that either changes or does not change any terms of the resting order). The Exchange recently determined that if the System receives a no-change order, the resting order will lose its priority position; however, if the System receives a “no-change” bid or offer in a bulk message, the resting bid or offer will not lose its priority position. The Exchange proposes to harmonize the handling of all no-change orders and quotes so that any “no-change” order or bulk message bid or offer will lose priority and describe this behavior in the Exchange’s Rules.

Additionally, the Exchange proposes to describe in the Exchange’s Rules how the System in general handles all cancel/replace messages submitted by users, including those that change or do not change the price and size of a resting order’s terms. Specifically, the Exchange proposes to codify current System functionality that causes a resting order to lose its priority position (including if the price of an order is changed or the quantity is increased) if any cancel/replace message is submitted if any term other than a decrease to the quantity, the Max Floor (if a Reserve

Order),⁴ or the stop price (if a Stop or Stop Limit Order)⁵ is modified.

Therefore, the proposed rule change amends Rule 21.8 to add that if a user submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the user only (1) decreases the quantity of an order, (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to the Rules regarding how the System handles all cancel/replace messages, including those that change no order terms. The Exchange believes consistency in handling of all no-change orders and quotes will simplify order handling, which will promote just and equitable principles of trade and thus further benefit investors. The Exchange believes it is reasonable for a user’s resting order to lose priority if that user submits a cancel/replace order, including a no-change order, to replace that resting order (other than the three proposed exceptions). Ultimately, the purpose of a cancel and replace message is to replace a resting order with a new order; therefore, it is appropriate for the System to treat that replacement order as a new order for purposes of priority. Despite the fact that a cancel/replace message may not modify the price or size of a resting order (and thus has no investment purpose), a user elected to send that new order to the Exchange despite having an identical order resting on the Exchange’s book and used System capacity to do so. Therefore, the Exchange believes it promotes just and equitable principles of trade to treat that replacement order as a new order for priority purposes. The Exchange believes the proposed rule change encourages users to submit to the Exchange only bona fide cancel/replace orders that have legitimate investment purposes and discourages use of System capacity to send unnecessary message traffic.

The Exchange believes it will remove impediments to and perfect the mechanism of a free and open market as well as protect investors by adding transparency to codify current System functionality regarding all cancel/replace messages, including those that do not cause a loss of priority position. Under current System functionality, a cancel/replace order that changes the price of a resting order or increases the size of a resting order the order loses its priority position and is placed in a

⁴ “Reserve Orders” are limit orders that have both a portion of the quantity displayed (“Display Quantity”) and with a reserve portion of the quantity (“Reserve Quantity”) that is not displayed. Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the user’s instruction, replenish the Display Quantity from the Reserve Quantity using one of the replenishment instructions set forth in the Rules. If the remainder of an order is less than the replenishment amount, the Exchange will replenish and display the entire remainder of the order. A user must instruct the Exchange as to the quantity of the order to be initially displayed by the System (“Max Floor”) when entering a Reserve Order, which is also used to determine the replenishment amount. A new timestamp is created for both the Display Quantity and the Reserve Quantity of the order each time it is replenished from reserve. See Rule 21.1(d)(1).

⁵ “Stop Orders” are orders that become market orders when the stop price is elected. “Stop Limit Orders” are orders that become limit orders when the stop price is elected. A Stop or Stop Limit Order to buy is elected when the consolidated last sale in the option occurs at or above, or the NBB is equal to or higher than, the specified stop price. A Stop or Stop Limit Order to sell is elected when the consolidated last sale in the option occurs at or below, or the NBO is equal to or lower than, the specified stop price. See Rule 21.1(d)(10) and (11).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

³ In this context, the term “order” includes bids and offers submitted in bulk messages. A bulk message means a bid or offer included in a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the user may enter, modify, or cancel up to an Exchange-specified number of bids and offers. See Rule 16.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

priority position based on the time the System receives the cancel/replace message, as increasing the price or quantity of a resting order could cause it to gain priority over other resting orders if it did not otherwise get a new timestamp. Additionally, under current System functionality, cancel/replace order that decreases the size of a resting order (and changes no other terms) does not result in a loss of priority position. Unlike a no-change order, an order to reduce the size of a resting order may have a legitimate investment purpose, such as to reduce execution risk, but would not impact its priority compared to other resting orders (e.g., resting orders are often decreased in size if they receive partial execution, and the remainders retain their priority status; unlike an increase in size, a decrease in size would not cause a resting order to otherwise gain priority over other resting orders).

Additionally, under current System functionality, a cancel/replace message that changes the Max Floor (if a Reserve Order) or the stop price (if a Stop or Stop-Limit order) and no other terms will not cause a resting order to lose priority because it is unnecessary given the handling of those orders and the fact that at that time there is no priority to lose. Such handling is consistent with the definitions and handling of both of those order types. Specifically, as set forth in the definition of a Reserve Order, the Max Floor amount is relevant for replenishment of the Display Quantity of the order after execution, and once replenished, the System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve (i.e., prioritizes it in the book at the time of replenishment). Therefore, there is no need for a loss in priority due to a change in the Max Floor amount because that order will have its priority reset once it is replenished with that new amount. Similarly, as set forth in the definitions of Stop and Stop-Limit orders, those orders become market or limit orders, respectively, once triggered and thus placed on the book as market or limit orders and prioritized based on that time. The stop price is the piece of information that determines when these orders will be triggered. As a result, there is no need for an order to lose priority due to a change in the stop price given that those orders have not yet been prioritized on the Book and will be prioritized once triggered and entered into the Book for potential execution.

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 change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the System will handle all cancel/replace orders from all users in the same manner. All cancel/replace orders, including all no-change orders, except for the three exceptions, will cause the resting order to lose priority. The three types of cancel/replace orders that will not cause a resting order to lose priority are consistent with current order handling rules.

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 change only impacts priority of orders resting on the Exchange's book and thus will have no impact on terms of an order that are disseminated to market participants or on trading outside of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2023-029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2023-029. 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 offices of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeBZX-2023-029, and should be submitted on or before June 2, 2023.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10128 Filed 5–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34910; 812–15449]

Hennessy Funds Trust and Hennessy Advisors, Inc.

May 8, 2023.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and Rule 18f–2 thereunder, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Hennessy Funds Trust and Hennessy Advisors, Inc.

FILING DATES: The application was filed on March 31, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on June 2, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–

5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission:

Secretarys-Office@sec.gov. Applicant: Teresa M. Nilsen, *terry@hennesseyfunds.com*.

FOR FURTHER INFORMATION CONTACT:

Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated March 31, 2023, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10133 Filed 5–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–259, OMB Control No. 3235–0269]

Submission for OMB Review; Comment Request; Extension: Rule 17f–5

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 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) requests for extension of the previously approved collections of information discussed below.

Rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 [15 U.S.C. 80a] (the “Act”) governs the

custody of the assets of registered management investment companies (“funds”) with custodians outside the United States. Under rule 17f–5, a fund or its foreign custody manager (as delegated by the fund’s board) may maintain the fund’s foreign assets in the care of an eligible fund custodian under certain conditions. If the fund’s board delegates to a foreign custody manager authority to place foreign assets, the fund’s board must find that it is reasonable to rely on each delegate the board selects to act as the fund’s foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund’s assets are placed with a foreign custodian and when any material change occurs in the fund’s custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care, in performing the delegated services. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund’s assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,¹ and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate’s qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the

¹¹ 17 CFR 200.30–3(a)(12).

¹ See section 17(f) of the Act. 15 U.S.C. 80a–17(f).

delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.²

Commission staff estimates that each year, approximately 62 registrants³ could be required to make an average of one response per registrant under rule 17f-5. A “response” may involve the fund’s directors making certain findings concerning foreign custody managers, and the review and ratification of custodial contracts. Commission staff estimates a response relating to these matters will require approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers, and 1 hour of related compliance attorney time per response, to assist the fund board.⁴ For registrants, the total annual burden associated with these requirements of the rule is up to approximately 217 hours (62 responses × 3.5 hours per response).

Foreign custody managers are also affected by the collection of information requirements under rule 17f-5. Commission staff estimate that, in connection with each registrant’s board of directors making certain findings concerning a foreign custody manager, those findings will require

approximately 20 hours of trust administrator time from the applicable manager. This burden relates to the foreign custody manager’s initial considerations regarding custodial arrangements with the registrant and preparing reports to the fund board.⁵ Commission staff further estimate that annually, approximately 15 foreign custody managers will be required to make an average of 4 responses per manager concerning the use of foreign custodians other than depositories.⁶ This “response” may involve the foreign custody manager establishing bank custody arrangements, negotiating/renegotiating custodial contracts, preparing reports to fund boards, and establishing and/or amending the foreign custody manager’s system for monitoring custody arrangements for its clients. The staff estimates that each response will take approximately 250 hours of trust administrator time, requiring approximately 1000 total hours annually per foreign custody manager (4 responses per foreign custody manager × 250 hours per response). Thus, the total annual burden for foreign custody managers associated with the requirements of the rule is approximately 16,240 hours ((62 responses by foreign custody managers × 20 hours per response) + (15 foreign custody managers × 4 responses per manager) × 250 hours per response).

Therefore, the total annual burden of all collection of information requirements of rule 17f-5 is estimated to be up to 16,457 hours (217 hours + 16,240 hours). The total monetized annual cost of burden hours is estimated to be \$5,166,833 ((217 hours × \$3,529/hour blended wage rate) + (16,240 hours × \$271/hour for a trust administrator’s time)).⁷ Compliance with the collection

⁵ This estimate does not include burden hours related to the establishment and/or amendment of the foreign custody manager’s system for monitoring custody arrangements for its clients, which is accounted for separately as discussed below.

⁶ This figure is based on the staff’s estimate of the number of global custodians that may act as foreign custody managers under rule 17f-5.

⁷ The rates used to create the blended rate are as follows: board of director time—\$4,770 and compliance attorney time—\$425. Staff estimates concerning wage rates for the cost of board of director time are based on fund industry representations. Based on fund industry representations, the staff estimated in 2014 that the average cost of board of director time, for the board as a whole, was \$4,000 per hour. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately \$4,770 per hour. Estimates concerning wage rates for compliance attorneys and trust administrators are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association and modified by Commission staff for 2023. The compliance attorney and trust administrator wage figures are based on

of information requirements of the rule is necessary to obtain the benefit of relying on the rule’s permission for funds to maintain their assets with foreign custodians.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or representative survey or study of the costs of Commission rules and forms.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by June 12, 2023 to (i) MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: May 8, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–10115 Filed 5–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97452; File No. SR–CBOE–2023–025]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of its Flexible Exchange Options (“FLEX Options”) Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options

May 8, 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 May 3, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange

published rates for each, modified to account for a 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

² The staff believes that subcustodian monitoring does not involve “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (“Paperwork Reduction Act”).

³ This figure is an estimate of the number of new management investment company registrants each year, based on data reported on Form N–CEN as of December 2019, 2020, and 2021. Commission staff anticipates that the number of existing registrants that change their foreign custody managers is negligible and, therefore, the compliance burden of rule 17f-5 falls primarily on new registrants. In practice, not all registrants will use foreign custody managers. The actual figure therefore may be smaller.

⁴ As discussed below, Commission staff estimate that a response from a registrant will also include a related burden for the applicable foreign custody manager chosen by the registrant’s board of directors.

Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to extend the operation of its Flexible Exchange Options (“FLEX Options”) pilot program regarding permissible exercise settlement values for FLEX Index Options. The text of the proposed rule change is provided below. (additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.21. Series of FLEX Options

(a) No change.

(b) *Terms*. When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series:

- (1)–(4) No change.
- (5) settlement type:
 - (A) No change.
 - (B) *FLEX Index Options*. FLEX Index Options are settled in U.S. dollars, and may be:
 - (i) No change.
 - (ii) p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities), except for a FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option) may only be a.m.-settled; however, for a pilot period ending the earlier of [May 8] *November 6, 2023* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option with an expiration date on the third-Friday of the month may be p.m.-settled;

(iii)–(iv) No change.

* * * * *

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

On January 28, 2010, the Securities and Exchange Commission (the “Commission”) approved a Cboe Options rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.⁵ The Exchange has extended the pilot period numerous times, which is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis.⁶ The purpose of this

⁵ Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (“Approval Order”). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. See Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026).

⁶ See Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR-CBOE-2012-102); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR-CBOE-2013-099); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR-CBOE-2014-080); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR-CBOE-2016-032); 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR-CBOE-2017-032); 83175 (May 4, 2018), 83 FR 21808 (May 10, 2018) (SR-CBOE-2018-037); 84537 (November 5, 2018), 83 FR 56113 (November 9, 2018) (SR-CBOE-2018-071); 85707 (April 23, 2019), 84 FR 18100 (April 29, 2019) (SR-CBOE-2019-021); 87515 (November 13, 2020), 84 FR 63945 (November 19, 2019) (SR-CBOE-2019-108); 88782 (April 30, 2020), 85 FR

rule change filing is to extend the pilot program through the earlier of November 6, 2023 or the date on which the pilot program is approved on a permanent basis.⁷ This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rule 4.21(b), *Series of FLEX Options* (regarding terms of a FLEX Option),⁸ a FLEX Option may expire on any business day (specified to day, month and year) no more than 15 years from the date on which a FLEX Trader submits a FLEX Order to the System.⁹ FLEX Index Options are settled in U.S. dollars, and may be a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component securities) or p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities).¹⁰

27004 (May 6, 2020) (SR-CBOE-2020-039); 90279 (October 28, 2020), 85 FR 69667 (November 3, 2020) (SR-CBOE-2020-103); 91782 (May 5, 2021), 86 FR 25915 (May 11, 2021) (SR-CBOE-2021-031); 93500 (November 1, 2021), 86 FR 61340 (November 5, 2021) (SR-CBOE-2021-064); 94812 (April 28, 2022), 87 FR 26381 (May 4, 2022) (SR-CBOE-2022-020); and 96239 (November 4, 2022), 87 FR 67985 (November 10, 2022) (SR-CBOE-2022-053) (extending the pilot program through the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. See Approval Order, *supra* note 1. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. See *id.*; and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040) (Order Granting Approval of Proposed Rule Change Related to Permanent Approval of Its Pilot on FLEX Minimum Value Sizes).

⁷ The Exchange recently proposed to make the pilot program permanent. See Securities Exchange Act Release No. 97368 (April 24, 2023) (SR-CBOE-2023-018).

⁸ In 2019, prior Rule 24A.4.01, covering the pilot program, was relocated to current Rule 4.21(b)(5). See Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-CBOE-2019-084).

⁹ Except an Asian-settled or Cliquet-settled FLEX Option series, which must have an expiration date that is a business day but may only expire 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date on which a FLEX Trader submits a FLEX Order to the System.

¹⁰ See Rule 4.21(b)(5)(B); see also Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-CBOE-2019-084). The rule change removed the provision regarding the exercise settlement value of FLEX Index Options on the NYSE Composite Index, as the

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Specifically, a FLEX Index Option that expires on, or within two business days of, a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option), may only be a.m. settled.¹¹ However, under the exercise settlement values pilot, this restriction on p.m.-settled FLEX Index Options was eliminated.¹² As stated, the exercise settlement values pilot is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of November 6, 2023 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying a third Friday-of-the-month expiration day, p.m.-settled FLEX Index Options series.¹³ The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest.

The Exchange believes there is sufficient investor interest and demand

in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹⁴

¹⁴ In further support, the Exchange also notes that the p.m. settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, the third Friday-of-the-month. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter ("OTC") markets that expire on or near the third Friday-of-the-month and are p.m. settled. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange ("NYSE") at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege ("UTP") markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on the third Friday-of-the-month. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 8.35, *Position Limits for FLEX Options*, 8.42(g) *Exercise Limits* (in connection with FLEX Options) and 8.43(j), *Reports Related to Position Limits* (in connection with FLEX Options). Additionally, all FLEX Options remain subject to the general position reporting requirements in Rule 8.43(a).¹⁵ Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Rule 10.9, *Margin Required is Minimum*, to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. Cboe Options continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. Cboe Options continues to believe that market participants benefit from being able to

Exchange no longer lists options on that index for trading, and included the provisions regarding how the exercise settlement value is determined for each settlement type, as how the exercise settlement value is determined is dependent on the settlement type.

¹¹ For example, notwithstanding the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before the third Friday-of-the-month could be a.m. or p.m. settled. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before the third Friday-of-the-month could only be a.m. settled.

¹² No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

¹³ The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for third Friday-of-the-month expiration days, a.m.-settled FLEX Index series and third Friday-of-the-month expiration day Non-FLEX Index series overlying the same index as a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

¹⁵ Rule 8.43(a) provides that "[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of Rule 8.43, the term "customer" in respect of any Trading Permit Holder includes "the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof." Rule 8.43(d).

trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened counterparty creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange is required to submit an annual report at least yearly. Currently, the Exchange provides annual reports that cover the period from August 1st to July 31st of the applicable year. The Exchange will continue to provide reports covering this period annually and any additional report at least two months prior to the expiration date of the program covering the full prior year in the case that the Exchange is requesting permanent approval of the program.¹⁶ The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order.¹⁷ Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the pilot program, and will make public any data and analyses it submits to the Commission under the pilot program in the future.¹⁸

As noted in the pilot program's Approval Order, any positions established under the pilot program

would not be impacted by the expiration of the pilot program.¹⁹

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.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²¹ 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)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits an additional exercise settlement value, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and are p.m.-settled. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot

period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

¹⁶ For example, if the Exchange plans on submitting a proposal in April 2023 requesting permanent approval of the pilot program expiring May 8, 2023, the Exchange would have to submit an annual report no later than March 8, 2023 covering the full prior year.

¹⁷ The Exchange is required to submit the interim reports on a quarterly basis within 15 days of the end of each calendar quarter that the pilot is in effect.

¹⁸ Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-flex-pm-data>.

¹⁹ For example, a position in a p.m.-settled FLEX Index Option series that expires on the third Friday-of-the-month in January 2020 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at footnote 3, *supra* note 1.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2023-025 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-2023-025. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CBOE-2023-025, and should be submitted on or before June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10126 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34911; File No. 812-15448]

Calamos Aksia Alternative Credit and Income Fund, et al.

May 8, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Calamos Aksia Alternative Credit and Income Fund, Calamos Advisors LLC, Aksia LLC, Abacus Private Credit, L.P., High Sierra Credit Investors LP, PERSLA Opportunistic Fund LP, and TRS Coriolis LP.

FILING DATES: The application was filed on March 28, 2023, and amended on April 26, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Chris Jackson at cjackson@Calamos.com.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁸ 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated April 26, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10134 Filed 5-11-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before June 12, 2023.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Small Business Administration"; "Currently Under Review," then select the "Only Show ICR for Public Comment" checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents

from the Agency Clearance Office at Curtis.Rich@sba.gov; (202) 205-7030, or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: The Disaster Loan Program is an SBA financing program authorized under the Small Business Act of 1953, 15 U.S.C. 636 *et seq.* SBA provides low-interest disaster loans to help businesses and homeowners recover from declared disasters. The information collection that is approved under OMB Control Number 3245-0018 facilitates the ongoing administration of the Disaster Loan Program. This information collection currently consists of SBA Form 5C titled Disaster Home or Renter Loan Application. SBA recognizes that this information collection needs to be modernized to meet the needs of homeowners and small business applicants during their recovery after a disaster. As a result, SBA intends to make revisions to this information collection that would streamline the process. These form revisions will result in greater clarity and understanding for victims applying for assistance. SBA Form 5C will be updated and some fields will be moved over to SBA Form 5, Disaster Business Loan Application to incorporate all business types including sole proprietors. Questions on SBA Form 5C will be reorganized and simplified, and as needed other questions may be added based on the Agency's recent experience with the Coronavirus pandemic.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information. OMB Control 3245-0018.

Title: Disaster Home or Renter Loan Application.

Description of Respondents: Disaster survivors seeking disaster loan assistance.

Form Number: SBA Form 5C.

Estimated Number of Respondents: 101,319.

Estimated Annual Responses: 101,319.

Estimated Annual Hour Burden: 126,649.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023-10177 Filed 5-11-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

AGENCY: Small Business Administration, National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The public meeting will be held on Wednesday, June 14, 2022, from 12:30 p.m. to 2:30 p.m. EDT.

ADDRESSES: This meeting will be held via Zoom, a web conferencing platform. The access link will be provided to attendees upon registration.

FOR FURTHER INFORMATION CONTACT: For more information, please visit the NWBC website at www.nwbc.gov, email info@nwbc.gov or call Jordan Chapman (NWBC Communications Specialist) at 202-941-6001.

The meeting is open to the public; however, advance notice of attendance is requested. To RSVP, please visit the NWBC website at www.nwbc.gov. The "Public Meetings" section under "Events" will feature a link to register on Eventbrite.

NWBC strongly encourages that public comments and questions be submitted in advance by June 6th. The Eventbrite registration page will include an opportunity to do so, but individuals may also email info@nwbc.gov with subject line—"[Name/Organization] Comment for 06/14/23 Public Meeting." NWBC staff and/or a Council Member will read the first five questions or statements with most relevance to the topic of women's business enterprise. Please note that public comments are typically shared during the final 20 minutes of the program.

During the live event, attendees will be in listen-only mode and may submit additional questions via the Q&A Chat feature. For technical assistance, please visit the Zoom Support Page. All public comments will be included in the meeting record, which will be made available on www.nwbc.gov in the "Public Meetings" section under "Events."

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, the National Women's Business Council (NWBC) announces its second public meeting of Fiscal Year 2024. The 1988 Women's

Business Ownership Act established NWBC to serve as an independent source of advice and policy recommendations to the President, Congress, and the Administrator of the U.S. Small Business Administration (SBA) on issues of importance to women entrepreneurs.

This meeting will allow the Council to hear from subject matter experts on issues related to women's entrepreneurship. It will also allow the three subcommittees to provide updates to the full Council. The public will have the opportunity to ask questions and provide comments in advance of the meeting.

Dated: May 8, 2023.

Andrienne Johnson,
Committee Management Officer.

[FR Doc. 2023-10119 Filed 5-11-23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before June 12, 2023.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Small Business Administration"; "Currently Under Review," then select the "Only Show ICR for Public Comment" checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Curtis.Rich@sba.gov; (202) 205-7030, or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: The Disaster Loan Program is an SBA

financing program authorized under the Small Business Act of 1953, 15 U.S.C. 636 *et seq.* SBA provides low-interest disaster loans to help businesses and homeowners recover from declared disasters. The information collection that is approved under OMB Control Number 3245-0017 facilitates the ongoing administration of the Disaster Loan Program. This information collection currently consists of SBA Form 5 titled Disaster Business Loan Application. SBA recognizes that this information collection needs to be modernized to meet the needs of homeowners and small business applicants during their recovery after a disaster. As a result, SBA intends to make revisions to this information collection that would streamline the process. These form revisions will result in greater clarity and understanding for victims applying for assistance. SBA Form 5 will be updated to incorporate all business types including sole proprietors. Questions on SBA Form 5 will be reorganized and simplified, and as needed other questions may be added based on the Agency's recent experience with the Coronavirus pandemic.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control 3245-0017

Title: Disaster Business Loan Application.

Description of Respondents: Disaster survivors seeking disaster loan assistance.

Form Number: SBA Form 5.

Estimated Number of Respondents: 23,833.

Estimated Annual Responses: 23,833.

Estimated Annual Hour Burden: 29,791.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023-10183 Filed 5-11-23; 8:45 am]

BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collections regarding petitions for declaratory order and petitions for relief not otherwise specified, as described below.

DATES: Comments on these information collections should be submitted by July 11, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, or to PRA@stb.gov. When submitting comments, please refer to "Paperwork Reduction Act Comments, Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified." For further information regarding this collection, contact Mike Higgins at (866) 254-1792 (toll-free) or 202-245-0238, or by emailing rcpa@stb.gov. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: For each collection, comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections*Collection Number 1*

Title: Petitions for declaratory order.

OMB Control Number: 2140–0031.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other stakeholders that choose to seek a declaratory order from the Board to terminate a controversy or remove uncertainty.

Number of Respondents:

Approximately eight.

Estimated Time per Response: 180 hours.

Frequency: On occasion. In calendar years 2020–2022, approximately 12 petitions for declaratory order were filed with the Board per year.

Total Burden Hours (annually including all respondents): 2,160 hours (estimated hours per petition (180) × total number of petitions (12)).

Total “Non-hour Burden” Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for declaratory order can encompass a broad range of issues and types of requests, the Board does not prescribe specific instructions for their filing. The collection by the Board regarding petitions for declaratory order that parties choose to file enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 2

Title: Petitions for relief not otherwise provided.

OMB Control Number: 2140–0030.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, communities, and other stakeholders that seek to address issues under the Board’s jurisdiction that are not otherwise specifically provided for under the Board’s other regulatory provisions.

Number of Respondents:

Approximately four.

Estimated Time per Response: 25 hours.

Frequency: On occasion. In calendar years 2020–2022, approximately four petitions of this type were filed with the Board per year.

Total Burden Hours (annually including all respondents): 100 hours (estimated hours per petition (25) × total number of petitions (4)).

Total “Non-Hour Burden” Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board’s catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as waiver of the Board’s regulations) not otherwise specifically provided for under the Board’s other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) a short, plain statement of jurisdiction, (b) a short, plain statement of petitioner’s claim, and (c) request for relief. The collection by the Board of these petitions that parties choose to file enables the Board to more fully meet its statutory duty to regulate the rail industry.

The Board makes this submission because, under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), Federal agencies are required to provide, prior to an agency’s submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 9, 2023.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–10199 Filed 5–11–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD**60-Day Notice of Intent To Seek Extension of Approval of Collection: Dispute Resolution Procedures Under the Fixing America’s Surface Transportation Act**

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of “FAST Act” Dispute Resolution Procedures, as described below.

DATES: Comments on this information collection should be submitted by July 11, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to PRA@stb.gov. When submitting comments, please refer to “Paperwork Reduction Act Comments, FAST Act Dispute Resolution Procedures.” For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), at (866) 254–1792 (toll-free) or 202–245–0238, or by emailing to rcpa@stb.gov. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) the accuracy of the Board’s burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board’s request for OMB approval.

Description of Collection

Title: FAST Act Dispute Resolution Procedures.

OMB Control Number: 2140–0036.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Parties seeking the Board’s informal assistance under Fixing America’s Surface Transportation Act, Public Law 114–94 (signed Dec. 4, 2015) (FAST Act).

Number of Respondents: Approximately three.

Estimated Time per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): Three hours (estimated hours per response (1) × total number of responses (3)).

Total Annual “Non-Hour Burden” Cost (such as start-up and mailing costs): There are no non-hourly burden costs for this collection.

Needs and Uses: Title XI of the FAST Act, entitled “Passenger Rail Reform and Investment Act of 2015,” gives the

Board jurisdiction to resolve cost allocation and access disputes between the National Railroad Passenger Corporation (Amtrak), the states, and potential non-Amtrak operators of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of these disputes, “which may include the provision of professional mediation services.” 49 U.S.C. 24712(c)(2), 24905(c)(4). Under 49 CFR 1109.5, the Board provides that parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Committee may, by a letter submitted to OPAGAC, may request the Board’s informal assistance in securing outside professional mediation services. The letter shall include a concise description of the issues for which outside professional mediation services are sought. The collection by the Board of these request letters enables the Board to meet its statutory duty under the FAST Act.

The Board makes this submission because, under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), Federal agencies are required to provide, prior to an agency’s submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 9, 2023.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2023–10200 Filed 5–11–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36700]

Grenada Railroad, LLC—Acquisition and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC

Grenada Railroad, LLC (GRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 228 miles of rail line from the North Central Mississippi Regional Railroad Authority (NCMRRA) and Grenada Railway, LLC

(GRY). The line consists of three segments: (1) approximately 175.4 miles of main line between milepost 403.0 at Southaven, Miss. (GRY MP 491.09), and milepost 703.8 near Canton, Miss. (GRY MP 616.49), along with certain side and yard tracks (the Grenada Line); (2) approximately 11.42 miles of branch line between a point of connection with the Grenada Line at milepost 603.0 and milepost 614.42 at Bruce Junction, Miss. (the Water Valley Branch); and (3) approximately 21.70 miles of branch line between a point of connection with the Grenada Line at milepost H–0.20 at Aberdeen Junction, Miss., and milepost H–21.90 near Kosciusko, Miss. (the Aberdeen Branch) (collectively, the Lines). According to the verified notice, GRR has operated the Grenada Line and Water Valley Branch pursuant to a lease and operating agreement since 2015¹ and now seeks authority to acquire these lines and the Aberdeen Branch, which is owned by NCMRRA.² GRR states that the Aberdeen Branch has been out of service since prior to NCMRRA’s acquisition of that segment.

The verified notice states that the parties entered into an Asset Purchase Agreement on April 27, 2023.

GRR certifies that the proposed acquisition of the Lines does not involve any interchange commitments. GRR further certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. Pursuant to 49 CFR 1150.42(e), if a carrier’s projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, GRR has filed a request for partial waiver of the 60-day advance labor notice requirements to allow the transaction to proceed after 30 days’ notice to employees on the Lines. GRR’s waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

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)

¹ See *Ill. Co. Rail Road—Lease & Operation Exemption—N. Cent. Miss. Reg’l R.R. Auth.*, FD 35940 (STB served July 9, 2015).

² See *N. Cent. Miss. Reg’l R.R. Auth.—Acquis. & Operation Exemption—Miss. Dep’t of Transp.*, FD 36182 (STB served Nov. 20, 2018).

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 May 19, 2023.

All pleadings referring to Docket No. FD 36700, should 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, one copy of each pleading must be served on GRR’s representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to GRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 9, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Raina White,
Clearance Clerk.

[FR Doc. 2023–10202 Filed 5–11–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36679]

CaterParrott Railnet, LLC—Change of Operators Exemption—Ogeechee Railroad Company

CaterParrott Railnet, LLC (CPR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to assume operation of approximately 22.4 miles of rail line owned by the State of Georgia Department of Transportation (GDOT) between milepost SA–36.4 at or near Ardmore, Ga., and milepost SA–58.8 at or near Sylvania, Ga. (the Line).¹

CPR states that Ogeechee Railroad Company (ORC) is the current lessee and operator of the Line. According to the verified notice, CPR, ORC, and GDOT have executed a novation agreement transferring ORC’s rights under its lease agreement with GDOT to CPR.² CPR will operate the Line under an amended lease with GDOT.

¹ CPR states that the notice of exemption filed in *Ogeechee Railroad—Acquisition & Operation Exemption—Georgia Midland Railroad*, Docket No. FD 35086, identifies the Line’s endpoint as milepost SA–57.5, but, according to CPR, a recent review determined that the Line extends to milepost SA–58.8.

² CPR states that it is also entering into an asset purchase agreement with ORC under which CPR is acquiring ORC’s assets related to the operation of

Continued

CPR certifies that the agreement governing the proposed transaction does not impose or include an interchange commitment. CPR further certifies that its projected annual revenues will not exceed \$5 million and will not result in CPR's becoming a Class I or Class II rail carrier. Under 49 CFR 1150.42(b), a change in operator requires that notice be given to shippers. CPR certifies that notice of the proposed transaction has been provided to shippers on the Line.

The earliest this transaction may be consummated is May 26, 2023 (30 days after the filing date of the verified notice of exemption).³

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 May 19, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36679, 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 CPR's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to CPR, 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: May 9, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Raina White,
Clearance Clerk.

[FR Doc. 2023-10179 Filed 5-11-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Report of Fuel Cost, Consumption, and Surcharge Revenue

AGENCY: Surface Transportation Board.

the Line, including the lease of the Line between ORC and GDOT.

³ CPR's supplement, indicating that CPR's annual freight revenue will not exceed \$5 million, was filed on April 26, 2023, which therefore is deemed the filing date of the verified notice.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of the Report of Fuel Cost, Consumption, and Surcharge Revenue, as described below.

DATES: Comments on this information collection should be submitted by July 11, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, or to PRA@stb.gov. When submitting comments, please refer to "Paperwork Reduction Act Comments, Report of Fuel Cost, Consumption, and Surcharge Revenue." For further information regarding this collection, contact Mike Higgins at (866) 254-1792 (toll-free) or 202-245-0238, or by emailing rcpa@stb.gov. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue.
OMB Control Number: 2140-0014.
STB Form Number: None.

Type of Review: Extension without change.

Respondents: Class I [large] railroads.
Number of Respondents: Seven.
Estimated Time per Response: One hour.

Frequency: Quarterly.

Total Burden Hours (annually including all respondents): 28.

Total "Non-Hour Burden" Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 U.S.C. 10702, the Board has the authority to

address the reasonableness of a rail carrier's practices. This information collection permits the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to fulfill its statutory responsibilities. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

The Board makes this submission because, under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 9, 2023.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2023-10201 Filed 5-11-23; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0032]

Commercial Driver's License: Daimler; Application for Exemption; Daimler Truck North America LLC (Daimler)

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

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption from the commercial driver's license (CDL) requirements to Daimler Truck North America LLC (Daimler) for one commercial motor vehicle (CMV) driver, Dr. Andreas Gorbach, Executive Vice President and Board of Management Member for Daimler. Dr. Gorbach holds a valid German commercial license and wants to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements. FMCSA reviewed Dr.

Gorbach's commercial license records provided by Daimler and believes the requirements for a German commercial license will ensure that Dr. Gorbach's operation of a CMV under this exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: The exemption is effective May 12, 2023 and expires May 12, 2028.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 385-2415 or by email at bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2012-0032" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click "Browse Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number "FMCSA-2012-0032" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level

of safety equivalent to, or greater than, the level that would be achieved by the current regulation in accordance with 49 U.S.C. 31315(b)(1). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Current Regulatory Requirements

Current Regulation(s) Requirements

Under 49 CFR 383.23, no person shall operate a CMV without having taken and passed knowledge and driving skills tests for a commercial learner's permit or CDL that meet the Federal standards contained in subparts F, G, and H of 49 CFR part 383 for the CMV that person operates or expects to operate.

Applicant's Request

Daimler has applied for an exemption for Dr. Andreas Gorbach from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Dr. Gorbach is unable to obtain a CDL due to his lack of residency in the United States. The exemption would enable Dr. Andreas Gorbach to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements. Daimler requests that the exemption cover the maximum allowable duration of five years.

IV. Method To Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if this driver had a CDL issued by one of the States. Daimler asserts that Dr. Gorbach will be accompanied at all times by an experienced Daimler CDL holder who is familiar with the routes to be traveled in case of any unforeseen circumstance. Additionally, Daimler provided a statement of Dr. Gorbach's driving history.

V. Public Comments

On October 17, 2022, FMCSA published notice of the Daimler application and requested public comments (87 FR 62918). The Agency

received one comment in support of the application; the commenter made the following statement: "I believe that Dr. Andreas Gorbach will not cause undo harm to other[s] if allowed to drive with his German CDL in the United States."

VI. FMCSA Decision

FMCSA has determined that the process for obtaining a CDL in Germany is comparable to the process for obtaining a State-issued CDL and therefore adequately ensures that this driver can safely operate a CMV in the United States. Based on the information provided by Daimler, as described in section IV, including the driver's experience and safety record, FMCSA concludes that the exemption, subject to the terms and conditions set forth in section VII, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1).¹

VII. Terms and Conditions for the Exemption

This exemption applies only to Daimler driver Dr. Andreas Gorbach. This driver is granted an exemption from the CDL requirement in 49 CFR 383.23 to allow him to drive CMVs in the United States without a State-issued CDL. When operating under this exemption, the driver is subject to the following terms and conditions:

- (1) The driver and Daimler must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399);
- (2) The driver must be in possession of the exemption document and a valid German commercial license;
- (3) The driver must be employed by and operate the CMV within the scope of his duties for Daimler;
- (4) At all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a State-issued CDL who is familiar with the routes traveled;
- (5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving Dr. Gorbach;
- (6) Daimler must notify FMCSA in writing if Dr. Gorbach is convicted of an offense listed in § 383.51 or a disqualifying offense under § 391.15 of

¹ FMCSA has granted Daimler drivers similar exemptions: July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742); and September 28, 2020 (85 FR 60782).

the Federal Motor Carrier Safety Regulations; and

(7) Daimler must subject the driver to a drug and alcohol testing program substantially equivalent to the requirements in 49 CFR part 382 (excluding the Clearinghouse requirements in subpart G). Daimler must ensure that the testing program for Dr. Gorbach complies with the procedures set forth in 49 CFR part 40, as required by 49 CFR 382.105.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, Daimler must notify FMCSA within 5 business days of any positive drug or alcohol tests or test refusal, or accident (as defined in 49 CFR 390.5), involving Dr. Andreas Gorbach while operating a CMV under the terms of this exemption. The notification about accidents must include the following information:

- a. Identifier of the Exemption: "Daimler—Dr. Gorbach;"
- b. Name of operating carrier and USDOT number;
- c. Date of the accident or date of the positive test result or refusal;
- d. City or town, and State, in which the accident occurred, or closest to the accident scene;
- e. Driver's name and license number;
- f. Co-driver's name (if any) and license number;
- g. Vehicle number and State license number;
- h. Number of individuals suffering physical injury;
- i. Number of fatalities;
- j. The police-reported cause of the accident, if provided by the enforcement agency;
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

VIII. Termination

FMCSA has no reason to believe the motor carrier and driver covered by this

exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–10108 Filed 5–11–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or 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://ofac.treasury.gov>).

Notice of OFAC Actions

On May 9, 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 authority listed below.

Individuals

1. OGAZON SEDANO, Mario Esteban, Villa Calomato 3595, Fraccionamiento Colinas de la Rivera, Culiacan, Sinaloa, Mexico; DOB 14 Jul 1980; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. OASM800714HSLGDR00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. GUZMAN LOPEZ, Joaquin (a.k.a. "El Guero"; a.k.a. "Guero Moreno"; a.k.a. "Moreno"), Sinaloa, Mexico; DOB 16 Jul 1986; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. GULJ860716HSRZPQ01 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. PAEZ LOPEZ, Saul, Mexico; DOB 31 Jan 1994; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. PALS940131HSLZPL01 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. PEREZ URIBE, Raymundo, Mexico; DOB 10 Feb 1951; POB Mexico City, Mexico; nationality Mexico; Gender Male; C.U.R.P. PEUR510210HDFRRY09 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

5. URBANIZACION, INMOBILIARIA Y CONSTRUCCION DE OBRAS, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Blvd. Pedro Maria Anaya 2498 NTE, Col. Villa Universidad,

Culiacan, Sinaloa, Mexico; Organization Established Date 03 Jun 2010; Organization Type: Real estate activities on a fee or contract basis; R.F.C. UIC100603PR2 (Mexico); Folio Mercantil No. 79755 (Mexico) [ILICIT-DRUGS-EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Mario Esteban OGAZON SEDANO, a person sanctioned pursuant to E.O. 14059.

6. SUMILAB, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Boulevard Enrique Cabrera 2212, Culiacan, Sinaloa C.P. 80020, Mexico; Organization Established Date 25 May 2001; Organization Type: Manufacture of chemicals and chemical products; R.F.C. SUM010525IF9 (Mexico); Folio Mercantil No. 56745 (Mexico) [ILICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: May 9, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.

[FR Doc. 2023-10150 Filed 5-11-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0176]

Agency Information Collection Activity Under OMB Review: Certification of Training Hours, Wages, and Progress

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits 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 by clicking on the following link www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900-0176."

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0176" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501(a), and 38 U.S.C. 3677.

Title: Certification of Training Hours, Wages, and Progress, VA Form 28-1905c.

OMB Control Number: 2900-0176.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28-1905c is used to gather the necessary information to determine any changes in enrollment certification, monthly progression, and attendance as outlined in the claimant's vocational rehabilitation plan. This information is essential to track the type

and hours of training, as well as the rating of the claimant's performance toward the completion of his or her training program under 38 U.S.C. Chapter 31 and 38 U.S.C. Chapter 35. Without the information gathered on this form, benefits could be delayed under 38 U.S.C. 501(a).

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 38 on February 27, 2023, page 12449.

Affected Public: Individuals or Households.

Estimated Annual Burden: 380 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,140.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023-10142 Filed 5-11-23; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Affairs Advisory Committee on Cemeteries and Memorials will be held June 14-15, 2023. The Committee will meet in two separate locations as shown in the chart below. The meeting sessions will begin and end as follows:

Date(s)	Time(s)	Location(s)
June 14, 2023	8:30 a.m. to 3:00 p.m. Eastern Standard Time (EST).	Department of Veterans Affairs, 810 Vermont Ave. NW, Room 230, Washington, DC 20424.
June 15, 2023	8:30 a.m. to 2:15 p.m. EST	Quantico National Cemetery, Operations Building, 1824 Joplin Rd., Triangle, VA 22172.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee makes

recommendations to the Secretary regarding such activities.

On Wednesday, June 14, 2023, the agenda will include remarks by National Cemetery Administration (NCA) leadership a panel on Unclaimed Veterans' Remains, and a briefing from the Veterans Experience Office; there will also be an opportunity for public comment and open discussion.

On Thursday, June 15, 2023, the agenda will include remarks and a recap from the Committee Chair; briefings on the Pre-Need/Eligibility Program and Quantico National Cemetery, as well as Subcommittee updates, public comments; and open discussion. In the afternoon, the Committee will tour Quantico National Cemetery.

Transportation will not be provided for public guests.

Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202-603-4499. Please leave a voice message no later than close of business, June 5, 2023. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *Faith.Hopkins@va.gov*. In

the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent. Because the meeting is being held in a Government building, a photo I.D. must be presented as part of the clearance process. Due to an increase in security protocols and to prevent delays in clearance processing, allow an additional 30 minutes before the meeting begins.

Additionally, if you are interested in attending the meeting virtually, the dial-in number for both days is 1-404-397-1596, Access Code: 27621076518#.

Dated: May 9, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

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Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 431****[EERE–2019–BT–TP–0027]****RIN 1904–AE65****Energy Conservation Program: Test Procedure for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (“DOE”) proposes to amend the test procedures for Packaged Terminal Air Conditioners (“PTACs”) and Packaged Terminal Heat Pumps (“PTHPs”) to establish seasonal energy efficiency metrics for heating and cooling. DOE also proposes to revise the current test procedure to measure dehumidification energy use of make-up air PTACs and PTHPs. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than July 11, 2023. See section V, “Public Participation,” for details. DOE will hold a webinar on Tuesday, June 6, 2023, from 1:00 p.m. to 4:00 p.m. See section V, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE–2019–BT–TP–0027. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0027, by any of the following methods:

Email: PTACHP2019TP0027@ee.doe.gov. Include the docket number EERE–2019–BT–TP–0027 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S.

Department of Energy, Building Technologies Office, 1000 Independence Ave SW, Washington, DC 20585. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2019-BT-TP-0027. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email: ApplianceStandardsQuestions@ee.doe.gov

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: Amelia.Whiting@hq.doe.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

DOE proposes to maintain material previously approved for incorporation by reference in part 431: AHRI 310/380–2014, and update ANSI/ASHRAE Standard 16–1983 (RA 2014), ANSI/ASHRAE Standard 37–2009 and ANSI/ASHRAE Standard 58–1986. DOE

incorporates by reference the following industry standards into 10 CFR part 431:

AHRI Standard 310/380–2017, “Standard for Packaged Terminal Air-Conditioners and Heat Pumps,” July 2017 (“AHRI 310/380–2017”). ANSI/ASHRAE Standard 16–2016, “Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity,” ANSI approved November 1, 2016 (“ANSI/ASHRAE 16–2016”).

Copies of AHRI 310/380–2014 and AHRI 310/380–2017 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201 (703) 524–8800, or online at: www.ahrinet.org/standards.

See section IV.M of this document for a further discussion of these standards.

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I. Authority and Background

Package terminal air conditioners (“PTACs”) and package terminal heat pumps (“PTHPs”) (collectively “PTAC/HPs”) are included in the list of “covered equipment” for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(I)) DOE’s current test procedures for PTACs and PTHPs are currently prescribed at title 10 of the Code of Federal Regulations (“CFR”), part 431, section 96(g) “Test Procedures for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps,” with additional provisions provided in section 96 paragraphs (c) and (e). The following sections discuss DOE’s authority to establish test procedures for PTACs and PTHPs and relevant background information regarding DOE’s consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and

certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C² of EPCA, added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes PTACs and PTHPs, the subject of this document. (42 U.S.C. 6311(1)(I))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297). DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) With respect to small,

large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively “ASHRAE equipment”), EPCA requires DOE to use industry test procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”), as referenced in ASHRAE/IES Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings.” (“ASHRAE Standard 90.1”) (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE is required to amend its test procedure to be consistent with the amended industry test procedure, unless it determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including PTACs and PTHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)(A))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days’ duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b))

DOE is publishing this notice of proposed rulemaking (“NOPR”) in satisfaction of the seven-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(ii))

B. Background

DOE’s existing test procedures for PTACs and PTHPs appear at title 10 of

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

the CFR part 431, subpart F, section 96(g).

For PTACs and PTHPs, DOE currently specifies the energy efficiency ratio (“EER”) as the energy efficiency descriptor for cooling efficiency. Table 1 to 10 CFR 431.96. EER is the ratio of the produced cooling effect of the PTAC or PTHP to its net work input, expressed in Btu/watt-hour, and measured at standard rating conditions. 10 CFR 431.92. For PTHPs, DOE specifies the coefficient of performance (“COP”) as the energy efficiency descriptor for heating efficiency. Table 1 to 10 CFR 431.96. COP is the ratio of the produced heating effect of the PTHP to its net work input, expressed in watts/watts, and measured at standard rating conditions. 10 CFR 431.92.

The test procedures were most recently amended after AHRI published AHRI Standard 310/380–2014, “Standard for Packaged Terminal Air-Conditioners and Heat Pumps” (“AHRI 310/380–2014”) in February 2014. The 2014 version of the standard updated and superseded AHRI Standard 310/380–2004. In a final rule published on June 30, 2015 (“June 2015 TP final rule”), DOE amended the test procedures for PTACs and PTHPs. 80 FR 37136, 37136–37149. In the June 2015 TP final rule, DOE incorporated by reference certain sections of AHRI 310/380–2014. *Id.* at 80 FR 37148. DOE also incorporated by reference (1) American National Standard Institute (“ANSI”)/ASHRAE Standard 16–1983 (RA 2014), “Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners” (“ASHRAE 16–1983”); (2) ANSI/ASHRAE Standard 58–1986 (RA2014), “Method of Testing for Rating Room Air Conditioner and Packaged Terminal Air Conditioner Heating Capacity” (“ASHRAE 58–1986”); and (3) ANSI/ASHRAE Standard 37–2009, “Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment” (“ASHRAE 37–2009”). *Id.* Additionally, DOE amended the PTAC and PTHP test procedures to specify an optional break-in period; explicitly require that wall sleeves be sealed; allow for the pre-filling of the

condensate drain pan; require that measurements of cooling capacity be conducted using electrical instruments accurate to ± 0.5 percent of reading; and require testing with 14-inch deep wall sleeves and the filter option most representative of a typical installation. *Id.* at 80 FR 37149.

In July 2017, AHRI published AHRI Standard 310/380–2017, “Packaged Terminal Air-Conditioners and Heat Pumps” (“AHRI 310/380–2017”). The 2017 version of the standard updated and superseded AHRI Standard 310/380–2014. The 2017 version of the standard incorporated DOE’s additional PTAC and PTHP test procedure specifications listed previously. The current DOE test procedures for PTACs and PTHPs are therefore consistent with AHRI 310/380–2017.

EPCA requires DOE to use industry test procedures developed or recognized by AHRI or ASHRAE as referenced in ASHRAE Standard 90.1. The latest update to ASHRAE Standard 90.1, published on October 24, 2019 (“ASHRAE Standard 90.1–2019”) updated the AHRI Standard 310/380 reference to the 2017 edition. As discussed, the DOE test procedures for PTACs and PTHPs are already consistent with AHRI 310/380–2017. (42 U.S.C. 6314(a)(4)(A))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including PTACs and PTHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

Under this seven-year lookback provision, DOE initiated a test procedure rulemaking for PTACs and PTHPs to collect data and information to determine whether there is clear and convincing evidence that would justify the adoption of procedures other than those referenced in ASHRAE 90.1–2019. On December 8, 2020, DOE published

an early assessment request for information (“RFI”) in which it sought data and information pertinent to whether amended test procedures would (1) more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the equipment without being unduly burdensome to conduct, or (2) reduce testing burden. See 85 FR 78967 (“December 2020 Early Assessment RFI”).

Based on the comments received on the December 2020 Early Assessment RFI and DOE’s review of the test procedures for PTACs and PTHPs, DOE determined it appropriate to continue the test procedure rulemaking after the early assessment process. On May 25, 2021, DOE published in the **Federal Register** a RFI (“May 2021 RFI”) in which DOE requested comments, information, and data about a number of issues, including (1) the market size of PTAC and PTHP units that include make-up air dehumidification, the equipment designs of PTACs and PTHPs that provide make-up air dehumidification, and the energy use associated with this function of PTACs and PTHPs; (2) the market size of PTAC and PTHP units that are capable of part-load operation and the energy use associated with part-load operation of PTACs and PTHPs; (3) the power use associated with fan-only mode operation of PTACs and PTHPs and whether fan-only operation reflects energy use during a representative average use cycle; and (4) low-temperature performance for cold climate PTHPs and whether and how the test procedure should be updated for such equipment. 86 FR 28005.

DOE received comments in response to the May 2021 RFI from the interested parties listed in Table I.1. Discussion of the relevant comments, and DOE’s responses, are provided in the appropriate sections of this document. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.³

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MAY 2021 RFI

Commenter(s)	Reference in this NOPR	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Trade Association.
Appliance Standards Awareness Project, Natural Resources Defense Council.	Joint Advocates	Efficiency Organizations.
California Investor Owned Utilities	CA IOUs	Utility.

³ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop test procedures for PTACs

and PTHPs. (Docket NO. EERE–2019–BT–TP–0027, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter

name, comment docket ID number, page of that document).

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MAY 2021 RFI—Continued

Commenter(s)	Reference in this NOPR	Commenter type
Northwest Energy Efficiency Alliance	NEAA	Efficiency Organizations.
LG Electronics USA	LG	Manufacturer.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE is proposing to relocate the existing test procedures for PTACs and PTHPs from 10 CFR 431.96(g) to a new appendix H to subpart F of part 431, “Uniform test method for measuring the energy consumption of package terminal air conditioners and heat pumps,” (“appendix H”) that would include the relevant test procedure requirements for measuring existing efficiency metrics: (1) EER for cooling mode and (2) COP for heating mode. DOE is also proposing to establish a new appendix H1 to subpart F of part 431, “Uniform test method for measuring the energy

consumption of package terminal air conditioners and heat pumps,” (“appendix H1”) that would include the relevant test procedure requirements for PTACs and PTHPs for measuring seasonal cooling and heating efficiency via new efficiency metrics: (1) seasonal cooling performance (“SCP”) for cooling mode and (2) seasonal heating performance (“SHP”) for heating mode and provide test procedure requirements for making representations of dehumidification energy use via a new efficiency metric, dehumidification efficiency (“DE”). The current DOE test procedures for PTACs and PTHPs would be relocated from § 431.96(g) to appendix H without change, and the

new test procedures would be established at appendix H1. Appendix H1 would provide the test procedure for representations based on SCP, SHP and DE and would be mandatory at such time as compliance is required with amended energy conservation standards based on SCP and SHP, should DOE adopt standards using such metrics. In conjunction, DOE is proposing to amend Table 1 of 10 CFR 431.96 to identify the newly added appendices H and H1 as the applicable test procedures for PTAC/HPs.

DOE’s proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Located at 10 CFR 431.96(g)	Current test procedure unchanged but relocated to appendix H. The proposed new test procedure would be located in appendix H1.	Improves readability.
Incorporates by reference AHRI 310/380–2014, ANSI/ASHRAE 16–1983, ANSI/ASHRAE 58–1986, ANSI/ASHRAE 37–2009.	Updates incorporation by reference to AHRI 310/380–2017 and maintains other existing references in appendix H.. In appendix H1 incorporates by reference AHRI 310/380–2017, ANSI/ASHRAE 16–2016 and ANSI/ASHRAE 37–2009.	Updates to the applicable industry test procedures.
Includes provisions for determining full-load efficiency metrics, EER and COP.	Maintains existing metrics in appendix H. In appendix H1, includes provisions for determining seasonal efficiency metrics, SCP and SHP.	More representative test procedure.
Does not define make-up PTAC/HPs nor includes provisions to measure dehumidification energy use of these units.	Maintains existing approach in appendix H. In appendix H1, defines make-up PTAC/HPs and includes provisions to measure dehumidification energy use.	More representative test procedure.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR regarding the establishment of appendix H would not alter the measured efficiency of PTAC/HPs or require retesting solely as a result of DOE’s adoption of the proposed amendments to the test procedure, if made final. DOE has tentatively determined, however, that the proposed test procedure amendments in appendix H1 would, if adopted, alter the measured efficiency of PTAC/HPs. DOE has tentatively determined that these amendments will provide efficiency measurements more representative of the energy efficiency of PTACs and PTHPs and are not unduly burdensome to conduct. Further, use of the proposed appendix H1 would not be required until the compliance date of

amended standards denominated in terms of SCP and SHP. Discussion of DOE’s proposed actions are addressed in further detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

This rulemaking applies to PTACs and PTHPs. DOE defines PTAC as a wall sleeve and a separate un-encased combination of heating and cooling assemblies intended for mounting through the wall. 10 CFR 431.92. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder’s choice of hot water, steam, or electricity. *Id.* DOE defines PTHP as a PTAC that utilizes reverse cycle refrigeration as its prime heat source

and has a supplemental heat source available, including hot water, steam, or electric resistant heat. *Id.*

B. Proposed Organization of the PTAC/HP Test Procedure

The current DOE test procedures for PTACs and PTHPs appear at 10 CFR 431.96(g). The current test procedure for cooling mode incorporates by reference AHRI 310/380–2014, with the following sections applicable to the DOE test procedure: sections 3, 4.1, 4.2, 4.3, and 4.4; ANSI/ASHRAE 16–1983 and ANSI/ASHRAE 37–2009. 10 CFR 431.96(g)(1). The current test procedure for heating mode testing incorporates by reference AHRI 310/380–2014, with the following sections applicable to the DOE test procedure: sections 3, 4.1, 4.2 (except sections 4.2.1.2(b)), 4.3, and 4.4; and

ANSI/ASHRAE Standard 58–1986. 10 CFR 431.96(g)(2).

The current test procedures also include additional provisions in paragraphs (c) and (e) of 10 CFR 431.96. Paragraph (c) of 10 CFR 431.96 specifies provisions for an optional compressor break-in period, and paragraph (e) of 10 CFR 431.96 details what information sources can be used for unit set-up and provides specific set-up instructions for refrigerant parameters (e.g., superheat) and air flow rate.⁴

DOE is proposing to relocate and centralize the current test procedure for PTACs and PTHPs from 10 CFR 431.96(g) to a new appendix H. As proposed, appendix H would not amend the current test procedure. DOE's current test procedure incorporates by reference AHRI 310/380–2014, but the most recent version of ASHRAE Standard 90.1, ASHRAE Standard 90.1–2019, recognizes AHRI 310/380–2017 as the test procedure for PTACs and PTHPs. AHRI 310/380–2017 differs from AHRI 310/380–2014 only in that it includes the additional test provisions that DOE has already prescribed at 10 CFR 431.96(c), (e) and (g). Therefore, the current DOE test procedures for PTAC/HPs are already consistent with AHRI 310/380–2017. However, to improve readability, DOE is proposing to update the incorporate by reference from AHRI 310/380–2014 to AHRI 310/380–2017 and to remove the redundant test provision references to 10 CFR 431.96(c), (e) and (g).

The test procedure as proposed for appendix H would be updated to reference AHRI 310/380–2017 and provide instructions for determining EER and COP. Consistent with the existing test procedure, DOE is proposing to continue to reference ANSI/ASHRAE 16–1983, ANSI/ASHRAE 58–1986 and ANSI/ASHRAE 37–2009 in the proposed appendix H. As proposed, DOE would require that PTACs and PTHPs be tested according to appendix H until the compliance date of any future amended energy conservation standards for PTACs and PTHPs.

DOE also is proposing in parallel an amended test procedure for PTACs and PTHPs in a new appendix H1 to subpart F of 10 CFR part 431. Appendix H1 would include test instructions for determining the new seasonal cooling and heating metrics, SCP and SHP,

respectively, and provide test instructions for making representations of dehumidification energy use in terms of the dehumidification metric, DE. As proposed, DOE would not require that PTACs or PTHPs be tested according to the test procedure in proposed appendix H1 until the compliance date of any future amended energy conservation standards for PTACs and PTHPs.

C. Updates to Industry Standards

1. AHRI 310/380–2017

As noted previously, DOE's current test procedure for PTACs and PTHPs is codified at 10 CFR 431.96 and incorporates by reference AHRI 310/380–2014, with additional test provisions at 10 CFR 431.96(c), (e) and (g). The most recent version of ASHRAE Standard 90.1, ASHRAE Standard 90.1–2019, recognizes AHRI 310/380–2017 as the test procedure for PTACs and PTHPs.

In response to the May 2021 RFI, AHRI expressed their view that ASHRAE Standard 90.1–2019 and AHRI Standard 310/380–2017 are reasonably designed to measure energy use during a representative use cycle and that the design of PTACs and PTHPs and their usage patterns have not changed significantly since the last DOE rulemaking. (AHRI, No. 14 at p. 2) AHRI commented that AHRI 310/380–2017 was incorporated by reference into the 2019 edition of ASHRAE 90.1, and that DOE must now act to incorporate AHRI Standard 310/380–2017 by reference without any modifications. *Id.* AHRI noted that the Secretary has discretion to consider modifications to the test procedure cited in ASHRAE, but similar to energy conservation standards, for “ASHRAE products” any deviation from the industry test procedure must be, “supported by clear and convincing evidence” that the industry procedure was (a) not reasonably designed to produce test results which reflect energy efficiency; or (b) unduly burdensome to conduct. *Id.* AHRI asserted that AHRI 310/380–2017 met neither of these criteria since no manufacturer has submitted a waiver to DOE for use of a modified version of the current test procedure, which indicates that the results of the existing test procedure remain representative of actual energy use or efficiency; and all products defined as PTACs and PTHPs are able to be tested in accordance with AHRI 310/380. *Id.*

DOE notes that the only difference between AHRI 310/380–2014 and AHRI 310/380–2017 is that AHRI 310/380–2017 includes the same additional test provisions that DOE has already

prescribed at 10 CFR 431.96(c), (e) and (g). Therefore, the current DOE test procedure, which incorporates by reference AHRI 310/380–2014 and includes these additional provisions, is consistent with AHRI 310/380–2017. However, as discussed in section III.B of this proposed rule, to improve readability, DOE is proposing to update the existing incorporation by reference provisions in 10 CFR 431.95 to reference AHRI 310/380–2017 and to remove the applicability of the redundant test provisions at 10 CFR 431.96(c), (e) and (g). Appendix H would reference AHRI 310/380–2017 and provide instructions for determining EER and COP that are consistent with the existing DOE test procedure.

As mentioned previously, DOE is undertaking this rulemaking to satisfy the seven-year review requirement for test procedures in 42 U.S.C. 6314(a)(1)(A). Under this process, if DOE determines that an amended test procedure would more fully or accurately comply with the requirements in 42 U.S.C. 6314(a)(2) and (3), DOE shall prescribe an amended test procedure. Further, as PTACs are subject to the provisions in EPCA for ASHRAE equipment, DOE's determination must be supported by clear and convincing evidence.

Based on an evaluation of the current test methodology and products on the market, DOE has tentatively determined that an amended test procedure may produce test results that more fully or accurately reflect energy efficiency and energy use of PTAC/HPs during a representative average use cycle and would not be unduly burdensome to conduct. In particular, DOE notes that AHRI 310/380–2017 does not include test provisions to measure the potential benefit of designs that can operate at part load (i.e., variable speed products). As discussed in more detail in section III.E of this notice, DOE is aware of several variable-speed PTAC/HP models on the market that can provide efficiency benefits at part-load conditions which are not captured by the test conditions in AHRI 310/380–2017. AHRI 310/380–2017 also does not provide a measure of seasonal cooling and heating efficiency, but instead relies on the single-point ratings of EER and COP—at 95 °F outdoor temperature for EER and at 47 °F outdoor temperature for COP. As PTACs and PTHPs in the field operate year round in cooling or heating mode, seasonal performance, which considers more than one outdoor temperature and the potential for part-load operation when the building load is low at moderate outdoor temperatures, would be more

⁴ The amendatory instructions in the June 2015 TP final rule for PTACs and PTHPs includes the reference to AHRI Standard 310/380–2014 in paragraphs (c) and (e), indicating that the requirements do apply to this equipment, even though the current CFR does not include this reference. 80 FR 37136, 37149 (June 30, 2015).

representative of average use as compared to a single-point rating. However, AHRI 310/380–2017 does not include test conditions or provisions to capture either of these factors, which would affect seasonal cooling or heating efficiency. Finally, AHRI 310/380–2017 does not address PTAC/HPs that provide “make-up air,” *i.e.*, outside air brought in to provide ventilation, or provide test instructions to determine the dehumidification energy use associated with these units.

While DOE is proposing to incorporate by reference certain sections of AHRI 310/380–2017 into appendix H1 (sections 3, 4 and 5), DOE has additionally tentatively determined that there is clear and convincing evidence to propose deviations from AHRI 310/380–2017 and to establish amended test procedures at appendix H1.

2. ANSI/ASHRAE 16–2016

As mentioned, the current test procedure for cooling mode incorporates by reference ANSI/ASHRAE 16–1983 and the current test procedure for heating mode incorporates ANSI/ASHRAE 58–1986. On October 31, 2016, ASHRAE published ANSI/ASHRAE 16–2016, “Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity” (“ANSI/ASHRAE 16–2016”). ANSI/ASHRAE 16–2016 is substantively the same as ANSI/ASHRAE Standard 16–1983 but also incorporates the method of test for obtaining heating capacity for rating room air-conditioners and PTAC/HP heating capacity as prescribed in ANSI/ASHRAE Standard 58–1986.

For appendix H, DOE is proposing to maintain the reference to ANSI/ASHRAE 16–1983 and ANSI/ASHRAE 58–1986. For appendix H1, DOE is proposing to incorporate by reference the updated ANSI/ASHRAE 16–2016 for both the cooling and heating test procedures.

D. Definitions

DOE currently defines PTAC as a wall sleeve and a separate un-encased combination of heating and cooling assemblies intended for mounting through the wall. 10 CFR 431.92. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder’s choice of hot water, steam, or electricity. *Id.*

DOE defines PTHP as a PTAC that utilizes reverse cycle refrigeration as its prime heat source and has a supplemental heat source available,

including hot water, steam, or electric resistant heat. *Id.*

In the May 2021 RFI, DOE requested comment on the definitions of PTACs and PTHPs and whether any of the terms should be amended, and if so, how. 86 FR 28005, 28007. In particular, DOE requested comment on whether the terms are sufficient to identify which equipment is subject to the test procedure and whether any test procedure amendments are required to ensure that all such equipment can be appropriately tested in accordance with the test procedure. *Id.*

In response, AHRI stated that they have no recommended changes to the definitions of PTACs and PTHPs. (AHRI, No. 14 at p. 4) NEEA recommended that DOE amend the definition of PTACs and PTHPs to include ‘dual-ducted’ units, which the commenter explained are units that use two through-the-wall ducts in place of an outdoor mounted section. NEEA further noted that these products are marketed as replacements for PTAC/HPs and are similarly permanently installed through-the-wall air conditioners or heat pumps. NEEA provided product literature for two such units. (NEEA, No. 17 at p. 1–2)

DOE reviewed the product literature provided by NEEA and tentatively concludes that these products do not meet the PTAC and PTHP definitions because they do not have a separate un-encased assembly of heating/cooling, do not have a wall sleeve and have no separable outdoor louvers. See 10 CFR 431.92. While the two unit ducts go ‘through the wall’, the unit itself is mounted on the inside of the conditioned space. Additionally, DOE considers that broadening the PTAC and PTHP definitions to include these products is not appropriate since the product literature for these two units indicates that these are covered under other air conditioning product categories. Therefore, DOE is not proposing to include the units identified by NEEA within the definitions of PTAC and PTHP.

E. Operation at Part Load Conditions and Integrated Metrics

As stated, EPCA requires that the test procedures for PTACs and PTHPs be the generally accepted industry testing procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) EPCA also requires that test procedures prescribed by DOE be reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle, and must not be unduly

burdensome to conduct. (42 U.S.C. 6314(a)(2))

DOE’s current test procedures for PTACs and PTHPs do not have provisions to measure the potential benefit of designs that can operate at part load, nor does the test address unit cooling performance at part-load outdoor temperature conditions that represent many of the hours of the cooling season. Additionally, the current DOE test procedures do not have provisions to measure performance at low-ambient outdoor temperature conditions for the heating season. For PTACs and PTHPs, ASHRAE Standard 90.1–2019 specifies minimum efficiency levels expressed in terms of the full-load metrics of EER and COP. “Full-load” refers to testing at a single test condition, under which the compressor operates continuously at 100 percent of its full capacity. Under DOE’s current test procedure, full load efficiency is measured at the standard rating conditions as prescribed in AHRI 310/380–2014. In contrast, for cooling, “part-load” refers to testing at a reduced-temperature test condition in which the cooling load of the space would generally be less than the full cooling capacity of the compressor. Any temperatures below the standard rating condition could potentially be considered part-load cooling conditions. For heating, “part-load” refers to testing at a temperature test condition in which the heating load of the space is less than the full heating capacity of the compressor. Any temperatures which do not require the full heating capacity could potentially be considered part-load heating conditions.

1. Market Size of PTACs and PTHPs With Part-Load Operation Capability

DOE is aware of several variable-speed PTAC and PTHP models on the market that can provide an efficiency benefit at part-load conditions. In the May 2021 RFI, DOE requested information on the market availability and market size for PTACs and PTHPs that incorporate two-stage, multi-stage, or fully variable-speed compressors that enable more efficient part-load operation. 86 FR 28005, 28009–28010.

AHRI commented that it surveyed its members to determine the relative market share of PTACs and PTHPs that incorporate two-stage, multi-stage, or fully variable-speed compressors and that their data, which constituted a representative sample of the PTAC and PTHP market, indicated that 0.7 percent of PTAC and PTHP shipments incorporate these enhanced compressors. (AHRI, No. 14 at p. 7)

The CA IOUs commented there has been an increase in variable-speed compressor technology across a whole host of commercial and residential air conditioner products and PTACs and PTHPs are no exception to the growth of variable-speed compressor technology. (CA IOUs, No. 15 at p. 2) The CA IOUs noted that at least five manufacturers already sell variable speed products, and that number is likely to grow. *Id.* Additionally, they stated that the hotel industry has also published articles speaking to the benefits of new PTAC/HPs that incorporate variable-speed compressors. *Id.*

The Joint Advocates asserted that PTACs and PTHPs are rarely required to operate at full load and an amended test procedure that captures part-load performance would thus be more representative and would also capture the potential efficiency gains associated with variable-speed compressors. (Joint Advocates, No. 16 at p. 1) The Joint Advocates encouraged DOE to adopt efficiency metrics that reflect annual energy consumption including part-load operation. *Id.*

DOE notes that while the shipments data provided by AHRI suggests that only a small fraction of PTACs and PTHPs incorporate variable speed compressor technology currently, DOE's review of its compliance certification management system ("CCMS")⁵ database and current product literature indicates that these products are already present in the market and may continue to increase in market share. As a result, inclusion of part-load performance in the test procedure may provide a more representative measure of unit performance over the cooling or heating season. The next section discusses potential part-load cooling and heating efficiency metrics for PTACs and PTHPs.

2. Potential Part-Load Efficiency Metrics

For measurement of part-load performance for PTACs and PTHPs, the proposed DOE test procedure at appendix H1 would require a part-load or seasonal efficiency metric. Several categories of air conditioning and heating equipment are already rated under DOE test procedures using metrics that account for cooling part-load or seasonal performance. For example, commercial unitary air conditioners ("CUACs") are rated using the part-load metric integrated energy efficiency ratio ("IEER") (see appendix

A to subpart F of 10 CFR part 431); and central air conditioners ("CACs") and heat pumps ("CHPs") ("collectively CAC/HPs") are rated using the seasonal energy efficiency ratio ("SEER2") (see appendix M1 to subpart B of 10 CFR part 430 ("appendix M1")). Room air conditioners ("RACs") are rated using the combined energy efficiency ratio ("CEER").⁶ While the CEER metric is not a part-load or seasonal metric, amendments to the DOE test procedure provide for the application of a performance adjustment factor to a variable-speed model's CEER rating (*i.e.*, "performance-adjusted CEER") that reflects seasonal efficiency benefits (see appendix F to subpart B of 10 CFR part 430).⁷

Similar to the EER cooling metric, the COP heating metric for PTHPs measures heating efficiency only at full load operation. For the reasons described previously with regard to cooling efficiency, using a heating efficiency metric that accounts for only full-load operation does not measure the part-load operation in PTHPs that may be enabled by the incorporation of two-stage, multi-stage, or variable-speed compressors. Heating Season Performance Factor ("HSPF2") is a metric that serves as a counterpart to SEER2 and accounts for seasonal performance in the heating season for residential central heat pumps. It reflects seasonal performance by averaging test results from multiple load points, depending on system configuration (single-speed, two-capacity, or variable-speed), with varying outdoor conditions and staging levels to represent the product's average efficiency throughout the heating season (see appendix M1).

In the May 2021 TP RFI, DOE requested comment on how to best measure part-load cooling performance for PTACs and PTHPs, specifically the number of tests that are appropriate to represent the part-load capabilities of the unit; the outdoor ambient conditions that best represent real world performance; the averaging weights that should be applied to each condition; whether a cyclic test component should be incorporated and whether an optional test for multi-capacity rating should be incorporated. 86 FR 28005,

28010. DOE also requested feedback on the appropriateness and potential applicability of the IEER, SEER⁸ and performance-adjusted CEER as appropriate metrics for PTACs and PTHPs and whether a test procedure for PTACs and PTHPs that uses any of these would produce test results that reflect the energy efficiency of that equipment during a representative average use cycle. *Id.* DOE also requested information on the costs that would be associated with a test procedure that uses any of these metrics. *Id.* Additionally, DOE requested comment on whether any other seasonal efficiency metrics that incorporate part-load performance would produce test results that reflect the energy efficiency of PTACs and PTHPs during a representative average use cycle, and if so, which outdoor temperature rating conditions would be appropriate for testing PTACs and PTHPs. *Id.*

For the heating metric, DOE requested comment on how to best measure part-load and seasonal heating performance for PTHPs, specifically the number of tests that are appropriate to represent the part-load capabilities of the unit; the outdoor ambient conditions that best represent real world performance; the averaging weights that should be applied to each condition; whether a cyclic test component should be incorporated; whether an optional test for multi-capacity rating should be incorporated; and whether a test to evaluate the PTHP in defrost cycles is required 86 FR 28005, 28011. DOE also requested information on whether HSPF⁹ would be an appropriate metric for PTHPs, or if any other seasonal heating efficiency metrics that would produce test results that reflect the energy efficiency of PTHPs during a representative average use cycle would be appropriate, and if so, which outdoor temperature rating conditions would be appropriate for testing PTHPs. *Id.* DOE also requested comment on the costs that would be associated with the use of any such seasonal heating efficiency metric to rate PTHP performance. *Id.*

The Joint Advocates encouraged DOE to adopt cooling and heating efficiency metrics that attempt to reflect the annual energy consumption of PTACs

⁸ In the May 2021 RFI, DOE referred to SEER instead of SEER2. SEER2 has the same definition as SEER but reflects the amendments made to the test procedure in appendix M1, which change the measured efficiency values compared to appendix M to subpart B of 10 CFR part 430.

⁶ CEER is an energy efficiency metric for room air conditioners that integrates standby/inactive and off mode energy use with the active mode energy use. 10 CFR 430.23(f)(3); appendix F to subpart B of 10 CFR part 430 sections 2 and 5.2.2.

⁷ DOE published a final rule on March 29, 2021, amending the test procedure for room air conditioners to establish test provisions for measuring the energy use of variable-speed units during a representative average use cycle. 86 FR 16446.

⁹ In the May 2021 RFI, DOE referred to HSPF instead of HSPF2. HSPF2 has the same definition as HSPF but reflects the amendments made to the test procedure in appendix M1, which change the measured efficiency values compared to appendix M.

⁵ DOE's Compliance Certification Management System Database is available at www.regulations.doe.gov/ccms.

and PTHPs in typical applications and to adopt an amended test procedure that tests all PTACs and PTHPs the same way, regardless of whether a unit is single-speed, two-stage, multi-stage or variable speed as this will provide comparable efficiency ratings. (Joint Advocates, No. 16 at p. 1)

NEEA suggested that DOE adopt part-load metrics aligned with the AHRI Standard 210/240 as referenced in appendix M1. (NEEA, No. 17 at p. 2) NEAA stated that aligning with appendix M1 is the best course of action in the current rulemaking as PTACs and PTHPs are most likely to be substitutes for smaller residential products of similar capacities. *Id.* NEEA further stated that multiple manufacturers are already making representations of SEER and HSPF for PTAC/HPs, showing the market demand for a residential part-load metric. *Id.* NEEA noted that a part-load metric would allow for the benefits of inverter driven, variable speed PTACs and PTHPs to be more accurately represented and that there were several variable speed products on the market from at least six manufacturers. (NEEA, No. 17 at p. 3) NEEA asserted that the fact that these variable speed products have emerged in the absence of a part-load test procedure shows strong market demand for these products and shifting to a part-load metric would allow for these products to fairly compete with single speed products and would likely lead to the introduction of more variable speed products. *Id.*

The CA IOUs also recommended that DOE utilize appendix M1 to measure the cooling and heating efficiencies of PTACs and PTHPs. The CA IOUs asserted that consumers often compare PTAC/HPs with CAC/HPs when choosing a method to cool or heat and cool a single space such as multifamily housing or lodging facilities because there are models with similar capacities in both product types and that these products are typically selected in the construction design process to provide conditioning year-round. (CA IOUs, No. 15 at p. 2) The CA IOUs stated that manufacturers recognize the similarity of these products and provide “SEER equivalent” performance information for their PTAC and PTHPs. *Id.* The CA IOUs highlighted that a survey of more than 160 buildings in Manhattan found that in new buildings more PTAC and PTHPs were installed compared to RACs, and that PTAC and PTHPs were more likely to be designed into the building rather than part of a retrofit to address a need for cooling—which is similar to the selection and installation of CAC/HPs and indicates that PTAC/HPs and RACs are less likely to be

substituted for each other. *Id.* The CA IOUs stated that they therefore believe it is most important to be able to compare PTAC/HPs with CAC/HPs. *Id.* Additionally, the CA IOUs commented that the test procedures for CUACs and RACs only measure cooling capacity and efficiency, but PTHPs need a test procedure for both cooling and heating, noting that appendix M1 provides both the SEER2 metric for cooling and HSPF2 for heating, as well as part-load conditions. *Id.*

LG also recommended the DOE adopt AHRI Standard 210/240 as referenced in appendix M1, but recommended using this test procedure only for part-load cooling performance and not for heating performance, because PTACs and PTHPs contain electric heat. (LG, No. 18 at p. 1) LG stated that while DOE categorized PTACs and PTHPs as commercial products, these products are usually installed in hotel rooms and people consider the hotel room as a vacation home—therefore their usage was close to the residential air conditioner. *Id.*

NEEA recommended that DOE adopt a load-based test procedure for all heat pumps and air conditioners including PTHPs and PTACs, stating that while a part-load test procedure aligned with appendix M1 will be a step towards better accounting for the performance of PTHPs and PTACs, it will not account for the effectiveness of the unit’s controls or fully reflect how these units are likely to perform in the real world. (NEEA, No. 17 at p. 4) The Joint Advocates also encouraged DOE to investigate a load-based test procedure, which they stated would provide a realistic representation of how all units perform in the field, including capturing the importance of control strategies. (Joint Advocates, No. 16 at p. 2).

In response to NEEA, the CA IOUs and LG’s suggestion regarding the use of appendix M1 for PTACs and PTHPs, DOE’s notes that there are differences between PTAC/HPs and CAC/HPs that suggest that the direct use of appendix M1 as the test procedure for PTAC/HPs is inappropriate. The primary application for CAC/HPs is residential single-family homes which may have multiple zones, whereas the primary application for PTAC/HPs is lodging, typically serving single zones (*i.e.*, each individual hotel room). This difference in the use cases results in substantially different cooling and heating building load lines for these two air-conditioning and heating categories. As such, the test conditions and weighting factors in appendix M1 are not suitable to capture PTAC and PTHP operation. DOE agrees that SEER2 and HSPF2 are

comprehensive metrics that provide efficiency ratings representative of an entire season, and the publication of ‘SEER-equivalent’ and ‘HSPF-equivalent’ ratings for PTAC/HPs suggest a desire for similar seasonal ratings for PTAC/HPs. However, DOE has provisionally determined that seasonal cooling and heating metrics for PTACs and PTHPs, even if similar to the SEER2 and HSPF2 metrics, respectively, should reflect the different average use operation for PTAC/HP applications. This is further discussed in sections III.F and III.G of this document.

In response to NEEA and the Joint Advocates’ suggestions that DOE investigate a load-based test procedure, DOE notes that it is unaware of a comprehensive evaluation of load-based testing of PTACs or similar equipment that satisfactorily demonstrates repeatability and reproducibility. DOE is aware of ongoing work addressing questions about whether the current DOE and industry test procedures for several air conditioning and heat pump equipment are fully representative of field operation and would be better served by a load-based test procedure.¹⁰ These efforts have been largely focused on residential CAC/HPs, where the market presence of variable-speed units has considerably more history and greater market share, and therefore a load-based test procedure may hold potential value. In comparison, the increased test burden resulting from a load-based test procedure would not be appropriate for PTAC/HPs, given the modest share of variable-speed PTAC/HPs in the market. As such, on the basis of insufficient test procedure development leading to repeatability and reproducibility concerns, and the increased test burden associated with a load-based test procedure, DOE has provisionally determined that introducing a load-based test procedure for PTAC/HPs would not be appropriate at this time. However, DOE will continue to investigate load-based

¹⁰ A dynamic load-based test method differs from the steady-state test method currently used in DOE test procedures for air conditioning and heat pump equipment. In a steady-state test method, the indoor room is maintained at a constant temperature throughout the test. In this type of test, any variable-speed or variable-position components of air conditioners and heat pumps are set in a fixed position, which is typically specified by the manufacturer. In contrast, a dynamic load-based test has the conditioning load applied to the indoor room using a load profile that approximates how the load varies for units installed in the field. In this type of test, an air conditioning system or heat pump is allowed to automatically determine and vary its control settings in response to the imposed conditioning loads, rather than relying on manufacturer-specified settings.

testing and monitor future efforts related to this topic.

AHRI noted that it was unreasonable for DOE to expect stakeholders to develop a procedure in 30 days through a response to the RFI and were unable to any provide information on how to measure part-load performance of PTACs and PTHPs. (AHRI, No. 14 at p. 7) AHRI urged DOE to join the ASHRAE Standard 16 committee and engage in the consensus-standards development process for the method of test for PTACs and PTHPs. *Id.* AHRI noted that all cooling metrics suggested in the May 2021 RFI would carry with them a significant increase in the test burden when compared to the full load EER metric of AHRI Standard 310/380. (AHRI, No. 14 at p. 8) AHRI attached a table comparing the required tests for each metric. *Id.* AHRI also stated that the residential metrics, SEER for CAC/HPs and performance-adjusted CEER for RACs, present the potential to cause confusion if applied to commercial products and that perhaps the best option would be to develop an entirely new part-load metric suited to PTAC/HPs, through a consensus standards process. *Id.* AHRI agreed that variable speed products may benefit from a part load metric, but stated that the additional test burden required by a part load metric for single stage products is unwarranted. *Id.* AHRI asserted that the PTAC and PTHP market is overwhelmingly single stage, where a full load rating is most appropriate. *Id.* AHRI noted that full load metrics have not been eliminated in ASHRAE Standard 90.1 as new part load metrics, such as IEER, have been introduced and federally regulated. Instead, through building standards, states have regulated both full and part-load metrics for a single product for those in which both metrics have been published in ASHRAE Standard 90.1. *Id.* AHRI also stated that a part-load metric for any piece of equipment should be specific to the unit's average use operation for the most common applications and that no cooling metric DOE suggested in May 2021 RFI is primarily for use in hotels—the application where the majority of PTACs and PTHPs are used. AHRI commented that some metrics, including SEER and performance-adjusted CEER, are for residential applications and that PTACs and PTHPs are commercial products and have vastly different operating hours and use patterns than residential equipment. (AHRI, No. 14 at p. 9). For the heating metric, AHRI did not provide a response on the appropriateness of HSPF or any other seasonal metric. (AHRI, No. 14 at

p. 10) AHRI stated that it was not possible to quantify the cost implications for a new test procedure prior to the test procedure being developed. *Id.*

In response to AHRI's statement that the PTAC and PTHP market is overwhelmingly single stage where a full-load rating is most appropriate and that the additional test burden required by a part load metric for single stage products is unwarranted, DOE notes that EPCA requires DOE to amend a test procedure if DOE determines that the amended test procedure would more fully or accurately reflect energy use during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(1)(A)) Comments received on the May 2021 RFI suggest that the current full-load cooling and heating metrics (EER and COP) may not effectively capture the energy efficiency during a representative average use cycle, regardless of whether a PTAC/HP is single-stage, multi-stage or variable capacity, because PTAC/HPs often operate at part-load and at several different temperature conditions during the cooling or heating season. Therefore, a full-load standard rating condition may not fully capture the performance of a PTAC/HP. However, DOE also recognizes that EPCA requires that test procedures must not be unduly burdensome to conduct and DOE understands that a new test procedure incorporating multiple test conditions will introduce more test burden when compared to the full load single condition EER or COP metric of AHRI Standard 310/380. As described in section III.K of this NOPR, DOE has tentatively determined that the increase in test procedure costs will not be unduly burdensome to manufacturers, especially given the flexibility to utilize alternate efficiency determination methods ("AEDMs") to rate models. DOE agrees with AHRI that the part-load metric for any piece of equipment should be specific to the unit's average use operation for the most common applications. Accordingly, DOE initially determines that the best option would be to develop an entirely new part-load metric for PTACs and PTHPs, which would be specific to the use cases for PTAC/HPs and would include consideration of different load levels and outdoor temperature conditions.

In summary, DOE is proposing cooling and heating metrics which incorporate part-load seasonal performance and are appropriate based on the use case for PTACs and PTHPs. Sections III.F and III.G of this NOPR

detail DOE's proposed cooling and heating metrics, respectively.

3. Low-Ambient Heating

Heat pumps generally perform less efficiently at low ambient outdoor temperatures than they do at moderate ambient outdoor temperatures. DOE is aware of residential CAC/HP models that are optimized for operation in cold climates and can operate at temperatures as low as -20 degrees Fahrenheit (" $^{\circ}\text{F}$ "). DOE understands that there has been interest in cold-climate PTHPs. For example, the New York State Clean Heat Program ("NYS Clean Heat") requires a manufacturer-reported COP greater than 1.75 at 5°F ¹¹ and the Northeast Energy Efficiency Partnership ("NEEP") recently included a PTAC/HP cold climate specification requiring a COP of 1.5 at 5°F .¹² DOE is aware of at least one PTHP model that is optimized for cold climates and can operate at temperatures as low as -5°F .

A conventional PTHP model switches its heat source from reverse-cycle vapor compression heating to electric resistance heating, which is less efficient than vapor compression heating, at an outdoor ambient temperature of around 32°F . A PTHP design that is optimized for operation in cold climates could provide energy savings compared to conventional PTHP models by enabling the use of the more efficient vapor compression heating, rather than electric resistance heating, at lower ambient temperatures. However, DOE's current COP test metric for heating efficiency requires testing only at the standard rating condition of 47°F dry bulb for the outdoor side. Thus, DOE's COP metric does not account for the efficiency improvement that could result from using reverse-cycle heating at low ambient temperatures.

In the May 2021 RFI, DOE requested information on several issues related to low-ambient heating, specifically information on the comparison of the seasonal heating load and seasonal cooling load for a typical PTAC/PTHP installation; information on the range of low-temperature cutout for compressor operation of PTHPs, including the percentage of PTHPs that continue to operate the compressor at outdoor temperatures below 32°F , below 20°F , and below 10°F ; information on the design changes necessary for a typical PTHP (that has a 32°F low-temperature cutout) to be converted for satisfactory field performance operation at a 17°F

¹¹ See: <https://ma-eeac.org/wp-content/uploads/NYS-Clean-Heat-Manual-NEEPA.pdf>.

¹² See: https://neep.org/sites/default/files/media-files/ccpthp_spvhp_specification_v1.pdf.

outdoor test condition and whether the design optimization of PTHPs for cold-climate operation impacts the COP as measured under the DOE test procedure; and feedback on any other test methods that would produce test results that reflect the energy efficiency of these units during a representative average use cycle, as well as information on the test burden associated with such test methods. 86 FR 28005, 28011.

AHRI commented that it is aware of units operating down to 25 °F, and other manufacturers have published the low-temperature cutout for compressor operation of PTHPs at 42 °F, 38 °F, and 32 °F. (AHRI, No. 14 at p. 11–12) Regarding the design changes necessary for a PTHP to be converted to operate at a 17 °F condition, AHRI stated that the PTHP standard wall sleeve size limits component sizing such as a heat exchanger and fan, but one possibility would be to install variable speed compressors and to further optimize by installing electronic expansions valves (“EEV”) in place of capillary tubes. (AHRI, No. 14 at p. 12) They stated that additional changes would include the addition of an inverter board, enclosure for new board, wire harness, software, compressor, and possibly additional thermistors. *Id.* AHRI commented that these design changes have not been demonstrated as a valid methodology at this writing to their knowledge. *Id.* AHRI also stated that if the test procedure were to be amended to require testing at the 17 °F test condition it would negatively impact COP for single speed units as the capillary tubes can only be optimized for a single set point—however, variable speed units with electronic expansion valves would be able to be optimized for multiple outdoor conditions. *Id.* AHRI stated that heating testing at very low temperatures can become quite costly. Based on their analysis conducted to review the costs associated with Natural Resources Canada’s proposal to make the H4₂ (5 °F heating mode) test in appendix M1 for residential heat pumps mandatory as part of evaluating HSPF2, AHRI found that the cost to upgrade a laboratory to test to the new condition will require significant investment and imposes new testing costs to manufacturers. (AHRI, No. 14 at p. 12) AHRI stated that currently laboratories do not have the capacity to test equipment to the proposed test condition of 5 °F and estimated that the cost to upgrade one laboratory could reach \$75,000 USD and needs to be repeated across each laboratory intending on testing to 5 °F heating mode test condition. *Id.* They further noted that the total costs to

upgrade labs necessary to test equipment to this new condition in a timely manner is between \$7.5 to \$13.1M USD. (AHRI, No. 14 at p. 10–11)

The CA IOUs, Joint Advocates and NEEA encouraged DOE to capture performance at lower ambient temperatures. The CA IOUs noted that results from their market research aligned with DOE’s assessment that, while there are products that operate below freezing, it is a small subset of the market. (CA IOUs, No. 15 at p. 3). The CA IOUs highlighted three products that operate in vapor compression mode below freezing, two of which switch to an electric resistant heater at 25 °F while the other is able to operate in vapor compression mode down to –5 °F. *Id.* The CA IOUs reiterated their suggestion that PTHPs be tested per appendix M1 which requires single-speed and variable-speed products to be tested at 47 °F, 35 °F, and 17 °F to calculate HSPF2. *Id.* The CA IOUs recommended that units that cannot be tested at the lower temperatures use a default COP of 1.0, the efficiency of electric resistant heat, for the lower temperatures to calculate HSPF2. *Id.* They stated that requiring testing and reporting of performance at these three additional temperatures would also allow designers to know the temperature at which the PTHP will switch over to electric resistance heat, especially if the PTHP is also providing makeup air to the room. *Id.* NEEA recommended a part-load test aligned with appendix M1 at an outdoor test condition of 17 °F. (NEEA, No. 17 at p. 3) Additionally, NEEA suggested that DOE account for energy used in defrost and energy used in electric resistance boost functionality, which the commenter described as a feature which turns on the electric resistance at outdoor temperatures where the heat pump can provide adequate heating, thus resulting in unnecessary energy use. *Id.* The Joint Advocates also encouraged DOE to capture defrost performance, which they said would differentiate the performance of different defrost strategies. (Joint Advocates, No. 16 at p. 2).

In response to AHRI’s comment that design changes to operate below a 17 °F condition have not been demonstrated as a valid methodology for PTHPs, as noted earlier in this section, DOE is aware of at least one commercialized PTHP that can operate at temperatures as low as –5 °F. Additionally, while the required design changes to operate at low ambient conditions may not yet be widely present in PTHPs, other categories of heat pumps (such as central HPs) have demonstrated that

these design changes are possible. Regarding AHRI’s comment that heating testing at very low temperatures can become quite costly and that currently laboratories do not have the capacity to test equipment to the proposed test condition of 5 °F, DOE notes that several CAC/HP manufacturers already conduct testing at this temperature for the H4₂ test in appendix M1 and provide ratings in the CCMS. Additionally, DOE notes that commercial equipment, which includes PTACs and PTHPs, can benefit from AEDMs to rate their equipment and therefore do not need to physically test more than 2 units per basic model. However, DOE understands the significant increase in burden associated with mandating tests at low temperatures.

Based on the comments received, DOE tentatively concludes that while there are PTAC/HPs that can operate below freezing (32 °F), they represent only a small subset of the market and most of these cut-off heat pump operation around 25 °F. If contemporary PTAC/HPs would be required to operate at conditions below freezing, for example at 17 °F, they would require significant design changes or complete re-design. Therefore, testing at low ambient heating conditions may not be appropriate as a requirement for all PTHPs. However, DOE also understands that for those PTHPs that are designed for cold climate operation (as noted, DOE is aware of at least one such PTHP), it may be beneficial to provide a means within the test procedure to make representations of operational performance at low-ambient conditions, similar to the approach currently used for low-temperature operation for central heat pumps. Section III.G details DOE’s heating test procedure incorporating optional low-ambient heating and an adjustment to account for defrost performance degradation.

F. Proposed Cooling Metric and Test Procedure

As noted, several categories of air conditioning and heating equipment are already rated under DOE test procedures using metrics that account for part-load or seasonal performance. As discussed in section III.E.2 of this document, several commenters suggested that DOE adopt appendix M1, and subsequently the SEER2 metric for PTAC/HPs. In the May 2021 RFI, DOE noted that PTACs and PTHPs may be considered as an alternative to CAC/HPs and products and equipment rated with SEER2 are generally used in residential or small commercial applications, often with smaller internal loads that require minimal or no cooling at low ambient

outdoor air temperatures. 86 FR 28005, 28010. SEER2 reflects seasonal performance by averaging test results from up to five different load points, depending on system configuration (single-speed, two-capacity, or variable-speed), with varying outdoor conditions and staging levels to represent the product's average efficiency throughout the cooling season (see appendix M1). The test procedure also includes optional cyclic testing to evaluate cycling losses. Based on comments received by stakeholders that manufacturers are interested in making 'SEER-equivalent' representations, DOE has initially determined that a cooling metric that incorporates seasonal performance similar to the SEER2 metric is appropriate for PTAC/HPs.

However, DOE considers that the test conditions, cooling building load line, hours of cooling, methods of calculations, cycling losses and other aspects of the test procedure will differ for PTAC/HPs as compared to CAC/HPs and are better informed by use cases specific to PTAC/HPs. Additionally, test burden associated with CAC/HP testing per appendix M1 may be higher than appropriate for the relatively lower national energy use associated with PTAC/HPs as compared to CAC/HPs. DOE is therefore proposing to define a new seasonal cooling performance for PTAC/HPs, seasonal cooling performance ("SCP"), which presents a better match of PTAC/HP performance rather than CAC/HP and reduces test burden as compared to CAC/HP testing. The proposed definition of this new metric, which would be included in 10 CFR 431.92, reads as follows:

Seasonal cooling performance (SCP) means the total heat removed from the conditioned space during the cooling season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal air conditioner or heat pump during the same season, expressed in watt-hours. SCP is determined in accordance with appendix H1 to this subpart.

The following sections detail the key differences for the SCP metric as compared to the SEER2 metric.

1. Test Conditions

As discussed previously, DOE recognizes that throughout the cooling season, PTACs and PTHPs operate under various outdoor temperature conditions. DOE also understands that these varying outdoor conditions present a range of reduced cooling loads in the conditioned space. To effectively capture performance at these varying outdoor conditions and associated loads, DOE proposes a test procedure

with three test conditions at dry-bulb outdoor temperatures of 95 °F, 82 °F and 75 °F. These are denoted as the "A", "B" and "C" conditions, respectively. DOE notes that these additional temperatures were informed by weather analysis conducted for 16 cities representing ASHRAE climate zones 1 through 7. For each condition, DOE established a temperature range and then evaluated a representative temperature within that range. This representative temperature was evaluated as a weighted average by multiplying the mean temperature in the respective temperature range for each city, by the prevalence of the commercial buildings energy consumption survey ("CBECS") small hotel prototype in that city, which is the primary application for PTAC/HPs.

Issue 1: DOE requests comment on its proposed A (95 °F), B (82 °F) and C (75 °F) test conditions to represent reduced cooling conditions experienced by PTACs and PTHPs in the field.

These conditions are paired with three compressor speeds to denote the different cooling capacities at which the unit will run to modulate to the required cooling load: full, intermediate, and low. For example, a B_{low} test would mean a test conducted at the "B" condition (82 °F) and set to a low compressor speed.

For tests run at the full compressor speed, the test will require the room thermostat to be set at a lower temperature than the indoor condition *i.e.*, 75 °F. DOE understands that for setting the low and intermediate compressor speeds, special control override instructions will be required from manufacturers. Therefore, because maintaining fixed compressor speeds is critical to the repeatability of the PTAC/HP cooling test procedure, DOE may, in a separate rulemaking addressing certification, require manufacturers to provide in each certification report for a two-speed or variable-speed system basic model, all necessary instructions to maintain the low and intermediate compressor speeds required for each test condition when testing that basic model. This approach is similar to the DOE requirements for RACs and CAC/HPs when testing with reduced compressor speeds. However, DOE is not addressing certification in this rulemaking and may address this issue in a separate future rulemaking.

Issue 2: DOE requests comment on whether setting the unit thermostat down to 75 °F (*i.e.*, a 5 °F differential to the indoor condition of 80 °F) is sufficient to ensure that the compressor runs at full speed. DOE requests comment on whether manufacturers will be able to provide override

instructions to ensure operation at the low and intermediate compressor speeds.

DOE's review of several PTAC/HP models suggests that PTAC/HPs offer at least two user-selectable indoor fan speeds: high and low, and two user-selectable modes: cycling (or auto) fan and constant fan modes. In the cycling fan mode, the indoor fan cycles with the compressor while in the constant fan mode, the indoor fan runs continuously regardless of the compressor operation. DOE is proposing to require that all tests be done with the fan control selections that set the fan speed to high and the indoor fan to cycle with the compressor. However, DOE understands that fan staging may also vary based on compressor staging for two-stage and variable speed PTAC/HPs, and may need to be fixed.

Issue 3: DOE requests comment on whether fan speed may vary with staging and whether it may have to be "fixed" at the right speed.

2. Cooling Tests

DOE understands that the PTAC/HP market has a mixed presence of single-speed, two-speed, or variable-speed systems, with most units employing a single-speed compressor. Therefore, DOE is proposing that each of these systems be tested with a different subset of conditions to effectively measure performance. DOE is using appendix M1 as the basis for the required cooling tests for each system type, but with necessary modifications to reduce test burden as appropriate. For example, as discussed in section III.F.3 of this document, DOE is not proposing cyclic tests but instead requiring the use of a default degradation coefficient.

To prevent confusion between two-speed and variable-speed systems, DOE is proposing to define variable speed PTAC/HP as follows:

Variable speed PTAC/HP means a packaged terminal air-conditioner or heat pump with a compressor that uses a variable-speed drive to vary the compressor speed to achieve variable capacities or three or more capacities for any operating condition for which the compressor would be running.

For units having a single-speed compressor, and consequently one compressor speed, DOE is proposing to require two full-speed tests conducted at the A and C conditions, with the compressor running at its nominal, full speed. Table III.1 sets out the test condition for systems employing single-speed compressors. DOE considers that the A and C conditions would be sufficient to develop a performance curve for the purpose of interpolation.

In order to reduce test burden, DOE is not proposing to require testing at the B condition.

TABLE III.1—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
C _{full} Test—required	80	67	75	60	Full.

For units having a two-speed compressor or a variable-speed compressor that operate at two speed levels at any given outdoor temperature, DOE is proposing to require two full-speed tests conducted at the A and B

conditions, and two low-speed tests conducted at the B and C conditions. These pairings of test conditions and speeds are intended to be representative of actual field operation. Table III.2 sets out the test condition for systems

employing two-speed compressors or a variable-speed compressor that operate at two speed levels at any given outdoor temperature.

TABLE III.2—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-SPEED COMPRESSOR *

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
B _{full} Test—required	80	67	82	65	Full.
B _{low} Test—required	80	67	82	65	Low.
C _{low} Test—required	80	67	75	60	Low.

* This includes units with compressors that achieve no more than two capacity levels using variable speed technology for any one of the test conditions used for the tests.

For units having variable-speed compressors with three or more speed levels at any given outdoor temperature, the same tests as set for the two-speed systems will apply—but with an additional optional intermediate speed

test at the B condition *i.e.*, the B_{int} test. This optional intermediate test is included to provide an opportunity for a variable-speed unit to test improved performance as compared to the performance interpolated between the

low speed and the high speed at the B condition. Table III.3 sets out the test condition for systems employing variable-speed compressors with three or more speed levels at any given outdoor temperature.

TABLE III.3—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR WITH THREE OR MORE SPEED LEVELS AT ANY GIVEN OUTDOOR TEMPERATURE

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
B _{full} Test—required	80	67	82	65	Full.
B _{low} Test—required	80	67	82	65	Low.
B _{int} Test—optional	80	67	82	65	Intermediate.
C _{low} Test—required	80	67	75	60	Low.

Issue 4: DOE requests comment on its proposed cooling tests for single-speed, two-speed and variable-speed compressor systems.

3. Cyclic Losses

Under part-load operation, in which the cooling load of the space is less than the full cooling capacity of the compressor and the compressor cannot modulate compressor speed to match

capacity to the required load, the compressor cycles on and off (for single-speed systems) or operates between different compressor speeds (for two-stage or variable speed systems). This cycling behavior introduces inefficiencies, *i.e.*, “cycling losses.” In appendix M1 and AHRI Standard 210/240–2023, “Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment” (“AHRI 210/

240–2023”), the inefficiencies associated with cycling losses in CAC/HPs are represented by a degradation coefficient (C_D). The cooling degradation coefficient is denoted by C_{D^c} and heating degradation coefficient is denoted as C_{D^h} . In appendix M1 and AHRI 210/240–2023, this degradation coefficient can be optionally evaluated

via cyclic testing, or a default degradation coefficient can be used.¹³ As ASHRAE Standard 16–2016 does not include test provisions to conduct cyclic tests, DOE is not proposing to include cyclic tests as part of the new test procedure at appendix H1. To represent the cycling losses of a PTAC/HP, a degradation coefficient is required. CAC/HP systems are differently configured as compared to PTAC/HPs and therefore, the use of the default degradation coefficients from appendix M1 and AHRI 210/240–2023 may not be appropriate for PTAC/HPs.

To investigate cycling losses and evaluate a default degradation coefficient particular to PTAC/HPs, DOE conducted testing with several single-speed PTHPs and one variable-speed PTHP under different cooling conditions at reduced loads. DOE installed each PTHP in a calorimetric test chamber, set the unit thermostat just below 80 °F, and applied a range of fixed cooling loads to the indoor chamber.^{14 15} The calorimeter chamber was configured so that the indoor chamber temperature could vary but averaged out at the standard indoor

condition of 80 °F/67 °F (dry-bulb/wet-bulb), thereby allowing the test unit to maintain the target indoor chamber temperature by adjusting its cooling operation in response to the changing temperature of the indoor chamber. Figure III–1 shows the efficiency losses for each unit at varying cooling loads at an outdoor condition of 82 °F/65 °F, relative to the performance of each unit as tested at the full-load condition at 82 °F/65 °F.

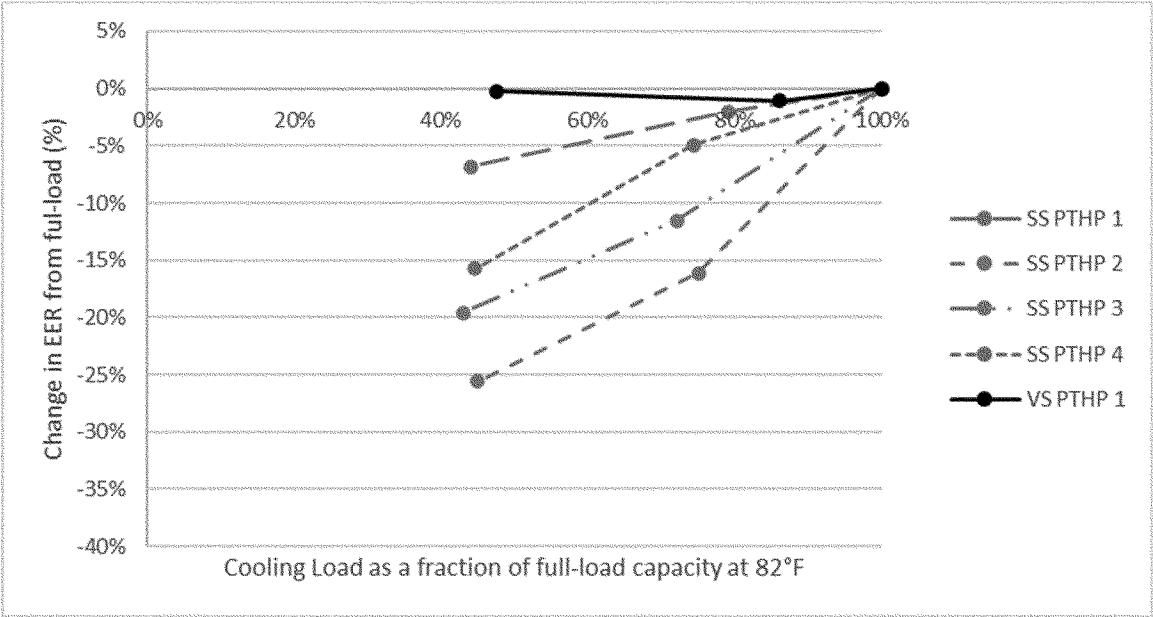


Figure III-1. Change in EER for Reduced Cooling Loads at an outdoor test condition of 82°F

In Figure III–1, the distance of each data point from the x-axis represents the change in efficiency relative to the full-load efficiency for each unit at an outdoor condition of 82 °F/65 °F. The single-speed PTHP efficiency decreases in correlation with a reduction in cooling load, reflecting cycling losses that become relatively larger as the cooling load decreases. In contrast, the efficiency of the variable-speed PTHP remains steady as the cooling load decreases, reflecting the lack of cycling

losses associated with lower compressor speeds. Based on this data, DOE evaluated the cooling degradation coefficient for each single-speed PTHP unit as defined in Appendix M1,¹⁶ and then obtained an average, as shown in Table III.4.

TABLE III.4—COOLING DEGRADATION COEFFICIENTS FOR DIFFERENT SINGLE-SPEED UNITS

Unit identifier	Cooling degradation coefficient (C _D)
PTHP 1	0.12
PTHP 2	0.47
PTHP 3	0.35
PTHP 4	0.26
Average	0.30

¹³ Previous versions of AHRI Standard 210/240, including the version referenced in Appendix M1, AHRI 210/240–2008, also address the degradation coefficient in the same manner.
¹⁴ A cooling load is “applied” by adjusting and fixing the rate of heat added to the indoor test

chamber to a level at or below that of the nominal cooling capacity of the test unit.
¹⁵ This approach aims to represent a consumer installation in which the amount of heat added to a room may be less than the rated cooling capacity of the room AC (e.g., electronics or lighting turned

off, people or pets leaving the room, and external factors such as heat transfer through walls and windows reducing with outdoor temperature).
¹⁶ See section 3.5.3—Cooling-Mode Cyclic-Degradation Coefficient Calculation.

Based on the observed data, the average value of the cooling degradation coefficients is different from the default value (0.2) assigned in appendix M1 and AHRI 210/240–2023 for single-speed systems. DOE did not conduct similar testing for heating mode, but considers that a similar degradation in performance would be observed. Therefore, DOE is proposing that the default cooling and heating degradation coefficient for the PTAC/HP test procedure be 0.30, as calculated based on DOE's testing.

Issue 5: DOE requests comment on its proposed value of the cooling and heating degradation coefficients.

4. SCP Calculation

As mentioned, DOE's proposed cooling metric, SCP, represents a measure of cooling efficiency across the entire season, as opposed to a single test condition. The SCP metric involves the evaluation and summation of the total cooling provided and the power consumed using a binned analysis

similar to the one used for the SEER2 metric for CACs. These quantities are calculated for each individual temperature bin using the appropriate calculation methods depending on the operating characteristics of the type of system *i.e.*, single-speed, two-speed or variable-speed. Bin temperatures and bin hours are discussed in section III.F.5 of this document.

Similar to appendix M1, DOE is also proposing a relationship to represent the cooling building load line for PTAC/HPs, which enables the calculation of the quantities mentioned previously. The PTAC/HP cooling building load line is specific to the use cases for PTAC/HPs, primarily small hotels and midrise apartments, and represents the averaged cooling load at different temperatures evaluated as a national average. For this analysis, DOE considered an equal weighting of the small hotel and the midrise apartment use cases. Similar to the cooling building load line in appendix M1, the building load line for PTAC/HPs

includes a 10 percent assumption for oversizing.

Issue 6: DOE requests comment on its proposed approach to calculate SCP using a similar binned analysis as that of SEER2. DOE also requests comment on the proposed cooling building load line; specifically, whether an equal weighting of the small hotel and midrise apartment use cases is appropriate.

5. Cooling Temperature Bins and Weights

As mentioned, the values of the total cooling provided and the power consumed are evaluated for each individual temperature bin. Table III.5 shows DOE's proposed temperature bins and associated weighting factors to represent the number of cooling hours per year spent at each bin. These temperature bins and fractional hours are based on DOE's analysis of building energy use associated with PTAC/HP use cases, primarily the small hotel and the midrise apartment prototypes and are a national average.

TABLE III.5—DISTRIBUTION OF FRACTIONAL HOURS WITHIN COOLING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range °F	Representative temperature for bin °F	Fraction of total temperature bin hours, η_j/N
1	65–69	67	0.229
2	70–74	72	0.238
3	75–79	77	0.220
4	80–84	82	0.150
5	85–89	87	0.094
6	90–94	92	0.047
7	95–99	97	0.014
8	100–104	102	0.007

Issue 7: DOE requests comment on its proposed temperature bins and associated fractional bin hours for cooling.

G. Proposed Heating Metric and Test Procedure

Similar to the cooling metric discussed in section III.F, DOE has initially determined that a heating metric that incorporates seasonal heating performance (similar to the HSPF2 metric) for CAC/HPs is appropriate for PTAC/HPs. HSPF2 reflects seasonal performance by averaging test results from different load points, depending on system configuration (single-speed, two-capacity, or variable-speed), with varying outdoor conditions and staging levels to represent the product's average efficiency throughout the heating season (see appendix M1).

However as noted earlier, DOE considers that the direct adoption of

HSPF2 as detailed in appendix M1 is not suitable for PTAC/HPs, as there are differences in the use cases for PTAC/HPs and the test burden associated with CAC/HP testing per appendix M1 may be much higher than appropriate to gauge heating performance of PTAC/HPs. DOE is proposing to define a new heating metric for PTAC/HPs called seasonal heating performance (SHP) as follows:

Seasonal Heating Performance (SHP) means the total heat added to the conditioned space during the heating season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal heat pump during the same season, expressed in watt-hours. SHP is determined in accordance with appendix H1 to this subpart.

1. Test Conditions

Similar to the cooling season, PTACs and PTHPs operate under various outdoor temperature conditions and

load points in the heating season. To effectively capture performance at these varying outdoor conditions and associated loads, DOE proposes a test procedure with three heating test conditions at dry-bulb temperatures of 47 °F, 17 °F and 5 °F. These are denoted as the "H₁", "H₃" and "H₄" conditions, respectively. As discussed in section III.E.3 of this document, DOE understands that very few PTHPs are able to operate in heat pump mode at temperatures below freezing, and therefore could not be tested at the "H₃" and "H₄" conditions. Therefore, DOE is proposing that (1) tests at the H₄ condition be optional and (2) for those units that are unable to test at the "H₃" condition, a substitute test, denoted as "H_L" be utilized. The H_L test is conducted at a target dry-bulb temperature equal to the average of the

cut-out¹⁷ and cut-in¹⁸ temperatures for a particular PTHP unit. The corresponding wet-bulb temperature is chosen such that it corresponds to a maximum of 60 percent relative humidity (“RH”) level. DOE considers that a maximum 60 percent RH level would be low enough to prevent significant frost build up, but high enough that it would not be unduly burdensome for test labs to achieve. Details on evaluating the cut-in and cut-out temperatures is presented in section III.G.3 of this document. Tolerances as set in Table 2B of ANSI/ASHRAE 37–2009 apply to these test conditions.

Depending on compressor capacity control attributes, the three test conditions (H₁, H₃ or H_L and H₄) are paired with up to three compressor speeds to denote the different heating capacities that the unit will run at to modulate to the required heating load: full, intermediate, and low. For example, a H_{1,low} test would denote a test conducted at the “H₁” condition (47 °F) and set to a low compressor

speed for variable-speed and two-capacity compressor systems.

The full compressor speed for the heating mode tests would be evaluated by setting the room thermostat at a higher temperature than the required indoor condition *i.e.*, at 75 °F. Manufacturers will need to provide special control override instructions to set the low and intermediate compressor speeds for heating. Similar to the cooling tests, DOE is proposing to require that all heating tests be done with the fan control selections that set the fan speed to high and the indoor fan to cycle with the compressor.

Issue 8: DOE requests comment on its proposed H₁ (47 °F), H₃ (17 °F) or H_L and H₄ (5 °F) test conditions to represent different heating outdoor conditions experienced by PTACs and PTHPs in the field.

Issue 9: DOE requests comment on whether setting the unit thermostat up to 75 °F (*i.e.*, a 5 °F differential to the indoor condition of 70 °F) is sufficient to ensure that the compressor runs at full speed for heating mode.

2. Heating Tests

Similar to the cooling tests in section III.F.2 of this document, DOE is using appendix M1 as the basis for the required heating tests for each system type—single-speed, two-speed, variable-speed, but with necessary modifications to reduce test burden as appropriate. Firstly, as discussed in more detail in section III.G.4 of this document, DOE is not including tests in the temperature range which presents a potential for heavy frost accumulation—for example, at 35 °F. Additionally, while Appendix M1 includes heating tests at lower ambient conditions (17 °F and 5 °F), these conditions can either be substituted *i.e.* using the H_L test instead of testing at 17 °F, or are optional (5 °F).

For units having a single-speed compressor, and consequently one compressor speed, DOE is proposing to require two full-speed tests conducted at the H₁ and H₃ (or H_L) conditions, with the compressor running at its nominal, full speed. Table III.6 sets out the test condition for systems employing single-speed compressors.

TABLE III.6—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1, full} Test—required	70	60 max	47	43	Full.
H _{3, full} Test—required	70	60 max	17	15	Full.
H _{L, full} Test ¹	70	60 max	See note 2 ...	See note 3 ...	Full.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb temperature corresponding to a maximum 60% RH level.

For units having a two-speed compressor or a variable-speed compressor that operate at two speed levels at any given outdoor temperature, DOE is proposing three full-speed tests

conducted at the H₁, H₃ (or H_L) and H₃ conditions, with the H₃ condition test optional. DOE is also proposing to require two low-speed tests conducted at the H₁ and H₃ (or H_L) conditions.

Table III.7 sets out the test condition for systems employing two-speed compressors.

TABLE III.7—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR *

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1,full} Test—required	70	60 max	47	43	Full.
H _{3, full} Test—required	70	60 max	17	15	Full.
H _{L, full} Test ¹	70	60 max	See note 2 ...	See note 3 ...	Full.
H _{4, full} Test—optional	70	60 max	5	4	Full.
H _{1,low} Test—required	70	60 max	47	43	Low.
H _{3, low} Test—required	70	60 max	17 ¹	15 ²	Low.

¹⁷ Cut-out temperature refers to the temperature at which the unit compressor stops *i.e.*, ‘cuts out’ operation to prevent compressor damage.

¹⁸ Cut-in temperature refers to the temperature at which the unit compressor restarts *i.e.*, ‘cuts in’ operation after it has reached a cut-out event.

TABLE III.7—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR*—Continued

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{L, low} Test ¹	70	60 max	See note 2 ...	See note 3 ...	Low.

* This includes units with compressors that achieve no more than two capacity levels using variable speed technology for any one of the test conditions used for the tests.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb that corresponds to a maximum 60% RH level.

For units having variable-speed compressors with three or more speed levels at any given outdoor temperature,

the same tests as set for the two-speed systems will apply—but with an

additional optional intermediate speed test at the H₃ (or H_L) condition.

TABLE III.8—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1, full} Test—required	70	60 max	47	43	Full.
H _{3, full} Test—required	70	60 max	17	15	Full.
H _{L, full} Test ¹	70	60 max	See note 2 ..	See note 3 ..	Full.
H _{4, full} Test—optional	70	60 max	5	4	Full.
H _{1, low} Test—required	70	60 max	47	43	Low.
H _{3, low} Test—required	70	60 max	17	15	Low.
H _{L, low} Test ¹	70	60 max	See note 2 ..	See note 3 ..	Low.
H _{3, int} Test—optional	70	60 max	17	15	Intermediate.
H _{L, int} Test—optional ¹	70	60 max	See note 2 ..	See note 3 ..	Intermediate.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb that corresponds to a maximum 60% RH level.

Issue 10: DOE requests comment on its proposed heating tests for single-speed, two-speed and variable-speed compressor systems.

3. Evaluating Cut-In and Cut-Out Temperatures

As mentioned in section III.G.2 of this document, for those units that are unable to test at the H₃ condition, the H_L test would be required. The H_L test is conducted at a target dry-bulb temperature equal to the average of the cut-in and cut-out temperatures for a particular PTHP unit and the wet-bulb temperature is chosen such that it corresponds to a maximum 60 percent RH level.

To evaluate the cut-out and cut-in temperatures, DOE is proposing to utilize the verification test procedure used in the residential cold-climate heat pump technology challenge¹⁹ (“CCHP Challenge”). DOE’s proposal requires that the unit be set to operate in heating mode with the thermostat set at 75 °F and the conditioned space at the

standard heating-mode test temperature of 70 °F. The outdoor chamber temperature is then reduced to a level that is 3 °F warmer than the expected cut-out temperature²⁰ and paused for 3 minutes to allow conditions to stabilize. The outdoor chamber temperature is reduced in steps or continuously at an average rate of 1 °F every 5 minutes. The average outdoor coil air inlet temperature when the HP operation stops is noted as the cut-out temperature. The outdoor temperature is held constant for 5 minutes where the cut-out occurred to allow for any compressor short cycle timer to expire—then the outdoor chamber temperature is increased by 1 °F every 5 minutes. The temperature ramp is continued until 5 minutes after the HP operation restarts. The average outdoor coil air inlet temperature when the HP operation restarts is noted as the cut-in temperature.

For this evaluation of the cut-out and cut-in temperatures, the outdoor chamber would need to be sufficiently

dried out to prevent frost collection. A remotely controlled circulating fan would also be required to provide the temperature ramp after the cut-out occurs.

Issue 11: DOE requests comment on its proposed method to evaluate cut-out and cut-in temperatures.

4. Defrost Degradation

DOE’s proposed heating test procedure does not include tests in the temperature range which presents a potential for heavy frost accumulation *i.e.*, (“frost zone”). Tests in the frost zone need to account for performance impact of frost accumulation and address unit energy use to operate a defrost cycle. When a PTHP unit operates a defrost cycle, it reverses the heating cycle *i.e.*, it operates in cooling mode, removing heat from the indoor space to supply to the outdoor coils and remove frost. This operation impacts the unit’s efficiency because the effective heating capacity is reduced.

When testing CHPs, appendix M1 requires that one test be conducted at a frost zone temperature. Specifically, appendix M1 calls for testing at an

¹⁹ Available at: www.energy.gov/sites/default/files/2021-10/bto-cchp-tech-challenge-spec-102521.pdf.

²⁰ This information is often indicated in the unit installation manual or product brochure.

outdoor condition of 35 °F DB temperature and 33 °F WB temperature. When operating at this condition, the frost accumulation is sufficiently rapid that performance can be affected noticeably before a full 30-minute test can be completed. In addition, capturing the full impact of frost on performance requires conducting a test that includes a full cycle of both heating with frost accumulation and defrost. As noted, such a test is specified in appendix M1 as the “transient” test, which follows the test method described for the “T” test in ANSI/ASHRAE 37–2009. DOE understands that there is additional test burden associated with running a transient test as compared to a steady-state test and this burden may not be appropriate for PTHPs due to their relatively lower energy use as compared to CHPs. For these reasons, DOE is proposing not to include transient heating tests.

However, DOE understands that PTHPs in the field do operate in the frost zone and consequently, are impacted by frost. To ensure that the heating test procedure is reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle, DOE has provisionally determined that it would be more appropriate to apply a representative defrost degradation to the seasonal heating efficiency metric than to require testing to determine the impact. Specifically, DOE is proposing to adjust the calculated capacity and power for the representative temperature bins associated with frost accumulation, *i.e.*, 17 °F to 40 °F. This will be achieved by applying defrost coefficients to the capacity and power obtained from the H₁ and H₃ (or H_L) tests.

DOE does not currently have defrost data for PTHPs. Thus, DOE is proposing to use an approach for defrost degradation based on the capacity and power adjustments from appendix M1 for CAC/HPs for determination of full-capacity performance of variable-speed CHPs in 35 °F conditions. Specifically, section 3.6.4.c of appendix M1 calls for calculation of full-speed performance at 35 °F by calculating capacity and power using the interpolation from the 17 °F and 47 °F tests, and then adjusting the evaluated heating capacity and power by 10 percent and 1.5 percent,

respectively. Similarly, for PTHPs, DOE is proposing that the heating capacity and power at 35 °F be evaluated from the interpolation of H₁ (47 °F) and H₃ (17 °F), or H_L tests, with the same adjustments applied to capacity (10%) and power (1.5%). The evaluation of heating capacity and power at temperature bins associated with frost accumulation *i.e.*, 17 °F to 40 °F, would then be interpolated using the performance at 35 °F.

Issue 12: DOE requests comment on its proposed defrost adjustment coefficients; specifically, DOE requests feedback on its approach to use appendix M1 to inform the adjustment values for performance at 35 °F. DOE requests data on defrost degradation particular to PTHPs.

5. SHP Calculation

DOE’s proposed heating metric, SHP, represents a measure of heating efficiency across the entire season, as opposed to a single test condition. The SHP metric involves the evaluation and summation of the total heating provided and the power consumed using a binned analysis similar to the one used for the HSPF2 metric. Similar to HSPF2, the SHP calculation determines energy use for each bin based on the heating load for the bin, whether the PTHP would be operating in heat pump mode, using electric resistance heat, or both—and the heat pump capacity, power input, and degradation (if applicable). These quantities are calculated for each individual temperature bin using the appropriate formula for each bin depending on the operating characteristics of the type of system *i.e.*, single-speed, two-speed or variable-speed. For each bin, it is assumed that the total heating provided would exactly match the building load. Bin temperatures and bin hours are discussed in section III.G.6 of this document.

DOE understands that some units would use the H_L test instead of testing at the H₃ condition (17 °F). Additionally, different units would undergo the H_L test at different temperatures, depending on their respective cut-in and cut-out temperatures. This may appear to present a concern of a non-standardized test condition impacting the SHP calculation. However, DOE notes that since the H₃ or H_L tests would be used

in addition to the other test conditions to interpolate performance in the various bins, and electric heat would supplement unit capacity to ensure total heating matches the building load in all bins, the evaluated SHP values would still allow for a meaningful comparison between units. Specifically, for a unit that tests using the H_L test, heat pump performance would be determined down to the cutoff temperature using the performance at the “L” temperature, and all heating below the cut-out temperature would be calculated based on its being provided by electric resistance heating. This results in consistent comparison of PTHPs using the H_L test and other PTHPs using the H₃ test, because for all calculations the total delivered heating would match the building load, and energy input for bins below the cut-out temperature would be calculated assuming provision using electric resistance heat.

DOE is also proposing a relationship to represent the heating building load line for PTAC/HPs. Similar to the cooling building load line, the PTAC/HP heating building load line represents the averaged heating load at different temperatures evaluated as a national average and utilizes an equal weighting of the small hotel and the midrise apartment prototypes.

Issue 13: DOE requests comment on its proposed approach to calculate SHP using a similar binned analysis as that of HSPF2. DOE also requests comment on the proposed heating building load line; specifically, whether an equal weighting of the small hotel and midrise apartment use cases is appropriate.

6. Heating Temperature Bins and Weights

The values of the total heating provided and the power consumed are evaluated for each individual temperature bin. Table III.9 shows DOE’s proposed temperature bins and associated weighting factors to represent the number of hours per year spent at each bin for heating. These temperature bins and fractional hours are based on DOE’s analysis of building energy use associated with PTAC/HP use cases, primarily the small hotel and midrise apartment prototypes, and are a national average.

TABLE III.9—DISTRIBUTION OF FRACTIONAL HOURS WITHIN HEATING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range °F	Representative temperature for bin °F	Fraction of total temperature bin hours, η_j/N
1	39–35	37	0.337
2	34–30	32	0.298
3	29–25	27	0.192
4	24–20	22	0.108
5	19–15	17	0.051
6	14–10	12	0.008
7	9–5	7	0.006

Issue 14: DOE requests comment on its proposed temperature bins and associated fractional bin hours for heating.

H. Dehumidification of Fresh Air

In typical hotel installations, the PTAC or PTHP unit provides cooling and heating to individual rooms or suites within the hotel and the hotel hallways and common areas are usually serviced by a separate air conditioning system. In older building designs, fresh air ventilation is supplied to hotel rooms via the corridors to which the rooms are connected. In these designs, air is exhausted from each hotel room by a bathroom exhaust fan and is replaced by “make-up” air supplied via the corridor and conditioned by the heating, ventilation, and air conditioning (“HVAC”) system that serves the corridor. Make-up air from the corridor enters the hotel rooms by passing through an undercut or grill in the hotel room door.

Building designs that supply make-up air via corridors generally are no longer permissible under the building codes adopted in most U.S. states. Chapter 10, Section 1018.5 of the 2009 International Building Code (“IBC”) states that, with some exceptions, “corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.”²¹ The International Code Council (“ICC”) tracks the adoption of the IBC by state. The ICC reports that, as of July 2022, only seven states had not fully adopted the 2009 version or a more recent version of the IBC.²² These IBC code requirements have precipitated the introduction of PTAC and PTHP models that are designed to draw outdoor air into the unit, dehumidify the outdoor

air, and introduce the dehumidified air into the conditioned space. These models are commonly referred to as “make-up air PTACs” or “make-up air PTHPs.” The following paragraphs discuss issues regarding the market size and energy consumption of make-up air PTACs and PTHPs.

1. Market Size of Make-Up Air PTACs and PTHPs

DOE has identified two different designs of make-up air PTAC and PTHP units on the market. In the first design, the PTAC or PTHP includes a dehumidifier module situated in the outdoor portion of the unit between the unit’s outdoor heat exchanger and the panel that divides the indoor and outdoor portions of the unit. The dehumidifier module contains a compressor and refrigerant loop that are separate from the main refrigerant loop that the PTAC or PTHP uses to provide cooling to the conditioned space. In this design, outdoor air flows through the dehumidifier module, which removes moisture from the air, and into the conditioned space.

In the second identified design, the make-up air PTAC or PTHP does not include a dehumidifier module. Instead, the unit incorporates a variable-speed compressor that can operate at speeds less than full speed. In this design, outdoor air is drawn through the unit and across the unit’s primary evaporator coil; dehumidification is provided by the unit’s main refrigerant loop, and the unit’s variable-speed compressor adjusts its capacity to provide humidity control by matching compressor operation to the required load of sensible²³ or latent²⁴ cooling, such that the unit removes moisture from the air without cooling the air to a temperature well below the setpoint.

In the May 2021 TP RFI, DOE requested comment on how “make-up air PTAC” and a “make-up air PTHP” could be defined, and what characteristics could be used to distinguish make-up air PTACs and PTHPs from other PTACs and PTHPs. 86 FR 28005, 28008. DOE also requested comment on the market size each of the PTAC and PTHP design options it has identified that provide dehumidification of fresh air and whether there were any other design pathways by which a PTAC or PTHP can provide dehumidification of outdoor air and, if alternative designs exist, the market size of these alternative designs. *Id.* DOE also requested data on the relative market share of make-up air PTACs/PTHPs within the three PTAC and PTHP capacity ranges: <7,000 Btu/h; ≥7,000 Btu/h and ≤15,000 Btu/h; and >15,000 Btu/h. 86 FR 28005, 28009.

AHRI stated that the market for PTACs and PTHPs introducing conditioned outside air is very small. (AHRI, No. 14 at p. 4) AHRI commented that based on the survey they conducted to determine the market size for units providing dehumidification of outdoor air, AHRI estimates between 2.9 and 8.6 percent of PTAC/HPs sold include conditioned outdoor air capabilities across the PTAC and PTHP entire market, irrespective of equipment capacity and of these, an even smaller percentage include dehumidification capabilities. *Id.* AHRI stated that their survey did not have enough data to aggregate the proportion among the capacity bins, but it constituted a representative sample of the PTAC and PTHP market and indicated 3.8 percent of PTAC and PTHP shipments include make-up air for all equipment capacities. (AHRI, No. 14 at p. 7) They stated that this small market share is not expected to increase significantly, and it was their belief that DOE’s analysis of this issue relying solely on building codes fails to appropriately account for alternate methods of providing makeup air based on the shipment numbers that are likely dominant in the market. *Id.*

²¹ International Code Council. 2009 International Building Code. Available at: <https://codes.iccsafe.org/content/chapter/4641/>.

²² International Code Council (2022). “International Codes—Adoption by State.” Available at: www.mitek-us.com/wp-content/uploads/2022/08/Master-I-Code-Adoption-Chart.pdf.

²³ “Sensible cooling” refers to cooling that reduces air temperature without removing moisture from the air.

²⁴ “Latent cooling” refers to cooling that only removes moisture from the air.

Regarding definitions for make-up air PTACs and PTHPs, AHRI commented that they disagree that revisions are necessary, but offered information regarding different technologies that introduce makeup air through a PTAC or PTHP. (AHRI, No. 14 at p. 4–5) AHRI noted that the primary technologies for introducing outside air through a PTAC or PTHP are based on a separate module that includes a dehumidification coil—with air either being forced into the room or a vent damper introducing ventilation air into the unit through induction (*i.e.*, standard PTAC with open damper). *Id.* AHRI further noted that forced air introduction and induced air via a vent damper may or may not condition the outside air and may have a simple vent opening in its bulkhead which allows outside air to be drawn in by the negative pressure of the room caused by running the bathroom's exhaust fan. *Id.* AHRI commented that in the case of a dehumidification module, outdoor air is introduced through a module with its own compressor, fan, and dehumidification coils, with air being pushed through a module with a small fan(s) and an automated damper door will open and close to prevent draft while not in use. *Id.* AHRI further commented that most PTACs and their internal make-up air modules are equipped to accept signals from an occupancy detection system and that units with dehumidification modules are sometimes also referred to as “two-stage systems.” *Id.*

NEEA commented that PTAC/HPs with make-up air capabilities are already available from at least four manufacturers and are likely to become more prevalent as the new construction and retrofit markets shift to meet this code requirement. (NEEA, No. 17 at p. 2) NEEA stated that there are also products on the market that are not specifically marketed for their ventilation capabilities, but which do allow for the introduction of outside air when the unit is operating. *Id.* NEAA noted that the distinguishing characteristic of these products is the introduction and conditioning of outside air. *Id.*

In response to AHRI, DOE notes that while the market for make-up air PTACs and PTHPs may be small currently, new IBC code requirements and increased focus on ventilation, may lead to increased demand for these units. While there are other alternate methods of providing make up air, such as through a dedicated outdoor air system, DOE understands that implementing these alternate methods may require significant changes to existing buildings. As such, using make up air

PTAC/HPs may be the preferred option to comply with new building codes. Therefore, DOE has initially determined that a test procedure to account for the dehumidification function of this equipment is appropriate.

2. Dehumidification Energy Use

As previously mentioned, neither the current DOE test procedure nor the industry test procedures, AHRI Standard 310/380–2014 or AHRI Standard 310/380–2017, account for any additional energy associated with the dehumidification of make-up air traversing the unit. When a unit is operating in cooling mode, the dehumidification function may add heat to the room, thus increasing the cooling load on the unit. In addition, introducing make-up air to the room while the unit is operating in heating mode could increase a unit's energy consumption if the unit uses electric resistance heating to heat the make-up air. The amount of energy consumed by a dehumidification function depends on a variety of factors, including the airflow rate, the amount of time the dehumidification function is engaged, how the dehumidification function is controlled, and the ambient air temperature, among others.

In the May 2021 TP RFI, DOE sought comment on the impacts on the energy consumption of PTACs and PTHPs that dehumidify incoming outdoor air for units that include a dehumidification module, a variable-speed compressor, or any other design that dehumidifies outdoor air and introduces it to the conditioned space, in both cooling and heating mode. 86 FR 28005, 28009. DOE also requested comment on how to quantify the energy consumption associated with the dehumidification function of make-up air PTACs/PTHPs for an average use cycle and what indoor and outdoor temperature and humidity conditions might be appropriate for this characterization. *Id.*

NEEA commented that the introduction of outside air will generally increase energy use and the conditioning of this air should be captured by the test procedure. (NEEA, No. 17 at p. 2) NEEA stated that it is important to include this energy use because designers may be comparing makeup air PTACs with other ventilation options and that if this energy use is not captured by the test procedure, it would lead to an unfair comparison between PTAC or PTHPs and other ventilation options by not fully reflecting the energy used by these units. *Id.* The Joint Advocates also encouraged DOE to incorporate the additional energy use associated with

make-up air PTACs and PTHPs so that the test procedure is representative for these units (Joint Advocates, No. 16 at p. 1)

AHRI stated that there is no standard test procedure for measuring the energy component of a PTAC associated with the introduction and dehumidification of outdoor air. (AHRI, No. 14 at p. 5) They identified many factors to consider including, ambient environmental conditions, the quantity and the relative humidity of the outdoor air being supplied to the room, and the set of conditions that must be satisfied first before a dehumidification process is initiated. *Id.* AHRI stated that it was unreasonable to request stakeholders to essentially develop a test procedure through the notice and comment process for any product, much less an “ASHRAE product”, and that these test procedures should be developed by a technical committee through consensus-process with relevant experts, including manufacturers, testing laboratory staff, and other experts present to discuss issues. *Id.*

DOE agrees with NEAA and Joint Advocates that the introduction of outside air will generally increase energy use and the conditioning of this air should be considered as part of the test procedure. However, DOE also recognizes the challenges identified by AHRI regarding the evaluation of the make-up air operation via a test procedure. DOE notes that it participates in the AHRI Standard 310/380 committee and has worked with stakeholders to develop industry test procedures for PTAC/HPs in the past and is willing to do so in the future, including for operation in dehumidification mode.

The next section presents DOE's proposed test procedure for measuring the dehumidification energy use of make-up air PTAC/HPs.

3. Proposed Test Procedure

To ensure that the test procedures prescribed by DOE are reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle for PTAC or PTHP employing the make-up air function, DOE is proposing a test procedure for manufacturers to make representations of dehumidification energy use for make-up PTACs and PTHPs.

a. Definitions

Comments received in response to the May 2021 RFI suggest that the key feature of a make-up air PTAC or PTHP is the ability to introduce and condition outside air. While PTACs and PTHPs

which do not have dehumidification capabilities also have provisions to bring in outside air through the unit bulkhead;²⁵ they do not condition the outdoor air before the outdoor air enters the conditioned space. Therefore, DOE considers that the conditioning of outside air is the defining aspect to distinguish make-up air PTAC/HPs from non make-up air PTAC/HPs. DOE is proposing to define make-up air PTACs and make-up PTHPs as follows:

Make-up Air PTAC means a PTAC for which a portion of the total airflow is drawn in from outside the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after mixing with the air drawn into the unit from the conditioned space, but before being discharged from the unit.

Make-up Air PTHP means a PTHP for which a portion of the total airflow is drawn in from outside the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after mixing with the air drawn into the unit from inside the conditioned space, but before being discharged from the unit.

As discussed in section III.H.1 of this document, DOE has identified two designs of make-up air units—the first design employs a separate dehumidifier module, *i.e.*, an “add-on dehumidifier” to provide dehumidification, while the second design relies on the main refrigeration circuit to provide dehumidification, *i.e.*, it utilizes an “integrated dehumidifier”. DOE is proposing to define and include these terms in appendix H1 as follows:

Add-on Dehumidifier means a dehumidification system of a make-up air PTAC or PTHP that has its own complete dehumidification system and does not use the main PTAC/HP system indoor coil for any portion of the outdoor air dehumidification.

Integrated Dehumidifier means a dehumidification system of a make-up air PTAC or PTHP for which some of the dehumidification of the outdoor air is provided by the main PTAC/HP system indoor coil.

Issue 15: DOE requests comment on its proposed definitions for make-up air PTAC, make-up air PTHP, add-on dehumidifier and integrated dehumidifier.

b. Make-Up Air Setup

To help DOE evaluate a test procedure for make-up air operation, DOE requested information and data in the

May 2021 TP RFI regarding various aspects of the make-up air function, including: the typical range of make-up air volume flowing through a make-up air PTAC/PTHP and whether this airflow varies while the dehumidification function is engaged; how make-up air flowing through the unit is heated while the unit is operating in heating mode; how make-up air dehumidification is controlled for units with a dehumidifier module and units without a dehumidifier module, specifically, what conditions trigger the unit to engage make-up air dehumidification and how do make-up air PTACs/PTHPs interact with variables like occupancy or exhaust fan controls; the typical amount of time that make-up air PTAC/HPs engage the dehumidification function; how the cooling and dehumidification modes are coordinated for make-up air PTACs/PTHPs, whether dehumidification and cooling are typically performed simultaneously or separately, and the impact that any such coordination has on energy consumption; and the range of dehumidification capacities (in pints of water/day) for make-up air PTACs/PTHPs in the market and the test conditions used to rate dehumidification capacity. 85 FR 28005, 28009. DOE also requested comment on what instructions the test procedures should provide regarding how to prepare and setup a PTAC or PTHP make-up air unit for testing under the current DOE test procedure, which does not test the make-up air function of the unit. *Id.*

AHRI stated that dehumidification modules typically introduce 25 to 50 cubic feet per min (“CFM”) of outdoor air, but airflow rates may vary depending on the design of the make-up air feature. (AHRI, No. 14 at p. 6) Regarding the time that the dehumidification mode is engaged, ARHI commented that there are different control strategies to control make-up air introduction and could be based on outdoor air conditions, room occupation, or other means and without some level of research, it is not possible to empirically determine what is “typical”. *Id.* AHRI stated that they were unable to comment on dehumidification capacities (in pints of water/day) as there is currently no consensus method to measure dehumidification capacities for make-up air PTACs/PTHPs in the market. *Id.* DOE did not receive any further

comments on other aspects of the make-up air function.

DOE’s review of product literature suggests typical publicized dehumidification rates of 4–5 pints per day, although as AHRI noted there is currently no consensus method to measure dehumidification capacities for make-up air PTACs/PTHPs in the market. DOE also found that some make-up air PTACs or PTHPs use control schemes based on outdoor air temperature and relative humidity to decide when to engage the dehumidification function.

DOE notes that the 2022 edition of the ASHRAE ventilation standard, ASHRAE 62.1, “Ventilation and Acceptable Indoor Quality” (“ASHRAE 62.1–2022”) prescribes minimum ventilation rates in Table 6–1 of the standard. The minimum ventilation rates include an occupancy-based outdoor air rate based on expected number of people in the space and/or an outdoor air rate based on floor area. For hotels, the occupancy-based outdoor air rate is 5 CFM per person and the floorspace based outdoor air rate is 0.06 CFM per square foot. Based on a typical hotel room occupancy of 2 persons and a floor area of 300 square feet, the total required ventilation airflow would amount to 28 CFM. DOE conducted a review of product literature marketing PTACs and PTHPs with make-up air capabilities and concluded that all such units are capable of introducing at least 30 CFM of air, with airflow ranges from 30 to 75 CFM. Therefore, DOE has tentatively concluded that 30 CFM is the appropriate representative airflow to use in the development of the test procedure.

DOE understands that a key challenge associated with the testing of make-up air PTAC/HPs is the introduction and measurement of the make-up air. Some make-up PTAC/HPs have fans to provide the make-up air, while others rely on a negative pressure differential within the room. To standardize the rate and means of make-up air intake, DOE’s proposed test procedure requires the use of a make-up air inlet duct assembly to draw air into the make-up air intake for the PTAC/HP unit. The inlet duct assembly would include a nozzle airflow measuring apparatus and an inlet plenum, with interconnecting duct sections. The air flow measuring apparatus would be used to measure and feed air into the plenum. Figure III–2 details the setup of the inlet duct

²⁵ DOE’s research indicates that this bulkhead opening is often sealed during installation to prevent moisture ingress.

assembly and the nozzle airflow measuring apparatus.

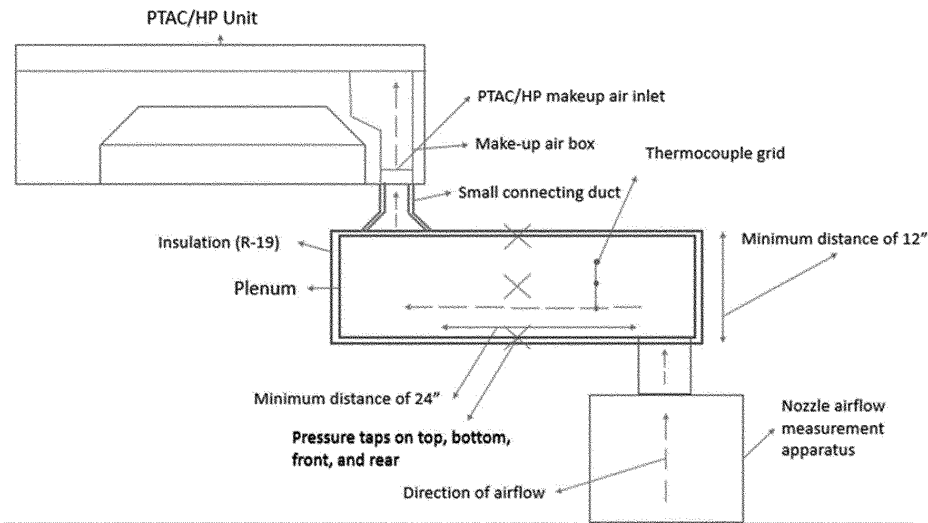


Figure III-2: Inlet Duct Assembly Setup for Make-up Air Dehumidification Test

DOE’s proposal requires that the inlet plenum have interior dimensions of at least 12 inches high and at least 12 inches wide in the plane perpendicular to the air flow, and an interior dimension of at least 24 inches between the edges of the inlet and outlet ducts that are closest to each other. The inlet plenum would be insulated to prevent variance in the air temperature in the plenum as compared to the make-up air inlet. Nozzle airflow measuring apparatus as described in section 6.2 of ASHRAE 37–2009 in addition to an adjustable fan, would be used to adjust the inlet plenum pressure. The nozzle airflow measuring apparatus would take in outdoor room air and move it into the unit under test in a blow-through arrangement. Additionally, a transfer fan would transfer makeup air from the indoor room back to the outdoor room.

The transfer fan would be adjustable to allow setting of the needed pressure differential when the target makeup air is passing through the test unit. Setting up of the 30 CFM make-up air flow rate would require adjustments of both the inlet plenum pressure and the transfer fan.

To measure the pressure differential between the outdoor room and the inlet air plenum, static pressure taps shall be placed at four locations around the inlet air plenum as shown in Figure III–2, and consistent with section 6.5 of ASHRAE 37–2009. The pressure taps would be manifolded together as indicated in section 6.5.3 of ASHRAE 37–2009. Temperature measurements of the outdoor inlet dry bulb and wet bulb temperatures would be made at the inlet of the nozzle airflow measurement apparatus, consistent with ASHRAE 16–2016.

Issue 16: DOE requests comment on the required make-up airflow rate of 30 CFM and the proposed test setup for the make-up inlet assembly.

c. Test Conditions and Measurements

DOE did not receive any comments regarding the test conditions for a dehumidification test. In the absence of any information, DOE considers that the standard test conditions used for DOE’s current test procedure—80 °F/67 °F (dry-bulb/wet-bulb) in the conditioned space and 95 °F/6 °F (dry-bulb/dew point) for the outdoor entering air, are appropriate. These conditions ensure that the outdoor air would have a higher humidity ratio than the indoor air and would present the need for dehumidification. Table III.10 and Table III.11 set out the test conditions and tolerances.

TABLE III.10—DEHUMIDIFICATION TEST CONDITIONS

Air entering makeup air inlet temperatures (°F)		Air entering indoor side of unit temperature (°F)		Make-up air flow (scfm)
Dry bulb	Dew Point	Dry bulb	Wet bulb	
95	67	80	67	30

TABLE III.11—DEHUMIDIFICATION TEST TOLERANCES

Reading	Variation of arithmetic average from specified conditions (test condition tolerance)	Maximum observed range of readings (test operating tolerance)
Air entering makeup air inlet dry bulb (°F)	0.3	1.2
Dew point (°)	0.5	1.5
Add-on dehumidification system test:		
Air entering indoor side dry bulb (°)	3	5
Wet bulb (°)	3	5
Integrated dehumidification system test:		
Air entering indoor side dry bulb (°)	0.3	1.5
Wet bulb (°)	0.3	1.0
Makeup airflow (scfm)	1	.....
Makeup airflow Nozzle pressure drop (%) .....	.....	5

The evaluation of dehumidification energy use requires the measurement of condensate removed by the make-up air unit and the power consumed during the operation *i.e.*, the liters of water removed per watt-hours (“Wh”). Moisture removal is part of the associated latent capacity of a PTAC/HP unit, and units which do not have make-up air capabilities also collect condensate. For most PTAC/HPs, the collected condensate is ‘slung’ back onto the condenser coils to provide an evaporative benefit and improve efficiency. Therefore, to collect and measure condensate that is strictly associated with the dehumidification portion of the make-up air unit, this slinging operation needs to be either bypassed or taken into account.

The two separate designs of make-up air PTAC/HPs discussed in section III.H.1 of this document necessitate different methodologies to measure dehumidification energy use. For systems that use an add-on dehumidifier, DOE’s proposed test procedure requires isolating the add-on dehumidifier of the unit under test from the main refrigeration circuit, thereby also avoiding the slinging operation. This can be achieved by setting the unit thermostat to a high temperature setting, and if necessary, moving the sensor such that it is in sufficiently cool air to prevent main system start. A preliminary power measurement would be made with the PTAC/HP in fan-only mode or with the thermostat and fan controls set such that the indoor fan is energized, but the compressor and outdoor fan are not—this measurement would establish the background power to be subtracted from the test measurement including the dehumidifier operating. The unit is then operated at the test conditions mentioned previously and the

thermostatic drain plug is removed to allow the collection and measurement of condensate—with measurements at intervals of no more than 10 minutes. Equilibrium test conditions would be maintained within tolerances shown in Table III.11 for not less than one hour before recording data for the test. The dehumidification test would then be conducted over a 1-hour period, with no parameter exceeding the allowable tolerances specified in Table III.11 of this document. Measurements of test conditions, input power and energy, and airflow are taken at least every 60 seconds and logged. The condensate is collected in a bucket placed on a scale with a mass measurement resolution of 1 gram. The collection bucket is covered to limit re-evaporation. This test will yield the value of collected condensate, $w_{d,add}$.

For systems that use an integrated dehumidifier, the measurement of dehumidification efficiency would be based on a comparison of condensate collected and power consumed in a preliminary ‘non-makeup air’ test (*i.e.*, test without make-up air intake) and a ‘make-up air’ test (*i.e.*, test without make-up air intake).

For the ‘non make-up air’ test—the make-up airflow passage would be blocked, and to prevent use of the condensate for condenser cooling, the condensate will need to be drained before it reaches a level high enough for the slinger to spray it onto the condenser coil. Since this will affect performance by preventing the enhancement of condenser cooling, this test will be done at reduced outdoor air temperature conditions to compensate for the slinger de-activation. This would require measuring the average coil temperature during the A_{full} cooling test, using the temperature measuring setup in Figure III–2 of this document. For the

‘non-make up air’ test, the outdoor room dry bulb temperature will be reduced to a level for which the outdoor coil return bend temperature is within 0.5 °F of the temperature measured during the A_{full} test. The sensible and latent capacity would be measured as described in ASHRAE 16–2016, with condensate measurements at intervals of 10 minutes. When conditions have stabilized after a duration of 60 minutes, the performance test is conducted for a 60 minute test period. The test is considered valid when the energy balance requirements described in section 7 of ASHRAE 16–2016 have been met and the latent capacity calculated based on the condensate measurement is within 6 percent of the latent capacity measurement based on the psychrometric or calorimetric test method, whichever is used. This test will yield the value of collected condensate, $w_{d,pre}$.

For the ‘make-up air’ test—the make-up airflow passage would be unblocked and will utilize the same reduced outdoor air temperature conditions, but to ensure a consistent comparison with other make-up systems (make-up air systems with add-on dehumidifiers), the incoming make-up air would need to be re-heated back to 95 °F. Part (or all) of this re-heating may be provided by the heat generated from the push-through code tester fan as depicted in Figure III–2 of this document. Supplemental re-heating may be required to provide the remaining re-heat. Similar to the ‘non-make-up air test’, a 60 minute stability period will be followed by a test duration of 60 minutes. The test is considered valid when the energy balance requirements are met. This test will yield the value of collected condensate, $w_{d,int}$.

The difference between the collected condensate for both tests: $w_{d,int}$ and

$w_{d,pre}$, and the difference between the power consumed in the two tests, will be evaluated to provide a measure of dehumidification efficiency for make-up air units with an integrated dehumidifier.

Issue 17: DOE requests comment on the proposed test conditions for the make-up air dehumidification test; specifically, whether the indoor air entering conditions, outdoor air entering conditions are appropriate.

Issue 18: DOE requests comment on its proposed test measurements and instructions for both make-up air system designs.

d. Metric

DOE is proposing that the dehumidification energy use for both designs of make-up air systems be measured using a separate metric, dehumidification efficiency (DE). DE is measured in liters per kWh, and is evaluated as a ratio of the collected condensate to energy consumed in dehumidification, as measured in section III.H.3.c of this document. DOE is proposing to define dehumidification efficiency of PTACs and PTHPs as follows:

Dehumidification Efficiency, or *DE*, means the quantity of water removed from the air divided by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

DOE may as an alternative choose to integrate the dehumidification energy use of a make-up air unit with the cooling performance, by incorporating the liters per Wh into the SCP metric. DOE could implement such an integration by incorporating the capacity and power input impacts measured for the dehumidification test into the SCP. For each bin involved in the SCP calculation for which national-average humidity associated with the bin's dry bulb temperature represents more moisture than typical indoor humidity conditions, *e.g.*, associated with 75 °F dry-bulb temperature and 50 percent relative humidity conditions, the system would be assumed to be providing dehumidification at the capacity measured in the dehumidification test, with power input also as measured in the test. The additional thermal load associated with the dehumidification system's power input, less the latent capacity equivalent of the dehumidification, would be added to the cooling load for the bin to determine additional PTAC/HP primary cooling system energy use for the bin. Also, the measured dehumidification system's power input would be added to the PTAC/HP power input for the bin. The latent capacity associated with the

measured dehumidification would also be added to the delivered cooling for the bin. Both delivered cooling and power input of these contributions would multiply by the bin hours, thus providing the integrated cooling and energy for the bin—by summing bin contributions for the cooling season, the calculations would in this way integrate the contributions to cooling and energy of the dehumidification system.

Issue 19: DOE requests comment on its proposed metric to evaluate dehumidification energy use.

Issue 20: DOE requests feedback on whether a separate metric is appropriate for evaluating dehumidification energy use, or whether dehumidification energy use should be integrated into the cooling metric. If integrated into the cooling metric, DOE requests comment on the approach outlined above to represent the dehumidification energy use.

I. Fan-Only Mode

The current DOE test procedures for PTACs and PTHPs do not address energy consumption during “fan-only” mode. In the May 2021 TP RFI, DOE described “fan-only” mode as a mode in which the fan is operating and providing ventilation or air circulation without active cooling or heating. 86 FR 28005, 28011.

In the May 2021 TP RFI DOE requested data and information related to the power consumption of PTAC and PTHP units during “fan-only” mode, specifically, whether the indoor and outdoor fans are powered by the same motor; whether the default fan control scheme dictates that the indoor fan cycles with the compressor or stays on; and whether the fan operates at a lower power if the fan remains on when the compressor cycles off. *Id.* DOE also requested data and information on the annual number of hours PTAC and PTHP units operate in “fan-only” mode. *Id.*

AHRI explained that power can be supplied to the indoor and outdoor fans using two different motors and both fans can be variable speed and operate at different set points given mode of operation and model type. (AHRI, No. 14 at p. 11) Alternately, AHRI noted that power can be supplied using a single motor operating both indoor and outdoor fans. *Id.* AHRI further explained that the indoor “fan-only” mode has two user-selectable speeds: high and low, and that the default settings for the indoor fan are to run continuously for cooling and to cycle for heating. *Id.* AHRI stated that there is no change in power consumption of the fan itself when running continuously compared

to cycling with the compressor and there is no difference in fan speed during cooling, heating or ventilation operations. *Id.* AHRI did not provide any data regarding “fan-only” mode operating hours, but noted that it would be highly individualized to the individual staying in the hotel room. *Id.* They stated that the compressor is the dominant energy using component of a PTAC or PTHP and that many PTACs and PTHPs use brushless DC motors, which have comparatively low energy consumption. *Id.*

The Joint Advocates and NEEA encouraged DOE to capture energy use in fan-only mode. (Joint Advocates, No. 16 at p. 2; NEEA, No. 17 at p. 3) NEEA stated that product literature indicated that at least some PTACs and PTHPs utilize continuous fan operation in their primary mode *i.e.*, these units operate the fan any time the unit is on, regardless of whether the compressor is running. (NEEA, No. 17 at p. 3) NEEA stated that the number of fan hours spent in this mode have the potential to be significant, and this energy use should be captured by the test procedure. NEEA recommended that DOE conduct further research to determine the number of hours spent in fan-only mode and to include this energy use in the test procedure. *Id.*

To investigate the energy used during “fan-only” mode, DOE reviewed literature for several PTAC/HPs and performed investigative testing on 2 single-speed PTHPs, running full-load and part-load cooling tests to evaluate the differences between running a unit with the indoor fan running continuously (“constant fan” test) and running the indoor fan cycling with the compressor (“cycling fan” test). The two tests were run at the same conditions and loads to provide a comparison. DOE's literature review agrees with AHRI's provided information that most PTAC/HPs have two user-selectable speeds: high and low, and that the default settings for the indoor fan is usually to run continuously for cooling and to cycle for heating. However, while DOE agrees with AHRI that there is no change in power consumption of the fan itself when running continuously compared to cycling with the compressor, DOE's investigative testing, which incorporated part-load cyclic tests, was able to conclude that the average total power consumed over several cycles was higher for the indoor fan when running in “constant fan” mode, as compared to when it was running on “cycling fan” mode. Consequently, the cooling efficiency (EER) observed for the constant fan tests were lower.

These test results suggest that PTAC/HPs may consume more energy when they are operating with the fan in continuous operation. However, DOE does not have enough information regarding the prevalence of use when only the fan is in operation, *i.e.*, number of annual hours spent in fan-only mode, as this is highly dependent on user preference and other factors. Further, DOE did not receive any comments that provided this information. Therefore, DOE is not proposing to measure energy use during fan-only mode. However, the evaluation of cooling and heating default degradation coefficients in section III.F.3 of this document are evaluated based on the cyclic testing data associated with the constant fan mode, as this presents the worst case for cycling losses.

J. Use of Psychrometric Testing

The current DOE test procedure for PTAC/HPs allow for cooling mode testing to be performed either in a calorimeter room per ASHRAE 16–1983 or by employing the indoor air enthalpy method per ANSI/ASHRAE 37–2009. The heating mode testing must be performed using ASHRAE 58–1986, which utilizes a psychrometric measurement.

In response to the May 2021 RFI, the CA IOUs recommended that DOE require testing in a calorimeter room for both cooling and heating mode. (CA IOUs, No. 15 at p. 3–4) The CA IOUs cited DOE's conclusion in the RAC rulemaking that testing done using the ANSI/ASHRAE 37 procedure for RACs did not provide repeatable data when compared to the calorimeter method and that, unlike the calorimeter, the air-enthalpy method did not accurately account for heat transfer within and through the unit chassis. *Id.* (See 86 FR 16446, 16461) The CA IOUs recommended that DOE either perform similar testing for PTAC/HPs or use the results from the RAC testing to only allow testing under ANSI/ASHRAE 16. *Id.*

DOE has in the past considered requiring calorimetric testing for all PTAC/HPs. In the test procedure NOPR published on March 13, 2014 (“March 2014 NOPR”), DOE proposed requiring that tests be conducted using the calorimetric method of ASHRAE 16, based on testing conducted using both methods which showed better performance using ASHRAE 16 than when using ASHRAE 37. 79 FR 14186, 14190–14191. However, DOE did not finalize such a requirement in the June 2015 TP final rule. DOE based this decision on feedback from commenters suggested that there would be additional

burden if DOE were to require all testing to be performed calorimetrically, and data received from a commenter based on a more extensive series of tests that showed that the calorimetric and psychrometric test methods were comparable, contrary to DOE's test results. 80 FR 37136, 37141. Consequently, DOE did not eliminate the optional use of ANSI/ASHRAE 37–2009 to determine cooling capacity. *Id.* DOE notes that ASHRAE 16–2016 now allows for both calorimetric and psychrometric testing, indicating consensus of participants in the development of the updated test standard that the calorimeter and the psychrometric chamber provide comparable results. DOE more recently performed testing of a PTHP unit in cooling mode in both a calorimeter using methods in ASHRAE 16–1983, and in a psychrometric chamber using ASHRAE 37–2009, and found the results to be comparable. Regarding DOE's determination in the RAC rulemaking, it is not clear that the potential test inconsistency in that case would necessarily be an issue for PTAC/HPs, as it was specific to RACs. DOE notes that there are geometric differences and size differences between RACs and PTACs which can make recirculation of air from air discharge outlets to air inlets more likely for RACs than PTACs. This recirculation can occur on both the room side and the outdoor side. Such recirculation, which generally reduces a unit's performance, is blocked on the indoor side by use of ASHRAE 37–2009, due to ducting of the discharge air, but not when using the calorimetric method. Thus, DOE provisionally concludes that this issue would have a larger impact in the psychrometric testing of RACs as compared PTAC/HPs.

DOE is proposing to incorporate by reference ASHRAE 16–2016, which allows calorimetric and psychrometric testing for both heating and cooling mode tests. However, DOE welcomes additional data regarding the consistency of psychrometric and calorimetric tests for PTAC/HPs.

Issue 21: DOE requests data regarding the agreement of test results when testing PTAC/HPs using psychrometric test methods as opposed to calorimetric test methods.

K. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for PTACs and PTHPs by incorporating seasonal cooling and heating performance and establishing new cooling and heating metrics, SCP and SHP. DOE also proposes to include provisions to

measure dehumidification energy use of make-up air PTAC/HPs.

DOE has tentatively determined that the proposed amendments in this NOPR would improve the representativeness, accuracy, and reproducibility of the test results and would not be unduly burdensome for manufacturers to conduct. Because the current DOE test procedure for PTAC/HPs would be relocated to appendix H without change, the proposed test procedure in appendix H for measuring EER and COP would result in no change in testing practices and thus result in no new burden or costs.

Should DOE adopt standards in a future energy conservation standards rulemaking in terms of the new metrics (SCP and SHP), the proposed test procedure in appendix H1 would be required. DOE has tentatively concluded that the proposed test procedure in appendix H1 for measuring SCP and SHP, would increase third-party lab testing costs per unit relative to the current DOE test procedure. DOE estimates the expected cost increase for physical testing to range from \$5,100 to \$15,300 per unit for the complete test, depending on the system configuration of the PTAC/HP unit (single-speed, two-speed or variable-speed). In addition to the increased costs due to required testing to determine SCP and SHP, make-up air PTAC/HPs may incur an additional cost of \$3,000 if manufacturers chose to make dehumidification representations.

However, in accordance with 10 CFR 429.70, PTAC/HP manufacturers may elect to use AEDMs to rate models, which significantly reduces costs to industry. DOE estimates the per-manufacturer cost to develop and validate an AEDM for PTAC/HPs to be \$25,200. DOE estimates a cost of approximately \$50²⁶ per basic model for determining energy efficiency using the validated AEDM. Both of these estimates reflect the costs for AEDM development based on the proposed appendix H1 procedure. Because DOE is not proposing any changes to appendix H that would affect current testing practices, there are no incremental costs

²⁶ DOE estimated initial costs to validate an AEDM assuming 80 hours of general time to develop an AEDM based on existing simulation tools and 16 hours to validate two basic models within that AEDM at the cost of an engineering technician wage of \$50 per hour plus the cost of third-party physical testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM, assuming 1 hour per basic model at the cost of an engineering technician wage of \$50 per hour.

expected due to the proposed amendments to appendix H.

Issue 22: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's estimates of the costs associated with testing using appendix H1 of this document.

L. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) Representations related to energy consumption of PTACs and PTHPs must be made in accordance with the appropriate appendix that applies (*i.e.*, appendix H or appendix H1) when determining compliance with the relevant standard. DOE would not require that PTAC/HPs be tested according to the test procedure in the proposed appendix H1 until the compliance date of any future amended energy conservation standard that relies on the SCP and SHP metrics, should DOE adopt such standards. However, beginning 360 days after publication of a test procedure final rule finalizing appendix H1, any representations of dehumidification capacity and efficiency of make-up air PTAC/HPs must be made using the dehumidification test procedures in appendix H1.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that

maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: www.energy.gov/gc/office-general-counsel.

1. Description of Why Action Is Being Considered

DOE is proposing to amend the existing DOE test procedures for PTACs and PTHPs in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(i)).

2. Objective of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA, added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. (42 U.S.C. 6311–6317) This equipment includes PTACs and PTHPs, the subjects of this document. (42 U.S.C. 6311(1)(J))

Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including PTACs and PTHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6146314(a)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of PTACs and PTHPs, the Small Business Administration (“SBA”) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The equipment covered by this rule are classified under North American Industry Classification System (“NAICS”) code 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and

Industrial Refrigeration Equipment Manufacturing.” In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. DOE identified twelve original equipment manufacturers (“OEMs”) of equipment covered by this rulemaking. DOE screened out companies that do not meet the definition of a “small business” or are foreign-owned and operated. Of the twelve OEMs, DOE identified one small, domestic OEM for consideration. DOE used subscription-based business information tools to determine headcount and revenue of the small business.

DOE relied on the CCMS Compliance Certification Database²⁷ to create a list of companies that manufacture equipment covered by this proposal.

4. Description and Estimate of Compliance Requirements

In the test procedure notice, DOE proposes to relocate the current DOE test procedure for PTACs and PTHPs to appendix H without change. This reorganization to the test procedure for measuring EER and COP would result in no change in testing practices and no cost to manufacturers.

Additionally, DOE is proposing to establish a new appendix H1 to subpart F of part 431. Appendix H1 would establish a new seasonal cooling performance metric (SCP) and a new seasonal heating performance metric (SHP) and the test procedure requirements for SCP and SHP. DOE also proposes to include provisions to measure dehumidification energy use of make-up air PTAC and PTHPs. Use of the proposed appendix H1 is not required and would not be required until the compliance date of amended energy conservation standards based on SCP and SHP, should DOE adopt such standards.

Should DOE adopt standards in a future energy conservation standards rulemaking in terms of the new metrics (SCP and SHP), the proposed test procedure in appendix H1 would be required. DOE has tentatively concluded that the proposed test procedure in appendix H1 for measuring SCP and SHP, would increase third-party lab testing costs per unit relative to the current DOE test procedure. DOE estimates the expected cost increase for physical testing to range from \$5,100 to \$15,300, depending on the system configuration of the PTAC/HP unit

(single-speed, two-speed or variable-speed). In addition to the increased costs due to required testing to determine SCP and SHP, make-up air PTAC/HPs may incur an additional cost of \$3,000 if manufacturers chose to make representations for dehumidification in terms of the DE metric. However, in accordance with 10 CFR 429.70, PTAC/HP manufacturers may elect to use AEDMs to rate models, which significantly reduces costs to industry. DOE estimates the per-manufacturer cost to develop and validate an AEDM for PTAC/HPs to be \$25,200. DOE estimates a cost of approximately \$50 per basic model for determining energy efficiency using the validated AEDM.

DOE estimates that developing an AEDM and re-rating all 219 basic models to new metrics would cost the identified small manufacturer approximately \$40,000. DOE has tentatively determined that this amount would not constitute a significant economic impact on this small manufacturer. However, because these costs would only be incurred if DOE were to adopt a future energy conservation based on SCP and SHP metrics, the small manufacturer would incur no additional compliance costs as a direct result of this test procedure rulemaking. On this basis, DOE tentatively concludes that the proposed rule would not have a significant impact on a substantial number of small entities.

DOE has tentatively determined that the proposed amendments in this NOPR would improve the representativeness, accuracy, and reproducibility of the test results and would not be unduly burdensome for manufacturers to conduct.

Issue 23: DOE requests comment on the number of small OEMs identified. DOE also seeks comment the estimated costs the small manufacturer may incur.

5. Duplication Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

DOE proposes to reduce burden on manufacturers, including small businesses, by allowing AEDMs in lieu of physically testing all basic models. The use of an AEDM is less costly than physical testing of PTAC and PTHP models. Without AEDMs, DOE estimates the cost to physically test all PTAC and PTHP basic models for the identified

small manufacturer to be approximately \$2 million.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed \$8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE’s energy efficiency standards may apply to DOE’s Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of PTAC/HPs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including PTAC/HPs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not proposing to amend the certification or reporting requirements for PTAC/HPs in this NOPR. Instead, DOE may consider proposals to amend the certification requirements and reporting for PTAC/HPs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

²⁷ U.S. Department of Energy Compliance Certification Database, available at: www.regulations.doe.gov/certification-data/products.html.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for PTAC/HPs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to

the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process

to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at www.energy.gov/gc/office-general-counsel. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE

published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20QA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of PTAC/HPs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; “FEAA”) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section

32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (“FTC”) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for PTAC/HPs would incorporate testing methods contained in certain sections of the following commercial standards: AHRI 310/380–2017 and ASHRAE 16–2016. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the following test standards:

AHRI 310/380–2017 is an industry-accepted test standard for measuring the performance of PTAC/HPs, and is an update of AHRI 310/380–2014. AHRI 310/380–2017 is available from AHRI at www.ahrinet.org/search-standards.aspx.

ANSI/ASHRAE 16–2016 is an industry-accepted test procedure that provides a calorimetric method for rating the cooling and heating capacity of room air conditioners and PTAC/HPs, and is an update of ANSI/ASHRAE 16–1983. ANSI/ASHRAE 16–2016 is available on ANSI’s website at webstore.ansi.org/standards/ashrae/ansiashraestandard162016.

DOE proposes to maintain and update the incorporation by reference previously approved for the following test standards:

AHRI 310/380–2014 is an industry-accepted test standard for measuring the performance of PTAC/HPs. AHRI 310/380–2014 is available from AHRI at www.ahrinet.org/search-standards.aspx.

ANSI/ASHRAE 16–1983 (RA 2014) is an industry-accepted test procedure that provides a calorimetric method for rating the cooling and heating capacity of room air conditioners and PTAC/HPs. ANSI/ASHRAE 16–1983 (RA 2014) is available on ANSI’s website at <https://webstore.ansi.org/standards/ashrae/ansiashraestandard161983r2014>.

ANSI/ASHRAE 58–1986 (RA 2014) is an industry-accepted test procedure that provides a psychometric method for rating the cooling and heating capacity of air conditioning and heating

equipment. ANSI/ASHRAE 58–1986 (RA 2014) is available on ANSI’s website at webstore.ansi.org/standards/ashrae/ansiashraestandard581986r2014.

ANSI/ASHRAE 37–2009 is an industry-accepted test procedure that provides methods for determining cooling or heating capacities of several categories of air conditioning and heating equipment. ANSI/ASHRAE 37–2009 is available on ANSI’s website at webstore.ansi.org/standards/ashrae/ansiashrae372009r2019.

The following standards included in the proposed regulatory text were previously approved for incorporation by reference for the locations in which they appear in this proposed rule: AHRI 210/240–2008, AHRI 340/360–2007, and ISO Standard 13256–1.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards staff at (202) 287–1445 or Appliance_Standards_Public_Meetings@ee.doe.gov.

Please note that foreign nationals visiting DOE Headquarters 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 meeting, please inform DOE of this fact 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.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor’s desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (“DHS”), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver’s licenses that currently are acceptable for entry into DOE facilities at www.dhs.gov/real-id-enforcement-

brief. A driver's licenses from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at <https://www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines>. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

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 **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it 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. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further

comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the previous procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.²⁸ Interested parties

²⁸ DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico ("NAFTA"), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) ("NAFTA Implementation Act"); and Executive Order 12889, "Implementation of the North American Free Trade Agreement," 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States ("USMCA"), Nov. 30, 2018, 134 Stat. 11 (*i.e.*, the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act.

may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The www.regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted

Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

via email also will be posted to www.regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

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

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE requests comment on its proposed A (95 °F), B (82 °F) and C

(75 °F) test conditions to represent reduced cooling conditions experienced by PTACs and PTHPs in the field.

Issue 2: DOE requests comment on whether setting the unit thermostat down to 75 °F (*i.e.*, a 5 °F differential to the indoor condition of 80 °F) is sufficient to ensure that the compressor runs at full speed. DOE requests comment on whether manufacturers will be able to provide override instructions to ensure operation at the low and intermediate compressor speeds.

Issue 3: DOE requests comment on whether fan speed may vary with staging and whether it may have to be "fixed" at the right speed.

Issue 4: DOE requests comment on its proposed cooling tests for single-speed, two-speed and variable-speed compressor systems.

Issue 5: DOE requests comment on its proposed value of the cooling and heating degradation coefficients.

Issue 6: DOE requests comment on its proposed approach to calculate SCP using a similar binned analysis as that of SEER2. DOE also requests comment on the proposed cooling building load line; specifically, whether an equal weighting of the small hotel and midrise apartment use cases is appropriate.

Issue 7: DOE requests comment on its proposed temperature bins and associated fractional bin hours for cooling.

Issue 8: DOE requests comment on its proposed H1 (47 °F), H3 (17 °F) or HL and H4 (5 °F) test conditions to represent different heating outdoor conditions experienced by PTACs and PTHPs in the field.

Issue 9: DOE requests comment on whether setting the unit thermostat up to 75 °F (*i.e.*, a 5 °F differential to the indoor condition of 70 °F) is sufficient to ensure that the compressor runs at full speed for heating mode.

Issue 10: DOE requests comment on its proposed heating tests for single-speed, two-speed and variable-speed compressor systems.

Issue 11: DOE requests comment on its proposed method to evaluate cut-out and cut-in temperatures.

Issue 12: DOE requests comment on its proposed defrost adjustment coefficients; specifically, DOE requests feedback on its approach to use appendix M1 to inform the adjustment values for performance at 35 °F. DOE requests data on defrost degradation particular to PTHPs.

Issue 13: DOE requests comment on its proposed approach to calculate SHP using a similar binned analysis as that of HSPF2. DOE also requests comment on the proposed heating building load

line; specifically, whether an equal weighting of the small hotel and midrise apartment use cases is appropriate.

Issue 14: DOE requests comment on its proposed temperature bins and associated fractional bin hours for heating.

Issue 15: DOE requests comment on its proposed definitions for make-up air PTAC, make-up air PTHP, add-on dehumidifier and integrated dehumidifier.

Issue 16: DOE requests comment on the required make-up airflow rate of 30 CFM and the proposed test setup to ensure this make-up airflow rate.

Issue 17: DOE requests comment on the proposed test conditions for the make-up air dehumidification test; specifically, whether the indoor air entering conditions, outdoor air entering conditions are appropriate.

Issue 18: DOE requests comment on its proposed test measurements and instructions for both make-up air system designs.

Issue 19: DOE requests comment on its proposed metric to evaluate dehumidification energy use.

Issue 20: DOE requests feedback on whether a separate metric is appropriate for evaluating dehumidification energy use, or whether dehumidification energy use be integrated into the cooling metric. If integrated into the cooling metric, DOE requests comment on the approach outlined above to represent the dehumidification energy use.

Issue 21: DOE requests data addressing potential inconsistency of test results when testing PTAC/HPs using psychrometric test methods as opposed to calorimetric test methods.

Issue 22: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's estimates of the costs associated with testing using appendix H1 of this document.

Issue 23: DOE requests comment on the number of small OEMs identified. DOE also seeks comment on the estimated costs the small manufacturer may incur.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting

and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on April 21, 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 24, 2023.

Treena V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.43 by revising paragraph (a)(1)(iii) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 British thermal units per hour cooling capacity).

(a) * * *
(1) * * *

(iii) Packaged terminal air conditioners and packaged terminal heat pumps.

(A) The represented value of cooling capacity shall be the average of the capacities measured for the sample selected as described in paragraph (a)(1)(ii) of this section, rounded to the nearest 100 Btu/h.

(B) For make-up air PTACs and PTHPs, the represented value of dehumidification capacity will be the average of the capacities measured for the sample selected as described in paragraph (a)(1)(ii) of this section, rounded to the nearest 0.01 liters/hr.

(C) For make-up air PTACs and PTHPs, the represented value of dehumidification efficiency (DE) will be the average of the DE values measured for the sample selected as described in paragraph (a)(1)(ii) of this section, rounded to the nearest 0.01 liters/kWh.

■ 3. Amend § 429.70 by revising table 2 to paragraph (c)(5)(vi)(B) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *
(c) * * *
(5) * * *
(vi) * * *
(B) * * *

TABLE 2 TO PARAGRAPH (c)(5)(vi)(B)

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities.	Integrated Energy Efficiency Ratio	10% (0.1)
	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	Integrated Energy Efficiency Ratio	10% (0.1)
	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Water-Source HPs, All Capacities	Integrated Energy Efficiency Ratio	10% (0.1)
	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Single Package Vertical ACs and HPs	Integrated Energy Efficiency Ratio	10% (0.1)
	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Seasonal Cooling Performance	10% (0.1)
	Seasonal Heating Performance	10% (0.1)
	Dehumidification Efficiency	10% (0.1)
Variable Refrigerant Flow ACs and HPs (Excluding Air-Cooled, Three-phase with Less than 65,000 Btu/h Cooling Capacity).	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Sensible Coefficient of Performance	5% (0.05)
Direct Expansion-Dedicated Outdoor Air Systems	Integrated Seasonal Coefficient of Performance 2	10% (0.1)
	Integrated Seasonal Moisture Removal Efficiency 2 ..	10% (0.1)

TABLE 2 TO PARAGRAPH (c)(5)(vi)(B)—Continued

Equipment	Metric	Applicable tolerance
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C 6291–6317; 28 U.S.C 2461 note.

■ 5. Amend § 431.92 by adding, in alphabetical order, definitions for “Dehumidification efficiency”, “Make-up air PTAC”, “Make-up air PTHP”, “Seasonal cooling performance” and “Seasonal heating performance” to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Dehumidification efficiency, or *DE*, means the ratio of water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

* * * * *

Make-up air PTAC means a PTAC for which a portion of the total airflow is drawn in from the outside of the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after mixing with the air drawn into the unit from inside the conditioned space, but before being discharged from the unit.

Make-up air PTHP means a PTHP for which a portion of the total airflow is drawn in from outside the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after

mixing with the air drawn into the unit from inside the conditioned space, but before being discharged from the unit.

* * * * *

Seasonal cooling performance or *SCP* means the total heat removed from the conditioned space during the cooling season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal air conditioner or heat pump during the same season, expressed in watt-hours. SCP is determined in accordance with appendix H1.

* * * * *

Seasonal heating performance or *SHP* means the total heat added to the conditioned space during the heating season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal air conditioner or heat pump during the same season, expressed in watt-hours. SHP is determined in accordance with appendix H1.

* * * * *

■ 6. Amend § 431.95 by:

■ a. Redesignating paragraphs (b)(4) through (9) as paragraphs (b)(5) through (10);

■ b. Adding paragraph (b)(4);

■ c. Revising paragraph (c)(1);

■ d. Redesignating paragraphs (c)(2) through (8) as paragraphs (c)(3) through (9);

■ e. Adding paragraph (c)(2);

■ f. In newly redesignated paragraph (c)(3), removing the words “and G1” and adding in its place, the words “and G1, H and H1”; and

■ g. In newly redesignated paragraph (c)(7), removing the text “§ 431.96” and adding in its place, the text “§ 431.96 and appendix H to this subpart”.

The additions and revision read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(4) AHRI Standard 310/380–2017 (“AHRI 310/380–2017”), “Packaged Terminal Air-Conditioners and Heat Pumps,” July 2017; IBR approved for appendices H and H1 to this subpart.

* * * * *

(c) * * *

(1) ANSI/ASHRAE Standard 16–1983 (RA 2014), (“ANSI/ASHRAE 16–1983”), “Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners,” ASHRAE reaffirmed July 3, 2014, IBR approved for appendix H to this subpart.

(2) ANSI/ASHRAE Standard 16–2016, (“ANSI/ASHRAE 16–2016”), “Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity,” November 2016, IBR approved for appendix H1 to this subpart.

* * * * *

■ 7. Amend § 431.96 by:

■ a. Removing paragraph (b)(2);

■ b. Revising table 1 to paragraph (b); and

■ c. Removing paragraph (g).

The revisions read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity ²	Energy efficiency descriptor	Use tests, conditions, and procedures ¹ in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix F to this subpart ³ .	None.
			SEER2 and HSPF2.	Appendix F1 to this subpart ³ .	None.
	Air-Cooled AC and HP ...	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A of this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 ..	Paragraph (e).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity ²	Energy efficiency descriptor	Use tests, conditions, and procedures ¹ in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP ...	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER.	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP ...	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER.	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix H to this subpart ³ .	None.
	AC and HP.	<760,000 Btu/h.	SCP and SHP.	Appendix H1 to this subpart ³ .	None.
Computer Room Air Conditioners.	AC	<760,000 Btu/h	SCOP	Appendix E to this subpart ³ .	None.
		<760,000 Btu/h	NSenCOP	Appendix E1 to this subpart ³ .	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase)	SEER	Appendix F to this subpart ³ .	None.
			SEER2	Appendix F1 to this subpart ³ .	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase)	SEER and HSPF	Appendix F to this subpart ³ .	None.
			SEER2 and HSPF2.	Appendix F1 to this subpart ³ .	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D of this subpart ³ .	None.
		≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP.	Appendix D1 of this subpart ³ .	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D of this subpart ³ .	None.
		<760,000 Btu/h.	IEER and COP.	Appendix D1 of this subpart ³ .	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart ³ .	None.
			EER, IEER, and COP.	Appendix G1 to this subpart ³ .	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart.	None.

¹ Incorporated by reference; see § 431.95.

² Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.

³ For equipment with multiple appendices listed in table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

■ 8. Add appendix H to subpart F of part 431 to read as follows:

Appendix H to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2022 edition of 10 CFR parts 200–499. Specifically, representations must be based upon results generated either under this appendix H or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022.

For any amended standards for packaged terminal air conditioners and packaged terminal heat pumps that rely on seasonal cooling performance (SCP) and seasonal heating performance (SHP) published after January 1, 2022, manufacturers must use the results of testing under appendix H1 of this subpart to determine compliance. Representations related to energy

consumption must be made in accordance with the appropriate appendix that applies (*i.e.*, appendix H or appendix H1) when determining compliance with the relevant standard.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI 310/380–2017, ANSI/ASHRAE 16–1983, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 58–1986. However, only enumerated provisions of AHRI 310/380–2017, ANSI/ASHRAE 16–1983, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 58–1986, as listed in this section 1.1 are required. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 AHRI 310/380–2017

(a) Section 3—Definitions and Table 1—Operating Conditions for Standard Rating and Performance Tests, as referenced in sections 2.1 and 2.2 of this appendix;

(b) Section 4—Test Requirements, as referenced in sections 2.1, 2.1.2 and 2.2 of this appendix;

(c) Section 5—Rating Requirements, as referenced in section 2.2 of this appendix.

1.2 ANSI/ASHRAE 16–1983

(a) Section 2—Definitions, as referenced in section 2.1.1 of this appendix;

(b) Section 4—Calorimeters, as referenced in section 2.1.1 of this appendix;

(c) Section 5—Instruments, as referenced in section 2.1.1 of this appendix;

(d) Section 6—Cooling Capacity Test, as referenced in section 2.1.1 of this appendix;

(e) Section 7.2—Nozzles, as referenced in section 2.1.1 of this appendix;

(f) Section 7.3—Apparatus, as referenced in section 2.1.1 of this appendix;

(g) Section 7.5—Ventilation, Exhaust, and Leakage Airflow Measurement, as referenced in section 2.1.1 of this appendix;

1.3 ANSI/ASHRAE 58–1986

(a) Section 3—Definitions, as referenced in section 2.2 of this appendix;

(b) Section 5—Instruments, as referenced in section 2.2 of this appendix;

(c) Section 6—Apparatus, as referenced in section 2.2 of this appendix;

(d) Section 7—Test Procedures, as referenced in section 2.2 of this appendix;

(e) Section 8—Data to be Recorded, as referenced in section 2.2 of this appendix;

(f) Section 9—Calculation of Test Results, as referenced in section 2.2 of this appendix;
1.4 ANSI/ASHRAE 37–2009

(a) Section 3—Definitions, as referenced in section 2.1.2 of this appendix;

(b) Section 5—Instruments, as referenced in section 2.1.2 of this appendix;

(c) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, as referenced in section 2.1.2 of this appendix;

(d) Section 7—Methods of Testing and Calculation, as referenced in section 2.1.2 of this appendix;

(e) Section 8—Test Procedures, as referenced in section 2.1.2 of this appendix;

(f) Section 9—Data to be Recorded, as referenced in section 2.1.2 of this appendix; and

(g) Section 11—Symbols Used in Equations, as referenced in section 2.1.2 of this appendix.

2. Test Method

2.1 Cooling Mode Testing

The test method for testing packaged terminal air conditioners and packaged terminal heat pumps in cooling mode shall consist of application of the methods and conditions in AHRI 310/380–2017 sections 3, 4, and, and in the enumerated sections of the following test standards, depending on the cooling mode test standard utilized.

2.1.1 Calorimetric Test Method

The calorimetric test method shall consist of application of the methods and conditions in ANSI/ASHRAE 16–1983, sections 2, 4, 5, 6, 7.2, 7.3, and 7.5.

2.1.2 Psychrometric Test Method

The psychrometric test method shall consist of application of the methods and conditions in ANSI/ASHRAE 37–2009, sections 3, 5, 6, 7, 8, 9, and 11, subject to the requirement of AHRI 310/380–2017, section 4.2.1.1(b) indicating that no secondary capacity check is required and no ductwork shall be attached to the condenser.

2.2 Heating Mode Testing

The test method for testing packaged terminal heat pumps in heating mode shall consist of application of the methods and conditions in AHRI 310/380–2017 sections 3, 4, and 5, and in ANSI/ASHRAE 58–1986, sections 3, 5, 6, 7, 8 and 9.

2.3 Precedence

Where definitions provided in AHRI 310/380–2017, ANSI/ASHRAE 16–1983, ANSI/ASHRAE 37–2009 and/or ANSI/ASHRAE 58–1986 conflict with the definitions provided in 10 CFR 431.92, the 10 CFR 431.92 definitions shall be used.

■ 9. Add appendix H1 to subpart F of part 431 to read as follows:

Appendix H1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Note: Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for

packaged terminal air conditioners and packaged terminal heat pumps provided in § 431.97 that are published after January 1, 2022, and that rely on seasonal cooling performance (SCP) and seasonal heating performance (SHP). Representations related to energy consumption, must be made in accordance with the appropriate appendix that applies (*i.e.*, appendix H or appendix H1) when determining compliance with the relevant standard. Manufacturers may make representations of dehumidification capacity and efficiency only if measured in accordance with this appendix.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI 310/380–2017, ANSI/ASHRAE 16–2016, and ANSI/ASHRAE 37–2009. However, enumerated provisions of AHRI 310/380–2017 and ANSI/ASHRAE 16–2016, as listed in this section 1 are required. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 AHRI 310/380–2017

(a) Section 3—Definitions, as referenced in section 2 of this appendix;

(b) Section 4—Test Requirements, as referenced in section 3.1 of this appendix;

(c) Section 5—Rating Requirements, as referenced in section 3.1 of this appendix.

1.2 ASHRAE 16–2016

(a) Section 3—Definitions, as referenced in section 2 of this appendix,

(b) Section 5—Instruments, as referenced in section 3.1 of this appendix,

(c) Section 6—Apparatus, as referenced in section 4.1 of this appendix,

(d) Section 7—Methods of Testing, as referenced in sections 4.4.2.1.2 and 4.4.2.2.2 of this appendix,

(e) Section 8—Test Procedures, as referenced in sections 3.1, 4.4.2.1.2, and 4.4.2.2.2 of this appendix;

(f) Section 9—Data to be recorded, as referenced in section 3.1 of this appendix,

(g) Section 10—Measurement Uncertainty and Table 5—Uncertainties of Measurement for the Indicated Values, as referenced in section 3.1 of this appendix,

(h) Section 11—Test Results, as referenced in section 3.1 of this appendix,

(i) Normative Appendix A—Cooling Capacity Calculations—Calorimeter Test Indoor and Calorimeter Test Outdoor, as referenced in section 3.1 of this appendix,

(j) Normative Appendix B—Cooling Capacity Calculations—Calorimeter Test Indoor and Psychrometric Test Indoor, as referenced in section 3.1 of this appendix,

(k) Normative Appendix C—Cooling Capacity Calculations—Psychrometric Test Indoor and Calorimeter Test Outdoor, as referenced in section 3.1 of this appendix,

(l) Normative Appendix D—Heating Capacity Calculations—Calorimeter Test Indoor and Calorimeter Test Outdoor, as referenced in section 3.1 of this appendix,

(m) Normative Appendix E—Heating Capacity Calculations—Psychrometric Test Indoor and Psychrometric Test Indoor, as referenced in section 3.1 of this appendix,

(n) Normative Appendix F—Heating Capacity Calculations—Psychrometric Test Indoor and Calorimeter Test Outdoor, as referenced in section 3.1 of this appendix,
1.2 ASHRAE 37–2009

(a) Section 6.2—Nozzle Airflow Measuring Apparatus, as referenced in section 4.1.1 of this appendix;

(b) Section 6.5—Recommended Practices for Static Pressure Measurements, as referenced in section 4.2.1 of this appendix;

(c) Section 7.3.3—Cooling Calculations, as referenced in section 3.1 of this appendix;

(d) Section 7.3.4—Heating Calculations When Using the “S” Test Method of section 8.8.2, as referenced in section 3.1 of this appendix;

(e) Section 7.8.2.1—Latent Cooling Capacity Calculation, as referenced in section 4.4.2.1.2 of this appendix.

2. *Definitions.* In addition to the definitions in section 3 of AHRI 310/380–2017 and section 3 of ANSI/ASHRAE 16–2016, the following definitions apply.

Add-on dehumidifier means a dehumidification system of a make-up air PTAC or PTHP that has its own complete dehumidification system and does not use the main PTAC/HP system indoor coil for any portion of the outdoor air dehumidification.

Degradation coefficient (C_D) means a parameter used in calculating the part load factor. The degradation coefficient for cooling is denoted by C_{D^c} . The degradation coefficient for heating is denoted by C_{D^h} .

Dehumidification efficiency, or $\dot{D}E$, means the quantity of water removed from the air divided by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

Integrated dehumidifier means a dehumidification system of a make-up air PTAC or PTHP for which some of the dehumidification of the outdoor air is provided by the main PTAC/HP system indoor coil.

Part-load factor (PLF) means the ratio of the cyclic EER (or COP for heating) to the steady-state EER (or COP), where both EERs (or COPs) are determined based on operation at the same ambient conditions.

Make-up air PTAC means a PTAC for which a portion of the total airflow is drawn in from outside the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after mixing with the air drawn into the unit from the conditioned space, but before being discharged from the unit.

Make-up air PTHP means a PTHP for which a portion of the total airflow is drawn in from outside the conditioned space and in which this outside air passes through a dehumidifying or cooling coil, either before or after mixing with the air drawn into the unit from inside the conditioned space, but before being discharged from the unit.

Seasonal cooling performance or SCP means the total heat removed from the conditioned space during the cooling season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal air conditioner or heat pump during the same season, expressed in watt-hours. SCP is determined in accordance with appendix H1.

Seasonal heating performance or SHP means the total heat added to the conditioned space during the heating season, expressed in Btu's, divided by the total electrical energy consumed by the package terminal heat pump during the same season, expressed in watt-hours. SHP is determined in accordance with appendix H1.

Variable speed PTAC/HP means a packaged terminal air-conditioner or heat pump with a compressor that uses a variable-speed drive to vary the compressor speed to achieve variable capacities or three or more capacities for any operating condition for which the compressor would be running.

3. Heating and Cooling Test Procedures

3.1 General. Evaluate SCP and SHP using instructions in sections 3.1 to 3.8 to this appendix. For the cooling tests required to evaluate SCP, use the cooling test conditions in section 3.5 of this appendix. For the heating tests required to evaluate SHP, use the heating test conditions in section 3.7 of this appendix. The capacity and power input measurements for the cooling tests shall be

determined using section 4 and section 5 of AHRI 310/380–2017; section 8, section 11, appendix A, appendix B and appendix C of ANSI/ASHRAE 16–2016 and section 7 of ANSI/ASHRAE 37–2009. The capacity and power input measurements for the heating tests shall be determined using section 4 and section 5 of AHRI 310/380–2017; section 8, section 11, appendix E, appendix F and appendix G of ANSI/ASHRAE 16–2016 and section 7 of ANSI/ASHRAE 37–2009. Test measurements shall be made in accordance with section 5, section 9 and section 10 of ANSI/ASHRAE 16–2016.

3.2 Additional setup instructions. If applicable, unit dehumidification mode will be turned off. Any controls setting for dehumidification (e.g., for lower fan speed) shall not to be activated. Any make-up air opening or opening in the unit bulkhead shall be sealed shut for the cooling and heating tests.

3.3 Compressor speeds. Use compressor speeds as required by the cooling and heating tests in section 3.5 and 3.7 respectively, of

this appendix. To operate the unit at full compressor speed, set the room thermostat at 75 °F for both heating and cooling tests, representing a 5 °F differential above the heating test condition and 5 °F below the cooling test condition. Use the certified values for the low and intermediate compressor speeds.

3.4 Indoor Fan Settings. Conduct all tests with the fan control selections that set the fan speed to high and the indoor fan to cycle with the compressor. If the fan control selections do not allow for indoor fan to cycle with the compressor, use the alternate selection that runs the fan continuously. If needed, the manufacturer supplemental test instructions must provide a means for overriding the controls to achieve this high airflow.

3.5 Cooling Mode Tests

3.5.1 Tests for a System with a Single-Speed Compressor. Conduct two steady-state full-load tests, at the A and C conditions. Table 1 specifies test conditions for the two tests.

TABLE 1—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
C _{full} Test—required	80	67	75	60	Full.

3.5.2 Tests for a System with a Two-Speed Compressor. Conduct two full-load

tests, at the A and B conditions. Conduct two low-load tests, at the B and C conditions.

Table 2 specifies test conditions for the four tests.

TABLE 2—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR¹

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
B _{full} Test—required	80	67	82	65	Full.
B _{low} Test—required	80	67	82	65	Low.
C _{low} Test—required	80	67	75	60	Low.

¹ This includes units with compressors that achieve no more than two capacity levels using variable speed technology for any one of the test conditions used for the tests.

3.5.3 Tests for a System with a Variable-Speed Compressor. Conduct two full-load tests, at the A and B conditions. Conduct two

low-load tests, at the B and C conditions. Conduct an optional intermediate test at the

B condition. Table 3 specifies test conditions for the four tests.

TABLE 3—COOLING MODE TEST CONDITIONS FOR VARIABLE-SPEED PTAC/HPs

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A _{full} Test—required	80	67	95	75	Full.
B _{full} Test—required	80	67	82	65	Full.
B _{low} Test—required	80	67	82	65	Low.
B _{int} Test—optional	80	67	82	65	Intermediate.
C _{low} Test—required	80	67	75	60	Low.

3.6 Evaluation of Cut-out and Cut-in Temperatures in Heating Mode

3.6.1 *Setup.* Set the unit to operate in heating mode with the thermostat set at 75 °F and the conditioned space at a lower temperature of 70 °F.

3.6.2 *Cut-out Temperature.* Reduce outdoor chamber temperature in steps or continuously at an average rate of 1 °F every

5 minutes. The average outdoor coil air inlet temperature when the PTHP operation stops is noted as the cut-out temperature.

3.6.3 *Cut-in Temperature.* Hold outdoor temperature constant for 5 minutes where the cut-out occurred—then increase outdoor chamber temperature by 1 °F every 5 minutes. Continue temperature ramp until 5 minutes after the HP operation restarts. The

average outdoor coil air inlet temperature when the HP operation restarts is noted as the cut-in temperature.

3.7 Heating Mode Tests

3.7.1 *Tests for a System with a Single-Speed Compressor.* Conduct two steady-state full-load tests, at the H₁ and H₃ (or H_L) conditions. Table 4 specifies test conditions for the two tests.

TABLE 4—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1,full} Test—required	70	60 max	47	43	Full.
H _{3,full} Test—required	70	60 max	17	15	Full.
H _{L,full} Test ¹	70	60 max	See note 2	See note 3	Full.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb temperature corresponding to a maximum 60% RH level.

3.7.2 *Tests for a System with a Two-Speed Compressor.* Conduct two full-load tests, at the H₁ and H₃ (or H_L) conditions.

Conduct two low-load tests, at the H₁ and H₃ (or H_L). Conduct an optional full-load test at

the H₄ condition. Table 5 specifies test conditions for the four tests.

TABLE 5—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR *

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1,full} Test—required	70	60 max	47	43	Full.
H _{3,full} Test—required	70	60 max	17	15	Full.
H _{L,full} Test ¹	70	60 max	See note 2	See note 3	Full.
H _{4,full} Test—optional	70	60 max	5	4	Full.
H _{1,low} Test—required	70	60 max	47	43	Low.
H _{3,low} Test—required	70	60 max	17	15	Low.
H _{L,low} Test ¹	70	60 max	See note 2	See note 3	Low.

* This includes units with compressors that achieve no more than two capacity levels using variable speed technology for any one of the test conditions used for the tests.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb temperature corresponding to a maximum 60% RH level.

3.7.3 *Tests for a System with a Variable-Speed Compressor.* Conduct tests as indicated in section 3.7.2 of this appendix.

Conduct an additional optional intermediate low load test at the H₃ (or H_L) condition.

TABLE 6—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR WITH THREE OR MORE SPEED LEVELS AT ANY GIVEN OUTDOOR TEMPERATURE

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H _{1,full} Test—required	70	60 max	47	43	Full.
H _{3,full} Test—required	70	60 max	17	15	Full.
H _{L,full} Test ¹	70	60 max	See note 2	See note 3	Full.
H _{4,full} Test—optional	70	60 max	5	4	Full.
H _{1,low} Test—required	70	60 max	47	43	Low.
H _{3,low} Test—required	70	60 max	17	15	Low.
H _{L,low} Test ¹	70	60 max	See note 2	See note 3	Low.
H _{3,int} Test—optional	70	60 max	17	15	Intermediate.
H _{L,int} Test—optional ¹	70	60 max	See note 2	See note 3	Intermediate.

¹ To be conducted only if the unit is unable to test at H₃ conditions.

² Use the average of the cut-in and cut-out temperatures.

³ Use a wet-bulb temperature corresponding to a maximum 60% RH level.

3.8 Calculation of seasonal performance descriptors

3.8.1 SCP Calculation

The SCP is calculated per equation 3.8.1–1:
Equation 3.8.1–1:

$$SCP = \frac{\sum_{j=1}^8 q_c(T_j)}{\sum_{j=1}^8 e_c(T_j)} = \frac{\sum_{j=1}^8 \frac{q_c(T_j)}{N}}{\sum_{j=1}^8 \frac{e_c(T_j)}{N}}$$

Where:

$\frac{q_c(T_j)}{N}$ = the ratio of the total space cooling provided during periods of the space cooling season when the outdoor temperature fell within the range represented by the bin temperature T_j to the total number of hours in the cooling season (N), Btu/h.

$\frac{e_c(T_j)}{N}$ = the electrical energy consumed by the test unit during periods of the space cooling season when the outdoor temperature fell within the range represented by the bin temperature T_j to the total number of hours in the cooling season (N), Btu/h.

T_j = the outdoor bin temperature, °F, which are binned in bins of 5°F with the 8 cooling season bin temperatures being 67,72,77,82,87,92,97 and 102°F.

j = the bin number, For cooling season calculations, j ranges from 1 to 8.

Evaluate the building cooling load, $BL(T_j)$ using equation 3.8.1–2:
Equation 3.8.1–2:

$$BL(T_j) = \frac{(T_j - 37)}{95 - 37} * \frac{Q_{A,full}}{1.1}$$

Where:

$Q_{A,full}$ is the space cooling capacity measured in the A_{full} test

Use the fractional cooling hours for each temperature bin, j as defined in Table 7

TABLE 7—DISTRIBUTION OF FRACTIONAL HOURS WITHIN COOLING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range °F	Representative temperature for bin °F	Fraction of total temperature bin hours, n_j/N
1	65–69	67	0.229
2	70–74	72	0.238
3	75–79	77	0.220
4	80–84	82	0.150
5	85–89	87	0.094
6	90–94	92	0.047
7	95–99	97	0.014
8	100–104	102	0.007

3.8.1.1 Single-speed system

Evaluate $\frac{q_c(T_j)}{N}$ and $\frac{e_c(T_j)}{N}$ using equations below:

Equation 3.8.1.1–1:

$$\frac{q_c(T_j)}{N} = X(T_j) * \dot{Q}_c(T_j) * \frac{n_j}{N}$$

Equation 3.8.1.1-2:

$$\frac{e_c(T_j)}{N} = \frac{X(T_j) * \dot{E}_c(T_j)}{PLF_j} * \frac{n_j}{N}$$

Where:

$$X(T_j) = \left\{ \frac{BL(T_j)}{\dot{Q}_c(T_j)} \text{ or } 1 \right\} \text{ whichever is less ; the cooling load factor for temperature}$$

bin j, dimensionless;

$\dot{Q}_c(T_j)$ = the space cooling capacity of the unit when operating at outdoor temperature, Tj, Btu/h;

$\dot{E}_c(T_j)$ = the electrical power consumption of the test unit when operating at outdoor temperature Tj, W;

$PLF = 1 - C_D^C \cdot [1 - X(T_j)]$, the part load factor, dimensionless;
 $C_D^C = 0.3$, the cooling degradation coefficient, dimensionless; and

$\frac{n_j}{N}$ = fractional bin hours for the cooling season; the ratio of the number of hours

during the cooling season when the outdoor temperature fell within the range represented

by bin temperature Tj to the total number of hours in the cooling season, dimensionless.

Evaluate the terms $\dot{Q}_c(T_j)$ and $\dot{E}_c(T_j)$ using equations 3.8.1.1-3 and 3.8.1.1-4:

Equation 3.8.1.1-3:

$$\dot{Q}_c(T_j) = \dot{Q}_{c,full} + \frac{\dot{Q}_{A,full} - \dot{Q}_{c,full}}{95 - 75} * (T_j - 75)$$

Equation 3.8.1.1-4:

$$\dot{E}_c(T_j) = \dot{E}_{c,full} + \frac{\dot{E}_{A,full} - \dot{E}_{c,full}}{95 - 75} * (T_j - 75)$$

Where $\dot{Q}_{c,full}$ and $\dot{E}_{c,full}$ are determined from the C_{full} test, $\dot{Q}_{A,full}$ and $\dot{E}_{A,full}$ are determined from the A_{full} test, and all four quantities are measured as specified in section 3.5.1 of this appendix.

3.8.1.2 *Two-speed systems*
 Calculate SCP using Equation 3.8.1-1.
 Evaluate the space cooling capacity $\dot{Q}_{c,low}(T_j)$, and electrical power consumption, $\dot{E}_{c,low}(T_j)$, of the test unit when operating at low

compressor capacity and outdoor temperature Tj using:
 Equation 3.8.1.2-1:

$$\dot{Q}_{c,low}(T_j) = \dot{Q}_{c,low} + \left\{ \frac{\dot{Q}_{B,low} - \dot{Q}_{c,low}}{82 - 75} \right\} * (t_j - 75)$$

Equation 3.8.1.2-2:

$$\dot{E}_{c,low}(T_j) = \dot{E}_{c,low} + \left\{ \frac{\dot{E}_{B,low} - \dot{E}_{c,low}}{82 - 75} \right\} * (t_j - 75)$$

Where $\dot{Q}_{c,low}$ and $\dot{E}_{c,low}$ are determined from the C_{low} test, $\dot{Q}_{B,low}$ and $\dot{E}_{B,low}$ are determined from the B_{low} test, and all four

quantities are measured as specified in section 3.5.2 of this appendix.

Evaluate the space cooling capacity $\dot{Q}_{c,full}(T_j)$, and electrical power consumption, $\dot{E}_{c,full}$

(T_j), of the test unit when operating at full compressor capacity and outdoor temperature T_j using: Equation 3.8.1.2-3:

$$\dot{Q}_{full}(T_j) = \dot{Q}_{B,full} + \left\{ \frac{\dot{Q}_{A,full} - \dot{Q}_{B,full}}{95 - 82} \right\} * (t_j - 82)$$

Equation 3.8.1.2-4:

$$\dot{E}_{full}(T_j) = \dot{E}_{B,full} + \left\{ \frac{\dot{E}_{A,full} - \dot{E}_{B,full}}{95 - 82} \right\} * (t_j - 82)$$

Where $\dot{Q}_{B,full}$ and $\dot{E}_{B,full}$ are determined from the B_{full} test, and $\dot{Q}_{A,full}$ and $\dot{E}_{A,full}$ are determined from the A_{full} test, and all four quantities are measured as specified in section 3.5.2 of this appendix.

The calculation of equation 3.8.1-1 quantities differs depending on whether the test unit would operate at low capacity (section 3.8.1.2.1 of this appendix), cycle between low and high capacity (section 3.8.1.2.2 of this appendix), or operate at high

capacity (section 3.8.1.2.3) in responding to the building load. Use Equation 3.8.1-2 to calculate the building load, $BL(T_j)$, for each temperature bin.

3.8.1.2.1 *Building load is less than low-stage cooling capacity* ($BL(T_j) < \dot{Q}_{c,low}$)

Evaluate $\frac{q_c(T_j)}{N}$ and $\frac{e_c(T_j)}{N}$ using equations below:

Equation 3.8.1.2.1-1:

$$\frac{q_c(T_j)}{N} = X_{low}(T_j) * \dot{Q}_{c,low}(T_j) * \frac{n_j}{N}$$

Equation 3.8.1.2.1-2:

$$\frac{e_c(T_j)}{N} = \frac{X_{low}(T_j) * \dot{E}_{c,low}(T_j)}{PLF_{low}} * \frac{n_j}{N}$$

$$PLF = 1 - C_D^C * [1 - X_{low}(T_j)]$$

Where:

$X_{low}(T_j) = \frac{BL(T_j)}{\dot{Q}_{c,low}(T_j)}$; the cooling load low capacity factor for temperature bin j,

dimensionless;

$PLF = 1 - C_D^C * [1 - X_{low}(T_j)]$, the part load factor, dimensionless;

$C_D^C = 0.3$, the cooling degradation coefficient, dimensionless; and

$\frac{n_j}{N}$ = fractional bin hours for the cooling season; the ratio of the number of hours

during the cooling season when the outdoor temperature fell within the range represented

by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

3.8.1.2.2 *Building load is higher than the low-stage capacity and less than the full-stage capacity ($\dot{Q}_{c,low} < BL(T_j) < \dot{Q}_{c,full}$)*

Evaluate $\frac{q_c(T_j)}{N}$ and $\frac{e_c(T_j)}{N}$ using equations below:

Equation 3.8.1.2.2-1:

$$\frac{q_c(T_j)}{N} = [X_{low}(T_j) * \dot{Q}_{c,low}(T_j) + X_{full}(T_j) * \dot{Q}_{c,full}(T_j)] * \frac{n_j}{N}$$

Equation 3.8.1.2.2-2:

$$\frac{e_c(T_j)}{N} = [X_{low}(T_j) * \dot{E}_{c,low}(T_j) + X_{full}(T_j) * \dot{E}_{c,full}(T_j)] * \frac{n_j}{N}$$

Where:

$X_{low}(T_j) = \frac{\dot{Q}_{c,full}(T_j) - BL(T_j)}{\dot{Q}_{c,full}(T_j) - \dot{Q}_{c,low}(T_j)}$ is the cooling mode, low capacity load factor for temperature bin j , dimensionless; and

$X_{full}(T_j) = 1 - X_{low}(T_j)$ is the cooling mode, full capacity load factor for temperature bin j , dimensionless.

3.8.1.2.3 *Building load is higher than the full-stage capacity ($BL(T_j) > \dot{Q}_{c,full}$)*

Evaluate $\frac{q_c(T_j)}{N}$ and $\frac{e_c(T_j)}{N}$ using equations below:

$$\frac{q_c(T_j)}{N} = \dot{Q}_{c,full}(T_j) * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_{c,full}(T_j) * \frac{n_j}{N}$$

Evaluate $\dot{Q}_{c,full}(T_j)$ and $\dot{E}_{c,full}(T_j)$ using equations 3.8.1.2–3 and 3.8.1.2–4.

3.8.1.3 Variable-speed system

Calculate SCP using Equation 3.8.1–1.

Evaluate the space cooling capacity $\dot{Q}_{c,low}(T_j)$, and electrical power consumption, $\dot{E}_{c,low}(T_j)$, of the test unit when operating at low compressor capacity and outdoor

temperature T_j using equations 3.8.1.2–1 and 3.8.1.2–2.

Calculate the space cooling capacity, $\dot{Q}_{c,int}(T_j)$, and electrical power consumption, $\dot{E}_{c,int}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during using the following:

Equation 3.8.1.3–1:

$$\dot{Q}_{c,int}(T_j) = \dot{Q}_{B,int} + M_Q * (T_j - 82)$$

Equation 3.8.1.3–2:

$$\dot{E}_{c,int}(T_j) = \dot{E}_{B,int} + M_E * (T_j - 82)$$

Where $\dot{Q}_{B,int}$ and $\dot{E}_{B,int}$ are determined from the optional B_{int} test or interpolated from the B_{low} and B_{full} tests.

Approximate the slopes of the intermediate speed cooling capacity and electrical power input curves, M_Q and M_E , as follows:

$$M_Q = \left[\frac{\dot{Q}_{B,low} - \dot{Q}_{c,low}}{82 - 75} * (1 - N_Q) \right] + \left[N_Q * \frac{\dot{Q}_{A,full} - \dot{Q}_{B,full}}{95 - 82} \right]$$

$$M_E = \left[\frac{\dot{E}_{B,low} - \dot{E}_{c,low}}{82 - 75} * (1 - N_E) \right] + \left[N_E * \frac{\dot{E}_{A,full} - \dot{E}_{B,full}}{95 - 82} \right]$$

Where:

$$N_Q = \frac{\dot{Q}_{c,int}(87) - \dot{Q}_{c,low}(87)}{\dot{Q}_{c,full}(87) - \dot{Q}_{c,low}(87)}$$

$$N_E = \frac{\dot{E}_{c,int}(87) - \dot{E}_{c,low}(87)}{\dot{E}_{c,full}(87) - \dot{E}_{c,low}(87)}$$

Use Equations 3.8.1.2–1, 3.8.1.2–2, 3.8.1.2–3 and 3.8.1.2–4, respectively, to calculate $\dot{Q}_{c,low}(87)$, $\dot{E}_{c,low}(87)$, $\dot{Q}_{c,full}(87)$ and $\dot{E}_{c,full}(87)$.

3.8.1.3.1 Building load is less than low-stage capacity ($BL(T_j) < \dot{Q}_{c,low}$)

$$\frac{q_c(T_j)}{N} = X_{low}(T_j) * \dot{Q}_{c,low}(T_j) * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X_{low}(T_j) * \dot{E}_{c,low}(T_j)}{PLF_{low}} * \frac{n_j}{N}$$

Where:

$$X_{low}(T_j) = \frac{BL(T_j)}{\dot{Q}_{c,low}(T_j)}; \text{ the cooling load low capacity factor for temperature bin } j,$$

dimensionless

$PLF = 1 - C_D^C * [1 - X_{low}(T_j)]$, the part load factor, dimensionless.

C_D^C = Cooling degradation coefficient, 0.3

$\frac{n_j}{N}$ = fractional bin hours for the cooling season; the ratio of the number of hours

during the cooling season when the outdoor temperature fell within the range represented

by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 7. Use Equations 3.8.1.2–1 and 3.8.1.2–2, respectively, to evaluate $\dot{Q}_{c,low}(T_j)$ and $\dot{E}_{c,low}(T_j)$.

3.8.1.3.2 *Building load is higher than the low-stage capacity and lesser than the full-*

stage capacity and the unit operates at an intermediate speed to match capacity to load ($\dot{Q}_{c,low} < BL(T_j) < \dot{Q}_{c,full}$)

$$\frac{q_c(T_j)}{N} = \dot{Q}_{c,int-bin}(T_j) * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_{c,int-bin}(T_j) * \frac{n_j}{N}$$

Where:

$\dot{Q}_{c,int-bin}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in

matching the building load at temperature T_j , Btu/h.

$$\dot{E}_{c,int-bin}(T_j) = \frac{\dot{Q}_{c,int-bin}(T_j)}{EER_{int-bin}(T_j)}, \text{ the electrical power input required by the test unit}$$

$EER_{int-bin}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at an intermediate compressor speed and temperature T_j , Btu/h per W.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 7 of this appendix. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER_{int-bin}(T_j)$ using the following equations:

For each temperature bin where $\dot{Q}_{c,low}(T_j) < BL(T_j) < \dot{Q}_{c,int}(T_j)$,

$$EER_{int-bin}(T_j) = EER_{low}(T_j) + \frac{EER_{int}(T_j) - EER_{low}(T_j)}{\dot{Q}_{c,int}(T_j) - \dot{Q}_{c,low}(T_j)} * (BL(T_j) - \dot{Q}_{c,low}(T_j))$$

For each temperature bin where $\dot{Q}_{c,int}(T_j) \leq BL(T_j) < \dot{Q}_{c,full}(T_j)$,

$$EER_{int-bin}(T_j) = EER_{int}(T_j) + \frac{EER_{full}(T_j) - EER_{int}(T_j)}{\dot{Q}_{c,full}(T_j) - \dot{Q}_{c,int}(T_j)} * (BL(T_j) - \dot{Q}_{c,int}(T_j))$$

Where:

$EER_{low}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at minimum compressor speed and temperature T_j , Btu/h per W, calculated using capacity $\dot{Q}_{c,low}(T_j)$ calculated using Equation 3.8.1.2–1 and electrical power consumption $\dot{E}_{c,low}(T_j)$ calculated using Equation 3.8.1.2–2;

$EER_{int}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at intermediate compressor speed and temperature T_j , Btu/h per W, calculated using capacity $\dot{Q}_{c,int}(T_j)$ calculated using Equation 3.8.1.3–1 and electrical power consumption $\dot{E}_{c,int}(T_j)$ calculated using Equation 3.8.1.3–2;

$EER_{full}(T_j)$ is the steady-state energy efficiency ratio of the test unit when

operating at full compressor speed and temperature T_j , Btu/h per W, calculated using capacity $\dot{Q}_{c,full}(T_j)$ calculated using Equation 3.8.1.2–3 and electrical power consumption $\dot{E}_{c,full}(T_j)$, calculated using Equation 3.8.1.2–4. $BL(T_j)$ is the building cooling load at temperature T_j , Btu/h.

3.8.1.3.3 *Building load is higher than the full-stage capacity a ($BL(T_j) > \dot{Q}_{c,full}(T_j)$)*

Evaluate $\frac{q_c(T_j)}{N}$ and $\frac{e_c(T_j)}{N}$ using instructions in section 3.8.1.2.3.

3.8.2 SHP Calculation

The SHP is calculated using equation 3.8.2-1:

Equation 3.8.2-1

$$SHP = \frac{\sum_{j=1}^7 n_j * BL(T_j)}{\sum_{j=1}^7 e_h(T_j) + \sum_{j=1}^8 RH(T_j)} = \frac{\sum_{j=1}^7 \frac{n_j}{N} * BL(T_j)}{\sum_{j=1}^7 \frac{e_h(T_j)}{N} + \sum_{j=1}^7 \frac{RH(T_j)}{N}}$$

Where:

$BL(T_j)$ = the value of the heating building load evaluated at the outdoor bin temperature, btu/hr.

$\frac{e_h(T_j)}{N}$ = the ratio of the electrical energy consumed by the test unit during periods of the space heating season when the outdoor temperature fell within the range represented by the bin temperature T_j to the total number of hours in the heating season (N), W.

$\frac{RH(T_j)}{N}$ = the ratio of the electrical energy used for resistive space heating during periods when the outdoor temperature fell within the range represented by the bin temperature T_j to the total number of hours in the heating season (N), W. Resistive space heating is modeled as being used to meet that portion of the building load that the heat pump does not meet because of insufficient capacity or because the heat pump automatically turns off at the lowest outdoor temperatures.

$\frac{n_j}{N}$ = fractional bin hours for the heating season; the ratio of the number of hours during the heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season, dimensionless.

T_j = the outdoor bin temperature, °F, which are binned in bins of 5°F with the 7 heating season bin temperatures being 7, 12, 17, 22, 27, 32, 37.

j = the bin number, For heating season calculations, j ranges from 1 to 7.

Evaluate the building heating load, $BL(T_j)$ using equation 3.8.2-2:
Equation 3.8.2-2:

$$BL(T_j) = \frac{(T_{zl} - T_j)}{T_{zl} + 15} * Q_{A,full}$$

Where:

$Q_{A,full}$ = is the space cooling capacity from the A_{full} test

$T_{z,l}$ the zero-load temperature, °F, is equal to 40 °F
 T_j the outdoor bin temperature, °F

Use the fractional heating hours for each temperature bin, j as defined in table 8.

TABLE 8—DISTRIBUTION OF FRACTIONAL HOURS WITHIN HEATING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range °F	Representative temperature for bin °F	Fraction of total temperature bin hours, n_j/N
1	39–35	37	0.337
2	34–30	32	0.298
3	29–25	27	0.192
4	24–20	22	0.108
5	19–15	17	0.051
6	14–10	12	0.008
7	9–5	7	0.006

3.8.2.1 Single-speed system

Evaluate $\frac{e_h(T_j)}{N}$ and $\frac{RH(T_j)}{N}$ using the following equations:

Equation 3.8.2.1–1:

$$\frac{e_h(T_j)}{N} = \frac{X(T_j) * \dot{E}_h(T_j) * \delta(T_j)}{PLF_j} * \frac{n_j}{N}$$

Equation 3.8.2.1–2:

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - [X(T_j) * \dot{Q}_h(T_j) * \delta(T_j)]}{3.413 \frac{Btu/h}{W}} * \frac{n_j}{N}$$

Where:

$$X(T_j) = \begin{cases} \frac{BL(T_j)}{\dot{Q}_h(T_j)} \\ or \\ 1 \end{cases}, \text{ whichever is less; the heating mode load factor for temperature}$$

$\dot{Q}_h(T_j)$ = the space heating capacity of the heat pump when operating at outdoor temperature T_j , Btu/h.

$\dot{E}_h(T_j)$ = the electrical power consumption of the heat pump when operating at outdoor temperature T_j , W.

$\delta(T_j)$ = the heat pump low temperature cut-out factor, dimensionless.

$PLF_j = \dot{C}_D^h * [1 - X(T_j)]$ (the part load factor, dimensionless).

$\dot{C}_D^h$ = Heating degradation coefficient = 0.3

Use Equation 3.8.2–2 to determine $BL(T_j)$.

Obtain fractional bin hours for the heating season,

$$\frac{n_j}{N}$$

from Table 8.

Determine the low temperature cut-out factor, $\delta(T_j)$, using the equation below:

Equation 3.8.2.1–3:

$$\delta(T_j) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \text{ or } \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} < 1 \\ \frac{1}{2}, & \text{if } T_{off} < T_j \leq T_{on} \text{ and } \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} \geq 1 \\ 1, & \text{if } T_j > T_{on} \text{ and } \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} \geq 1 \end{cases}$$

Where:

T_{off} = the outdoor temperature when the compressor is automatically shut off, °F. (If no such temperature exists, T_j is always greater than T_{off} and T_{on}).

T_{on} = the outdoor temperature when the compressor is automatically turned back on, if applicable, following an automatic shut-off, °F.

If the H_4 test is not conducted, calculate $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using Equations 3.8.2.1–4 and 3.8.2.1–5 if the H_3 is conducted, or equations 3.8.2.1–6 and 3.8.2.1–7 if the H_L test is conducted.

Equation 3.8.2.1–4:

$$\dot{Q}_{h,full}(T_j) = \begin{cases} \dot{Q}_{H3,full} + \frac{[\dot{Q}_{H1,full} - \dot{Q}_{H3,full}] * (T_j - 17)}{47 - 17}, & \text{if } T_j \leq 17^\circ\text{F} \\ \dot{Q}_{H3,full} + \frac{[\dot{Q}_{h,full}(35) - \dot{Q}_{H3,full}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{Q}_{h,full}(35) = 0.9 * \{ \dot{Q}_{H3,full} + 0.6 * [\dot{Q}_{H1,full} - \dot{Q}_{H3,full}] \}$$

Equation 3.8.2.1–5:

$$\dot{E}_{h,full}(T_j) = \begin{cases} \dot{E}_{H3,full} + \frac{[\dot{E}_{H1,full} - \dot{E}_{H3,full}] * (T_j - 17)}{47 - 17}, & \text{if } T_j \leq 17^\circ\text{F} \\ \dot{E}_{H3,full} + \frac{[\dot{E}_{h,full}(35) - \dot{E}_{H3,full}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{E}_{h,full}(35) = 0.985 * \{ \dot{E}_{H3,full} + 0.6 * [\dot{E}_{H1,full} - \dot{E}_{H3,full}] \}$$

Equation 3.8.2.1–6:

$$\dot{Q}_{h,full}(T_j) = \begin{cases} \dot{Q}_{HL,full} + \frac{[\dot{Q}_{H1,full} - \dot{Q}_{HL,full}] * (T_j - H_L)}{47 - H_L}, & \text{if } T_j \leq H_L \\ \dot{Q}_{HL,full} + \frac{[\dot{Q}_{h,full}(35) - \dot{Q}_{HL,full}] * (T_j - H_L)}{35 - H_L}, & \text{if } H_L < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{Q}_{h,full}(35) = 0.9 * \{ \dot{Q}_{HL,full} + \frac{35 - H_L}{47 - H_L} * [\dot{Q}_{H1,full} - \dot{Q}_{HL,full}] \}$$

Equation 3.8.2.1–7:

$$\dot{E}_{h,full}(T_j) = \begin{cases} \dot{E}_{HL,full} + \frac{[\dot{E}_{H1,full} - \dot{E}_{HL,full}] * (T_j - H_L)}{47 - H_L}, & \text{if } T_j \leq H_L \\ \dot{E}_{HL,full} + \frac{[\dot{E}_{h,full}(35) - \dot{E}_{HL,full}] * (T_j - H_L)}{35 - H_L}, & \text{if } 17^\circ\text{F} < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{E}_{h,full}(35) = 0.985 * \{ \dot{E}_{HL,full} + \frac{35-H_L}{47-H_L} * [\dot{E}_{H1,full} - \dot{E}_{HL,full}] \}$$

If the H_4 test is conducted, calculate $\dot{Q}_h(T_j)$ Equation 3.8.2.1–8:
and $\dot{E}_h(T_j)$ using equations 3.8.2.1–8 and
3.8.2.1–9:

$$\dot{Q}_{h,full}(T_j) = \begin{cases} \dot{Q}_{H3,full} + \frac{[\dot{Q}_{H3,full} - \dot{Q}_{H4,full}] * (T_j - 5)}{17 - 5}, & \text{if } T_j < 17^\circ\text{F} \\ \dot{Q}_{H3,full} + \frac{[\dot{Q}_{h,full}(35) - \dot{Q}_{H3,full}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} \leq T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{Q}_{h,full}(35) = 0.9 * \{ \dot{Q}_{H3,full} + 0.6 * [\dot{Q}_{H1,full} - \dot{Q}_{H3,full}] \}$$

Equation 3.8.2.1–9:

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_{H3,full} + \frac{[\dot{E}_{H3,full} - \dot{E}_{H4,full}] * (T_j - 5)}{17 - 5}, & \text{if } T_j < 17^\circ\text{F} \\ \dot{E}_{H3,full} + \frac{[\dot{E}_{h,full}(35) - \dot{E}_{H3,full}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} \leq T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{E}_{h,full}(35) = 0.985 * \{ \dot{E}_{H3,full} + 0.6 * [\dot{E}_{H1,full} - \dot{E}_{H3,full}] \}$$

3.8.2.2 Two-speed system

The calculation of Equation 3.8.2–1 quantities differs depending upon whether the heat pump would operate at low capacity

(section 3.8.2.2.1 of this appendix), cycle between low and high capacity (section 3.8.2.2.2 of this appendix), or operate at high capacity (section 3.8.2.2.3 of this appendix) in responding to the building load.

Evaluate the space heating capacity and electrical power consumption of the heat

pump when operating at low compressor capacity and outdoor temperature T_j using equations 3.8.2.2–1 and 3.8.2.2–2 if the H_3 is conducted, or equations 3.8.2.2–3 and 3.8.2.2–4 if the H_L is conducted:

Equation 3.8.2.2–1:

$$\dot{Q}_{h,low}(T_j) = \begin{cases} \dot{Q}_{H3,low} + \frac{[\dot{Q}_{H1,low} - \dot{Q}_{H3,low}] * (T_j - 17)}{47 - 17}, & \text{if } T_j \leq 17^\circ\text{F} \\ \dot{Q}_{H3,low} + \frac{[\dot{Q}_{h,low}(35) - \dot{Q}_{H3,low}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{Q}_{h,low}(35) = 0.9 * \{ \dot{Q}_{H3,low} + 0.6 * [\dot{Q}_{H1,low} - \dot{Q}_{H3,low}] \}$$

Equation 3.8.2.2–2:

$$\dot{E}_{h,low}(T_j) = \begin{cases} \dot{E}_{H3,low} + \frac{[\dot{E}_{H1,low} - \dot{E}_{H3,low}] * (T_j - 17)}{47 - 17}, & \text{if } T_j \leq 17^\circ\text{F} \\ \dot{E}_{H3,low} + \frac{[\dot{E}_{h,low}(35) - \dot{E}_{H3,low}] * (T_j - 17)}{35 - 17}, & \text{if } 17^\circ\text{F} < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{E}_{h,low}(35) = 0.985 * \{ \dot{E}_{H3,low} + 0.6 * [\dot{E}_{H1,low} - \dot{E}_{H3,low}] \}$$

Equation 3.8.2.2–3:

$$\dot{Q}_{h,low}(T_j) = \begin{cases} \dot{Q}_{HL,low} + \frac{[\dot{Q}_{H1,low} - \dot{Q}_{HL,low}] * (T_j - H_L)}{47 - H_L}, & \text{if } T_j \leq H_L \\ \dot{Q}_{HL,low} + \frac{[\dot{Q}_{h,low}(35) - \dot{Q}_{HL,low}] * (T_j - H_L)}{35 - H_L}, & \text{if } H_L < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{Q}_{h,low}(35) = 0.9 * \{ \dot{Q}_{HL,low} + \frac{35-H_L}{47-H_L} * [\dot{Q}_{H1,low} - \dot{Q}_{HL,low}] \}$$

Equation 3.8.2.2-4:

$$\dot{E}_{h,low}(T_j) = \begin{cases} \dot{E}_{HL,low} + \frac{[\dot{E}_{H1,low} - \dot{E}_{HL,low}] * (T_j - H_L)}{47 - H_L}, & \text{if } H_L \leq 17^\circ\text{F} \\ \dot{E}_{HL,low} + \frac{[\dot{E}_h(35) - \dot{E}_{HL,low}] * (T_j - H_L)}{35 - H_L}, & \text{if } H_L < T_j \leq 42^\circ\text{F} \end{cases}$$

Where:

$$\dot{E}_{h,low}(35) = 0.985 * \{ \dot{E}_{HL,low} + \frac{35-H_L}{47-H_L} * [\dot{E}_{H1,low} - \dot{E}_{HL,low}] \}$$

If the H₄ test is not conducted, evaluate the space heating capacity and electrical power consumption ($\dot{Q}_{h,full}(T_j)$ and $\dot{E}_{h,full}(T_j)$) of the heat pump when operating at high compressor capacity and outdoor temperature T_j by solving Equations 3.8.2.1-

4 and 3.8.2.1-5, or Equations 3.8.2.1-6 and 3.8.2.1-7 as appropriate. If the H₄ test is conducted, evaluate the space heating capacity and electrical power consumption ($\dot{Q}_{h,full}(T_j)$ and $\dot{E}_{h,full}(T_j)$) of the heat pump when operating at high compressor capacity

and outdoor temperature T_j using Equations 3.8.2.1-8 and 3.8.2.1-9, respectively.

3.8.2.2.1 *Building load is less than low-stage capacity* ($BL(T_j) < \dot{Q}_{h,low}$)

Evaluate $\frac{e_h(T_j)}{N}$ and $\frac{RH(T_j)}{N}$ using the following equations:

Equation 3.8.2.2.1-1:

$$\frac{e_h(T_j)}{N} = \frac{X_{low}(T_j) * \dot{E}_{h,low}(T_j) * \delta(T_j)}{PLF_j} * \frac{n_j}{N}$$

Equation 3.8.2.2.1-2:

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) * [1 - \delta(T_j)]}{3.413 \frac{\text{Btu/h}}{\text{W}}} * \frac{n_j}{N}$$

Where:

$X_{low}(T_j) = \frac{BL(T_j)}{\dot{Q}_{h,low}(T_j)}$, the heating mode low capacity load factor for temperature

$PLF_j = 1 - \dot{C}_D^h * [1 - X_{low}(T_j)]$, the part load factor, dimensionless.

$\delta(T_j)$ the low temperature cutoff factor, dimensionless.
 $\dot{C}_D^h$ = Heating degradation coefficient = 0.3

Determine the low temperature cut-out factor using Equation 3.8.2.2.1-3: Equation 3.8.2.2.1-3:

$$\delta(T_j) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \\ \frac{1}{2}, & \text{if } T_{off} < T_j \leq T_{on} \\ 1, & \text{if } T_j > T_{on} \end{cases}$$

Where:

T_{off} = the outdoor temperature when the compressor is automatically shut off, °F. (If no such temperature exists, T_j is always greater than T_{off} and T_{on}).

T_{on} = the outdoor temperature when the compressor is automatically turned back on, if applicable, following an automatic shut-off, °F.

3.8.2.2.2 *Building load is higher than the low-stage capacity and lesser than the full-stage capacity* ($\dot{Q}_{h,low} < BL(T_j) < \dot{Q}_{h,full}$)

Calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ using the following equations:

Equation 3.8.2.2.2-1:

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) * [1 - \delta(T_j)]}{3.413 \frac{Btu/h}{W}} * \frac{n_j}{N}$$

Equation 3.8.2.2.2-2:

$$\frac{e_h(T_j)}{N} = [X_{low}(T_j) * \dot{E}_{h,low}(T_j) + X_{full}(T_j) * \dot{E}_{h,low}(T_j)] * \delta(T_j) * \frac{n_j}{N}$$

Where:

$$X_{low}(T_j) = \frac{\dot{Q}_{h,full}(T_j) - BL(T_j)}{\dot{Q}_{h,full}(T_j) - \dot{Q}_{h,low}(T_j)}$$

$X_{full}(T_j) = 1 - X_{low}(T_j)$ the heating mode, high capacity load factor for temperature bin j , dimensionless.

Determine the low temperature cut-out factor, $\delta(T_j)$, using equation 3.8.2.2.1-3.

3.8.2.2.3 *Building load is higher than the full-stage capacity* ($BL(T_j) > \dot{Q}_{h,full}$)

Calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ using the following equations:

Equation 3.8.2.2.3-1:

$$\frac{e_h(T_j)}{N} = \dot{E}_{h,full}(T_j) * \delta'(T_j) * \frac{n_j}{N}$$

Equation 3.8.2.2.3-2:

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) * [\dot{Q}_{h,full}(T_j) * \delta'(T_j)]}{3.413 \frac{Btu/h}{W}} * \frac{n_j}{N}$$

Where:

$$\delta'(T_j) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \text{ or } \frac{\dot{Q}_{h,full}(T_j)}{3.413 * \dot{E}_{h,full}(T_j)} < 1 \\ \frac{1}{2}, & \text{if } T_{off} < T_j \leq T_{on} \text{ and } \frac{\dot{Q}_{h,full}(T_j)}{3.413 * \dot{E}_{h,full}(T_j)} \geq 1 \\ 1, & \text{if } T_j > T_{on} \text{ and } \frac{\dot{Q}_{h,full}(T_j)}{3.413 * \dot{E}_{h,full}(T_j)} \geq 1 \end{cases}$$

3.8.2.3 Variable-speed system

The calculation of the Equation 3.8.2-1 quantities differs depending upon whether the heat pump would operate at low capacity (section 3.8.2.3.1 of this appendix), cycle between low and high capacity (section 3.8.2.3.2 of this appendix), or operate at high capacity (section 3.8.2.3.3 of this appendix) in responding to the building load.

Calculate the space heating capacity, $\dot{Q}_{h,int}(T_j)$, and electrical power consumption,

$\dot{E}_{h,int}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during using the following equations:

Equation 3.8.2.3-1:

$$\dot{Q}_{h,int}(T_j) = \dot{Q}_{h,int}(35) + M_Q * (T_j - 35)$$

Equation 3.8.2.3-2:

$$\dot{E}_{h,int}(T_j) = \dot{E}_{h,int}(35) + M_E * (T_j - 35)$$

Where:

$$\dot{Q}_{h,int}(35) = 0.9 * \{ \dot{Q}_{H3,int} + 0.6 * [\dot{Q}_{H1,full} - \dot{Q}_{H3,int}] \}$$

$$\dot{E}_{h,int}(35) = 0.985 * \{ \dot{E}_{H3,int} + 0.6 * [\dot{E}_{H1,full} - \dot{E}_{H3,int}] \}$$

Where $\dot{Q}_{H3,int}$ and $\dot{E}_{H3,int}$ are determined from the optional $H_{3,int}$ test or interpolated from the $H_{3,low}$ and $H_{3,full}$ tests.

Approximate the slopes of the intermediate speed heating capacity and electrical power input curves, M_Q and M_E , as follows:

$$M_Q = \left[\frac{\dot{Q}_{H1,low} - \dot{Q}_{H3,low}}{47 - 17} * (1 - N_Q) \right] + \left[N_Q * \frac{\dot{Q}_{h,full}(35) - \dot{Q}_{H3,low}}{35 - 17} \right]$$

$$M_E = \left[\frac{\dot{E}_{H1,low} - \dot{E}_{H3,low}}{47 - 17} * (1 - N_E) \right] + \left[N_E * \frac{\dot{E}_{h,full}(35) - \dot{E}_{H3,low}}{35 - 17} \right]$$

Where:

$$N_Q = \frac{\dot{Q}_{h,int}(35) - \dot{Q}_{h,low}(35)}{\dot{Q}_{h,full}(35) - \dot{Q}_{h,low}(35)}$$

3.8.2.3.1 Building load is less than low-stage capacity ($BL(T_j) < \dot{Q}_{h,low}$)

$$N_E = \frac{\dot{E}_{h,int}(35) - \dot{E}_{h,low}(35)}{\dot{E}_{h,full}(35) - \dot{E}_{h,low}(35)}$$

Calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ using instruction in section 3.8.2.2.1

3.8.2.3.2 Building load is higher than the low-stage capacity and lesser than the full-

stage capacity ($\dot{Q}_{h,low} < BL(T_j) < \dot{Q}_{h,full}$) and the compressor operates at an intermediate

speed) in order to match the building heating load at a temperature T_j

Evaluate $\frac{RH(T_j)}{N}$ using equation 3.8.2.2.1-2. Evaluate $\frac{e_h(T_j)}{N}$ as follows:

$$\frac{e_h(T_j)}{N} = \dot{E}_{h,int-bin}(T_j) * \delta(T_j) * \frac{n_j}{N}$$

Where:

$$\dot{E}_{h,int-bin}(T_j) = \frac{\dot{Q}_{h,int-bin}(T_j)}{3.413 \frac{Btu/h}{W} * COP_{int-bin}(T_j)}$$

and $\delta(T_j)$ is evaluated using Equation 3.8.2.2.1-3 while, $\dot{Q}_{h,int-bin}(T_j) = (BL(T_j))$, the space heating capacity delivered by the unit in matching the building load at temperature (T_j), Btu/h. The matching occurs with the

heat pump operating at an intermediate compressor speed.

$COP_{int-bin}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at an intermediate compressor speed and temperature (T_j), dimensionless.

For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP_{int-bin}(T_j)$ using the following equations,

For each temperature bin where $\dot{Q}_{h,low}(T_j) < BL(T_j) < \dot{Q}_{h,int}(T_j) -$

$$COP_{int-bin}(T_j) = COP_{low}(T_j) + \frac{COP_{int}(T_j) - COP_{low}(T_j)}{\dot{Q}_{h,int}(T_j) - \dot{Q}_{h,low}(T_j)} * (BL(T_j) - \dot{Q}_{h,low}(T_j))$$

For each temperature bin where $\dot{Q}_{h,int}(T_j) \leq BL(T_j) < \dot{Q}_{h,full}(T_j)$ —

$$COP_{int-bin}(T_j) = COP_{int}(T_j) + \frac{COP_{full}(T_j) - COP_{int}(T_j)}{\dot{Q}_{h,full}(T_j) - \dot{Q}_{h,int}(T_j)} * (BL(T_j) - \dot{Q}_{h,int}(T_j))$$

Where:

$COP_{low}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at minimum compressor speed and temperature T_j , dimensionless, calculated using capacity $\dot{Q}_{h,low}(T_j)$ calculated using Equation 3.8.2.2.1 and electrical power consumption $\dot{E}_{h,low}(T_j)$ calculated using Equation 3.8.2.2.2;

$COP_{int}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at intermediate compressor speed and temperature T_j , dimensionless, calculated using capacity $\dot{Q}_{h,int}(T_j)$ calculated using Equation 3.8.2.3–1 and electrical power consumption $\dot{E}_{h,int}(T_j)$ calculated using Equation 3.8.2.3–2;

$COP_{full}(T_j)$ is the steady-state coefficient of performance of the heat pump when

operating at full compressor speed and temperature T_j , dimensionless, calculated using capacity $\dot{Q}_{h,full}(T_j)$ and electrical power consumption $\dot{E}_{h,full}(T_j)$, both calculated as described in section 3.8.2.1; and

$BL(T_j)$ is the building heating load at temperature T_j , Btu/h.

3.8.2.3.3 *Building load is higher than the full-stage capacity* a ($BL(T_j) > \dot{Q}_{h,full}$)

Calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ using instruction in section 3.8.2.2.3

4. Dehumidification Test Procedures

4.1 *Test Setup for Dehumidification Tests.* Install the unit according to section 6 of ANSI/ASHRAE 16–2016, subject to the following additional requirements:

4.1.1 *Makeup Air Inlet Duct Assembly.*

(1) Connect a makeup air inlet duct assembly as shown in Figure 1. The inlet duct assembly will include a nozzle airflow measuring apparatus and an inlet plenum, with interconnecting duct sections. The inlet plenum shall be insulated to a level of R–19. The interconnecting duct between the inlet plenum and the unit's makeup air inlet shall be insulated to a level of R–19 up to the inlet grill.

(2) The connecting duct between the code tester and the inlet plenum shall have cross-sectional dimensions such that the air velocity within it is no more than 200 fpm.

(3) The connecting duct between the inlet plenum and the makeup air inlet of the unit under test shall have dimensions equal to those of the dehumidification air inlet. If this is not possible due to interference of components within the unit under test, the dimensions of the duct may be different, but the cross-sectional area of the connecting duct shall be equal to that of the inlet. A hole shall be cut in the air inlet grill to make room for the duct. External to the inlet grill, the duct shall have an area-reducing section with reducing angle no greater than 45 degrees. At the connection to the inlet plenum, the connecting duct cross section shall be at least twice the cross section of the connection to the dehumidification air inlet. The duct shall extend beyond the grill such that the inlet plenum wall insulation is at least 3 inches distant from the grill.

(4) When testing a PTAC/HP with an integrated dehumidification system, the inlet plenum shall be located offset to the side, away from the center of the unit under test

to impose minimal air flow restriction on outdoor coil air inlet and discharge.

(5) The inlet plenum shall have interior dimensions of at least 12 inches high and at least 12 inches wide in the plane perpendicular to air flow, and an interior dimension of at least 24 inches between the edges of the inlet and outlet ducts that are closest to each other.

(6) Install a thermocouple grid consisting of nine thermocouples in a three-by-three arrangement in the inlet air plenum upstream of the plane of the pressure taps

(7) Seal all duct connections between the code tester inlet and the connection to the unit's dehumidification air inlet.

(8) Use a nozzle airflow measuring apparatus as described in section 6.2 of ASHRAE 37–2009 with an adjustable fan to allow adjustment of the inlet plenum pressure. Set up the nozzle airflow measuring apparatus to take in outdoor room air and move it into the unit under test in a blow-through arrangement.

(9) If testing a makeup air PTAC/HP with an integrated dehumidification system, provide means to heat or cool the inlet air as needed to achieve the target makeup air dry bulb temperature at a location between the measurement of conditions at the nozzle airflow measuring apparatus inlet and the apparatus fan. The applied heating or cooling shall not affect the makeup air dew point temperature.

4.1.2 *Indoor air duct connection.* When testing a makeup air PTAC/HP with an add-on dehumidification system, test the system without connection of an indoor air duct. When testing a makeup air PTAC/HP with an integrated dehumidification system, if the cooling performance of the unit was tested using the psychrometric method, keep the indoor air duct assembly connected.

4.1.3 *Transfer Fan.* Install an adjustable transfer fan to transfer makeup air from the

indoor room back to the outdoor room. The fan shall be adjustable to allow setting of the needed pressure differential when the target makeup air is passing through the test unit.

4.1.4 *Thermostatic plug.* Remove the thermostatic plug that prevents condensate drainage from the unit in cooling mode. Attach an adapter if needed, and a tube to transfer collected condensate to a measurement location in the outdoor room. Collect condensate in a bucket placed on a scale with mass measurement resolution of 1 gram. Provide a cover for the bucket to limit re-evaporation.

4.2 *Measurements*

4.2.1 *Pressure Measurement.* Consistent with section 6.5 of ASHRAE 37–2009, static pressure taps shall be placed at four locations around the inlet air plenum as shown in Figure 1, halfway between the nearest edges of the connecting ducts to the nozzle airflow measuring apparatus and the PTAC/HP makeup air inlet. The pressure taps shall be manifolded together as indicated section 6.5.3 of ASHRAE 37–2009. Measure pressure differential between the outdoor room and the inlet air plenum.

4.2.2 *Temperature Measurements.* Outdoor inlet dry bulb and wet bulb temperature shall be measured at the inlet of the nozzle airflow measurement apparatus, as described in ASHRAE 16–2016.

4.2.3 *Outdoor Coil Temperature Measurement for PTAC/HPs with Integrated Dehumidification Systems.* For PTAC/HPs with integrated dehumidification systems, measure outdoor coil temperature using provisions as described in this section, for both the cooling A_{full} test and all of the dehumidification tests. Attach a thermocouple with ± 0.5 °F measurement accuracy to a return bend at approximately the midpoint of the outdoor coil circuit.

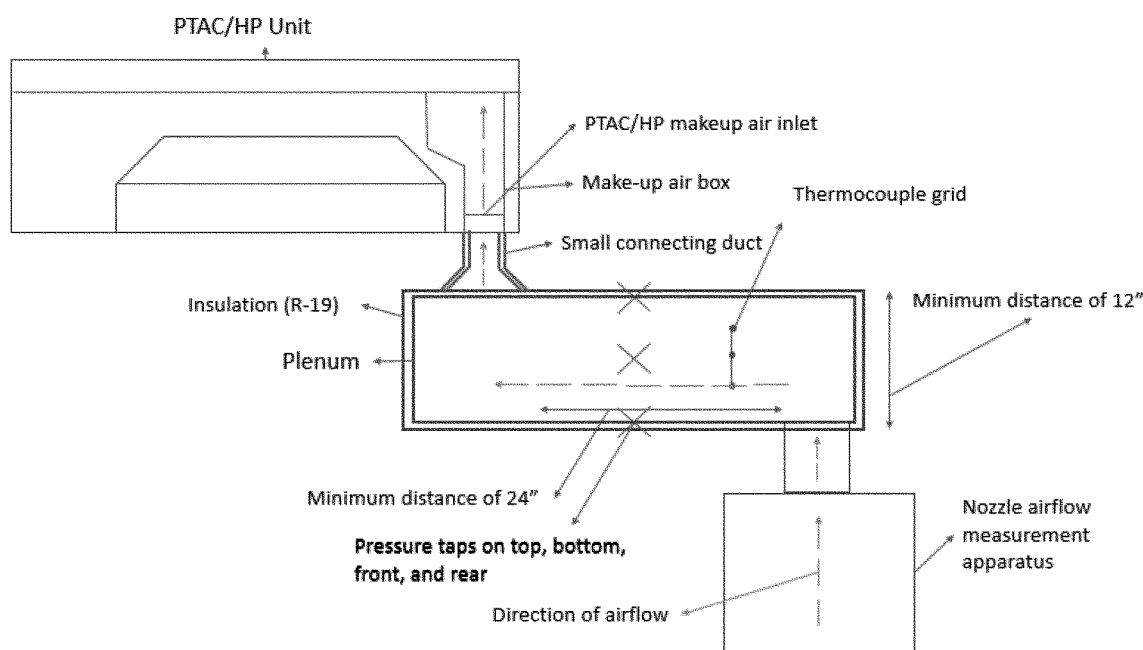


Figure 1 – Makeup Air Inlet Duct Assembly

Figure 1—Makeup Air Inlet Duct Assembly
4.4 Tests to be Conducted

4.4.1 Units with Add-on dehumidification system

4.4.1.1 *Preliminary Power Measurement.* Operate the PTAC/HP in fan-only mode or with the thermostat and fan controls set such that the indoor fan is energized, but the compressor and outdoor fan are not. Establish operating conditions as specified in Table 10, keeping indoor air dry bulb and wet bulb within 3 °F of specified values, and preliminarily setting dry bulb and dew point of air at the nozzle airflow measuring apparatus inlet within 3 °F of specified values. Make a preliminary measurement of PTAC/HP power input for a duration of 5 minutes when operating in this mode without the dehumidification system activated.

4.4.1.2 *Establishing Test Conditions.* Set up the makeup air flow by starting operation of the transfer fan and the nozzle airflow measuring apparatus fan. Activate the dehumidification system. Adjust the transfer fan and the nozzle airflow measuring apparatus fan so that the pressure differential from the inlet plenum to outdoor room is 0 +/- 0.005 inches of W.C. and the certified airflow is flowing as measured by the nozzle airflow measuring apparatus. Adjust outdoor room conditions such that the dew point of air entering the nozzle airflow measuring apparatus matches the specified outdoor air dew point and the dry bulb temperature measured by the thermocouple grid in the inlet plenum matches the specified outdoor air dry bulb temperature, both within required tolerances as specified in Table 10 of this appendix.

4.4.1.3 *Equilibrium and Test Periods.* Equilibrium test conditions shall be maintained within tolerances shown in Table 10 for not less than one hour before recording data for the capacity test. The dehumidification test shall then be conducted over a 1-hour period, confirming that at no time any measured parameter exceeds the allowable tolerances specified in Table 10. Measurements of test conditions, input power and energy, and airflow shall be taken at least every 60 seconds and logged. Measurements of condensate mass shall be made every 10 minutes.

4.4.2 Units with Integrated dehumidification

4.4.2.1 Preliminary Test

4.4.2.1.1 Calculate the average coil temperature measured during the A_{full} cooling test using the temperature measurement described in section 4.2.3 of this section.

4.4.2.1.2 With the make-up airflow passage blocked as for the A_{full} test, but with the makeup air inlet duct assembly installed as described in section 4.1.1 of this appendix and with the condensate plug removed to allow collection of condensate as described in section 4.1.4 of this appendix, conduct a repeat of the A_{full} test. For this preliminary test, reduce outdoor room dry bulb temperature to a level for which the outdoor coil return bend temperature is within 0.5 °F of the temperature measured during the official A_{full} test. Measure capacity and latent capacity as described in ASHRAE 16–2016. Measure condensate every 10 minutes. Calculate latent capacity based on the condensate measurement as described in section 7.8.2.1 of ASHRAE 37–2009. When

conditions have been stable for 60 minutes, as described in section 8.5.3 of ASHRAE 16–2016, measure performance for a 60 minute test period. The test is valid when energy balance requirements described in section 7 of ASHRAE 16–2016 have been met and the latent capacity calculated based on the condensate measurement is within 6 percent of the latent capacity measurement based on the psychrometric or calorimetric test method, whichever is used.

4.4.2.2 Makeup air test

4.4.2.2.1 Remove the blockage of the makeup air passage. Restart cooling operation as conducted for the preliminary test and set up the makeup air flow and conditions as described in section 4.4.1.2 of this appendix. However, maintain outdoor room dry bulb temperature within 0.3 °F of the average measured during the preliminary test, and set dry bulb temperature of the makeup air by adjusting the heating or cooling thereof using provisions set up in the nozzle airflow measuring apparatus as described in section 4.1.1(9) of this appendix.

4.4.2.2.2 When conditions have been stable for 60 minutes, as described in section 8.5.3 of ASHRAE 16–2016, measure performance for a 60 minute test period. The test is valid when energy balance requirements described in section 7 of ASHRAE 16–2016 have been met and the latent capacity calculated based on the condensate measurement is within 6 percent of the latent capacity measurement based on the psychrometric or calorimetric test method, whichever is used.

TABLE 9—DEHUMIDIFICATION TEST CONDITIONS

Air entering makeup air inlet temperatures (°F)		Air entering indoor side of unit temperature (°F)		Make-up air flow (scfm)
Dry bulb	Dew point	Dry bulb	Wet bulb	
95	67	80	67	30

TABLE 10—DEHUMIDIFICATION TEST TOLERANCES

Reading	Variation of arithmetic average from specified conditions (test condition tolerance)	Maximum observed range of readings (test operating tolerance)
Air entering makeup air inlet dry bulb (°F)	0.3	1.2
Dew point (°F)	0.5	1.5
Add-on dehumidification system test:		
Air entering indoor side dry bulb (°F)	3	5
Wet bulb (°F)	3	5
Integrated dehumidification system test:		
Air entering indoor side dry bulb (°F)	0.3	1.5
Wet bulb (°F)	0.3	1.0
Makeup airflow (scfm)	1	.....
Makeup airflow Nozzle pressure drop (%) .....	.....	5

4.3 Calculations

4.3.1 Dehumidifier capacity for PTAC/HP with add-on dehumidification system.

Calculate the capacity of an add-on dehumidification system using the data obtained and the formula:

$$C_d = 24 \times \frac{w_{d,add}}{\tau_{test}}$$

Where:

$w_{d,add}$ is the mass of collected condensate during the test period in pounds; τ is the test period duration in hours; and 24 is a conversion from hours to 24-hour period.

4.3.2 Dehumidifier capacity for PTAC/HP with integrated dehumidification system.

Calculate the capacity of an integrated dehumidification system using the data obtained and the formula:

$$C_d = 24 \times \left[\frac{w_{d,int}}{\tau_{test}} - \frac{w_{d,pre}}{\tau_{pre}} \right]$$

Where:

$w_{d,int}$ and $w_{d,pre}$ are the masses of collected condensate during the tests with the dehumidification system operative and non-operative, respectively, in pounds; τ_{test} and τ_{pre} are the test period durations in hours for the test with the dehumidification system operative and the preliminary test with the system non-operative, respectively; and 24 is a conversion from hours to 24-hour period.

4.3.3 *Dehumidifier Capacity in Pints per 24 hours.* Calculate capacity in pints per 24 hours by dividing the capacity in pounds per 24 hours by 1.04.

4.3.4 *Dehumidification Energy Use.* Calculate the 24-hour energy use associated with system dehumidification as follows.

$$E_d = 24 \times \left[\frac{E_{test}}{\tau_{test}} - \frac{E_{pre}}{\tau_{pre}} \right]$$

Where:

E_{test} and E_{pre} are the energy use measured during the dehumidification test and the

preliminary test, respectively, both in watt-hours (kWh); τ_{test} and τ_{pre} are the durations of the dehumidification test and the preliminary test, respectively, both in hours; and 24 is a conversion from hours to 24-hour period.

4.3.5 *Dehumidification Efficiency.* Calculate the dehumidification efficiency DE as follows:

$$DE = \frac{C_d}{E_d} \times 0.454$$

Where:

C_d is dehumidification capacity in pounds per 24 hour period; E_d is the energy use in kWh per 24 hour period; and 0.454 is a conversion factor from pounds to liters of water. Values of DE shall be rounded to the nearest 0.01 L/kWh.

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