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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Parts 201 and 203

[Doc. No. AMS–FTPP–21–0015]

RIN 0581–AE01

Preserving Trust Benefits Under the Packers and Stockyards Act

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule revises the Packers and Stockyards regulations to provide instructions for livestock sellers who desire to preserve their interest in the statutory livestock dealer trust under the Packers and Stockyards Act (Act). This rule adds procedures and timeframes for a livestock seller to notify the livestock dealer and the Secretary of Agriculture (Secretary) that the seller has not received full payment for livestock purchased by the dealer and that the seller intends to preserve its trust interests. Additionally, this rule provides that livestock dealers with average annual purchases over $100,000 are required to obtain written acknowledgement from livestock sellers that trust benefits do not pertain to credit sales. This rule provides further that livestock dealers are required to maintain records related to credit sales. These revisions to the Packers and Stockyards regulations reflect recent amendments to the Act that provide for a livestock dealer trust.

DATES: Effective July 24, 2023.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor; Packers and Stockyards Division, USDA AMS Fair Trade Practices Program; phone: 202–690–4355; or email: *S.Brett.Offutt@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 763 of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260; December 27, 2020), amended the Packers and Stockyards Act, 1921, as previously amended (7 U.S.C. 181 *et seq.*), by adding a new sec. 318 (7 U.S.C. 217b) establishing a statutory trust for the benefit of unpaid cash sellers of livestock. Under the new trust provisions, livestock dealers whose average annual purchases of livestock exceed $100,000 must hold all inventories of, and receivables and proceeds from, livestock purchased in cash sales in trust for the benefit of all unpaid cash sellers of livestock until the cash sellers have been paid in full. Livestock sellers lose the benefit of the trust unless they notify livestock dealers and the Secretary in writing that payment has not been received. Such notice must be provided within 30 days of the final date when payment was due, or within 15 days of notice that a dealer's payment instrument has been dishonored.

The newly added sec. 318 of the Act further provides that the dealer trust provisions apply only to cash sales, which are defined in the statute as sales in which the seller does not expressly extend credit to the buyer. Thus, livestock sellers have no claim against the trust if they have extended credit to the buyer.

Currently, § 203.15 of the Packers and Stockyards regulations outlines the process by which livestock sellers and live poultry sellers and growers preserve their interest in the packer and poultry trusts previously established under the Act (see 9 CFR 203.15). This final rule revises § 203.15, which will continue to provide for preservation of trust benefits under the packer and poultry trusts, by adding the process by which livestock sellers can preserve their interests under the new livestock dealer trust. Sections 206, 207, and 318 of the Act (7 U.S.C. 196, 197, 217b) require livestock sellers and poultry sellers or growers to notify packers, live poultry dealers, or livestock dealers and the Secretary in writing of their intent to preserve their trust benefits within 30 days of the final day on which payment was due or within 15 days of receiving notice that the packer's, live poultry dealer's, or livestock dealer's payment instrument was dishonored. Accordingly, the revised § 203.15 of the regulations outlines how sellers and growers can comply with the statutory requirement. The written notification should state that notification is to preserve trust benefits; identify both parties in the transaction; and include the date of the transaction, the date notice was received that the payment instrument was dishonored (if applicable), and the amount of money due. Written notification may be by letter, fax, email, or other electronic transmission, filed with the Packers and Stockyards Division (PSD) of the Agricultural Marketing Service (AMS). Section 203.15 of the regulations still provides that while the written notification described above is preferred, any written notice to the buyer and the Secretary that the seller has not received full payment is sufficient to meet the statutory requirement if it is given within the prescribed timeframes. Finally, § 203.15 is revised to include the statutory definition of a cash sale, meaning a sale in which the seller does not expressly extend credit to the buyer.

Section 201.200 of the regulations currently prohibits packers whose average annual livestock purchases exceed $500,000 from entering into credit agreements with livestock sellers unless the packer obtains written acknowledgement from the seller that the seller has no trust rights with respect to each particular sale under a credit agreement. Under this final rule, § 201.200 also prohibits livestock dealers whose average annual livestock purchases exceed $100,000 from entering into credit agreements with livestock sellers unless the purchasing dealer obtains written acknowledgement from the seller that the seller has no trust rights with respect to each particular sale under a credit agreement. The seller's written acknowledgment statement must further provide that the credit agreement covers a single sale, remains in effect until a specified date, or remains in effect until it is canceled in writing by either party. The seller's acknowledgement should be dated and signed by the seller. The purchasing livestock dealer is required to maintain records of the acknowledgement, as well as all other documents related to the credit agreement, for as long as required by any law or by the AMS Administrator, but for no less than two years following the expiration of the credit agreement referred to in the acknowledgment. Finally, the purchasing dealer is required to provide a copy of the acknowledgment to the seller.

Average annual livestock purchase amounts may be determined using information establishing actual yearly dealer purchases, or a dealer's purchases as stated on its most recent annual report filed pursuant to the requirements of 9 CFR 201.97. Average annual livestock purchase amounts may be determined for new dealers that have not operated for a year's time—and for dealers that have not filed an annual report in the prior two years—according to their actual livestock purchases for the current year to date, extrapolated to a yearly amount, if necessary. In general, the new requirements for livestock dealers in § 201.200 are similar to the current requirements for packers who enter into credit agreements with livestock sellers.

Comments

AMS published a proposed rule regarding this action on May 5, 2022 (87 FR 26695), and allowed 30 days for the public to submit comments on the proposal. The comment period closed June 6, 2022. AMS received six separate comments. Two comments were submitted by farm bureau federations. Three comments were submitted by livestock industry marketing associations. One comment was submitted by an association of community bankers.

Both farm bureau commenters supported establishment of the trust and the proposed rule generally, saying that the proposed regulations would benefit their members. One livestock marketing association commenter similarly supported establishment of the trust and AMS's efforts to add structure and functionality to the trust operation. One livestock marketing association commenter did not support establishment of the trust and opposed some provisions in the proposed rule. Another livestock marketing association commenter expressed concern about potential unintended consequences of the trust itself, as well as perceived shortcomings of the proposed rule. The association of community bankers opposed certain provisions of the dealer statutory trust and urged AMS to suspend rulemaking pending further industry outreach. Specific comments and AMS's responses are detailed below.

Credit Sales Acknowledgements

One commenter supported the proposed requirements that dealers obtain acknowledgments from sellers that sellers waive their trust rights when making credit sales and that credit agreements specify whether those agreements cover a single sale, remain in effect until a certain date, or remain in effect until cancelled. The commenter stated these requirements protect sellers against waiving their trust rights unknowingly.

AMS agrees that requiring dealers to obtain credit sales waivers and requiring such acknowledgments to specify the length of the credit agreement term can protect livestock sellers from waiving their trust rights inadvertently. AMS is making no changes to the proposed rule based on these comments.

Definition of Cash Sale

The same commenter recommended that AMS revise the proposed definition of *cash sale* to mean one in which the seller does not expressly extend credit to the buyer *in writing.* The commenter cited case law that found ''that unless the parties clearly agree in writing to a credit agreement, the transaction is a cash sale.'' [1] The commenter asserted that adding ''in writing'' to the cash sale definition would clarify that a written extension of credit is needed for the sale to no longer be a cash sale and would make the definition of *cash sale* align with the requirements that the credit agreement and waiver be in writing.

AMS notes that the definition of cash sale is already established by the Act: sec. 409(b) of the Act (7 U.S.C. 228b), regarding prompt payment for livestock purchases, requires credit agreements to be in writing, and sec. 318(d) of the Act (7 U.S.C. 217b), provides that ''[f]or the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.'' Accordingly, AMS is making no changes to the proposed regulatory definition of *cash sale* based on this comment.

One commenter suggested that the definition of *cash sale* should be only those in which neither the seller *nor any lender* has extended credit to the buyer to purchase the seller's livestock. The commenter asserted that livestock sales ultimately involve more participants than just the buyers and sellers, and that lenders would face increased burden as they attempted to follow all the transactions involved to determine whether sales were actually cash sales.

The prompt payment and trust provisions of the Act are intended to protect livestock sellers, and do not, as currently stated, involve lenders and any relationship they may have with buyers of livestock. Under the Act and attendant regulations, lenders do not have priority over the livestock for which the dealer has borrowed money; rather the trust is designed specifically to protect livestock sellers from non-payment, including situations where a lender might take livestock or proceeds from a buyer who has not paid for the livestock. Further, as mentioned above, the *cash sale* definition is statutory and not open to agency revision. Accordingly, AMS is making no change to the rule as proposed based on this comment.

Notifications

One commenter supported the proposed language in § 203.15 that provides what information should be submitted with a claim for a livestock seller to preserve the benefit of the dealer trust and that such a claim must be submitted to both the defaulting dealer and the Secretary. The commenter agreed that the required information properly identifies the sale for which trust benefits are being preserved and concurred with the proposal that while such information is desirable, any timely written notice informing the dealer and the Secretary that the dealer has failed to pay is sufficient to meet the notice requirement in order to preserve the seller's interest in the trust.

AMS notes that the proposed notification requirements mirror those currently in place in § 203.15 relating to the packer and live poultry dealer trusts. Accordingly, AMS is making no changes to the proposed rule based on these comments.

Two commenters stated that the proposed timeframes for notification are too long, one suggesting that trust notifications should be made no later than 10 business days from the date payment was due and/or postmarked, as per current prompt payment rules, with an additional three business days allowed after a payment instrument is dishonored. Both commenters expressed concern that the proposed rule's notification timeframes could allow for up to 45 days of ''clear title'' disruption and comingling of the non-paying dealer's receivables and assets. Two commenters further asserted that the proposed timeline could allow unpaid sellers to collude with non-paying dealers, allowing those dealers to operate illegally for up to 45 days from the date of the original transgression, and also allowing competitors to unknowingly sell livestock to offending dealers.

AMS notes that notification timeframes are based on the date of the transaction for which payment is not received. Later transactions do not extend the filing timeframe for earlier transactions. The proposed notification

[1] *In re Gotham Provision Co.,* 669 F.2d 1000, 1005 (5th Cir. 1982).

timeframes are statutory and have been established by Congress, and AMS cannot issue regulations that would conflict with the statute; as stated above, the proposed notification requirements are in accord with those currently in place in § 203.15 relating to the packer and live poultry dealer trusts. Accordingly, AMS is making no changes to the proposed rule based on these comments.

In connection with the list of registered dealers on PSD's website, two commenters suggested PSD also should be required to report trust claim notifications against dealers so all industry participants can verify not only the registration and bonding status of dealers, but also their status regarding trust claims. The commenters expressed concern about PSD's ability to maintain and publish such lists in a timely manner. Further, commenters suggested the proposed notification timelines and a lack of reliable disclosure about dealer payment defaults potentially harms other market participants. Commenters asserted there must be transparency and disclosure about dealers so that industry participants can make appropriate decisions with respect to their perceived risk.

PSD is prohibited under 9 CFR 201.96—Unauthorized disclosure of business information prohibited—from publicizing any facts or information regarding dealers' businesses without their consent. However, PSD acts quickly to initiate investigations when it receives trust notifications. PSD reviews packers', dealers', and live poultry dealers' records and determines whether other sellers have not been paid. As appropriate, PSD notifies other unpaid sellers that they may need to file trust notifications to protect their interests. Accordingly, AMS is making no changes to the proposed regulations based on these comments.

Dealers

The Packers and Stockyards regulations currently require livestock dealers to register with PSD. PSD maintains and publishes the list of registered dealers on its website. One commenter pointed out that regardless of their compliance with the registration requirement, any individual engaging in the business of buying and selling livestock in commerce is a dealer, and that sellers thus retain their statutory trust rights even when a buyer fails to register as a dealer. Another commenter disagreed, saying that the trust should only be enforceable against regulated livestock dealers identified and disclosed by PSD. According to this commenter, a seller engaging in livestock trade with an unidentified and unregulated livestock buyer, or ''alleged dealer,'' should assume the risk of doing so when there are alternative methods of marketing livestock in a secure manner, such as through a regulated dealer or livestock market. A third commenter asserted that the proposed rule could cause many buyers to unknowingly be classified as dealers (who ostensibly do not fit the definition of ''dealer'' under the Act).

Section 301(d) of the Act (7 U.S.C. 201) defines the term *dealer*—as used in the Act—to mean ''any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.'' The courts have held that if someone is not a *market agency,*[2] and is engaged in the business of buying and selling in commerce livestock, their activities fall within the provision of sec. 301(d) of the Act, and that to hold otherwise would be to ignore completely the definition of a *dealer* as prescribed by Congress.[3] Further, sec. 318(a)(1) of the Act (7 U.S.C. 217b) specifies that ''[a]ll livestock purchased by a dealer in cash sales and all inventories of, or receivables or proceeds from, such livestock sales shall be held by such dealer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid cash sellers.'' Only dealers whose average annual purchases of livestock do not exceed $100,000 are exempt from the dealer trust provisions (sec. 318(a)(2)).

AMS notes that the statutory trust provisions do not differentiate between registered and unregistered dealers, nor between sales to registered and unregistered dealers. AMS believes that if the regulations were to exclude unregistered dealers from trust applicability, it could entice some dealers to not register, and thereby put more sellers at risk. Accordingly, AMS is making no changes to the rule as proposed based on these comments.

One commenter objected to the definition of a *dealer* as one with purchases exceeding $100,000, finding the definition to be too broad and unenforceable from a regulatory standpoint. AMS clarifies that the $100,000 threshold does not alter the statutory definition of *dealer,* as discussed above. The $100,000 average annual purchases threshold, which is established by Congress in the amended statute, identifies which dealers are subject to the provisions of the trust and must comply with the requirement to obtain credit sales trust waiver acknowledgements from sellers. PSD is able to determine a dealer's average annual purchase amount using information provided by dealers in their annual reports, filed pursuant to the requirements of 9 CFR 201.97. PSD is also able to extrapolate average annual purchases for new dealers, or those who have not filed recent reports, using current year-to-date purchase information. The $100,000 average annual purchases threshold was established by Congress when the dealer trust was enacted, and AMS has no authority to alter or amend the statutory provision. Moreover, for the reasons cited, AMS believes the proposed requirement to be reasonably enforceable. Accordingly, AMS is making no change to the proposed regulation based on this comment.

Regulatory Burden

One commenter concurred with AMS's assessment of the reporting and recordkeeping burden related to compliance with these proposed requirements, agreeing that completing each acknowledgement would take one half hour or less and that the need for such acknowledgements would likely be infrequent. The commenter observed that the required credit sales acknowledgment is consistent with existing requirements related to the packer trust. AMS notes that these requirements intentionally mirror the packer trust provisions because the industry is already familiar with the process. AMS made no changes to the proposed rule based on these comments.

Another commenter stated that AMS grossly underestimated the financial impact of the trust itself on small businesses operating as livestock sellers, markets, producers, and/or dealers. The commenter suggested AMS has not considered costs to sellers related to offering credit terms. The commenter asserted that livestock marketing agencies would be forced by dealers to extend credit and would incur additional interest costs to secure lines of credit to cover their custodial accounts. The commenter speculated further that other industry participants, such as lenders and government

[2] The term *market agency* is defined in sec. 307(c) of the Act (7 U.S.C. 201) to mean ''any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services.'' The term includes ''any person who engages in the buying or selling of livestock, on a commission or other fee basis, through the use of online, video, or other electronic methods when handling or providing the means to handle receivables or proceeds from such buying or selling, so long as such person's annual average of online, video, or electronic sales of livestock, on a commission or other fee basis, exceeds $250,000.''

[3] *U.S.* v. *Kelly,* 106 F.Supp 394 (E.D. Okla., 1952).

agencies, would incur massive legal, interest, and administrative costs.

AMS notes that the scope of the proposed rule is confined to provisions related to making timely trust claim notifications and requiring dealers to obtain credit sales trust waiver acknowledgements from sellers. AMS's cost/benefit and Regulatory Flexibility analyses, which were published in the proposed rule, evaluated only the potential burdens, costs, and benefits of effectuating the proposed provisions. Thus, comments related to the burden of effectuating the statutory trust itself—which as noted above, has already been established by Congress with the enactment of the statute—are outside the scope of the proposed rule, and AMS is making no changes to the rule as proposed based on these comments.

Trust Provisions and Enforcement

AMS notes that the Act regulates the business activities of livestock dealers. The trust was created to protect livestock sellers doing business with dealers. The trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid.

Prior to implementing the trust, Congress instructed USDA to conduct a study on the feasibility of a dealer trust. The study, released on February 4, 2020, included input from the industry and lenders that Congress later considered when amending the Act to establish the livestock dealer statutory trust.[4] Congressional establishment of the dealer statutory trust through amendment of the Packers and Stockyards Act became effective December 27, 2020. The provisions of the proposed rule are preliminary steps to trust enforcement and include the regulations AMS deemed necessary to begin trust administration. The proposed provisions are intended to help sellers understand the conditions under which they can preserve their trust rights, and to help both sellers and dealers engaged in credit transactions understand the conditions of credit sales as they relate to trust benefits.

Three commenters expressed concern with regard to the establishment of the livestock dealer statutory trust, as well as other existing provisions of the amended Act and the regulations, such as prompt payment requirements, ''clear title'' of cleared livestock transactions, and definition of the term *dealer.* One commenter asserted that the trust was established by Congress without any meaningful or robust discussion with industry participants, who felt there was already ample protection available in the marketplace for livestock sellers operating within the guidelines of prompt payment rules. One commenter suggested that AMS suspend implementation of the proposed rule, so that AMS can conduct outreach to the affected industry and lenders, to mitigate possible unintended consequences (purportedly of the trust itself), including lower prices to producers. As noted above, USDA conducted a study which included input from the industry and lenders, that Congress later considered when amending the Act.

Comments about the establishment and merits of the trust itself, about provisions of the amended Act, or about other existing regulations are outside the scope of the proposed rule of May 5, 2022. Congress created the trust to protect livestock sellers doing business with dealers; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. AMS has no authority to alter or amend the statutory provisions that Congress has enacted for these purposes. Accordingly, AMS is making no changes to the rule as proposed based on those comments.

One commenter suggested that a new program to be instituted by the Federal Reserve will make it possible to transact instant interbank payments for livestock purchases.[5] The commenter stated that the proposed rule does not discuss use of an instant payment system in lieu of the dealer trust itself, nor its potential impact on information collection. The sole purpose of this rule is to delineate the process for sellers to preserve their dealer trust rights. Congress created the trust to protect livestock sellers doing business with dealers; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. The manner of payment is not addressed in the amendment to the statute. AMS has no authority to alter or amend the statutory provisions that Congress has enacted. Accordingly, AMS is making no changes to the rule as proposed based on those comments.

One commenter asserted that trust provisions conflict with Uniform Commercial Code (UCC) provisions regarding ''clear title'' on livestock transactions and lenders' liens and security interest in livestock. The application of the UCC to the statute and its operation, if any, and the question of ''clear title,'' cannot be addressed by AMS in this rulemaking. Congress created the trust to protect livestock sellers from non-payment; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. AMS has no authority to alter or amend the statutory provisions that Congress has enacted for these purposes.

The commenter further questioned whether competing buyers under UCC and trust provisions would be in a truly competitive bidding process or level playing field at public markets, because in the commenter's opinion, the trust creates a lien that interferes with clear title, and treats different classes of buyers differently. Congress, by statute, granted livestock sellers trust rights for their protection; this attendant rule to the statute only provides instructions for sellers who desire to preserve the benefit of the statutory livestock dealer trust. As stated previously, AMS cannot address what Congress has already established as the statutory trust.

One commenter expressed the opinion that according to the text of the statute, the non-paying dealer would be the trustee of the trust created under the Act. AMS notes that the statute also includes authority for USDA to replace the dealer with another person as trustee to better protect livestock sellers.

Two commenters expressed concerns about the mechanics of enforcing a dealer trust claim and the U.S. Department of Agriculture's (USDA) ability to enforce trust claims. One commenter further expressed belief that the trust and the proposed regulations may disrupt livestock markets and undermine current industry efforts to ''establish true price discovery,'' thereby damaging livestock producers who ''are already languishing under current market conditions.'' This comment appears to take issue with the establishment of the trust itself (and *not* the current proposed rule), which AMS cannot address. The same commenter stated there may be substantial dealer trust enforcement issues with regard to livestock transactions between members inside and outside of tribal nations. The commenter asserted that USDA has not met its burden of proof with regard to the impact and enforcement of the trust on Indian tribal nations.

The scope of the proposed rule regarding the trust already enacted by Congress is confined to provisions related to making timely trust claim

[4] Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust (*usda.gov*); accessed August 2, 2022.

[5] *https://www.federalreserve.gov/paymentsystems/fednow_about.htm;* accessed August 2, 2022.

notifications and requiring dealers to obtain credit sales trust waiver acknowledgements from sellers. Comments related to the existence of the statutory trust itself, or any burden of effectuating the trust are outside the scope of the proposed rule, and AMS is making no changes to the rule as proposed based on comments relating to the establishment of the trust. With regard to trust enforcement in tribal nations and without, AMS agrees that trust enforcement is important. In the development of the proposed rule, AMS determined that the proposed rule would be unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. While AMS has not yet addressed the procedure for enforcement of the dealer statutory trust itself, AMS plans to engage in future rulemaking to establish regulations for trust enforcement, and AMS intends to work with UDSA's Office of Tribal Relations and with tribal governments in the development of future trust enforcement regulations to ensure those rules address concerns such as those raised by the commenter. Forthcoming trust enforcement regulations would provide for consideration and consultation regarding trust enforcement inside and outside tribal nations.

One commenter noted that USDA's enforcement role in the dealer trust appears to be greater than its role in enforcement of the packer trust, and encouraged USDA to prioritize the establishment of dealer trust enforcement procedures so the agency is prepared to act immediately when a default occurs. AMS acknowledges that trust enforcement procedures should be established, and assures commenters that we are working on trust enforcement regulations to be proposed in the future. In that regard, AMS will endeavor to create trust enforcement regulations that provide for the most efficient enforcement response. In the meantime, PSD responds quickly to all complaints of nonpayment for livestock in order to notify sellers of their right to file trust claims and bond claims. Where appropriate, PSD brings enforcement action against violators, which could result in civil penalties and/or suspension of registration.

Comment Period Extension

The proposed rule provided a 30-day comment period for public input about the proposals. One commenter submitted two requests for an extension of the public comment period. One request simply asked for additional time to file comments. The other asked for a 90-day comment period.

As explained above, the provisions of the proposed rule, while very narrow in scope, are necessary to the administration of the dealer statutory trust. They mirror the provisions related to making timely trust claim notifications under the existing packer and live poultry dealer trusts, and they mirror provisions requiring packers to obtain credit sales trust waiver acknowledgements under the packer trust. AMS believes the 30-day comment period provided was sufficient to obtain input about these relatively non-controversial proposals. Accordingly, AMS denied the requests for an extended comment period.

Regulatory Analyses

Executive Orders 12866 and 13563

AMS is issuing this final rule in conformance with Executive Orders (E.O.) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

AMS believes that the livestock industry is best served by revising the existing regulation at 9 CFR 203.15 that addresses preserving packer and poultry trust benefits under the Act to include provisions related to the new livestock dealer trust. The industry is already familiar with the notification process. AMS anticipates that additional costs or the adoption of new practices related to compliance with this final rule will be minimal. Livestock sellers can use the instructions in this final rule to file notice most efficiently with dealers and AMS of their intent to preserve trust benefits. However, this final rule also provides flexibility because the revisions allow that any written notification to dealers and the Secretary within the prescribed timeframes that the seller has not received full payment for livestock will meet the statutory requirement. Furthermore, AMS believes that including the statutory definition of ''cash sale'' in § 203.15 can help sellers better understand the conditions under which they can preserve their trust benefits.

Regarding revisions to § 201.200, AMS believes that both buyers and sellers benefit when livestock dealers with more than $100,000 average annual purchases are required to obtain written acknowledgment from sellers that trust benefits do not extend to livestock purchases under credit terms, and to maintain all records related to such sales, including the written acknowledgement. Obtaining the written acknowledgement, as well as providing the seller with a copy of the written agreement and maintaining pertinent records, demonstrates that both parties understand the conditions of credit sales as they relate to dealer trust benefits. AMS does not expect this final rule to provide any environmental, public health, or safety benefits.

This final rule does not meet the criteria of a significant regulatory action under E.O. 12866 as supplemented by E.O. 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small business entities.

The final rule affects dealers that purchase more than $100,000 in cattle, hogs, sheep, goats, horses, or mules annually. It also affects livestock producers, other dealers, and livestock auctions from which the dealers purchased livestock.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System (NAICS) codes. Livestock dealers and livestock auctions would be classified as NAICS code 424520—Livestock Merchant Wholesalers, which includes all livestock dealers except dealers in horses and mules, and code 424590—Other Farm Product Raw Material Merchant Wholesalers.[6] For both classifications, SBA defined a small business as one with 100 employees or fewer.[7]

Livestock dealers, including livestock auctions, are required to register and file annual reports with AMS. In 2017 and 2018, 3,015 livestock dealers purchased more than $100,000 in livestock for

[6] Office of the President, OMB. ''North American Industry Classification System United States, 2017,'' pp. 336–337. *https://www.census.gov/naics/reference_files_tools/2017_NAICS_Manual.pdf.*

[7] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' Small Business Administration, effective August 19, 2019, p. 24. *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

their own account or for the account of others.[8] Livestock dealers do not disclose the number of employees in their annual reports, but based on its familiarity with the industry, AMS estimates at most three or four firms had more than 100 employees. At least 99.8 percent would be small businesses under the SBA definition.

Producers selling livestock would be classified as NAICS codes: 12111—Beef Cattle Ranching and Farming, 112210—Hog and Pig Farming, 112410—Sheep Farming, 112420—Goat Farming, and 112920—Horses and Other Equine Production. For each producer classification, SBA defined a small business as one with $1 million or less in annual receipts.[9]

The 2017 Census of Agriculture categorizes cattle producers, hog producers, sheep and lamb producers, and horse and mule producers by the size of their operation. The Census of Agriculture tables categorize producers' sales by number of head not the value of their receipts, but data from the tables enable AMS to make a rough estimate of the number of producers that would qualify as small businesses as defined by SBA.

Census of Agriculture tables indicate that 711,827 farms reported sales of cattle or calves in 2017, of which 704,776 (99 percent) produced fewer than 1,000 head, averaged less than $1 million in sales, and would be small businesses.[10] Of the 64,871 hog farms reporting sales, the 57,084 farms (88 percent) that produced fewer than 5,000 head would qualify as small businesses.[11] Of the 101,387 farms producing sheep and lambs, 101,280 (99.9 percent) would qualify as small businesses.[12] The Census of Agriculture reported 74,227 farms that sold horses. Of those, 74,065 (99.8 percent) sold fewer than 50 horses, averaged less than $1 million in sales, and would be considered small businesses. All the 10,435 farms that sold donkeys or mules were small businesses.[13] The Census did not have sales information for goat producers.

More than 99 percent of the cattle, sheep and lamb, horse, and mule producers were small businesses. Hog production was more concentrated, with only 88 percent qualifying as small businesses. As group, these livestock producers were about 98.5 percent small businesses.

The final rule includes two new provisions that affect small businesses: (1) The rule outlines how sellers can comply with the statutory requirement of providing written notification to dealers and to the Secretary if they wish to preserve their rights to the dealer trust, and (2) the rule requires dealers to obtain written acknowledgement from the seller that the seller waives their rights to the trust with respect to each particular sale under a credit agreement.

The costs of filing a trust claim would only apply to livestock sellers. There are few requirements. The cost would be the value of the time required to write and send the notification. AMS expects writing and sending the notification would require no more than a half hour of a manager's time. The U.S. Bureau of Labor Statistics estimated the average hourly wage for farmers, ranchers, and other agricultural managers to be $36.93.[14] If it takes one half hour to file the claim, filing the claim would cost $18.47.

In a review of dealer bond claims filed with AMS from October 2013 through June 2019, AMS found claims against 82 dealers from 184 claimants.[15] If sellers file trust claims at a similar rate as they have filed bond claims in the past, AMS could expect 14.5 incidents in which one or more sellers makes a valid claim against a dealer's trust each year, with an average of 2.25 claimants for each trust incident, or 33 claimants per year. At a cost of $18.47 for each claim, AMS expects annual costs to the industry to be $609.51. Since nearly all livestock producers and livestock dealers who might sell livestock to other dealers are small business entities, AMS expects that nearly all of the claimants would be small businesses.

The cost of obtaining a written waiver acknowledgement from the seller would only apply to livestock dealers. AMS provides sample wording for the acknowledgment and expects that obtaining written acknowledgment from the seller would take no more than a half hour of a dealer's time, or $18.47 for each acknowledgement.

AMS has no data on the number of dealers that purchase livestock with credit agreements, or the number of trust waiver acknowledgements dealers obtain from sellers and maintain. AMS's experience has been that the number of sellers acknowledging they waive their trust rights is relatively small. Sellers are reluctant to extend credit because they would be required to give up their rights to file trust claims or they have not had the financial resources to extend credit. With packer trusts, packers typically have not created separate trust waiver acknowledgements for each transaction. Instead, the waiver acknowledgments tend to cover a number of transactions over a period of time, limiting the number of written trust waivers required.

Regarding dealer trusts, AMS expects that relatively few sellers would enter into credit agreements requiring trust waiver acknowledgments. However, if a dealer must obtain waiver acknowledgments according to § 201.200, AMS expects that the dealer would limit the number of waiver acknowledgments by having a single waiver acknowledgment cover a number of transactions over a period of time. AMS estimates that at most, ten percent (302) of the 3,015 dealers that average annual purchases of more than $100,000 in livestock would have credit agreements that require trust waiver acknowledgements. Dealers that purchase livestock with credit agreements may also purchase other livestock through cash sales, for which they are not required to obtain trust waiver acknowledgements from sellers. AMS estimates that each dealer that purchases livestock with credit and obtains trust waivers from sellers will only do so with an average of five customers in a year. That amounts to a total cost of $27,890 for all of the expected trust waivers (302 dealers × 5 waivers/dealer × $18.47/waiver).

The costs would not be spread uniformly across dealers. Dealers that do not enter into credit agreements would have no costs. Only the estimated ten percent of dealers that purchase livestock under a credit agreement with the seller would need trust waiver acknowledgments. The cost would average $92 for each dealer that purchases livestock with a credit agreement, which is about 0.1 percent of the minimum amount ($100,000) of

[8] USDA, AMS. ''Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust.'' December 20, 2019, p. 39. *https://www.ams.usda.gov/sites/default/files/media/LivestockDealerStatutoryTrustSenttoCongress.pdf.*

[9] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' Small Business Administration, effective August 19, 2019, pp. 2–3.

[10] USDA, National Agricultural Statistics Service (NASS). ''2017 Census of Agriculture: United States Summary and State Data'' Volume 1. April 2019, p. 23. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[11] Ibid., p. 24.

[12] Ibid., p. 25.

[13] Ibid., p. 26.

[14] Department of Labor (USDOL), Bureau of Labor Statistics (BLS). Occupational Employment Statistics. ''Occupational Employment and Wages, May 2020. 11–9013 Farmers, Ranchers, and Other Agricultural Managers.'' *https://www.bls.gov/oes/current/oes119013.htm#nat.*

[15] USDA, AMS. ''Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust.'' December 20, 2019, p. 70.

average annual livestock purchases that makes a dealer responsible for obtaining waiver acknowledgments from credit sellers. Costs would likely be correlated with the size of the dealer: smaller dealers that purchase livestock on credit from fewer sellers would have fewer trust waiver acknowledgements.

AMS expects total marginal costs for the two provisions to be $28,599. Small businesses would be responsible for nearly all of the costs. In 2017 and 2018, livestock dealers that purchased more than $100,000 in a year purchased a yearly total of $27.065 billion in livestock.[16] Compared to the amount of business that livestock dealers conduct, an annual cost of $28,599 is 0.00011 percent of total dealer livestock purchases. Accordingly, AMS has determined that this action would not have a significant negative economic impact on a substantial number of these small business entities.

One comment submitted in response to the proposed rule suggested that AMS grossly underestimated the financial impacts of the dealer statutory trust on small businesses operating as livestock sellers, markets, producers, and/or dealers. The commenter asserted that, in light of statutory trust provisions, dealers will force sellers to extend credit to dealers, incurring additional interest costs to secure lines of credit to cover their custodial accounts, which AMS did not consider. The commenter estimated this additional interest cost alone could range between $30,000 and $60,000 annually per market, or between $40 million and $50 million collectively. The commenter identified other industry participants that could be financially impacted by the trust, citing legal fees, interest fees on unsettled notes, and extensive administrative costs to industry participants and government agencies. Finally, the commenter urged USDA to submit to a more extensive rulemaking process that incorporates the input and cooperation of the impacted businesses.

AMS acknowledges that the general impacts and costs related to establishment of the dealer statutory trust were not considered in the initial Regulatory Flexibility analysis performed in conjunction with the proposed rule, nor should they have been. AMS's cost/benefit and Regulatory Flexibility analyses, which were published in the proposed rule, properly evaluated only the potential burdens, costs, and benefits of effectuating these proposed provisions that provide instructions for livestock sellers who desire to preserve their interest in the statutory livestock dealer trust under the Packers and Stockyards Act. Impacts related to the existence or establishment of the statutory trust itself are outside the scope of the proposed rule. Accordingly, AMS has made no changes to the proposed rule, nor to the analysis, based on this comment. AMS's analysis focused on the impacts of the proposed rule's provisions on small business entities, as was appropriate. Some of the commenter's observations and projections may be applicable to future rulemaking about trust enforcement. We encourage the commenter and all other interested parties to participate in that effort.

[16] USDA, AMS. ''Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust.'' December 20, 2019, p. 33.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the information collection requirements under the Packers and Stockyards regulations have been approved previously by OMB and assigned OMB No. 0581–0308. Changes to those requirements are necessary in connection with this final rule.

Title: Preserving Trust Benefits Under the Packers and Stockyards Act.

OMB Number: 0581–0336.

Expiration Date of Approval: 3 years from approval.

Type of Request: Intent to seek approval to conduct a new information collection.

Abstract: The Packers and Stockyards Act, 1921 (Act) (7 U.S.C. 181 *et seq.*), was recently amended by the addition of section 318 (7 U.S.C. 217b), establishing a statutory trust for the benefit of unpaid cash sellers of livestock. Under the amended Act, livestock dealers whose average annual purchases of livestock exceed $100,000 must hold all inventories of and receivables and proceeds from livestock purchased in cash sales in trust for the benefit of all unpaid cash sellers of that livestock until the cash sellers have been paid in full.

Under the new statutory trust provisions, livestock sellers lose their interest in the trust unless they notify livestock dealers and the Secretary of Agriculture (Secretary) in writing that payment has not been received. Such notice must be provided within 30 days of the final date when payment was due or within 15 days of notice that a dealer's payment instrument has been dishonored. The statute further provides that trust provisions apply only to cash sales, which are defined in the statute as sales in which the seller does not expressly extend credit to the buyer. Thus, livestock sellers have no claim against the trust if they have extended credit to the buyer.

AMS seeks approval for a new information collection related to the livestock dealer trust to implement new regulatory requirements. Livestock dealers who purchase livestock under credit terms and whose average annual purchases of livestock exceed $100,000 must obtain written acknowledgements from sellers that trust benefits do not pertain to credit sales. Dealers must provide copies of the acknowledgements to sellers and must retain the acknowledgements for two years after the expiration of the subject credit agreements. Additionally, a livestock seller who has not received payment in full for cash livestock sales must notify both the dealer and the Secretary of Agriculture in writing and within specified timeframes that the seller has not received full payment and intends to preserve their interest in the dealer trust. Providing such notice to the Secretary will enable USDA to initiate enforcement investigations and further actions as necessary.

Authority:

- In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and
- The Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*), as amended.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 to 30 minutes.

Respondents: Livestock dealers and sellers.

Estimated Number of Potential Respondents: 335.

Estimated Total Potential Annual Responses: 1,845.

Maximum Estimated Total Annual Burden on All Respondents: 847 hours.

A 60-day public comment period regarding the information collection related to this rule was imbedded in the proposed rule that was published on May 5, 2022 (87 FR 26695). The comment period closed July 5, 2022. AMS received one comment referencing the estimated information collection burden on regulated entities. The commenter supported the proposed requirement to obtain credit sales trust waiver acknowledgements and concurred with AMS's estimate of the amount of time to do so and the likely infrequency of needing to do so. The commenter said the requirement protects sellers by ensuring they are well informed that they are giving up their trust rights when extending credit to a dealer. The commenter stated also that the statutory trust is an important tool for collecting funds in the event of a default, and producers should not be

put in a position to waive this protection without notice. The commenter observed that the burden of creating the acknowledgement is low, as the language for dealers to use in the document is provided in the regulation. Finally, the commenter recognized that the requirement is consistent with the existing regulation for extending credit to packers and waiving packer statutory trust protections. AMS made no changes to the information collection requirements of the proposed rule based on this comment.

Upon approval by OMB, this information collection will be merged with the information collection currently approved for the Packers and Stockyards Division.

Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Should additional changes become necessary, they would be submitted to OMB for approval.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

E-Government Act

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

Executive Order 13175

This final rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. In the development of the proposed rule, AMS determined that the proposed rule would be unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

One comment submitted in response to the proposed rule suggested that AMS had not met its burden of proof with regard to the impact and enforcement implications of dealer trust regulations on livestock sales transactions between tribal and non-tribal industry participants. AMS clarifies that neither the proposed rule nor this final rule addresses the impacts or enforcement of the dealer statutory trust itself. AMS plans to engage in future rulemaking to establish regulations for trust enforcement regulations. AMS intends to work with USDA's Office of Tribal Relations and with Tribal governments in the development of future trust enforcement regulations to ensure those rules address concerns such as those raised by the commenter. However, AMS continues to believe that the provisions of the May 5, 2022, proposed rule, as well as this final rule, are unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenge to the provisions of this rule.

Additional regulations pertaining to the new livestock dealer trust will be considered in a separate rulemaking action.

List of Subjects

9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 9 CFR chapter II as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Amend § 201.200 by:
■ a. Revising the section heading;
■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
■ c. Adding new paragraph (b);
■ d. Revising newly redesignated paragraph (c); and
■ e. Removing the parenthetical authority at the end of the section.

The revisions and addition read as follows:

§ 201.200 Sale of livestock on credit.

* * * * *

(b) No dealer whose average annual purchases of livestock exceed $100,000 shall purchase livestock on credit unless:

(1) Before purchasing livestock on credit, the dealer obtains from the seller a written acknowledgement that includes the information described in this paragraph (b)(1).

(i) The following statement:

On this date I am entering into a written agreement for the sale of livestock on credit to _____, a dealer, and I understand that in doing so I will have no rights under the trust provisions of section 318 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 217b), with respect to any such credit sale.

(ii) A statement about whether the credit sales agreement covers a single sale; covers multiple sales and remains in effect through a certain date and states the date; or remains in effect until canceled in writing by either party.

(iii) The date the seller signed the agreement.

(iv) The seller's signature.

(2) The dealer retains the written acknowledgment, together with all other documents, if any, setting forth the terms of credit sales on which the purchaser and seller have agreed, and the dealer retains a copy thereof, in their records for such time as is required by any law, or by written notice served on the dealer by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in the acknowledgment.

(3) The dealer provides a copy of the acknowledgment to the seller.

(c) Purchasing livestock for which payment is to be made by a draft which is not a check shall constitute purchasing such livestock on credit within the meaning of paragraphs (a) and (b) of this section. (See also § 201.43(b)(1).)

* * * * *

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

■ 3. The authority citation for part 203 continues to read as follows:

Authority: 7 CFR 2.22 and 2.81.

■ 4. Revise § 203.15 to read as follows:

§ 203.15 Trust benefits under sections 206, 207, and 318 of the Packers and Stockyards Act.

(a) Within the times specified under sections 206(b), 207(d), and 318(b) of

the Act, any livestock seller, live poultry seller or grower, to preserve their interest in the statutory trust, must give written notice to the appropriate packer, live poultry dealer, or livestock dealer and file such notice with the Secretary within the prescribed time by letter, fax, email, or other electronic transmission. The written notice should provide:

(1) Notification to preserve trust benefits;

(2) Identification of packer, live poultry dealer, or livestock dealer;

(3) Identification of seller or poultry grower;

(4) Date of the transaction;

(5) Date of seller's or poultry grower's receipt of notice that payment instrument has been dishonored (if applicable); and

(6) Amount of money due; and to make certain that a copy of such letter, fax, email, or other electronic transmission is filed with a PSD regional office or with the PSD headquarters office within the prescribed time.

(b) While the information in paragraphs (a)(1) through (6) of this section is desirable, any written notice which informs the packer, live poultry dealer, or livestock dealer, and the Secretary that the packer, live poultry dealer, or livestock dealer has failed to pay is sufficient to meet the statutory requirement in paragraph (a) of this section if it is given within the prescribed time.

(c) For purposes of administering statutory trusts under the Act, a *cash sale* means a sale in which the seller does not expressly extend credit to the buyer.

(Approved by the Office of Management and Budget under control number 0581–0308)

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–13418 Filed 6–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2022–1212]

Changes to Surveillance and Broadcast Services

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

ACTION: Notification of changes to surveillance services.

SUMMARY: This document announces termination of the Mode-S Traffic Information Service (TIS) at FAA terminal Mode-S radar sites. The FAA is replacing legacy terminal Mode-S radars via the Mode-S Beacon Replacement System (MSBRS) program, or may remove legacy terminal Mode-S radars as part of other ongoing activities. As each legacy terminal Mode-S Radar is replaced or removed, the FAA will no longer provide Mode-S TIS to capable transponders from that location. This change does not affect existing Traffic Information Service—Broadcast (TIS–B), Automatic Dependent Surveillance—Rebroadcast (ADS–R), or Automatic Dependent Surveillance—Same Link Rebroadcast (ADS–SLR) services currently provided to aircraft with a properly functioning Automatic Dependent Surveillance—Broadcast (ADS–B) system.

DATES: Effective June 23, 2023.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this document, contact: Michael Freie, Technical Advisor, Surveillance Services, AJM–4, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: 202–528–2337; email: *michael.freie@faa.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

In 2018, the FAA performed an assessment of the safety impacts on general aviation owners and operators (from here on referred to as ''the GA Community'') from the termination of Mode-S Traffic Information Service (TIS). The purpose of this work was to communicate information on the removal of Mode-S TIS from the National Airspace System (NAS) through user outreach and engaging with non-governmental organizations (*e.g.,* Aircraft Electronics Association (AEA), Aircraft Owner and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and General Aviation Manufacturers Association (GAMA)). Taking into consideration the results of the FAA study and the benefits from the ADS–B In traffic services available in the NAS, the FAA determined that removal of Mode-S TIS had little to no significant adverse safety impact on the GA Community. Therefore, beginning in 2024, Mode-S TIS will terminate at each radar location as current Mode-S radars are replaced by the Mode-S Beacon Replacement System (MSBRS) program, or as legacy terminal Mode-S radars are removed as part of other ongoing activities. The GA Community should no longer rely on reception of Mode-S TIS information from FAA capable radars.

I. Background

In 2000, FAA implemented Mode-S Traffic Information System (TIS) via Mode-S radar data-link functionality. Mode-S TIS has also been referred to informally as TIS–A by some in industry. Mode-S TIS was implemented by FAA in response to an NTSB recommendation suggesting improvement of situational awareness information for the general aviation (GA) community not equipped with a traffic alert and collision avoidance system (TCAS). Reception of Mode-S TIS information was not a functionality that was required for Mode-S transponders. To this day, a very limited set of transponders are known to be capable of receiving and processing Mode-S TIS information from FAA terminal radars.

In May 2010, the FAA published 14 CFR 91.225 and 91.227, requiring aircraft to be equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) Out equipment by 1 January 2020 in order to operate in certain U.S. airspace. ADS–B was identified as the backbone for the future of the FAA's Next Generation (NextGen) programs. From 2010 through 2020, the FAA funded deployment of approximately 700 ADS–B radio stations across the U.S. to provide improved surveillance coverage across the NAS. Along with improving surveillance coverage, the FAA implemented functionality into ADS–B radio stations geared at providing appropriately equipped GA aircraft with enhanced situational awareness through both Traffic Information Services—Broadcast (TIS–B) and Automatic Dependent Surveillance—Rebroadcast (ADS–R).[1] In 2016, FAA funded the addition of Automatic Dependent Surveillance—Same Link Rebroadcast (ADS–SLR) service at the busiest U.S. airports with a surface surveillance system.[2]

In the decades following the initial Mode-S TIS deployment, the FAA implemented improved systems for provisioning information on proximate aircraft to GA pilots through the use of TIS–B, ADS–R, and ADS–SLR services. These new services expand beyond the

[1] More information on TIS–B and ADS–R can be found at the FAA's NEXTGEN ADS–B website: *https://www.faa.gov/nextgen/programs/adsb.*

[2] FAA has two surface surveillance systems: ASSC (Airport Surface Surveillance Capability) and ASDE–X (Airport Surface Detection Equipment, Model X). See *https://www.faa.gov/nextgen/programs/adsb/atc/assc* and *https://www.faa.gov/air_traffic/technology/asde-x.*

currently provided Mode-S TIS. With the ADS–B mandate in effect since January 2020, and low-cost avionics systems for receiving and displaying ADS–B, ADS–R, ADS–SLR, and TIS–B information are readily available, the GA community is able to obtain a heightened situational awareness of the traffic around them. This is especially true when flying around the terminal areas where significant ADS–B coverage is available today.

As of March 6, 2023, approximately 133,486 aircraft have been identified as receiving ADS–B In information on one or both of the mandated ADS–B frequencies. The vast majority of these are general aviation aircraft due to the number of portable ADS–B In devices or integrated ADS–B In/Out systems available to this market.

Mode-S Radar Beacon Replacement System

Many FAA Mode-S terminal radars are approaching the end of their useful lifecycle. Additionally, the FAA is facing an increased maintenance cost from the inability to purchase parts, due to parts obsolescence or part shortages, necessary to ensure continued operational availability. To mitigate this, the FAA has initiated a radar modernization effort called the Mode-S Beacon Replacement System (MSBRS) program. Under this program, the FAA intends to replace at least forty-six (46) aging Mode-S terminal radars starting in 2024. Starting in 2024 as the new MSBRS radars replace the existing terminal radars, the existing Mode-S TIS functionality will disappear at the location of each replaced terminal radar.

Replacement of the existing terminal radars capable of providing Mode-S TIS under the MSBRS Program will provide an improvement in air traffic control (ATC) capabilities, which will benefit civil and military aviation, including general aviation. Installation of the new state-of-the-art MSBRS radars will improve system operational reliability and reduce system down time.

During this timeframe, the FAA will continue to provide Mode-S TIS through the existing terminal radars until the existing radar is replaced with a new MSBRS radar. This document is intended to provide time for GA aircraft owners and operators who have not yet equipped with an ADS–B receiver to acquire and install, if appropriate, an ADS–B In capable system.

Other FAA Surveillance System Improvement Activities

Independent of the MSBRS program, FAA is also engaged in multiple activities aimed at improving existing surveillance systems. These activities are aimed at reducing FAA operating costs and/or reducing congestion on surveillance system RF frequencies. As these activities proceed, FAA may remove one or more Mode-S terminal radars from operation, which would eliminate Mode-S TIS at that location.

II. Industry Discussion on Mode-S TIS Removal

Using surveys and discussions with industry organizations, the FAA was able to obtain the necessary data required to understand the potential safety impacts from removing Mode-S TIS functionality from the existing terminal radars. FAA conducted surveys, such as the General Aviation/Part 135 Air Taxi Activity Survey, to produce a set of comprehensive data on part 91 and part 135 aircraft and their operations. The FAA reviewed data from survey reports for 2010, 2014, 2016, 2018, and 2019, and discussed these reports with industry association experts. The data from these reports were utilized to study the relevant surveillance equipage for all types of aircraft: Fixed Wing Piston, Fixed Wing turboprop single and multi-engine, turbojet, and rotorcraft.

Since 2018, the FAA has conducted industry briefings and discussions with major avionics manufacturing companies on the MSBRS program and the associated planned removal of Mode-S TIS from terminal radars. These discussions assisted in gathering pertinent information on equipage and gaining insight into potential concerns. Taking into consideration this information and the survey results, as well as the ADS–B In traffic services available to the cockpit via low-cost portable or integrated devices, the FAA determined that removal of Mode-S TIS had little to no significant adverse safety impacts on the GA Community.

III. Summary

Based on industry engagement, FAA has determined that the removal of Mode-S TIS functionality will have little to no safety impact on the GA community.

Removal of legacy terminal Mode-S radars may occur as part of other ongoing FAA activities to divest radars or which are being replaced with other modern cooperative surveillance systems. These activities are being pursued to lower FAA operating costs and/or reduce congestion on surveillance system RF frequencies.

Aircraft operating within ADS–B mandated airspace, specified under 14 CFR 91.225, have transitioned their avionics equipment to be compliant with the performance requirements of the regulation. If the ADS–B Out equipment is performing and configured properly, aircraft equipped with ADS–B In are capable of receiving ADS–R, ADS–SLR, and TIS–B services from the FAA ADS–B ground stations across the NAS. These low-cost ADS–B In avionics systems are widely available, and provide the GA community with a heightened situational awareness of the traffic around them which was not previously available using solely Mode-S TIS information. These services expand coverage and more than replace the information currently provided by Mode-S TIS.

Issued in Washington, DC, on June 7, 2023.

Daniel S. Hicok,

Deputy Vice President (A), Program Management Organization, Air Traffic Organization.

[FR Doc. 2023–12607 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 12094]

RIN 1400–AF10

Passports: Consular Reports of Birth Abroad (CRBA)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposal for the Department of State (the Department) to remove from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) that lists only the applying parent.

DATES: This final rule is effective on July 24, 2023.

FOR FURTHER INFORMATION CONTACT: Kelly Cullum, Office of Adjudication, Passport Services, (202) 485–8800, or email *PassportOfficeofAdjudicationGeneral@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 11299 at 87 FR 63739, October 20, 2022 (the NPRM), with a request for comments to amend 22 CFR 51.28(a)(3)(ii) by removing from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) listing only the applying parent, because a CRBA is a citizenship document and not by itself evidence of sole authority/custody.

The Department also proposed to amend 22 CFR 51.28(a)(3)(i), (a)(4)(i) and (a)(4)(ii) to allow the non-applying parent or legal guardian to sign a statement of consent before a passport specialist at one of the passport agency public counters located within the United States as an alternative to signing it before a notary public when an application is pending at a passport agency/center. However, the Department has decided to postpone the publication of these amendments to a later date. For the same reason, the Department is not at this time finalizing the proposal relating to revising the DS–3053: *Statement of Consent for Issuance of a Passport to a Minor Under Age 16,* to allow for a signature at a passport agency's public counter.

Analysis of Comments: The Department provided 60 days for comment on the NPRM. The comment period closed December 19, 2022. The Department received two responsive comments regarding the removal of the CRBA from the list of acceptable documentary evidence of sole authority/custody if the CRBA lists only the applying parent, which is the subject of this final rule. Neither comment was opposed to the proposal.

Regulatory Findings

Administrative Procedure Act

The Department of State published this rulemaking as a proposed rule and provided 60 days for public comment. Pursuant to the Administrative Procedure Act, the rule will be in effect 30 days from the date of publication.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Only individuals, and no small entities, apply for passports.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department does not believe that this rule is a major rule as defined by the Congressional Review Act. This rule does not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Office of Information and Regulatory Affairs has designated this rule non-significant under Executive Order 12866. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order. The Department finds that the cost of this rulemaking to the public is expected to be minimal.

Executive Order 13563—Improving Regulation and Regulatory Review

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation With Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this rule.

Paperwork Reduction Act

This final rule does not add or modify any information collection subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The NPRM included the 60-day notice for the renewal of Control No. 1405–0129. The Department will publish the 30-day notice separately from this final rule.

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

PART 51—PASSPORTS

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1185; 8 U.S.C. 1185n (text of Pub. L. 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004)); 8 U.S.C. 1504; 8 U.S.C. 1714; 22 U.S.C. 211a, 212, 212a, 212b, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, and 3926; 26 U.S.C. 6039E; 26 CFR 301.6039E–1; 31 U.S.C. 9701; 34 U.S.C. 21501–21510; 42 U.S.C. 652(k) ; E.O. 11295, Aug. 5, 1966, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 114–119, 130 Stat. 15.

§ 51.28 [Amended]

■ 2. Amend § 51.28 by:
■ a. Removing paragraph (a)(3)(ii)(B):
■ b. Redesignating paragraphs (a)(3)(ii)(C) through (G) as paragraphs (a)(3)(ii)(B) through (F);
■ c. In newly redesignated paragraph (a)(3)(ii)(E), removing the period and adding ''; and'' in its place.

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2023–13318 Filed 6–22–23; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective

date of the increase, including when the penalties whose associated violation predate the increase.

DATES: This rule is applicable beginning on January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

In December of every year, OMB issues guidance to agencies to calculate the annual adjustment. According to OMB, the cost-of-living adjustment multiplier for fiscal year 2023 is 1.07745, based on the Consumer Price Index for the month of October 2022, not seasonally adjusted.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 (''The Chairman may assess a civil fine, not to exceed $57,527 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .''). The 2023 adjusted level of the civil monetary penalty is $61,983 ($57,527 × 1.07745).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate of more than $100 million per year on state, local, or tribal governments or the private sector. The rule also does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' Thus, a takings implication assessment is not required.

Federalism

Under the criteria in Executive Order 13132, this final rule has no 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.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments,* Executive Order 13175 (59 FR 22951, November 6, 2000), the Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The Commission is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule that the Commission publishes must:

(a) be logically organized;

(b) use the active voice to address readers directly;

(c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 575.4 [Amended]

■ 2. Amend the introductory text of § 575.4 by removing ''$57,527'' and adding in its place ''$61,983''.

E. Sequoyah Simermeyer,

Chair.

Jean C. Hovland,

Vice Chair.

[FR Doc. 2023–12625 Filed 6–22–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0517]

RIN 1625–AA87

Security Zone; Cooper River, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for certain navigable waters of the Cooper River near the International African American Museum in Charleston, South Carolina to prevent waterside threats and incidents for persons under the protection of the United States Secret Service. The action is necessary to protect an official party, public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents or other events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Charleston, or a designated representative.

DATES: This rule is effective from 8 a.m. through 2 p.m. on June 24, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0517 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 Thomas Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone 843–740–3184, email *CharlestonWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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
USSS United States Secret Service

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 certain details of the event were not available until two weeks prior to the event. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Immediate action is needed to prevent vessels from approaching the location in Charleston, SC of persons under the protection of the United States Secret Service (USSS protectees). It is impracticable to publish an NPRM because we must establish this security zone by June 24, 2023. It would be contrary to public interest to postpone establishing the temporary security zone.

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 prevent interference with the USSS protectees attendance at the International African American Museum in Charleston, SC.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70124. The Captain of the Port (COTP) Charleston has determined that the USSS protectees visit on June 24, 2023, presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is necessary to protect the official party, public, and surrounding waterways adjacent to the visit site in Charleston, South Carolina.

IV. Discussion of the Rule

This rule establishes a security zone from 8 a.m. through 2 p.m. on June 24, 2023. The security zone will cover an area approximately 500 yards in width by 615 yards in length on the Cooper River along the waterfront of Charleston, South Carolina as follows. All navigable waters of the Cooper River beginning at 32°47′24.87″ N, 079°55′28.41″ W, thence 500 yards east to 32°47′24.87″ N, 079°55′10.84″ W, thence south 615 yards to 32°47′4.74″ N, 079°55′10.84″ W, thence west to 32°47′4.74″ N, 079°55′25.32″ W, thence north along the shoreline to the point of origin.

The duration of the zone is intended ensure the security of the USSS protectees before, during, and immediately after the scheduled event. No vessel or person will be permitted to enter, transit through, anchor in or remain within the security zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

The Coast Guard will provide notice of the security zone by Broadcast Notice to Mariners and by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The security zone is limited in size and location as it will cover an area approximately 500 yards in width by 615 yards in length on the Cooper River along the waterfront of Charleston, South Carolina. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the security zone without authorization from the COTP Charleston or a designated representative, they may operate in the surrounding area during the enforcement period. Furthermore, the rule will allow vessels to seek permission to enter the zone. Persons and vessels may still enter, transit through, anchor in, or remain within the security zone during the enforcement period if authorized by the COTP Charleston or a designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary security zone enforced continuously for a period of 6 hours, which will prohibit entry to a portion of the Cooper River adjacent to Charleston, South Carolina. 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 where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0517 to read as follows:

§ 165.T07–0517 Security Zone; Cooper River, Charleston, SC.

(a) *Location.* The following area is a security zone: All waters of the Cooper River beginning at 32°47′24.87″ N, 079°55′28.41″ W, thence 500 yards east to 32°47′24.87″ N, 079°55′10.84″ W, thence south 615 yards to 32°47′4.74″ N,

079°55′10.84″ W, thence west to 32°47′4.74″ N, 079°55′25.32″ W, thence north along the shoreline to the point of origin. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(b) *Definitions.* The term ''designated representative'' means Coast Guard Patrol Commanders, including coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone described in paragraph (a) of this section unless authorized by the COTP Charleston or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Charleston or designated representative.

(2) Persons who must notify or request authorization from the COTP Charleston may do so by Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(d) *Enforcement period.* This rule will be enforced from 8 a.m. through 2 p.m. on June 24, 2023.

Dated: June 20, 2023.

F.J. DelRosso,

Captain, U.S. Coast Guard, Captain of the Port Sector Charleston.

[FR Doc. 2023–13519 Filed 6–22–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2023–0452]

RIN 1625–AA00

Safety Zone; Firework Display; Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 150-yard radius of a fireworks barge located near City Point, in Hopewell, VA. The purpose of this rulemaking is to ensure the safety of persons and vessels, and to protect the marine environment within the navigable waters proximate to fireworks displays, before, during, and after the scheduled events. Hazards with this event include potential falling debris and possible fire, explosion, projectile, and burn hazards. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Virginia.

DATES: This rule is effective from 9:15 p.m. to 10 p.m. on July 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0452 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580, email *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable to publish an NPRM for a safety zone which must be established by July 1, 2023, to prevent harm from potential navigation and safety hazards created by this event. There is not sufficient time to allow for a notice and comment period prior to the event.

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 would be contrary to the public interest, since immediate action is needed to ensure the safety of event spectators, support craft and other vessels transiting the navigable waters adjacent to the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However, advance notifications will be made to affected users of the waterway via Broadcast Notice to Mariners and Local Notice to Mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Virginia (COTP) has determined that potential hazards associated with the fireworks events present a safety concern for anyone within the safety zone. The purpose of this rule is to ensure safety of vessels and people in the navigable waters who might otherwise be in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:15 p.m. until 10 p.m. on July 1, 2023. The safety zone will include all navigable waters within 150 yards of the fireworks barge located at latitude 37°18′52″ N, longitude 077°17′12.5″ W, located near City Point in Hopewell, VA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the on the size, location, duration, and time-of-day of the safety zone. 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.

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 45 minutes that will prohibit entry within 150 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0452 to read as follows:

§ 165.T05–0452 Safety Zone; Firework Display; Appomattox River, Hopewell, VA.

(a) *Location.* The following area is a safety zone: all waters at the confluence of the Appomattox and James Rivers within a 150-yard radius of approximate position of the fireworks barge at latitude 37°18′52″ N, longitude 077°17′12.5″ W, located near City Point in Hopewell, VA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Virginia in the enforcement of the safety zone.

(c) *Regulations.* (1) No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP's representative via VHF FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone will be enforced from 9:15 p.m. to 10 p.m. on July 1, 2023.

Dated: June 19, 2023.

J.A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2023–13389 Filed 6–22–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0783; FRL–10523–02–R4]

Air Plan Approval; Tennessee; Revisions to Startup, Shutdown, and Malfunction Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on November 19, 2016, as supplemented on January 20, 2023, in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, regarding provisions in the Tennessee SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. Tennessee's January 20, 2023, supplemental SIP revision includes some additional changes related to the 2015 SIP call, plus other changes unrelated to the SIP call, in the affected chapter of Tennessee's regulations.

DATES: This rule is effective July 24, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R4–OAR–2022–0783. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Estelle Bae, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bae can be reached by telephone at (404) 562–9143 or via electronic mail at *bae.estelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 19, 2016, Tennessee submitted a SIP revision in response to the SIP call issued in the June 12, 2015, action titled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction'' (''2015 SSM SIP Action''),[1] and requested approval of changes to provisions in Chapter 1200–3–5 (''Visible Emissions Regulations'') and Chapter 1200–3–20 (''Limits On Emissions Due To Malfunctions, Startups, And Shutdowns''). Regarding the Chapter 1200–3–20 provisions, the State requested approval of changes to Rules 1200–3–20–.06(2), 1200–3–20–.06(4), and 1200–3–20–.06(6) (which have been renumbered from 1200–3–20–.07(1) (in part) and 1200–3–20–.07(3) in the current state code of regulations) to address deficiencies that EPA identified in the 2015 SSM Action in SIP-approved Rules 1200–03–20–.07(1) and 1200–03–20–.07(3). Tennessee also requested changes to Rule 1200–3–20–.06(6), which was not part of the SIP call. On January 20, 2023, Tennessee supplemented its 2016 SIP submission to request removal of Rule 1200–3–20–.06, ''Scheduled Maintenance,'' resulting in the renumbering of Rules 1200–3–20–.07 through .10 to 1200–3–20–.06 through .09 (*i.e.,* .07 is renumbered to .06, and so on), and other changes to Chapter 1200–3–20.[2]

On April 6, 2023, EPA proposed to act on portions of Tennessee's November 19, 2016, SIP revision, as supplemented on January 20, 2023.[3] In that notice of proposed rulemaking (NPRM), EPA proposed to determine that the SIP revision partially corrects the deficiencies with respect to Tennessee that the Agency identified in the 2015 SSM SIP Action. Consequently, EPA proposed to approve in part and disapprove in part Tennessee's November 19, 2016, SIP revision, as supplemented on January 20, 2023.[4] The reasons for EPA's proposed action are stated in the April 6, 2023, NPRM and will not be restated here. The public comment period for EPA's proposed action ended on May 8, 2023. EPA received one favorable comment on April 20, 2023, and one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter collectively referred to as the Commenter) on May 8, 2023, which agreed in part and disagreed in part with EPA's proposed action. Both sets of comments are available in the docket for this action.

II. Response to Comments

The Commenter provided comments both in support of and adverse to EPA's proposed action. EPA acknowledges the comments expressing support for the proposed action and will not address them further. Instead, this section of the final rulemaking notice will focus on the comments that were adverse or that warrant clarification. The responses to these comments are below.

Comment 1: For Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1), the Commenter acknowledges and supports the rationale behind EPA's proposed disapproval of these provisions and provides further commentary on why Tennessee's proposed additional language in Rule 1200–3–5–.02(1) is problematic. The Commenter states that EPA must finalize the disapprovals and issue a finding of failure to submit.

Response 1: EPA notes that at the time the Agency issued the April 6, 2023, NPRM, there was no basis for EPA to issue a finding of failure to submit regarding Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1). Pursuant to Clean Air Act (CAA or Act) section 110(k)(1)(B), EPA must determine no later than six months after the date by which a state is required to submit a SIP whether the state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A) and set forth at 40 CFR part 51, appendix A. EPA refers to the determination that a state has not submitted a SIP submission that meets

[1] *See* 80 FR 33839 (June 12, 2015).

[2] Tennessee requested that Rule 1200–3–20–.03 and 1200–3–20–.06(5) not be incorporated into the Tennessee SIP. See the document titled ''Transmittal_Letter_SSM SIP Call Chapter 20 Supplemental'' in the docket for this action.

[3] *See* 88 FR 20443 (April 6, 2023).

[4] Tennessee has withdrawn the portions of its submittal that EPA proposed to disapprove in the April 6, 2023, NPRM. The withdrawal letter, dated June 13, 2023, is included in the docket for this action.

the minimum completeness criteria as a ''finding of failure to submit.''

For the SIP call in the 2015 SSM Action, SIP submissions were due by November 22, 2016. With respect to the SIP-called Rules 1200–3–5–.02(1) and 1200–3–20–.06(1) and (2),[5] Tennessee submitted a SIP revision on November 19, 2016, in response to EPA's 2015 SSM SIP Action. Six months thereafter, on May 19, 2017, Tennessee's SIP revision was deemed complete by operation of law pursuant to CAA section 110(k)(1)(B).

Where a state has submitted a complete SIP revision, EPA must act on it pursuant to CAA section 110(k)(2)–(4) (*e.g.,* approve the revision, disapprove the revision, etc.). As noted by the Commenter, EPA proposed to disapprove the revisions to Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1). If EPA had finalized the disapproval of these provisions in this action, the disapproval would have triggered an obligation under CAA section 110(c)(1) for EPA to promulgate a federal implementation plan (FIP) within 24 months after the date of disapproval. However, since the issuance of the April 6, 2023, NPRM, Tennessee has withdrawn certain provisions addressed therein, including Rules 1200–3–5–.02(1) and 1200–3–20–.06(1), from EPA's consideration as a SIP revision. The letter withdrawing these provisions is provided in the docket for this final rulemaking. Consequently, EPA is not finalizing the proposed disapprovals for Rule 1200–3–5–.02(1) and Rule 1200–3–20–.06(1). Although the withdrawal of these provisions from EPA's consideration is relevant to a determination regarding a finding of failure to submit for those provisions, any such finding of failure to submit would be considered in a separate action. The comment requesting the issuance of a finding of failure to submit is not germane to the portions of the SIP revision subject to this action because they were not withdrawn.

Comment 2: The Commenter is concerned that the revised language in Rule 1200–3–20–.06(4) could be interpreted to preclude the admissibility of data by parties other than the violating owner or operator, particularly EPA or the public, where such data was not provided to TDEC within the required twenty days. The Commenter also asserts that although the NPRM states that the new term ''potential enforcement actions'' in Rule 1200–3–20–.06(4) refers to a state-only action, a state-only application is not unambiguous in the plain language of the rule. The Commenter goes on to state that even if the rule is interpreted to apply strictly to state enforcement of emission limit exceedances, EPA should require its removal because such provisions of state-only enforcement discretion are not appropriate for inclusion in the SIP.

Response 2: Tennessee has withdrawn Rule 1200–3–20–.06(4) from the SIP revision. Thus, EPA is not finalizing its proposed approval of Rule 1200–3–20–.06(4).

Comment 3: The Commenter is concerned that the addition of Rule 1200–3–20–.06(6) could be read to limit enforcement even though EPA's April 6, 2023, NPRM accurately states the fact that ''[a]ny excess emissions that would violate an applicable SIP emission limit are not allowed, regardless of whether they can be proved to cause or contribute to violations of any ambient air quality standards, and regardless of whether they occur during periods of SSM.'' [6] The Commenter expresses particular concern that a court could conclude that this provision precludes EPA and the public from enforcing against violations that occur during SSM events if the excess emissions cannot be proved to cause or contribute to any violations of ambient air quality standards. The Commenter states, ''Accordingly, EPA should either disapprove Rule 1200–3–20–.06(6) or approve it conditioned on the following clarification, so that it reads: 'No emission during periods of malfunction, start-up, or shutdown that are in excess of the standards in Division 1200–03 or any permit issued thereto shall be allowed.' ''

Response 3: EPA disagrees that Rule 1200–3–20–.06(6) could limit enforcement. In accordance with the 2015 SSM SIP Action, EPA will not approve SIP provisions that excuse excess emissions during periods of SSM, regardless of whether they can or cannot be proven to cause or contribute to any violations of ambient air quality standards. EPA interprets the statement in Rule 1200–3–20–.06(6) regarding ambient air quality standards as only emphasizing the impermissibility of causing or contributing to violations of the State's ambient air quality standards and the National Ambient Air Quality Standards. Therefore, EPA does not agree that Rule 1200–3–20–.06(6), although perhaps superfluous, must be disapproved or that, alternatively, EPA should approve Rule 1200–3–20–.06(6) conditioned on the Commenter's clarification.

Comment 4: The Commenter asks that EPA act on ''its SIP calls to Shelby County and Knox County, Tennessee that were part of the 2015 SSM SIP Call.'' Specifically, the Commenter refers to Shelby County Code § 16–87 and mentions that it ''addresses enforcement for excess emissions that occur during malfunctions, startups, and shutdowns by incorporating by reference the state's provisions in Tenn. Comp. R. & Regs. 1200–3–20.'' The Commenter goes on to opine about the provisions and its belief that these provisions are inconsistent with the SIP call and CAA. Finally, the Commenter states that ''EPA must take action to address the failure of these local air pollution control agencies to respond to EPA's SIP Call.''

Response 4: First, EPA notes that these comments are not within the scope of EPA's April 6, 2023, proposed action. Nevertheless, EPA disagrees with the assertion that neither Knox County nor Shelby County responded to EPA's 2015 SIP Call. Tennessee has responded to EPA's 2015 SSM SIP Action for both local air pollution control agencies. In fact, on January 11, 2016, Knox County, through the State of Tennessee, submitted a SIP revision that corrected the deficiencies noted in EPA's 2015 SSM SIP Action. EPA proposed approval of Tennessee's corrective SSM SIP for Knox County on September 22, 2016.[7] The Agency did not receive any comments during the public comment period, and EPA finalized that action on December 16, 2016.[8] Furthermore, on March 2, 2022, Shelby County, through the State of Tennessee, submitted a SIP revision in response to the 2015 SSM SIP Call to address the deficiencies that EPA identified. EPA is currently evaluating this SIP revision and is still within its CAA section 110(k) statutory timeframe to conduct this evaluation and process this SIP revision (*i.e.,* the deadline is September 2, 2023, in this case).

Comment 5: The Commenter states that EPA should take immediate steps to promulgate a FIP within 24 months of this final rulemaking, citing to the portion of CAA section 110(c)(1) that requires EPA to promulgate a FIP within two years after it disapproves a SIP submission in whole or in part.

[5] Rules 1200–3–20–.06(1) and (2), collectively, were previously numbered as Rule 1200–3–20–.06(1).

[6] Rule 1200–3–20–.06(6) states, ''No emission during periods of malfunction, start-up, or shutdown that are in excess of the standards in Division 1200–03 or any permit issued thereto shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200–03–03 or the National Ambient Air Quality Standards.''

[7] *See* 81 FR 65313.

[8] *See* 81 FR 91033.

Response 5: EPA acknowledges this comment and recognizes the Agency's statutory obligation to promulgate a FIP within 24 months of a final disapproval of a SIP submission unless the State corrects the deficiency, and EPA approves the plan or plan revision, before EPA promulgates the FIP. This comment is no longer within the scope of EPA's action because the proposed disapproval related to a portion of the submittal that was subsequently withdrawn and because EPA is therefore not finalizing the proposed disapproval in this action.

III. Final Action

EPA is approving changes to Chapter 1200–3–20 of the Tennessee SIP, as submitted on November 19, 2016, and supplemented on January 20, 2023. Specifically, EPA is approving the changes to Rule 1200–3–20–.01, ''Purpose''; Rule 1200–3–20–.02, ''Reasonable Measures Required''; Rule 1200–3–20–.06, ''Report Required Upon the Issuance of Notice of Violation,'' renumbered from 1200–3–20–.07, except for 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5); Rule 1200–3–20–.07, ''Special Reports Required,'' renumbered from 1200–3–20–.08; Rule 1200–3–20–.08, ''Rights Reserved,'' renumbered from 1200–3–20–.09; and Rule 1200–3–20–.09, ''Additional Source Covered,'' renumbered from 1200–3–20–.10. EPA is also approving the removal of Rule 1200–3–20–.06, ''Scheduled Maintenance.''

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is finalizing the incorporation by reference into the Tennessee SIP Rules 1200–3–20–.01, ''Purpose,'' State effective on September 26, 1994; 1200–3–20–.02, ''Reasonable Measures Required,'' State effective on November 11, 1997; [9] 1200–3–20–.06, ''Report Required Upon the Issuance of a Notice of Violation,'' State effective on November 16, 2016, except for 1200–3–20–.06(1), 1200–3–20–.06(4), and 1200–3–20–.06(5); [10] [11] 1200–3–20–.07, ''Special Reports Required,'' State effective on September 26, 1994; [12] 1200–3–20–.08, ''Rights Reserved,'' State effective on September 26, 1994; [13] and 1200–3–20–.09, ''Additional Sources Covered,'' State effective on September 26, 1994.[14] Also in this document, EPA is finalizing the removal of Rule 1200–3–20–.06, ''Scheduled Maintenance,'' [15] which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make the State Implementation Plan generally available through the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's partial approval and will be incorporated by reference in the next update to the SIP compilation.[16]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

[9] The effective date of the change to Rule 1200–3–20–.02, ''Reasonable Measures Required,'' is September 26, 1994. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Tennessee's rule is captured and superseded by changes which were state effective on November 11, 1997, and which EPA previously approved on April 7, 2017. *See* 82 FR 16927.

[10] EPA is not incorporating into the Tennessee SIP the following provisions of Rule 1200–03–20–.06: 1200–03–20–.06(1), 1200–03–20–.06(4), and 1200–03–20–.06(5).

[11] As explained in Section I, with the removal of Rule 1200–3–20–.06, Rule 1200–3–20–.07 is being renumbered to 1200–3–20–.06 in the SIP for those provisions of Rule 1200–3–20–.06 (State effective on November 16, 2016) that EPA is approving in this action. Because EPA is not acting on Rules 1200–3–20–.06(1) and (4) (formerly part of 1200–3–20–.07(1) and all of 1200–3–20–.07(3), respectively), the corresponding portions of Rule 1200–3–20–.07 (which are the first sentence of 1200–3–20–.07(1) and the entirety of 1200–3–20–.07(3)), State effective on March 21, 1979, are retained in the Tennessee SIP.

[12] As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.08 is being renumbered to 1200–3–20–.07.

[13] As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.09 is being renumbered to 1200–3–20–.08.

[14] As explained in Section I, with the removal of 1200–3–20–.06, 1200–3–20–.10 is being renumbered to 1200–3–20–.09.

[15] As explained in Section I, while 1200–3–20–.06, ''Scheduled Maintenance,'' is being removed from the SIP, other rules codified as 1200–3–20–.07 through .10 are being renumbered as 1200–3–20–.06 through .09.

[16] *See* 62 FR 27968 (May 22, 1997).

and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

TDEC did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. 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 EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 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, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. In § 52.2220, in paragraph (c), table 1 is amended under ''Chapter 1200–3–20 Limits on Emissions Due to Malfunctions, Start-ups, and Shutdowns'' by:

■ a. Revising the entries for Section 1200–3–20–.01, Section 1200–3–20–.02, Section 1200–3–20–.06, Section 1200–3–20–.07, Section 1200–3–20–.08, and Section 1200–3–20–.09; and

■ b. Removing the entry for Section 1200–3–20–.10.

The revisions read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
CHAPTER 1200–3–20 LIMITS ON EMISSIONS DUE TO MALFUNCTIONS, START–UPS, AND SHUTDOWNS				
*	*	*	*	*
Section 1200–3–20–.01	Purpose	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.02	Reasonable Measures Required	11/11/1997	6/23/2023, [Insert citation of publication].	
*	*	*	*	*
Section 1200–3–20–.06	Report Required Upon the Issuance of Notice of Violation.	11/16/2016	6/23/2023, [Insert citation of publication].	Except for paragraphs (1), (4), and (5).
Section 1200–3–20–.07	Report Required Upon the Issuance of Notice of Violation.	3/21/1979	2/6/1980, 45 FR 8004	Except for the second and third sentences of paragraph (1) (''The owner . . . 20 day period.'') and the entirety of paragraph (2).
	Special Reports Required	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.08	Rights Reserved	9/26/1994	6/23/2023, [Insert citation of publication].	
Section 1200–3–20–.09	Additional Sources Covered	9/26/1994	6/23/2023, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–13465 Filed 6–22–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OPPT–2023–0223; FRL 10781–01–OCSPP]

RIN 2070–AL40

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Year 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, this action updates the regulations to identify nine per- and polyfluoroalkyl substances (PFAS) that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective July 24, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0223, is available at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.* For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Brian Ventura, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0897; email address: *ventura.brian@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC, Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the PFAS listed in this rule. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130* (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114, 212115, 212220, 212230, 212290*; or 2211*, 221210*, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211*, 562212*, 562213*, 562219*, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems). *Exceptions and/or limitations exist for these NAICS codes.
- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: *https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.* To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is codifying the nine additional PFAS that were added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) since the last conforming rule pursuant to the FY2020 NDAA (87 FR 42651; July 18, 2022) (FRL–9427–01–OCSPP)).

C. What is the Agency's authority for taking this action?

This action is issued under the authority of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) (Pub. L. 116–92).

II. Background

A. What is NDAA section 7321?

On December 20, 2019, the FY2020 NDAA was signed into law. Among other provisions, section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the EPCRA section 313 list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

(1) Added to the list published under section 8(b)(1) of the Toxic Substances

Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or

(2) Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

The FY2020 NDAA defines ''covered determination'' as a determination made by rule under TSCA section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use (except such a determination made in connection with a determination described in TSCA sections 5(a)(3)(B) or 5(a)(3)(C)).

Under FY2020 NDAA section 7321(e), EPA must review confidential business information (CBI) claims before PFAS are added to the list pursuant to subsections (b)(1), (c)(1), or (d)(3) whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a), pursuant to subsection (b)(4) of that section. Under the FY2020 NDAA EPA must:

- Review a claim of protection from disclosure; and
- Require that person to reassert and substantiate or re-substantiate that claim in accordance with TSCA section 14(f) (15 U.S.C. 2613(f)).

In addition, if EPA determines that the chemical identity of a PFAS or class of PFAS qualifies for protection from disclosure, EPA must include the PFAS or class of PFAS on the TRI in a manner that does not disclose the protected information.

B. What PFAS have been added to the TRI list?

EPA has reviewed the above-listed criteria and found nine chemicals that meet the requirements of this part of the FY2020 NDAA and whose identity is not claimed as confidential business information (CBI).

Chemical name/CAS No.	Triggering action	Effective date
Perfluorobutanoic acid (375–22–4)	Final Toxicity Value (Ref. 1)	1/1/23
Sodium perfluorobutanoate (2218–54–4)	Final Toxicity Value (Ref. 1)	1/1/23
Potassium heptafluorobutanoate (2966–54–3)	Final Toxicity Value (Ref. 1)	1/1/23
Ammonium perfluorobutanoate (10495–86–0)	Final Toxicity Value (Ref. 1)	1/1/23
Perfluorobutanoate (45048–62–2)	Final Toxicity Value (Ref. 1)	1/1/23
Alcohols, C8–16, γ-ω-perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc. (2728655–42–1).	Addition to Existing Significant New Use Rule (see 85 FR 45109, *July 27, 2020*) (*FRL–10010–44*).	1/1/23
	CBI Declassification (Ref. 2)	
Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs. (2738952–61–7).	Addition to Existing Significant New Use Rule (see 85 FR 45109, *July 27, 2020*) (*FRL–10010–44*).	1/1/23
	CBI Declassification (Ref. 2)	
Acetamide, N-(2-aminoethyl)-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized (2742694–36–4).	Addition to Existing Significant New Use Rule (see 85 FR 45109, *July 27, 2020*) (*FRL–10010–44*).	1/1/23
	CBI Declassification (Ref. 2)	
Acetic acid, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters (2744262–09–5).	Addition to Existing Significant New Use Rule (see 85 FR 45109, *July 27, 2020*) (*FRL–10010–44*).	1/1/23
	CBI Declassification (Ref. 2)	

As stated above, under FY2020 NDAA section 7321(e), EPA must review CBI claims before PFAS whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a) (pursuant to subsection (b)(4)) are added to the list. The substances with the CAS No. 2728655–42–1, 2738952–61–7, 2742694–36–4, and 2744262–09–5 met the criteria under FY2020 NDAA section 7321(c)(1)(A)(iii), but were subject to a claim of protection from disclosure under 5 U.S.C. 552(b)(4) at that time (*i.e.,* when the FY2020 NDAA was enacted). These substances' identities have since been published on the non-confidential portion of the TSCA Inventory in 2022; therefore, the chemicals were added pursuant to FY2020 NDAA section 7321(e) to the TRI list and are being incorporated into the CFR pursuant to this rule.

As established by the FY2020 NDAA, the addition of these PFAS to the EPCRA section 313 list of reportable chemicals is effective January 1 of the calendar year following any of the dates identified in FY2020 NDAA section 7321(c)(1)(A). Accordingly, non-CBI PFAS are reportable beginning with the 2023 reporting year (*i.e.,* reports due July 1, 2024).

EPA is issuing this final rule to amend the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to include nine non-CBI PFAS added pursuant to the FY2020 NDAA.

III. Good Cause Exception

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary. This action is being taken to comply with a mandate in an Act of Congress, where Congress identified actions that automatically add these chemicals to the TRI. Thus, EPA has no discretion as to the outcome of this rule, which merely aligns the regulations with the self-effectuating changes provided by the FY2020 NDAA.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA.IRIS Toxicological Review of Perfluorobutanoic Acid (PFBA, CASRN 375–22–4) and Related Salts. December 2022. *https://iris.epa.gov/static/pdfs/0701tr.pdf.*

2. EPA. Non-CBI TSCA Inventory, February 2022.

V. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C 3501 et. seq. Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and assigned OMB control numbers 2070–0212 and 2050–0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. The annual reportable amount is equal to the combined total quantities of the following waste management activities:

- Released at the facility (including disposed of within the facility);
- Treated at the facility (as represented by amounts destroyed or converted by treatment processes);
- Recovered at the facility as a result of recycling operations;
- Combusted for the purpose of energy recovery at the facility; and
- Amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal.

A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control No. 2070–0212 (EPA Information Collection Request (ICR) No. 2613.04) and those related to trade secret designations under OMB Control No. 2050–0078 (EPA ICR No. 1428.12).

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 OMB control numbers relevant to EPA's regulations in 40 CFR are listed in 40 CFR part 9 and displayed on the information collection instruments (*e.g.,* forms, instructions).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. As discussed in Unit III., this rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exception under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13175 does not apply to this action.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. It does not have substantial direct effects on tribal government because EPA does not anticipate that PFAS reporting will be conducted by Tribes so this rulemaking is not expected to impose substantial direct compliance costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045. This action is not subject to Executive Order 13045, because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

Although this action does not concern an environmental health or safety risk, this reporting rule will aid in collecting information regarding PFAS. This rule will be of use in identifying releases of PFAS to which children may be exposed. EPA believes that the information obtained as a result of this action could also be used by the public, government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks including those that may disproportionately affect children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further,

we have concluded that this action is not likely to have any adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272, does not apply to this action.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This regulatory action makes changes to the reporting requirements for PFAS that will result in more information being collected and provided to the public; it does not have any impact on human health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action makes changes to the reporting requirements for PFAS, which will provide information that government agencies and others can use to identify potential problems, set priorities, and help inform activities.

However, EPA believes that this type of action does not directly concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This action involves additions to reporting requirements that will not affect the level of protection provided to human health or the environment. Although this action does not concern human health or environmental conditions, the information collected through TRI reporting will serve to inform communities living near facilities that report to TRI, and there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

The information obtained as a result of this action may be used to collect information on releases of PFAS. Understanding releases of PFAS will also help inform and tailor future EPA actions to address PFAS as needed. EPA also believes that the information obtained as a result of this action potentially could be used by the public (including people of color, low-income populations and/or indigenous peoples) to inform their behavior as it relates to releases of PFAS exposure or by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, community right-to-know, reporting and recordkeeping requirements, and toxic chemicals.

Dated: June 16, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. Amend § 372.65 by:

■ a. In paragraph (d) in table 4, adding in alphabetical order entries for ''Acetamide, N-(2-aminoethyl)-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized''; ''Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs.''; ''Acetic acid, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters''; ''Alcohols, C8–16, γ-ω-perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc.'', ''Ammonium perfluorobutanoate'', ''Perfluorobutanoate'', ''Perfluorobutanoic acid'', ''Potassium heptafluorobutanoate'', and ''Sodium perfluorobutanoate.''

■ b. In paragraph (e) in table 5, adding in numerical order entries for ''10495–86–0''; ''2218–54–4''; ''2728655–42–1''; ''2738952–61–7''; ''2742694–36–4''; ''2744262–09–5''; ''2966–54–3''; ''375–22–4''; and ''45048–62–2''.

The additions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(d) * * *

TABLE 4 TO PARAGRAPH (d)

Chemical name	CAS No.	Effective date
* * * * * * *		
Acetamide, N-(2-aminoethyl)-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized	2742694–36–4	1/1/23
Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs.	2738952–61–7	1/1/23
Acetic acid, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters	2744262–09–5	1/1/23
* * * * * * *		
Alcohols, C8–16, γ-ω-perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc.	2728655–42–1	1/1/23
* * * * * * *		
Ammonium perfluorobutanoate	10495–86–0	1/1/23

TABLE 4 TO PARAGRAPH (d)—Continued

Chemical name	CAS No.	Effective date
* * * * * * *		
Perfluorobutanoate	45048–62–2	1/1/23
* * * * * * *		
Perfluorobutanoic acid	375–22–4	1/1/23
* * * * * * *		
Potassium heptafluorobutanoate	2966–54–3	1/1/23
* * * * * * *		
Sodium perfluorobutanoate	2218–54–4	1/1/23
* * * * * * *		

* * * * * (e) * * *

TABLE 5 TO PARAGRAPH (e)

CAS no.	Chemical name	Effective date
* * * * * * *		
375–22–4	Perfluorobutanoic acid	1/1/23
* * * * * * *		
2218–54–4	Sodium perfluorobutanoate	1/1/23
* * * * * * *		
2966–54–3	Potassium heptafluorobutanoate	1/1/23
* * * * * * *		
45048–62–2	Perfluorobutanoate	1/1/23
* * * * * * *		
10495–86–0	Ammonium perfluorobutanoate	1/1/23
* * * * * * *		
2728655–42–1	Alcohols, C8–16, γ-ω-perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc	1/1/23
2738952–61–7	Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs	1/1/23
2742694–36–4	Acetamide, N-(2-aminoethyl)-, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized.	1/1/23
2744262–09–5	Acetic acid, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters	1/1/23

[FR Doc. 2023–13280 Filed 6–22–23; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 520, 530, 535, 540, 550, 555 and 560

[Docket No. FMC–2023–0009]

RIN 3072–AC96

Update of Existing FMC User Fees

AGENCY: Federal Maritime Commission

ACTION: Correcting amendments.

SUMMARY: On March 21, 2023, the Federal Maritime Commission (FMC) published in the **Federal Register** a direct final rule and request for comment updating its user fees. The document inadvertently stated an incorrect amount for two fees. The document stated as the cost for certification/validation of documents as $93 instead of $107, and for Non-Attorney Admission to Practice as $195 instead of $229. This document corrects the error by aligning the fees as stated in the rule with those that were correctly identified in the 2023–3–07FY23 User Fee Control File provided in the docket as a supporting document.

DATES: This correction is effective on July 24, 2023.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: In the March 21, 2023 direct final rule that the FMC published in the **Federal Register**, the rule inadvertently stated the incorrect amount for two fees for certain services. The fee for the certification/validation of documents found at both 46 CFR 503.50(c)(4) and 46 CFR 503.69(b)(2) was stated as $93 instead of $107. Similarly, the fee for Non-Attorney Admission to Practice at 46 CFR 503.50(d) was listed as $195 instead of $229. Included in the docket with the direct final rule as a supporting document was the 2023–3–07FY23 User Fee Control File. This spreadsheet shows the correct amounts for the fees and shows how those fees were calculated and is still available on the docket. The FMC is now correcting the error by aligning the fees in stated in the rule with those that were correctly

identified in the 2023–3–07FY23 User Fee Control File provided in the docket as a supporting document.

List of Subjects in 46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

For the reasons set forth above, the Federal Maritime Commission is amending 46 CFR part 503 by making the following correcting amendments:

PART 503—PUBLIC INFORMATION

■ 1. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 3331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 46103; E.O. 13526 of January 5, 2010, 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

■ 2. Amend § 503.50 by revising paragraphs (c)(4) and (d) to read as follows:

§ 503.50 Fees for services.

* * * * *

(c) * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $107 for each certification.

(d) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $229 pursuant to § 502.27 of this chapter.

■ 3. Amend § 503.69 by revising paragraph (b)(2) to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $107 for each certification.

* * * * *

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–13378 Filed 6–22–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 23–107, DA 23–241; FR ID 133828]

Table of Frequency Allocations and Radio Regulations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 7, 2023, the Federal Communications Commission's Office of Engineering and Technology issued a final rule making non-substantive editorial revisions to conform certain of the Commission's rules to the formatting requirements of the Code of Federal Regulations. This document corrects two typographical errors in the rule.

DATES: Effective July 7, 2023.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, Office of Engineering and Technology, at (202) 418–7061, *Patrick.Forster@fcc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. No. 2023–11972, appearing on page 37318 in the **Federal Register** of Wednesday, June 7, 2023, the following corrections are made:

§ 2.106 [Corrected]

■ 1. On page 37352, in the second column, § 2.106(b)(511)(i) is corrected by removing ''se'' and adding ''Use'' in its place.

■ 2. On page 37375, in table 18 to § 2.106(c)(346), the last entry is corrected to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

(c) * * *

(346) * * *

TABLE 18 TO PARAGRAPH (c)(346)

Facility	Coordinates	
* * * * * * *		
Guam Tracking Stations, Andersen AFB, and Naval CTS, Guam	13°36′54″ N	144°51′18″ E

* * * * *

Ronald T. Repasi,

Chief, Office of Engineering and Technology.

[FR Doc. 2023–13406 Filed 6–22–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No: 230620–0153; RTID 0648–XC872]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2023–2024 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the July 1, 2023, through June 30, 2024, fishing year. This final rule will prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest will be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine will be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan, or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The annual catch limit for the 2023–2024 Pacific sardine fishing year is 3,953 metric tons. This final rule is intended

to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619–2052, *Taylor.Debevec@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework, control rules, and management measures in the FMP. These control rules, including the harvest guideline (HG) control rule, the overfishing limit (OFL) and acceptable biological catch (ABC) rules, along with other management measures are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*

This final rule implements the annual catch levels, reference points, and management measures for the 2023–2024 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 16, 2023 (88 FR 31214). The proposed rule for this action included additional background on the specifications and details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (88 FR 31214, May 16, 2023).

This final rule implements an OFL of 5,506 metric tons (mt) and an ABC/annual catch limit (ACL) of 3,953 mt, based on CPS FMP control rules and a biomass estimate of Pacific sardine of 27,369 mt. This biomass estimate is from the 2022 update stock assessment, which was identified by the Council's Scientific and Statistical Committee (SSC) to represent the best scientific information available for management of Pacific sardine for this year. Per the CPS FMP, because the estimated biomass is less than 150,000 mt (*i.e.,* the Rebuilding target and CUTOFF in the harvest guideline control rule), the primary directed fishery is set to 0 mt, meaning there is no primary directed fishery for Pacific sardine. This is the ninth consecutive year the primary directed fishery has been closed. Because the estimated biomass is below the minimum stock size threshold (50,000 mt), the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight. Although these management measures, triggered by the FMP, are expected to keep catch far below the ACL as they have done in recent history, this rule also implements an annual catch target (ACT) of 3,600 mt and implements management measures intended to ensure harvest opportunity throughout the year.

A summary of the 2023–2024 fishing year specifications can be found in Table 1, and management measures are summarized in the list below Table 1.

TABLE 1—HARVEST SPECIFICATIONS FOR THE 2023–2024 SARDINE FISHING YEAR IN METRIC TONS

[mt]

Biomass estimate	OFL	ABC	HG	ACL	ACT
27,369	5,506	3,953	0	3,953	3,600

Following are the management measures for commercial sardine harvest during the 2023–2024 fishing year:

(1) If landings in the live bait fishery reach 2,500 mt of Pacific sardine, then a 1 mt per-trip limit of sardine would apply to the live bait fishery.

(2) An incidental per-landing limit of 20 percent (by weight) of Pacific sardine applies to other CPS primary directed fisheries (*e.g.,* Pacific mackerel).

(3) If the ACT of 3,600 mt is attained, then a 1mt per-trip limit of Pacific sardine landings would apply to all CPS fisheries (*i.e.,* (1) and (2) would no longer apply).

(4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

All sources of catch, including any exempted fishing permit (EFP) set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, will be accounted for against the ACT and ACL. At the April 2023 Council meeting, the Council approved 670 mt of the ACL for two EFP proposals to support stock assessments for Pacific sardine. NMFS published a notice of receipt of EFP applications on May 19, 2023 (88 FR 32200), and will decide whether to issue the EFPs after the comment period closes on June 20, 2023. If the effective date of this final rule is after July 1, 2023, any Pacific sardine harvested between July 1, 2023, and the effective date will count toward the 2023–2024 ACT and ACL.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the management measure limits, as well as any resulting changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

Comments and Responses

On May 16, 2023, NMFS published a proposed rule for this action and solicited public comments through May 31, 2023 (88 FR 31214). NMFS received two public comments—one from the industry group California Wetfish Producers Association (Association) and one from the environmental group Oceana. The Association supported the proposed rule in its entirety. After considering the public comments, NMFS made no changes from the proposed rule. NMFS summarizes and responds to the comment from Oceana below.

Comment: Oceana recommended that NMFS use a lower harvest rate (E_{MSY} or environmental maximum sustainable yield, which is used to calculate the OFL and ABC) of 5 percent to set specifications.

Oceana also appended to their comment a timeline of sardine management from 1967 to 1992. As this did not contain any recommendations, there is no response.

Lastly, Oceana attached a letter they sent to the Council in March 2023, which contained more specific recommendations to the Council for their consideration during the April 2023 Council Agenda Item H.4, 2023–2024 Pacific sardine annual catch limit

and management measures. Those recommendations included: use an E_{MSY} of 5 percent; incorporate more buffer into the calculations for specifications; set the ACL no higher than 800 mt; and limit the incidental catch allowance to no more than 10 percent.

Response: As it relates to the comment that NMFS should use an E_{MSY} of 5 percent to calculate the OFL and ABC, NMFS has determined that the OFL and ABC being implemented through this action will prevent overfishing and are supported by the best scientific information available, including the information used to calculate E_{MSY}. Additionally, the reference points proposed for the 2023–2024 fishing year were recommended by the Council's SSC, which they determined to represent the best available science for managing the fishery, and are based on the formulas in the CPS FMP, including the formula adopted for calculating E_{MSY}. In its comment, Oceana points to recent Council discussions related to E_{MSY}. NMFS notes in response that the Council's SSC—the scientific advisory body that is responsible for recommending changes to E_{MSY}—can (as it has done in the past) recommend changes to E_{MSY} at any time if the best available science warrants such a revision; it has not determined that a change to E_{MSY} is necessary at this time.

Oceana stated that the ''. . . annual catch limit for 2023–24 is nearly twice the 2,200 mt annual catch NMFS assumed to support its conclusion that Amendment 18 would rebuild the sardine population . . .'' To clarify, there are two stocks of Pacific sardine that can occur off the U.S. West Coast, known as the northern subpopulation and the southern subpopulation. The northern subpopulation, managed under the CPS FMP, is overfished and managed under the rebuilding plan (*i.e.,* Amendment 18 to the CPS FMP). The southern subpopulation, not managed under the CPS FMP nor part of the rebuilding plan, usually resides off the coast of Mexico, but in the summer months migrates north into waters off southern California. While the two subpopulations generally inhabit different geographic ranges, they do typically mix in the summertime, and it is impossible to distinguish between the subpopulations at the time of landing. Therefore, in an abundance of caution, NMFS counts all landed Pacific sardine against the ACL (which is set based on the biomass of the northern subpopulation only), regardless of which subpopulation they might belong to. Additionally, this rule includes management measures that generally restrict the fishery from catching the full ACL. These non-discretionary restrictions include the continued closure of the primary directed fishery (*i.e.,* the largest fishery that takes the majority of Pacific sardine catch) and restrictions on incidental harvest of Pacific sardine in other CPS fisheries (which are currently less than half of typical incidental limits).

In its March 24, 2023, letter to the Council, Oceana referenced a 2019 paper in support of its contention that the temperature index being used to calculate E_{MSY} is flawed. NMFS is aware of the paper Oceana referenced and of ongoing Council discussions related to E_{MSY}. NMFS is committed to participating in discussions about new science and whether that science justifies a change to how E_{MSY} is calculated for management purposes. NMFS notes that research related to the appropriate temperature index to inform E_{MSY} is ongoing and points out that the paper Oceana cited does not suggest an alternative methodology for calculating E_{MSY}. NMFS has not yet determined whether, a change in how E_{MSY} is calculated is necessary for management purposes. As previously stated, NMFS has determined that the reference points set through this action are based on the best scientific information available.

Oceana stated that the E_{MSY} fishing rate and distribution factor NMFS used to calculate the OFL ''. . . are overestimated, resulting in an inflated OFL that does not prevent overfishing.'' However, we note that overfishing has never occurred in this fishery, and the science supports NMFS' determination that the OFL implemented through this action will prevent overfishing.

NMFS disagrees with Oceana's suggestion to increase the buffer between OFL and ABC. The SSC recommended that the update stocks assessment upon which those reference points are based be deemed a Tier 2 assessment (meaning data moderate) and that a ''staleness'' factor be added to account for the time that has passed since the update assessment was conducted. The Council chose to use a P* of 0.4, which is consistent with past years. The buffer between OFL and ABC for this year's fishing season, 28.2 percent, is appropriately larger than the buffer between OFL and ABC for last year's fishing season because the stock assessment used for decision-making, while being best scientific information available, is a year older or ''staler.'' The ABC being implemented through this action is from the Council's SSC, which is responsible for making ABC recommendations to the Council and which bases its recommendations on the best scientific information available. NMFS also notes that, contrary to Oceana's assertions, there have been no ''indications of overfishing in several previous years'' that would warrant a more precautionary approach to setting the ABC. NMFS has therefore determined that it is not necessary to further reduce the ABC from the OFL to prevent overfishing.

NMFS also disagrees with Oceana's recommendation that the ACL should be no higher than 800 mt. The OFL/ABC/ACL were all calculated in alignment with the rebuilding plan. The reference points implemented through this action should also be viewed in the context of the non-discretionary harvest restrictions already in place, pursuant to the CPS FMP and the rebuilding plan for the northern subpopulation of Pacific sardine, which typically restrain the fishery from catching the full ACL. These non-discretionary restrictions include the continued closure of the primary directed fishery (*i.e.,* the largest fishery that takes the majority of Pacific sardine catch) and restrictions on incidental harvest of Pacific sardine in other CPS fisheries (which are currently less than half of typical incidental limits). Recent catch of Pacific sardine (both northern and southern subpopulations) has been 1,769 mt in the 2021–2022 season, and so far 1,110 mt in the 2022–2023 season (ending June 30, 2023). The reference points being implemented through this action were recommended by the Council based on the control rules in the FMP and were endorsed by the Council's SSC as the best scientific information available for setting the 2023–2024 harvest specifications for Pacific sardine.

The Council considered the overfished status of Pacific sardine, as well as the ''staleness'' of the 2022 update assessment, and incorporated precautionary measures in their recommendations to NMFS to account for those factors. Those precautionary measures included: (1) deeming the assessment Tier 2 and adding an additional ''staleness'' factor to that buffer; (2) using a P* value of 0.4; (3) reducing the ACT from the ACL; and (4) incorporating accountability measures. These accountability measures include: (1) limiting live bait landings to 1 mt per landing once 2,500 mt of sardine is attained; (2) imposing a per-trip limit of 1 mt of sardine in all CPS fisheries once the ACT is attained; and (3) implementing an incidental per-landing allowance of 2 mt in non-CPS fisheries until the ACL is reached.

As it relates to Oceana's recommendation that NMFS set the

incidental catch allowance at 10 percent, NMFS notes that all harvest, regardless of how it is taken or at what level (*i.e.,* 10 percent or 20 percent), is accounted for under the OFL/ABC/ACL/ACT for this action, and these levels have been determined to prevent overfishing of Pacific sardine and support the rebuilding of the stock. Additionally, reducing the incidental catch allowance is not necessary to ensure these reference points are not exceeded, therefore NMFS does not see a justification to restrict this sector further than the low catch allowance already in place.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the MSA, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness of these final harvest specifications for the 2023–2024 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2023. The contents of this rule are based on the best scientific information available on the population status of Pacific sardine, which became available at that April 2023 meeting. Making these final specifications effective on July 1, the first day of the fishing year, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30, 2023. The FMP requires a prohibition on primary directed fishing for Pacific sardine for the 2023–2024 fishing year because the sardine biomass has dropped below the CUTOFF. The purpose of the CUTOFF in the FMP, and for prohibiting a primary directed fishery when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. If these specifications are not effective by July 1, there would be no prohibition on the primary directed fishing, and a significant amount of sardine could theoretically be caught in a short period.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen have already been operating under a prohibition of the primary directed fishery for years, and are aware that the Council recommended that primary directed commercial fishing be prohibited again for the 2023–2024 fishing year, and are fully prepared to comply with the prohibition.

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule (88 FR 31214, May 16, 2023) and is not repeated here. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with the Council's tribal representative, who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the action.

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

Dated: June 20, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–13416 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket: 230616–0152]

RIN 0648–BL54

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 124 to the BSAI FMP for Groundfish and Amendment 112 to the GOA FMP for Groundfish To Revise IFQ Program Regulations; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects an inadvertent drafting error in final regulations published in the **Federal Register** on February 27, 2023, and effective on February 27, 2023. NMFS is correcting regulations to revise the date after which only an eligible community resident of Adak, Alaska may receive by transfer any individual fishing quota (IFQ) held by a community quota entity (CQE) in the Aleutian Islands subarea. In the final rule published on February 27, 2023, NMFS intended to extend by five years the date after which only an eligible community resident of Adak, AK may use or receive by transfer CQE IFQ. This action completes the removal of the Adak CQE residency requirement for a period of five years.

DATES: This rule is effective on June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907–586–7228 or *Alicia.m.miller@noaa.gov*.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) recommended and NMFS issued a final rule to implement Amendment 124 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 112 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) (88 FR 12259, February 27, 2023). One element of that final rule temporarily removed the Adak CQE residency requirement for a period of five years. The final rule's intent was to suspend the residency requirement for five years for both transfer and use of CQE IFQ. The final rule revised regulations at § 679.42(e)(8)(ii) and (f)(7)(ii) that otherwise limit the use of sablefish and halibut quota share to eligible community residents of Adak, Alaska. However, the final rule failed to make a corresponding revision at § 679.41(g)(6)(ii).

This action is necessary to correct an inadvertent drafting error in final regulations published on February 27, 2023. NMFS overlooked revising a regulation related to the Adak residency requirement and amending it to impose its suspension for a five-year period. This action corrects that error and modifies regulations at § 679.41(g)(6)(ii) to change the date after which only an eligible community resident of Adak, Alaska may receive by transfer IFQ held by a CQE in the Aleutian Islands subarea. This correcting amendment will fully implement the removal of the Adak CQE residency requirement for a period of five years as intended under

the final rule published on February 27, 2023.

Classification

NMFS is issuing this rule pursuant to 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The NMFS Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the BSAI and GOA FMPs and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest in clear and accurate regulations. This action corrects an inadvertent error and makes necessary clarifications to the February 27, 2023 final rule (88 FR 12259). Expeditious correction of the error and clarification is necessary to prevent confusion among participants in the fishery, as the fishery has already begun. In addition, notice and comment is unnecessary because this action makes only a minor change to correct an inadvertent error in final regulations published in the February 27, 2023 final rule (88 FR 12259). This correction will not affect the results of analyses conducted to support management decisions under the IFQ Program. This correction is consistent with the Council's intent for regulations, and the public expected the regulations to be written as they are in this correction. No change in operating practices in the fishery is required.

Similarly, the AA has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). The change in this action should be effective immediately to prevent further confusion among participants in the fishery. This notice makes only a minor correction to the final rule which was effective February 27, 2023. Delaying effectiveness of this correction would result in conflicting mandates in the regulations and confusion among fishery participants.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Date: June 16, 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 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.41, revise paragraph (g)(6)(ii) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(g) * * *

(6) * * *

(ii) In the Aleutian Islands subarea may be used by any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to February 28, 2028 and only by an eligible community resident of Adak, AK, after February 28, 2028.

* * * * *

[FR Doc. 2023–13391 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 120
Friday, June 23, 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 91

[Docket No. FAA–2018–0926; Notice No. 18–02A]

RIN 2120–AL09

Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft; Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published notice of proposed rulemaking that proposed to amend the regulations governing the operating limitations for certain experimental light-sport aircraft. The rulemaking proposed to remove the date restriction that currently prevents flight training on these aircraft and add language to permit training in certain experimental light-sport aircraft for compensation or hire through existing deviation authority. The FAA is withdrawing this action because the FAA is concurrently publishing a notice of proposed rulemaking to address the framework of flight training in certain aircraft holding special airworthiness certificates, which will include experimental light-sport aircraft.

DATES: The NPRM published on October 24, 2018, at 83 FR 53590 is withdrawn, as of June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Jabari Raphael, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1088; email *jabari.raphael@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2018, the FAA published a notice of proposed rulemaking (NPRM) titled ''Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft'' in the **Federal Register** [1] (ELSA NPRM). In the NPRM, the FAA proposed to revise regulations concerning the operation of experimental light-sport aircraft (ELSA). The rulemaking proposed to amend § 91.319(e)(2) of Title 14 of the Code of Federal Regulations (14 CFR) to add language to explicitly permit training in ELSA for compensation or hire through existing deviation authority provided in § 91.319(h). Through § 91.319(h), the FAA may issue a letter of deviation authority (LODA) providing relief from § 91.319(a) for the purpose of conducting flight training; accordingly, the NPRM proposed to add relief from paragraph (e)(2) through this established process. The FAA proposed this change to increase safety to facilitate the increased availability of aircraft with similar performance and handling characteristics to light-sport aircraft and ultralights to be used for training.

The NPRM comment period closed on November 23, 2018. The FAA received a total of 99 comments to the NPRM, submitted by individuals and the Experimental Aircraft Association (EAA). All of the comments expressed general support for the proposed changes in the NPRM, with some comments requesting that the FAA consider additional regulatory revisions, which were out of scope of the proposed rule. These comments are no longer applicable given the scope of the subsequently discussed rulemaking, which is intended to address the framework of flight training in ELSA.

Withdrawal of the NPRM

After publication and comments to the ELSA NPRM were considered, the FAA noted a discrepancy between the plain language of § 91.319 and FAA guidance to its inspectors on the approach to flight training in aircraft holding special airworthiness certificates [2] when no compensation is provided for the use of the aircraft. This discrepancy resulted in an inability for owners of experimental aircraft, including ELSA, to receive and provide compensation for specialized flight training and checking without holding a LODA from the FAA. This development prompted the FAA to propose a rule change that would resolve the discrepancy and better serve the public interest. The FAA recognizes that additional regulatory clarification, which is outside the scope of the ELSA proposed rule, is necessary to more sufficiently define both the permissions and the limitations of flight training for compensation or hire in certain aircraft that hold special airworthiness certificates.

The FAA notes that, for experimental aircraft, the discrepancy between the regulation and FAA guidance was resolved in section 5604 of the James M. Inhofe National Defense Authorization Act for 2023 (Pub. L. 117–263). That section directs that flight training, testing, and checking in experimental aircraft does not require a LODA from the FAA if certain conditions set forth in the legislation are met. The FAA has concurrently published an NPRM titled ''Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges,'' [3] intended to codify the legislation for experimental aircraft and expand the terms of the legislation to flight training, testing, and checking in other aircraft holding special airworthiness certificates. The expanded scope of the concurrently published proposed rulemaking will more comprehensively address the parameters of flight training in aircraft that hold certain special airworthiness certificates including light-sport aircraft and will create a consistent flight training framework for limited category aircraft and experimental aircraft, respectively.[4] Therefore, the FAA is withdrawing the ELSA NPRM, and flight training in ELSA will be more appropriately incorporated in the aforementioned rulemaking.

The FAA notes that comments received to the ELSA NPRM will not be addressed in the ''Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges'' rulemaking because the concurrently published NPRM will more comprehensively

[1] 83 FR 53590.

[2] Special airworthiness certificates are primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates. *See* § 21.175.

[3] RIN 2120–AL61.

[4] The expanded scope will also address flight training in primary category aircraft.

address the flight training in ELSA due to the expanded scope. Therefore, while the concurrently published NPRM contains some similar provisions, proposed amendments to § 91.319 are significantly different from the changes proposed in ELSA and comments to the ELSA NPRM are no longer applicable. The public may view and provide comments on the concurrently published ''Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges'' NPRM.

Conclusion

Withdrawal of Notice No. 18–02 does not preclude the FAA from issuing rulemaking on the subject in the future or commit the agency to any future course of action. The FAA will make necessary changes to the Code of Federal Regulations through an NPRM with opportunity for public comment in the new rulemaking project.

Therefore, the FAA withdraws Notice No. 18–02, FR Doc. 2018–23270, published at 83 FR 53590 on October 24, 2018.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Wesley L. Mooty,

Acting Deputy Executive Director, Flight Standards Service.

[FR Doc. 2023–13024 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2022–0017]

Notice of Availability of Updated ASTM Standard Under the Portable Fuel Container Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notification of availability and request for comment.

SUMMARY: In January 2023, the U.S. Consumer Product Safety Commission determined under the Portable Fuel Container Safety Act of 2020 (PFCSA) that ASTM F3429/F3429M–20 is a mandatory consumer product safety rule that impedes the propagation of flames into pre-filled portable fuel containers covered by the standard. ASTM has since notified the Commission that it has revised this voluntary standard. CPSC seeks comment on whether the revision meets the requirements of the PFCSA.

DATES: Comments must be received by July 7, 2023.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2022–0017, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *https://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2022–0017, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Scott Ayers, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2030; email: *sayers@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The PFCSA [1] requires the Commission to promulgate a final rule to require flame mitigation devices in portable fuel containers that impede the propagation of flame into the container. 15 U.S.C. 2056d(b)(1), (2). However, the Commission is not required to promulgate a final rule for a class of portable fuel containers within the scope of the PFCSA if the Commission determines at any time that:

- There is a voluntary standard for flame mitigation devices for those containers that impedes the propagation of flame into the container;
- The voluntary standard is or will be in effect not later than 18 months after the date of enactment of the PFCSA; and
- The voluntary standard is developed by ASTM International or such other standard development organization that the Commission determines to have met the intent of the PFCSA.

15 U.S.C. 2056d(b)(3)(A). Any such Commission determinations regarding applicable voluntary standards must be published in the **Federal Register**, and the requirements of such a voluntary standard ''shall be treated as a consumer product safety rule.'' 15 U.S.C. 2056d(b)(3)(B) and (b)(4).

Under this authority, on January 13, 2023, the Commission published a document determining that three voluntary standards for portable fuel containers meet the requirements of the PFCSA and will be treated as consumer product safety rules: ASTM F3429/F3429M–20 (prefilled containers), ASTM F3326–21 (containers sold empty), and section 18 of UL 30:2022 (safety cans). 88 FR 2206.

Portable fuel containers sold pre-filled are within the scope of ASTM F3429/F3429M, *Standard Specification for Performance of Flame Mitigation Devices Installed in Disposable and Pre-Filled Flammable Liquid Containers.* ASTM lists the standard as a dual standard in inch-pound (F3429 designation) and metric (F3429M designation) units. ASTM F3429/F3429M was first published in 2020. ASTM published a revised version of ASTM F3429/F3429M–20 in May 2023, as ASTM F3429/F3429M–23. On June 12, 2023, ASTM notified the Commission that it had approved and published ASTM F3429/F3429M–23.

Under section (b)(5) of the PFCSA, if the requirements of a voluntary standard that meet the requirements of section (b).

(3) are subsequently revised, the organization that revised the standard shall notify the Commission after the final approval of the revision. Any such revision to the voluntary standard shall become enforceable as a consumer product safety rule not later than 180 days after the Commission is notified of a revised voluntary standard that meets the conditions of section (b)(3) (or such

[1] Portable Fuel Container Safety Act of 2020, codified at 15 U.S.C. 2056d, as stated in Public Law 116–260, div. FF, title IX, § 901, available at: *https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf.*

later date as the Commission determines appropriate), in place of the prior version, unless within 90 days after receiving the notice the Commission determines that the revised voluntary standard does not meet the requirements described in section (b)(3) of the PFCSA. 15 U.S.C. 2056d(b)(5).

CPSC staff is assessing the revised voluntary standard to determine, consistent with section (b)(5) of the PFCSA, whether the revisions in ASTM F3429/F3429M–23 meet the requirements of section (b)(3)(A) of the PFCSA listed above. The Commission invites public comment on that question, to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F3429/F3429M–23.[2]

ASTM F3429/F3429M–23 is available for review in several ways. ASTM has provided on its website (at *https://www.astm.org/CPSC.htm*), at no cost, a read-only copy of the 2023 revisions to ASTM F3429/F3429M, including a red-lined version that identifies the changes made to ASTM F3429/F3429M–20. Likewise, a read-only copy of the existing standard (ASTM F3429/F3429M–20) is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by July 7, 2023. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section (b)(5) of the PFCSA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–13351 Filed 6–22–23; 8:45 am]

BILLING CODE 6355–01–P

[2] The Commission voted 4–0 to publish this notification.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124123–22]

RIN 1545–BQ57

Corporate Bond Yield Curve for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations specifying the methodology for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans, as well as insurance companies.

DATES: Written or electronic comments must be received by August 22, 2023. A public hearing on this proposed regulation has been scheduled for August 30, 2023 at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by August 22, 2023. If no outlines are received by August 22, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on August 28, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by August 25, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–124123–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–124123–22), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Arslan Malik or Linda S.F. Marshall at (202) 317–6700 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Vivian Hayes at (202) 317–5306 (not a toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.[1] For a plan subject to section 430, section 430(a) defines the minimum required contribution for a plan year by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(2) provides rules regarding the interest rates to be used under section 430. Section 430(h)(2)(B) provides that a plan's funding target and target normal cost for a plan year are determined using three interest rates: (1) the first segment rate, which applies to benefits reasonably determined to be payable during the 5-year period beginning on the valuation date; (2) the second segment rate, which applies to benefits reasonably determined to be payable during the next 15-year period; and (3) the third segment rate, which applies to benefits reasonably determined to be paid after that 15-year period. Under section 430(h)(2)(C)(i) through (iii), each of these segment rates is determined for a month on the basis of the corporate bond yield curve for the month, taking into account only that

[1] Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829 (1974), as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

portion of the yield curve that is based on bonds maturing during the period for which the segment rate is used.

Section 430(h)(2)(C)(iv), which was added to the Code in 2012 by section 40211 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405, and has been modified several times since then (most recently in 2021 by section 80602 of the Infrastructure Investment and Jobs Act, Pub. L. 117–58, 135 Stat. 429), provides interest rate stabilization rules under which the segment rates are constrained by reference to the 25-year average segment rates. Under section 430(h)(2)(C)(iv), if a segment rate for a month is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the corresponding segment rates for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate for that month is equal to the applicable minimum percentage or the applicable maximum percentage of the corresponding 25-year average segment rate, whichever is closest. The last sentence of section 430(h)(2)(C)(iv)(I) provides that any 25-year average segment rate that is less than 5 percent is deemed to be 5 percent.

Under section 430(h)(2)(D)(i), the term ''corporate bond yield curve'' means, with respect to any month, a yield curve prescribed by the Secretary for the month that reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available. Section 430(h)(2)(D)(ii) permits a plan sponsor to elect to use the corporate bond yield curve, rather than the segment rates, to determine the plan's minimum required contribution. The yield curve that applies pursuant to this election is determined without regard to 24-month averaging. This election, once made, may be revoked only with the consent of the Secretary.

Under section 430(h)(2)(F), the Secretary is instructed to publish for each month the corporate bond yield curve (without regard to the 24-month averaging specification), the segment rates described in section 430(h)(2)(C), and the 25-year averages of segment rates used under section 430(h)(4)(C)(iv). The Secretary is also instructed to publish a description of the methodology used to determine the yield curve and segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Section 1.430(h)(2)–1 was issued in 2009 to provide rules regarding the interest rates to be used under section 430. T.D. 9467, 74 FR 53004. Section 1.430(h)(2)–1(d) provides that the methodology for determining the yield curve is provided in guidance that is published in the Internal Revenue Bulletin. Notice 2007–81, 2007–2 CB 899, describes the methodology used by the Department of the Treasury (Treasury Department) to develop the corporate bond yield curve. Section 1.430(h)(2)–1(d) also provides that the yield curve for each month will be set forth in guidance published in the Internal Revenue Bulletin. Monthly IRS notices set forth the corporate bond yield curve for the month (without regard to the 24-month averaging specification), the section 430 segment interest rates (before and after adjustment pursuant to section 430(h)(3)(C)(iv)), and the 25-year average segment rates (which are updated annually).

Section 417(e)(3) provides assumptions for determining minimum present value for certain purposes, including the determination of a lump-sum that is the present value of an annuity, and prescribes an applicable interest rate for this purpose. Section 417(e)(3)(C) provides that the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of a distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Under section 846(c), the Secretary determines the applicable interest rate to be used by insurance companies to discount unpaid losses on the basis of the corporate bond yield curve (as defined in section 430(h)(2)(D)(i), determined by substituting ''60-month period'' for ''24-month period''). Under § 1.832–4(c), the applicable interest rate determined under section 846(c) is also used by insurance companies to discount estimated salvage recoverable, unless the Commissioner publishes applicable discount factors to be used for that purpose.

Explanation of Provisions

These proposed regulations specify the methodology used to develop the corporate bond yield curve. This methodology is generally the same as the methodology set forth in Notice 2007–81 but would include two refinements to take into account changes in the bond market since 2007. The proposed regulations would also amend the existing regulations under section 430(h)(2) to reflect the addition of the interest rate stabilization rules of section 430(h)(2)(C)(iv) and to eliminate transition rules that applied to plan years beginning before January 1, 2010.

Under these proposed regulations, as under Notice 2007–81, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years, and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average for each business day of that month of the spot rates at that duration on the daily corporate bond yield curves.

Under these proposed regulations, as under Notice 2007–81, each spot rate on the daily corporate bond yield curve is calculated using a discount function, which is derived from a forward interest rate function (that is, the projected instantaneous interest rate at each point in time). The forward interest rate function is defined by the selection of five coefficients of B-splines that are determined using the bond data and taking into account certain adjustment factors.

Two of those adjustment factors, which are included in the methodology set forth in Notice 2007–81, take into account the ratings of the bonds used to develop the daily corporate bond yield curve. The third adjustment factor, which was not included in the methodology set forth in that notice, is a hump adjustment variable that peaks at 20 years maturity [2] and serves to capture the effects of the hump in spot rates that is often seen around 20 years maturity.

These proposed regulations generally adopt the specification for the bond data set for a month in Notice 2007–81 but

[2] The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction at 20 years maturity.

modify an exclusion from that bond data set. Under Notice 2007–81 and the proposed regulations, subject to certain exclusions, the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with the following characteristics: (1) maturities longer than a ½ year,[3] (2) at least two payment dates, (3) designated as corporate, (4) high quality ratings (that is, AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations,[4] (5) at least $250 million in par amount outstanding on at least one day during the month, (6) payment of fixed nominal semiannual coupons and the principal amount at maturity, and (7) maturity not later than 30 years after that day.

Under Notice 2007–81 and these proposed regulations, the following categories of bonds are excluded from the bond data set: (1) bonds not denominated in U.S. dollars, (2) bonds not issued by U.S. corporations, (3) bonds that are capital securities (sometimes referred to as hybrid preferred stock), (4) bonds having variable coupon rates, (5) convertible bonds, (6) bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association), (7) asset-backed bonds, (8) putable bonds, (9) bonds with sinking funds, and (10) bonds with a par amount outstanding below $250 million for the day for which the daily yield curve is constructed.

Notice 2007–81 also excluded callable bonds (unless the call feature is make-whole) from the bond data set used to construct the daily corporate bond yield curve. The proposed regulations generally retain this exclusion but narrow it. Under the proposed regulations, this exclusion does not apply if the call feature is exercisable only during the last year before maturity. This type of call feature has recently become more widely used, and the inclusion of bonds with this feature in the data set will result in a significantly larger pool of bonds that more accurately reflects the market for high quality corporate bonds.

[3] Under Notice 2007–81 and the proposed regulations, the data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

[4] Although section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, generally prohibits federal agencies from issuing regulations that apply a standard that is based on credit ratings from statistical rating organizations, this prohibition does not apply to the construction of the daily corporate bond yield curve because the use of those credit ratings is required by section 430(h)(2)(D) of the Code.

Proposed Applicability Date

The rules in the proposed regulations are proposed to apply for months that begin more than 15 days after the date final regulations specifying the methodology for constructing the corporate bond yield curve are published in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Special Analyses

Regulatory Planning and Review (Executive Orders 12866 and 13563)

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Regulatory Flexibility Act (5 U.S.C. Chapter 6)

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The vast majority of plan sponsors of defined benefit plans that are subject to section 430 choose to use the segment rates under section 430(h)(2)(C), rather than the corporate bond yield curve under section 430(h)(2)(D), to determine minimum required contributions. Furthermore, most of the plan sponsors who choose to use the corporate bond yield curve for this purpose are not small employers. Therefore, the methodology set forth in the proposed regulations for constructing the corporate bond yield curve will not have a significant effect on minimum required contributions for small employers. In addition, the insurance companies that are required to use a modified version of the corporate bond yield curve to discount unpaid losses are typically not small employers. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulation are adopted as a final regulation, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments will be made available at *www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for August 30, 2023 beginning at 10 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by August 22, 2023 as prescribed in the preamble under the **ADDRESSES** section. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by August 22, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–124123–22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–124123–22.

Individuals who want to testify by telephone at the public hearing must

send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–124123–22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–124123–22.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–124123–22 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–124123–22. Requests to attend the public hearing must be received by 5:00 p.m. EST on August 28, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–124123–22 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–124123–22. Requests to attend the public hearing must be received by 5:00 p.m. EST on August 28, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least August 25, 2023.

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Amend § 1.430(h)(2)–1 as follows:

■ 1. Amend paragraph (a)(1) by removing the phrase ''and transition rules'' in the last sentence.

■ 2. Revise paragraph (b)(2).

■ 3. Amend paragraph (c)(1) by removing the last sentence.

■ 4. Amend paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) by removing the phrase ''under the transition rule of paragraph (h)(4) of this section'' and adding the phrase ''under the interest rate stabilization rules in section 430(h)(2)(C)(iv)'' in its place.

■ 5. Revise paragraph (d).

■ 6. Remove paragraph (e)(3) and redesignate paragraph (e)(4) as paragraph (e)(3) and paragraph (e)(5) as paragraph (e)(4).

■ 7. In newly redesignated paragraph (e)(3)(ii), remove the phrase ''this paragraph (e)(4)'' and add the phrase ''this paragraph (e)(3)'' in its place.

■ 8. Revise paragraph (h).

The revisions and additions read as follows:

§ 1.430(h)(2)–1 Interest rates used to determine present value.

* * * * *

(b) * * *

(2) In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

* * * * *

(d) *Monthly corporate bond yield curve*—(1) *In general*—(i) *Construction of monthly corporate bond yield curve.* For purposes of this section, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. The monthly corporate bond yield curve is constructed as the average of the spot rates from the set of daily corporate bond yield curves as specified in paragraph (d)(1)(ii) of this section. Each daily corporate bond yield curve is constructed using the methodology set forth in paragraph (d)(2) of this section based on the data described in paragraph (d)(3) of this section. Note 1 to paragraph (d)(1) of this section, the yield curve for each month will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(ii) *Monthly corporate bond yield curve constructed through averaging.* Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average, for each business day of that month, of the spot rates at that duration on the daily corporate bond yield curves.

(2) *Construction of the daily corporate bond yield curve*—(i) *In general*—(A) *Calculation of spot rates.* Each spot rate at duration *t* on a daily corporate bond yield curve is calculated from the discount function described in paragraph (d)(2)(i)(B) of this section and the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section.

(B) *Derivation of discount function.* The discount function for a day at duration *t* is derived from the forward interest rate function as described in paragraph (d)(2)(ii) of this section (denoted *f(z)*) using the following equation:

$$d(t) = exp\left(-\int_0^t f(z)dz\right)$$

(ii) *Determination of forward interest rates*—(A) *In general.* The forward interest rate function used to derive the discount function is determined as a series of cubic polynomials (referred to as a cubic spline) that have a smooth junction at specified knot points (maturities of 0, 1.5, 3, 7, 15, and 30 years). The requirement that the polynomials have a smooth junction at a knot point is satisfied if the two polynomials that are meeting at the knot have the same value, the same derivative, and the same second derivative at that knot point.

(B) *Constraints on the forward interest function.* The following three constraints are placed on the forward interest rate function—

(*1*) The second derivative of the function is set to zero at maturity zero.

(*2*) The value of the forward interest rate function at and after 30 years is constrained to equal its average value from 15 to 30 years.

(*3*) The derivative of the forward interest rate function is set to zero at maturity 30 years.

(iii) *Parameters for daily bond price model*—(A) *B-spline coefficients.* The

assumed cubic spline for the forward interest rate function can be described as a linear combination of B-splines, with five parameters, which are determined taking into account the two coefficients for the bond-quality adjustment variables described in paragraphs (d)(2)(iii)(B) and (C) of this section and the coefficient for the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section. The five parameters and three coefficients are determined using the bond data weighted as described in paragraph (d)(2)(iv) of this section. After this weighting of the bond data, the five parameters and three coefficients are chosen to minimize the sum of the squared differences between the bid price for each of the bonds (or ask price for commercial paper) and the price estimated for each of those bonds determined using the specified parameters and coefficients, and taking into account the bond's coupon rate, number of years until maturity, and rating.

(B) *Adjustment factor for share of bonds that are AA-rated.* The first adjustment variable is based on the proportion of bonds that are rated AA within the universe of bonds in the data set that are rated AA or AAA, weighted by par value. In the case of an AAA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an AA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of (1 − that proportion) and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(B) is set to 0.

(C) *Adjustment factor for share of bonds that are A-rated.* The second adjustment variable is based on the proportion of bonds rated A within the universe of bonds in the data set, weighted by par value. In the case of an AAA-rated bond or an AA-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an A-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of (1 − that proportion) and the number of years until maturity for the bond.

(D) *Hump adjustment variable.* The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction (as described in paragraph (d)(2)(ii)(A) of this section) at 20 years maturity. The spline rises from zero at 10 years maturity to 1.0 at 20 years maturity, then falls back down to zero at 30 years maturity. The hump adjustment variable is zero for maturities less than 10 years and maturities greater than 30 years.

(iv) *Weighting of bond data.* The bond data are weighted in two steps. First, equal weights are assigned to the commercial paper rates at the short end of the curve, and the par amounts outstanding of all the bonds are rescaled so that their sum equals the sum of the weights for commercial paper. Then, the squared price difference for each bond is multiplied by the bond's rescaled par amount outstanding, and the squared difference for each commercial paper rate is multiplied by the commercial paper weight. In the second stage, applicable for bonds with duration greater than 1, the weighted squared price difference for each bond from the first stage is divided by the bond's duration.

(3) *Data used*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with maturities longer than a ½ year, with at least two payment dates, and that:

(A) Are designated as corporate;

(B) Have high quality ratings (AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations;

(C) Have at least $250 million in par amount outstanding on at least one day during the month;

(D) Pay fixed nominal semiannual coupons and the principal amount at maturity; and

(E) Mature not later than 30 years after that business day.

(ii) *Excluded bonds.* The following types of bonds are not used to construct the daily corporate bond yield curve for a date:

(A) Bonds not denominated in U.S. dollars;

(B) Bonds not issued by U.S. corporations;

(C) Bonds that are capital securities (sometimes referred to as hybrid preferred stock);

(D) Bonds having variable coupon rates;

(E) Convertible bonds;

(F) Bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association);

(G) Asset-backed bonds;

(H) Callable bonds unless the call feature is make-whole or the call feature is exercisable only during the last year before maturity;

(I) Putable bonds;

(J) Bonds with sinking funds; and

(K) Bonds with a par amount outstanding below $250 million for the day for which the daily yield curve is constructed.

(iii) *Durations equal to or below a ½ year.* The data for durations equal to or below a ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

* * * * *

(h) *Applicability date of regulations.* This section applies to months that begin more than 15 days after the date final regulations issued pursuant to these proposed regulations are published in the **Federal Register**. For rules that apply for earlier periods, see § 1.430(h)(2)–1, as it appeared in the April 1, 2022, edition of 26 CFR part 1.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–12693 Filed 6–22–23; 8:45 am]

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SELECTIVE SERVICE SYSTEM

32 CFR Part 1660

RIN 3240–AA02

Release of Official Information in Litigation and Presentation of Witness Testimony by Selective Service System (SSS) Personnel (Touhy Regulation)

AGENCY: United States Selective Service System.

ACTION: Proposed rule.

SUMMARY: The Selective Service System (SSS) is publishing new regulations titled, ''Release of official information in litigation and presentation of witnesses testimony by Selective Service System (SSS) personnel'' (referred to as *Touhy* regulations). These new regulations will ensure consistent processing of *Touhy* requests; clarify the responsibilities of all parties in the *Touhy* process; and provide additional information about criteria that SSS and its Components should consider in the *Touhy* process.

DATES: Comments must be received 60 days from publication date.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title by email to *dlauretano@sss.gov,* or by mail to:

Selective Service System, General Counsel, 1515 Wilson Boulevard, Suite 500, Arlington, Virginia 22209–2425.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel A. Lauretano, Sr., General Counsel, 703–605–4012, *dlauretano@sss.gov.*

SUPPLEMENTARY INFORMATION:

A. Summary of New Regulatory Provisions and Their Impact

The SSS is creating its *Touhy* regulations to: (1) Promote consistent processing of *Touhy* requests among the SSS and SSS Components; (2) clarify the responsibilities of all parties in the *Touhy* process; and (3) provide additional information about criteria that SSS should consider in the *Touhy* process. The new regulations set forth the procedures to be followed with respect to a demand seeking official information or employee testimony relating to official information for use in a legal proceeding. The new regulations also set forth certain definitions. The new regulations apply to all SSS personnel (see § 1660.3), in particular, members and personnel of the Office of the Director, National Headquarters Directorates and Offices, Region Offices, the Data Management Center, the National Appeals Board, District Appeals Boards, Local Boards (including panels, multicounty, and intracounty boards), and all other organizational entities within the SSS (referred to collectively in this part as the ''SSS Components'').

The new regulations are intended only to provide guidance for the internal operations of the SSS, without displacing the responsibility of the Department of Justice to represent the United States in litigation. The new regulations do not apply to the release of official information or the presentation of witness testimony in connection with:

(1) Administrative proceedings or investigations conducted by the SSS.

(2) Security-clearance adjudicative proceedings.

(3) Administrative proceedings conducted by or for the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

(4) Negotiated grievance proceedings conducted in accordance with a collective bargaining agreement.

(5) Requests by Government counsel representing the United States or a Federal agency in litigation.

(6) Disclosures to Federal, State, local, or foreign authorities related to investigations or other law-enforcement activities conducted by a Federal law-enforcement officer, agent, or organization.

The new regulations do not affect in any way existing laws or SSS programs governing:

(1) The release of official information or the presentation of witness testimony in grand jury proceedings.

(2) Freedom of Information Act requests submitted pursuant in accordance with 32 CFR part 1662, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant in accordance with 32 CFR part 1665, even if the records sought are related to litigation.

(4) The release of official information outside of litigation.

The new regulations do not create any right or benefit (substantive or procedural) enforceable by law against the SSS or the United States.

The new regulations define:

Court. A Federal, State, or local court, tribunal, commission, board, or other adjudicative body of competent jurisdiction.

Demand. An order or subpoena by a court of competent jurisdiction for the production or release of official information or for the presentation of witness testimony by SSS personnel at deposition or trial.

Disclosure. The release of official information in litigation or the presentation of witness testimony by SSS personnel.

Legal Advisor includes the Selective Service System (SSS) General Counsel (GC), and any other SSS legal advisors designated by the GC.

Litigation. All pretrial (*e.g.,* discovery), trial, and post-trial stages of existing judicial or administrative actions, hearings, investigations, or similar proceedings before a civilian court, whether foreign or domestic.

Litigation request. Any written request by a party in litigation or the party's attorney for the production or release of official information or for the presentation of witness testimony by SSS personnel at deposition, trial, or similar proceeding.

Official information. All information of any kind and however stored that is in the custody and control of the SSS, relates to information in the custody and control of the SSS, or was acquired by SSS personnel due to their official duties or status.

Personnel.

(1) Civilian employees of the SSS.

(2) Present and former (*e.g.,* retired, separated) Service members assigned to the SSS.

(3) Present and former (*e.g.,* retired, separated) employees of another Federal agency assigned to, detailed to, or otherwise affiliated with SSS.

(4) Any individuals who are or were supervised by an SSS official and who perform or have performed services for the SSS through a contractual arrangement.

(5) Any individual that performs or has performed services for the SSS as a volunteer (*e.g.,* (local board, panel, multicounty, intercounty, district appeals board members, state resource volunteers, etc.).

(6) Any individual that performs or has performed the duties as a member of the National Appeals Board.

SSS Components. The SSS Components consist of:

(1) The Office of the Director.

(2) National Headquarters Directorates and Offices.

(3) Region Offices.

(4) Data Management Center.

(5) the National Appeals Board.

(6) District Appeals Boards.

(7) Local Boards (including panels, multicounty, and intracounty boards).

(8) All other organizational entities within the SSS.

The new regulations outline the SSS policy to make official factual information, both testimonial and documentary, reasonably available for use in Federal courts, State courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure. It makes clear that SSS personnel shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part. It stresses that SSS personnel shall not provide, with or without compensation, opinion or expert testimony concerning official SSS information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part. Finally, it provides that upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the

interests of the SSS or the United States, the SSS GC may, in their sole discretion, and pursuant to the guidance contained in this part, grant such written special authorization for SSS personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

Parties who submit a litigation request or demand to the SSS must describe, in writing and with specificity:

(1) the nature of the official information or witness testimony sought, its relevance to the litigation, and other pertinent details addressing the factors in § 1660.8.

(2) the litigation request or demand must show whether the request is consistent with the policy and rules of this part.

(3) the litigation request or demand must include copies of the complaint and relevant proceedings and be submitted at least 30 days before the desired date to the Selective Service System, General Counsel, 1501 Wilson Blvd., Suite 800, Arlington, Virginia 22209.

If the litigation request or demand seeks testimony, the identity of the SSS employee whose testimony is sought and a detailed summary about the relevance of the employee's testimony to the underlying legal proceeding;

If the litigation request or demand seeks documents or other materials, a description of the requested official information sought and a detailed summary about its relevance to the underlying legal proceeding;

An explanation of the unavailability of the requested official information or employee testimony through other sources; and

An explanation of how each of the factors set forth in 32 CFR 1660.8 applies to their demand.

The new regulations require that this information must be submitted at least 30 calendar days before the official information or employee testimony is needed and further require the submission of the above information even if parties serve a subpoena on the SSS or a SSS employee. A litigation request or demand will not be granted if a party fails to follow the instructions set forth in the regulations.

SSS personnel who receive a litigation request or demand are to:

(1) Inform their supervisors about the litigation request or demand so the supervisors may inform the SSS GC or other SSS legal advisor; and

(2) Refrain from providing official information and/or testimony in response to the litigation request or demand.

B. Background & Legal Basis for This Rule

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing ''the custody, use, and preservation of its records, papers, and property.''

The Supreme Court held in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), that under such authority, agency heads may establish procedures for determining whether to release official information and allow personnel testimony sought through a subpoena or other litigation request. This regulation sets forth SSS's procedures, which as the Supreme Court explained, are useful and necessary as a matter of internal administration to prevent possible harm from unrestricted disclosures in court. Currently, the SSS does not have *Touhy* regulations. This proposed rule creates new regulations spanning §§ 1660.1 through 1660.11.

C. Expected Impact of the Proposed Rule

This rule action will not impose any new costs. Creating SSS *Touhy* regulations will clarify and streamline requests and will produce efficiency and uniformity to the public's benefit. Less attorney time will be spent searching for SSS request procedures and complying with its requirements. After reviewing other agency regulations, the SSS concluded that attorneys for third-party litigants will save considerable time in performing research, review, and compliance time per subpoena or litigation request when referring to the Code of Federal Regulations for guidance.

For purposes of estimating the cost savings, the SSS's subject matter experts deemed it reasonable to use the mean hourly wage for lawyers as informed by the Bureau of Labor and Statistics, $78.74.[1] In addition to these cost savings, there will be an unquantified benefit of transparency through access to official information, while safeguarding classified, privileged, and personally identifiable information.

D. Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' E.O. 13563, ''Improving Regulation and Regulatory Review,'' and Congressional Review Act (5 U.S.C. 801–08)

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these E.O.s, the Office of Management and Budget has determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 nor a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

SSS certifies that this proposed rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it would not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require SSS to prepare a regulatory flexibility analysis.

F. Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. 1532)

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of $100 million or more (in 1995 dollars, adjusted annually for inflation) in any one year. This proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

G. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 1660 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. E.O. 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local Governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local Governments.

I. E.O. 11623, Delegation of Authority & Coordination Requirements

In E.O. 11623, the President delegated to the Director of Selective Service the authority to prescribe the necessary

[1] This information can be found in the website of the Bureau of Labor Statistics under National Wage Data for Lawyers, Occupation Code 23–1011 (available at *https://www.bls.gov/oes/current/oes231011.htm*), last updated in May 2019.

rules and regulations to carry out the provisions of the Military Selective Service Act. In carrying out the provisions of E.O. 11623, as amended by E.O. 13286, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation. On June 13, 2023, the SSS completed its coordination requirements, and the Director certifies that he has requested the views of the officials required to be consulted pursuant to subsection (a) of E.O. 11623, considered those views and as appropriate incorporated those views in these regulations, and that none of them has timely requested that the matter be referred to the President for decision.

List of Subjects in 32 CFR Part 1660

Government employees, Organization and functions (Government agencies).

■ For the reasons discussed in the preamble, the Selective Service System proposes to amend 32 CFR chapter XVI by adding part 1660 to read as follows:

PART 1660—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND PRESENTATION OF WITNESS TESTIMONY BY SSS PERSONNEL (TOUHY REGULATION)

Sec.

1660.1 Purpose.
1660.2 Applicability.
1660.3 Definitions.
1660.4 Policy.
1660.5 Responsibilities—the Selective Service System (SSS) General Counsel (GC).
1660.6 Responsibilities—the Selective Service System Component Heads.
1660.7 Procedures—authorities.
1660.8 Procedures—factors to consider.
1660.9 Procedures—requirements and determinations.
1660.10 Procedures—fees.
1660.11 Procedures—expert or opinion testimony.

Authority: 5 U.S.C. 301; 50 U.S.C. 3809; & E.O. 11623, as amended by E.O. 13286, Feb 28, 2003.

§ 1660.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official information in litigation and the presentation of witness testimony by Selective Service System (SSS) personnel pursuant to 5 U.S.C. 301 and the Supreme Court's decision in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 1660.2 Applicability.

This part—

(a) Applies to all SSS personnel (see § 1660.3), in particular, members and personnel of the Office of the Director, National Headquarters Directorates and Offices, Region Offices, Data Management Center, the National Appeals Board, District Appeals Boards, Local Boards (including panels, multicounty, and intercounty boards) and all other organizational entities within the SSS (referred to collectively in this part as the ''SSS Components'').

(b) Is intended only to provide guidance for the internal operations of the SSS, without displacing the responsibility of the Department of Justice to represent the United States in litigation.

(c) Does not preclude official comments on matters in litigation.

(d) Does not apply to the release of official information or the presentation of witness testimony in connection with:

(1) Administrative proceedings or investigations conducted by or for a SSS Component.

(2) Security-clearance adjudicative proceedings.

(3) Administrative proceedings conducted by or for the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

(4) Negotiated grievance proceedings conducted in accordance with a collective bargaining agreement.

(5) Requests by Government counsel representing the United States or a Federal agency in litigation.

(6) Disclosures to Federal, State, local, or foreign authorities related to investigations or other law-enforcement activities.

(e) Does not affect in any way existing laws or SSS programs governing:

(1) The release of official information or the presentation of witness testimony in grand jury proceedings.

(2) Freedom of Information Act requests submitted pursuant to 32 CFR part 1662, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant to 32 CFR part 1665, even if the records sought are related to litigation.

(4) The release of official information outside of litigation.

(f) Does not create any right or benefit (substantive or procedural) enforceable at law against the SSS or the United States.

§ 1660.3 Definitions.

These terms and their definitions are for the purpose of this part.

Court. A Federal, State, or local court, tribunal, commission, board, or other adjudicative body of competent jurisdiction.

Demand. An order or subpoena by a court of competent jurisdiction for the production or release of official information or for the presentation of witness testimony by SSS personnel at deposition or trial.

Disclosure. The release of official information in litigation or the presentation of witness testimony by SSS personnel.

Legal advisor means:

(1) The General Counsel of the SSS (SSS GC).

(2) Any Legal Advisor Designated by the SSS GC.

Litigation. All pretrial (*e.g.,* discovery), trial, and post-trial stages of existing judicial or administrative actions, hearings, investigations, or similar proceedings before a court, whether foreign or domestic.

Litigation request. Any written request by a party in litigation or the party's attorney for the production or release of official information or for the presentation of witness testimony by SSS personnel at deposition, trial, or similar proceeding.

Official information. All information of any kind and however stored that is in the custody and control of the SSS, relates to information in the custody and control of the SSS, or was acquired by SSS personnel due to their official duties or status.

Personnel means:

(1) Employees of the SSS.

(2) Present and former (*e.g.,* retired, separated) Service members assigned to, detailed to, or otherwise affiliated with the SSS.

(3) Present and former (*e.g.,* retired, separated) employees of another Federal agency assigned to, detailed to, or otherwise affiliated with the SSS.

(4) Any individuals who are or were supervised by an SSS official and who perform or have performed services for the SSS through a contractual arrangement.

(5) Any individuals who perform or have performed services for the SSS as a volunteer board member (local, panel, multicounty, intracounty, district appeals).

(6) Members of the National Appeals Board.

SSS Components. The SSS Components consist of:

(1) The Office of the Director.
(2) National Headquarters Directorates and Offices.
(3) Region Offices.
(4) Data Management Center.
(5) the National Appeals Board.
(6) District Appeals Boards.
(7) Local Boards (including panels, multicounty, and intercounty boards).
(8) All other organizational entities within the SSS.

§ 1660.4 Policy.

(a) It is the policy of the SSS to make official factual information, both testimonial and documentary, reasonably available for use in Federal courts, State courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) SSS personnel, as defined in § 1660.3, however, shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part.

(c) SSS personnel shall not provide, with or without compensation, opinion or expert testimony concerning official SSS information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part.

(d) Paragraphs (b) and (c) of this section constitute a regulatory general order, applicable to all SSS personnel individually, and need no further implementation. A violation of those provisions is the basis for appropriate administrative procedures with respect to civilian employees. Moreover, violations of this instruction by SSS personnel may, under certain circumstances, be actionable under 18 U.S.C. 207.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the SSS or the United States, the SSS GC may, in their sole discretion, and pursuant to the guidance contained in this part, grant such written special authorization for SSS personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 1660.5 Responsibilities—Selective Service System (SSS) General Counsel (GC).

The SSS GC has overall responsibility for the policy in this part, oversees the implementation of its procedures throughout the SSS, and provides supplemental guidance as appropriate.

§ 1660.6 Responsibilities—SSS Component Heads.

The SSS Component heads implement the policy and procedures in this part and, through the SSS GC or other SSS legal advisor, provide guidance for their respective components.

§ 1660.7 Procedures—authorities.

(a) In response to a litigation request or demand, and after any required coordination with the Department of Justice, the SSS GC and other SSS legal advisor (see § 1660.3) are authorized to:

(1) Determine whether the respective SSS Components may release official information originated by or in the custody of such components.

(2) Determine whether personnel assigned to, detailed to, or affiliated with the respective SSS Components may be contacted, interviewed, or used as witnesses concerning official information or, in exceptional circumstances, as expert witnesses.

(3) Impose conditions or limitations on disclosures approved pursuant to this paragraph (a) (*e.g.,* approve the release of official information only to a Federal judge for in-camera review).

(4) Assert claims of privilege or protection before any court.

(b) The SSS GC may assume primary responsibility for responding to any litigation request or demand.

§ 1660.8 Procedures—factors to consider.

In making a determination pursuant to § 1660.7(a), the SSS GC and other SSS legal advisor will consider whether:

(a) The litigation request or demand is overbroad, unduly burdensome, or otherwise inappropriate under applicable law or court rules, or this part.

(b) The disclosure would be improper (*e.g.,* the information is irrelevant, cumulative, or disproportional to the needs of the case) under the rules of procedure governing the litigation from which the request or demand arose.

(c) The official information or witness testimony is privileged or otherwise protected from disclosure under applicable law.

(d) The disclosure would violate a statute, Executive order, regulation, or policy.

(e) The disclosure would reveal:

(1) Information properly classified pursuant to Chapters 21, 22,6 31, 33, and 35 of title 44, United States Code; Sections 102, 105, 552,7 and 552a8 of title 5, United States Code; Executive Order 12968, ''Access to Classified Information,'' August 2, 1995, as amended; Intelligence Community Directive 703, ''Protection of Classified National intelligence, Including Sensitive Compartmental Information (SCI),'' June 21 20132; Executive Order 12958, ''Classified National Security Information,'' April 17, 1995, as amended; Presidential Memorandum, ''Implementation of the Executive Order, 'Classified National Security Information,' '' December 29, 2009;

(2) Controlled Unclassified Information pursuant to Executive Order 13556, ''Controlled Unclassified Information,'' November 4, 2010, as amended; 32 CFR part 2002.

(3) Technical data withheld pursuant to 32 CFR part 250.

(4) Information protected by the Privacy Act, which may not be disclosed in the absence of written consent, a routine use, or other authority listed in 5 U.S.C. 552a(b).

(5) Information otherwise exempt from unrestricted disclosure.

(f) The disclosure would:

(1) Interfere with an ongoing law enforcement proceeding.

(2) Compromise a constitutional right of another.

(3) Expose an intelligence source or confidential informant.

(4) Divulge a trade secret or similar confidential information.

(5) Be otherwise inappropriate.

§ 1660.9 Procedures—requirements and determinations.

(a) A litigation request or demand must describe, in writing and with specificity, the nature of the official information or witness testimony sought, its relevance to the litigation, and other pertinent details addressing the factors in § 1660.8.

(b) A litigation request or demand must be submitted at least 30 days before the desired date to the Selective Service System, General Counsel, 1501 Wilson Blvd., Suite 800, Arlington, Virginia 22209.

(c) Personnel and former personnel (*e.g.,* retired employees and Reserve Service Members, past volunteers) who receive a litigation request or demand must notify the SSS GC or their SSS legal advisor immediately.

(d) If another Federal agency originated the responsive information or otherwise has the primary equity with respect to that information, the SSS GC will:

(1) Transfer the litigation request or demand (or the appropriate portions) to such other agency for action.

(2) Inform the requesting party or issuing court.

(e) If the litigation request or demand requires a response before a determination can be made, the SSS GC or other SSS legal advisor will inform

the requesting party or the issuing court (through the Department of Justice) that the request or demand is still under consideration. The SSS GC or other SSS legal advisor also may seek a stay from the court in question until a final determination is made.

(f) Upon making a final determination pursuant to § 1660.7(a), the SSS GC or other SSS legal advisor will inform the requesting party or issuing court.

(g) If the SSS GC or other SSS legal advisor approves the release of official information or the presentation of witness testimony, personnel will limit the disclosure to those matters approved by the SSS GC or other SSS legal advisor. Personnel may not release, produce, comment on, or testify about any official information without the prior written approval of the SSS GC or other SSS legal advisor.

(h) If a court orders a disclosure that the SSS GC or other SSS legal advisor previously disapproved or has yet to approve, personnel must respectfully decline to comply with the court's order unless the SSS GC or other SSS legal advisor directs otherwise.

§ 1660.10 Procedures—fees.

Parties seeking official information by litigation request or demand may be charged reasonable fees to reimburse expenses associated with the Government's response. These reimbursable expenses may include the cost of:

(a) Materials and equipment used to search for, copy, and produce responsive information.

(b) Personnel time spent processing and responding to the request or demand.

(c) Attorney time spent assisting with the Government's response, to include reviewing the request or demand and the potentially responsive information.

§ 1660.11 Procedures—expert or opinion testimony.

In any legal proceeding before the SSS or in which the United States (including any Federal agency or officer of the United States) is a party:

(a) The SSS GC shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it.

(b) SSS personnel may testify for the United States both as to facts within their personal knowledge and as an expert or opinion witness. Except as provided in paragraph (c) of this section, SSS personnel may not testify as an expert or opinion witness, with regard to any matter arising out of their official duties or the functions of the SSS, for any party other than the United States in any legal proceeding in which the United States is a party. SSS personnel who receive a demand to testify on behalf of a party other than the United States may testify as to facts within the employee's personal knowledge, provided that the testimony be subject to the prior written approval of the SSS GC or other SSS legal advisor and to the Federal Rules of Civil Procedure and any applicable claims of privilege, the anticipated testimony is not adverse to the interests of the SSS or the United States Government, and is presented at no cost to the Government.

(c) SSS personnel may testify as an expert or opinion witness on behalf of the SSS or in any legal proceeding conducted by the SSS or the United States.

Daniel A. Lauretano, Sr.,

Selective Service System General Counsel & Federal Register Liaison Officer.

[FR Doc. 2023–13374 Filed 6–22–23; 8:45 am]

BILLING CODE 8015–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0297; FRL–11046–01–R1]

Air Plan Approval; Rhode Island; Organic Solvent Cleaning Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This SIP amendment consists of revisions to the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning (Part 36). The proposed SIP revisions include minor regulatory changes that were necessary to provide consistency with the federal regulations for National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before July 24, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0297 at *https://www.regulations.gov,* or via email to *kosin.michele@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Michele Kosin, Physical Scientist, Air Quality Branch, Air & Radiation Division (Mail Code 5–MI), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1175; *kosin.michele@epa.gov.*

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

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I. Background and Purpose
II. Description and Review of Submittals
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I. Background and Purpose

On September 3, 2020 (85 FR 54924), EPA approved a SIP revision demonstrating that Rhode Island meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standard (NAAQSs or standards). Additionally, the 2020 action approved specific regulations that implement RACT requirements by limiting air emissions of NO_X and VOC pollutants from solvent cleaning operations sources within the state. As part of this action, EPA approved the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36—Control of Emissions from Organic Solvent Cleaning (Part 36) into the SIP. Prior to the 2020 action, EPA last approved the Part 36 regulations into the SIP on in 2012. *See* 77 FR 14691

On February 4, 2022, the Rhode Island Department of Environmental Management's Office of Air Resources (RI DEM) proposed minor revisions to Part 36 to make the rule fully consistent with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning (40 CFR part 63, subpart T) eliminating any inconsistencies between the federal regulation and the current state rule. On May 3, 2022, the RI DEM Deputy Administrator Office of Air Resources signed the amended Part 36, and it was filed with the Rhode Island Secretary of State on May 24, 2022, with an effective date of June 13, 2022. The amended regulation was authorized pursuant to R.I. General Laws § 42–17.1–2(19) and R.I. General Laws Chapter 23–23, as amended, and has been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. General Laws Chapter 42–35. On June 9, 2022, the RI DEM submitted a request for EPA to incorporate the revisions to Part 36 into the Rhode Island SIP.

II. Description and Review of Submittals

On June 9, 2022, the RI DEM submitted to EPA an amended version of Part 36, Control of Emissions from Organic Solvent Cleaning, as a revision to the Rhode Island State Implementation Plan. The revisions to the Part 36 regulation ensure that Part 36 is fully consistent with the Halogenated Solvent Cleaning NESHAP at 40 CFR part 63, subpart T. Part 36 was revised to include the addition or amendment of several definitions consistent with the federal rule. In addition, RI DEM clarified the applicability of the rule.

Rhode Island made several minor changes to the Part 36 Organic Solvent Cleaning Rule. Specifically, RI DEM amended and added definitions to Section 36.5 in order to be consistent with the NESHAP, including definitions for air blanket, consumption, contaminants, cover, halogenated hazardous air pollutant solvent, high precision products, hoist, industrial solvent cleaning, janitorial cleaning, overall control device efficiency, part, soils, solvent/air interface area, sump heater, and vapor cleaning. The applicability section of Section 36.6 was also slightly revised at 36.6(C) to clarify the applicability for cold solvent cleaning machines and at 36.6(D) to clarify applicability for industrial solvent cleaning, consistent with the NESHAP. In addition, several other minor clerical revisions were made to correct formatting and other references as a result of the changes above.

The revisions discussed above serve to clarify the existing regulation and are not intended to significantly impact its original meaning. The revisions to Part 36 are generally non-substantive changes to ensure consistency between the state and federal rule. We have scrutinized the changes as described above and find that these do not unfavorably affect the stringency of the State's program or impact previous EPA SIP approvals for Part 36. We thus propose to find that Rhode Island's amended 250–RICR–120–05–36 (Part 36) submittal remains consistent with the Clean Air Act.

III. Proposed Action

EPA is proposing to approve the Rhode Island SIP revision requests as described above. The SIP revisions meet section 110(l) of the CAA because the revisions will not interfere with any applicable requirement concerning attainment and reasonable further process, or any other applicable requirement of the CAA. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference amended Rhode Island regulation Part 36, Control of Emissions from Organic Solvent Cleaning. The proposed changes are described in sections I. and II. of this document. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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 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. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The RI DEM did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. 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.

List of Subjects in 40 CFR Part 52

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

Dated: June 14, 2023.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2023–13229 Filed 6–22–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–HQ–NWRS–2023–0038; FXRS12610900000–234–FF09R20000]

RIN 1018–BG71

National Wildlife Refuge System; 2023–2024 Station-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to expand hunting opportunities on three National Wildlife Refuges (NWRs). We also propose to make changes to existing station-specific regulations in order to reduce the regulatory burden on the public, increase access for hunters and anglers on Service lands and waters, and comply with a Presidential mandate for plain language standards. Finally, the best available science, analyzed as part of this proposed rulemaking, indicates that lead ammunition and tackle have negative impacts on both wildlife and human health. In this proposed rule, Blackwater, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs are each proposing a non-lead requirement, which would take effect on September 1, 2026, if we adopt them as part of a final rule. While the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, this rulemaking does not include any opportunities proposing to increase or authorize the new use of lead beyond fall 2026.

DATES: We will accept comments received or postmarked on or before August 22, 2023.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, type in FWS–HQ–NWRS–2023–0038, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on ''Comment.''

• *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–HQ–NWRS–2023–0038, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information).

Supporting documents: For information on a specific refuge's or hatchery's public use program and the conditions that apply to it, contact the respective regional office at the address or phone number given in Available Information for Specific Stations under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kate Harrigan, (703) 358–2440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended (Administration Act), closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and

environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review hunting and sport fishing programs to determine whether to include additional stations or whether individual station regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to station-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of station purposes or the Service's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations at part 32 (50 CFR part 32), and on hatcheries at part 71 (50 CFR part 71). We regulate hunting and sport fishing to:

- Ensure compatibility with refuge and hatchery purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other values;
- Ensure visitor safety; and
- Provide opportunities for fish- and wildlife-dependent recreation.

On many stations where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate to meet these objectives. On other stations, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under Statutory Authority, below. We issue station-specific hunting and sport fishing regulations when we open wildlife refuges and fish hatcheries to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations may list the wildlife species that you may hunt or fish; seasons; bag or creel (container for carrying fish) limits; methods of hunting or sport fishing; descriptions of areas open to hunting or sport fishing; and other provisions as appropriate.

Statutory Authority

The Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105–57), governs the administration and public use of refuges, and the Refuge Recreation Act of 1962 (Recreation Act; 16 U.S.C. 460k–460k–4) governs the administration and public use of refuges and hatcheries.

Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System and Hatchery System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge or hatchery lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop station-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge or hatchery and the Refuge and Hatchery System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired land through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR parts 32 and 71. We ensure continued compliance by the development of comprehensive conservation plans and step-down management plans, and by annual review of hunting and sport fishing programs and regulations.

Proposed Amendments to Existing Regulations

Updates to Hunting and Fishing Opportunities on NWRs

This document proposes to codify in the Code of Federal Regulations all the Service's hunting and/or sport fishing regulations that we would update since the last time we published a rule amending these regulations (87 FR 57108; September 16, 2022) and that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We propose this to better inform the general public of the regulations at each station, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR parts 32, visitors to our stations may find them reiterated in literature distributed by each station or posted on signs.

TABLE 1—PROPOSED CHANGES FOR 2023–2024 HUNTING/SPORT FISHING SEASON

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Cahaba River NWR	Alabama	Closed	Already Open	E	Already Open.
Everglades Headwaters NWR	Florida	E	E	E	Closed.

TABLE 1—PROPOSED CHANGES FOR 2023–2024 HUNTING/SPORT FISHING SEASON—Continued

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Minnesota Valley NWR	Minnesota	E	E	E	Already Open.

Key:
E = Expansion (Station is already open to the activity: the proposed rule would add new lands/waters, modify areas open to hunting or fishing, extend season dates, add a targeted hunt, modify season dates, modify hunting hours, etc.)

The changes for the 2023–2024 hunting/fishing season noted in the table above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination (for refuges), and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

The Service remains concerned that lead is an important issue, and we will continue to appropriately evaluate and regulate the use of lead ammunition and tackle on Service lands and waters. The Service has initiated stakeholder engagement to implement a deliberate, open, and transparent process of evaluating the future of lead use on Service lands and waters, working with our State partners, and seeking input and recommendations from the Hunting and Wildlife Conservation Council, other stakeholders, and the public. The best available science, analyzed as part of this proposed rulemaking, indicates that lead ammunition and tackle have negative impacts on both wildlife and human health. Based on the best available science and sound professional judgment, where appropriate, the Service may propose to require the use of non-lead ammunition and tackle on Service lands and waters, as we have done in certain cases already. While the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, we will continue to work with stakeholders and the public to evaluate lead use through the annual rulemaking process. In the interim, we will not allow for any increase in lead use on Service lands and waters. Therefore, this rule does not include any opportunities proposing to increase or authorize the new use of lead. Minnesota Valley NWR already requires non-lead ammunition for the migratory bird and upland game hunting opportunities proposed to be expanded, and the refuge's proposed expansion of the big game hunt involves only archery deer hunting, which does not involve lead ammunition, as part of a special hunt program. Cahaba River NWR is proposing to expand archery deer hunting, which does not involve lead ammunition. Everglades Headwaters NWR is proposing to expand existing migratory game bird, upland game, and big game hunting to new acres that will require the use of non-lead ammunition immediately in the fall 2023 season; the proposed rule would require non-lead ammunition only within the newly expanded acres for hunting on the refuge. This proposed restriction on lead ammunition has been developed in coordination with the State of Florida's Fish and Wildlife Conservation Commission. As we noted in our September 16, 2022, final rule (87 FR 57108), in this proposed rule, Blackwater, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs are proposing a non-lead equipment requirement, which would be effective on September 1, 2026, if we adopt the provisions in a final rule. Specifically, all eight refuges would require the use of non-lead ammunition by fall 2026, and seven of the eight, excepting Chincoteague, would require the use of non-lead tackle by fall 2026 as well.

The Service is also providing a supplemental opportunity for public comment on regulatory provisions regarding use of dogs on the Silvio O. Conte National Fish and Wildlife Refuge in Vermont and New Hampshire that were promulgated in 2021 (see 86 FR 48822; August 31, 2021). The Service's preference in evaluating these 2021 regulatory changes is to allow dog training on the refuge from August 1 to the last Saturday in September. The Service would not require a permit for dog training or hunting with more than two dogs. The Service would only allow the use of dogs on the Putney Mountain Unit to hunt ruffed grouse, fall turkey, squirrel, and woodcock (see the proposed revisions to 50 CFR 32.64 in the rule portion of this document). We recently sought public review and comment on an update to the refuge's 2023 hunting and fishing plan and a supplemental environmental assessment (EA) that provided description and analysis of the provisions regarding use of dogs. That comment period ended on May 25, 2023. The Service considered those comments and used them to inform the decision in the finding of no significant impact associated with the supplemental EA. Comments made on this proposed rule pertaining to dog use and removal of the permit requirements related to dogs on the Silvio O. Conte Refuge will also be duly considered. If we receive compelling information or data that leads us to conclude that the relevant regulatory provisions should be removed or revised, then we may take that action in the final rule.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish-consumption advisories on the internet at *https://www.epa.gov/fish-tech.*

Request for Comments

You may submit comments and materials on this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment on *https://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—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. We will post all hardcopy comments on *https://www.regulations.gov.*

Required Determinations

Clarity of This Proposed Rule

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules

in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking is not significant.

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would open or expand hunting on three NWRs. As a result, visitor use for wildlife-dependent recreation on these stations will change. If the stations establishing new programs were a pure addition to the current supply of those activities, it would mean an estimated maximum increase of 586 user days (one person per day participating in a recreational opportunity; see table 2). Because the participation trend is flat in these activities, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED MAXIMUM CHANGE IN RECREATION OPPORTUNITIES IN 2023–2024

[2022 Dollars in thousands]

Station	Additional hunting days	Additional fishing days	Additional expenditures
Cahaba River NWR	120	.....	$4
Everglades Headwaters NWR	225	.....	9
Minnesota Valley NWR	241	.....	9
Total	586	.....	22

To the extent visitors spend time and money in the area of the station that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2016 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $22,000 in recreation-related expenditures (see table 2, above). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.51) derived from the report ''Hunting in America: An Economic Force for Conservation'' and for fishing activities (2.51) derived from the report ''Sportfishing in America'' yields a total maximum economic impact of approximately $56,000 (2022 dollars) (Southwick Associates, Inc., 2018).

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending will be ''new'' money coming into a local economy; therefore, this spending will be offset with a decrease in some other sector of the local economy. The net gain to the local economies will be no more than $56,000 and likely less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns will not add new money into the local economy and, therefore, the real impact will be on the order of about $22,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait-and-tackle shops, and similar businesses) may be affected by some increased or decreased station visitation. A large percentage of these retail trade establishments in the local communities around NWRs qualify as small businesses (see table 3, below). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a

substantial number of small entities in any region or nationally. As noted previously, we expect at most $22,000 to be spent in total in the refuges' local economies. The maximum increase will be less than one-tenth of 1 percent for local retail trade spending (see table 3, below). Table 3 does not include entries for those NWRs for which we project no changes in recreation opportunities in 2023–2024; see table 2, above.

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2023–2024

[Thousands, 2022 dollars]

Station/county(ies)	Retail trade in 2017 [1]	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2017 [1]	Establishments with fewer than 10 employees in 2017
Cahaba River:					
Bibb, AL	$143,008	$5	<0.1	52	39
Everglades Headwaters:					
Hardee, FL	223,259	3	<0.1	75	63
Highlands, FL	1,505,788	3	<0.1	342	246
Polk, FL	9,949,483	3	<0.1	1,814	1,276
Minnesota Valley:					
Carver, MN	1,116,550	5	<0.1	220	142

[1] U.S. Census Bureau.

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected stations. Therefore, we certify that this rule, as proposed, will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. We anticipate no significant employment or small business effects. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending at NWRs. Therefore, if adopted, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would affect only visitors at NWRs and would describe what they can do while they are on a Service station.

Federalism (E.O. 13132)

As discussed under *Regulatory Planning and Review* and *Unfunded Mandates Reform Act,* above, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. Because this proposed rule would expand hunting at two NWRs, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. We coordinate recreational use on NWRs and National Fish Hatcheries with Tribal governments having

adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act (PRA)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB previously approved the information collection requirements associated with application and reporting requirements associated with hunting and sport fishing and assigned OMB Control Number 1018–0140 (expires 09/30/2025). 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans and step-down management plans—which would include hunting and/or fishing plans—for public use of refuges and hatcheries, and prior to implementing any new or revised public recreation program on a station as identified in 50 CFR 26.32. We complied with section 7 for each of the stations affected by this proposed rulemaking.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to station-specific hunting and fishing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge or hatchery to the list of areas open to hunting and fishing in 50 CFR parts 32 and 71, we develop hunting and fishing plans for the affected stations. We incorporate these proposed station hunting and fishing activities in the station comprehensive conservation plan and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these comprehensive conservation plans and step-down plans in compliance with section 102(2)(C) of NEPA, the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500 through 1508, and the Department of Interior's NEPA regulations at 43 CFR part 46. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the stations at the addresses provided below.

Available Information for Specific Stations

Individual refuge and hatchery headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge or hatchery, contact the appropriate Service office for the States and Territories listed below:

Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6203.

Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW, Albuquerque, NM 87103; Telephone (505) 248–6635.

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone (612) 713–5476.

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7356.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8307.

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–4377.

Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 767–9241.

Primary Author

Kate Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as set forth below:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 115–20, 131 Stat. 86.

■ 2. Amend § 32.24 by revising paragraphs (s)(1)(iv) and (vi) to read as follows:

§ 32.24 California.

* * * * *

(s) * * *

(1) * * *

(iv) We restrict hunters in the spaced zone area of the East Bear Creek Unit and West Bear Creek Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or pursuing crippled birds.

* * * * *

(vi) We require State-issued Type A area permits for accessing the Freitas Unit on Wednesdays, Saturdays, and Sundays.

* * * * *

■ 3. Amend § 32.28 by revising paragraphs (e)(2) and (3) to read as follows:

§ 32.28 Florida.

* * * * *

(e) * * *

(2) *Upland game hunting.* We allow upland game hunting and the incidental take of nonnative wildlife as defined by the State on designated areas of the refuge in accordance with State regulations and applicable State Wildlife Management Area regulations and the following condition: We require the use of non-lead ammunition when hunting upland game and the incidental take of nonnative wildlife on the Corrigan Ranch/Okeechobee Unit.

(3) *Big game hunting.* We allow big game hunting and the incidental take of nonnative wildlife as defined by the State on designated areas of the refuge in accordance with State regulations and applicable State Wildlife Management Area regulations and the following condition: We require the use of non-lead ammunition when hunting big game and the incidental take of nonnative wildlife on the Corrigan Ranch/Okeechobee Unit.

* * * * *

■ 4. Amend § 32.35 by revising paragraph (a)(1)(v) to read as follows:

§ 32.35 Kansas.

* * * * *

(a) * * *

(1) * * *

(v) We close the Neosho River and refuge lands north of the Neosho River to all hunting from November 1 through March 1.

* * * * *

■ 5. Amend § 32.38 by:

■ a. Adding paragraph (b)(1)(v);

■ b. Revising paragraphs (b)(2)(i) and (3)(i);

■ c. Adding paragraph (f)(1)(v); and

■ d. Revising paragraphs (f)(2)(i), (3)(i), and (4)(ii).

The additions and revisions read as follows:

§ 32.38 Maine.

* * * * *

(b) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (v) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (v) of this section apply.

* * * * *

(f) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (f)(1)(i), (iii), and (v) of this section apply.

* * * * *

(3) * * *

(i) The conditions as set forth at paragraphs (f)(1)(i), (iv), and (v) of this section apply.

* * * * *

(4) * * *

(ii) The condition set forth at paragraph (f)(1)(v) of this section applies.

* * * * *

■ 6. Amend § 32.39 by:

■ a. Adding paragraph (a)(1)(iv);

■ b. Revising paragraph (a)(2)(i);

■ c. Adding paragraphs (a)(3)(vi), (4)(iii), (b)(2)(iv), (3)(iv), (4)(iii), and (c)(1)(v); and

■ d. Revising paragraphs (c)(2), (3)(i), and (4).

The additions and revisions read as follows:

§ 32.39 Maryland.

* * * * *

(a) * * *

(1) * * *

(iv) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (a)(1)(iv) and (a)(3)(i) through (v) of this section apply.

* * * * *

(3) * * *

(vi) The condition set forth at paragraph (a)(1)(iv) of this section applies.

(4) * * *

(iii) The condition set forth at paragraph (a)(1)(iv) of this section applies.

(b) * * *

(2) * * *

(iv) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(3) * * *

(iv) The condition set forth at paragraph (b)(2)(iv) of this section applies.

(4) * * *

(iii) The condition set forth at paragraph (b)(2)(iv) of this section applies.

(c) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) *Upland game hunting.* We allow hunting of gray squirrel, eastern cottontail rabbit, and woodchuck on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (c)(1)(i) through (iii) and (v) of this section apply.

(3) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), and (v) of this section apply.

* * * * *

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (c)(1)(v) of this section applies.

* * * * *

■ 7. Amend § 32.40 by:

■ a. Adding paragraph (a)(4)(iii); and

■ b. Revising paragraphs (b)(4) and (f)(4).

The addition and revisions read as follows:

§ 32.40 Massachusetts.

* * * * *

(a) * * *

(4) * * *

(iii) We allow fishing from legal sunrise to legal sunset.

(b) * * *

(4) *Sport Fishing.* We allow sport fishing on designated areas of the refuge from legal sunrise to legal sunset.

* * * * *

(f) * * *

(4) *Sport Fishing.* We allow sport fishing on designated areas of the refuge from legal sunrise to legal sunset.

* * * * *

■ 8. Amend § 32.47 by:

■ a. Revising paragraphs (d)(1)(i) and (iii);

■ b. Adding paragraphs (d)(1)(iv) and (v); and

■ c. Revising paragraph (d)(2)(iii).

The revisions and addition read as follows:

§ 32.47 Nevada.

* * * * *

(d) * * *

(1) * * *

(i) We allow hunting on designated days. We prohibit any migratory game bird hunting after January 31.

* * * * *

(iii) From October 1 to February 1, you may only be in possession of or use 25 or fewer shot shells per hunt day.

(iv) We only allow hunters to use watercraft to travel to and from their hunting location for each day's hunt. Watercraft must be completely immobilized while hunting, except to retrieve downed or crippled birds.

(v) We prohibit shooting 150 feet (45 meters) from the center line of roads (including access roads and two tracks), parking areas, levees, or into or from safety zones.

(2) * * *

(iii) The conditions set forth at paragraphs (d)(1)(iii) and (iv) of this section apply.

* * * * *

■ 9. Amend § 32.48 by revising paragraph (b) to read as follows:

§ 32.48 New Hampshire.

* * * * *

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—

(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, Wilson's snipe, and American woodcock on designated areas of the refuge subject to the following condition: We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, crow, snowshoe hare, muskrat, opossum, fisher, mink, weasel, ring-necked pheasant, and ruffed grouse on designated areas of the refuge subject to the following condition: We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(ii) We allow tree stands and blinds that are clearly marked with the owner's State hunting license number.

(iii) You must remove your tree stand(s) and blind(s) no later than 72 hours after the close of the season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

* * * * *

■ 10. Amend § 32.56 by revising paragraph (l)(2) to read as follows:

§ 32.56 Oregon.

* * * * *

(l) * * *

(2) *Upland game hunting.* We allow hunting of upland game birds and turkey on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (l)(1)(i) of this section applies.

* * * * *

■ 11. Amend § 32.57 by:

■ a. Adding paragraph (b)(1)(v);

■ b. Revising paragraphs (b)(2)(iii) and (3)(ii); and

■ c. Adding paragraph (b)(4)(vi).

The additions and revisions read as follows:

§ 32.57 Pennsylvania.

* * * * *

(b) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(iii) The conditions set forth at paragraphs (b)(1)(iv) and (v) of this section apply.

* * * * *

(3) * * *

(ii) The conditions set forth at paragraphs (b)(1)(iv) and (v) of this section apply.

(4) * * *

(vi) The condition set forth at paragraph (b)(1)(v) of this section applies.

* * * * *

§ 32.62 [Amended]

■ 12. Amend § 32.62 by:

■ a. Removing paragraph (h)(3)(x); and

■ b. Redesignating paragraphs (h)(3)(xi) through (xiii) as (h)(3)(x) through (xii), respectively.

■ 13. Amend § 32.64 by:

■ a. Adding paragraph (a)(4)(v); and

■ b. Revising paragraph (b).

The addition and revision read as follows:

§ 32.64 Vermont.

* * * * *

(a) * * *

(4) * * *

(v) We allow fishing from legal sunrise to legal sunset.

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—

(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, crow, snipe, and American woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow disabled hunters to hunt from a vehicle that is at least 10 feet from the traveled portion of the refuge road if the hunter possesses a State-issued disabled hunting license and a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(ii) We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours. We prohibit dog training on the Putney Mountain Unit.

(iii) We prohibit shooting from, over, or within 25 feet of the traveled portion of any road that is accessible to motor vehicles.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, bobcat, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, snowshoe hare, eastern cottontail, muskrat, opossum, weasel, pheasant, and ruffed grouse on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii) and (iii) of this section apply.

(ii) At the Putney Mountain Unit, we allow the use of dogs only for hunting ruffed grouse, fall turkey, squirrel, and woodcock.

(iii) We require hunters hunting at night to possess a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii) and (iii) of this section apply.

(ii) You may use portable tree stands and/or blinds. You must clearly label your tree stand(s) and/or blind(s) with your hunting license number. You must remove your tree stand(s) and/or blind(s) no later than 72 hours after the close of the season (see § 27.93 of this chapter).

(iii) You may retrieve moose at the Nulhegan Basin Division with the use of a commercial moose hauler, if the hauler possesses a Special Use Permit (FWS Form 3–1383–C) issued by the refuge manager.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge consistent with State regulations.

* * * * *

■ 14. Amend § 32.65 by:

■ a. Adding paragraph (b)(1)(vi);

■ b. Revising paragraph (b)(2)(i);

■ c. Adding paragraphs (b)(2)(vii) and (viii);

■ d. Revising paragraph (b)(3)(i);
■ e. Adding paragraphs (b)(4)(vi) and (c)(2)(iii);
■ f. Revising paragraph (c)(3)(i);
■ g. Adding paragraph (n)(1)(vi); and
■ h. Revising paragraphs (n)(2)(i) and (3)(i).

The additions and revisions read as follows:

§ 32.65 Virginia.

* * * * *

(b) * * *

(1) * * *

(vi) You may only use or possess approved non-lead shot shells and ammunition while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) and (vi) of this section apply. All occupants of a vehicle or hunt party must possess a signed refuge hunt brochure and be actively engaged in hunting unless aiding a disabled person who possesses a valid State disabled hunting license.

* * * * *

(vii) Hunting is allowed only during the regular State deer season.

(viii) We prohibit hunting on Sundays.

(3) * * *

(i) The conditions set forth at paragraphs (b)(1)(vi) and (b)(2)(i), (ii), and (v) through (viii) of this section apply.

* * * * *

(4) * * *

(vi) The condition set forth at paragraph (b)(1)(vi) of this section applies.

(c) * * *

(2) * * *

(iii) We prohibit hunting on Sundays.

(3) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), (iv) through (v), and (c)(2)(iii) of this section apply.

* * * * *

(n) * * *

(1) * * *

(vi) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth in paragraphs (n)(1)(i), (iii), and (vi) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (n)(1)(i), (ii), (vi), and (n)(2)(iv) of this section apply.

* * * * *

■ 15. Amend § 32.66 by revising paragraph (b)(4)(i) to read as follows:

§ 32.66 Washington.

* * * * *

(b) * * *

(4) * * *

(i) On waters open to fishing, we allow fishing only from the start of the State season to September 30, except that we allow fishing year-round on Falcon, Heron, Goldeneye, Corral, Blythe, Chukar, and Scaup Lakes.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–13360 Filed 6–22–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 120
Friday, June 23, 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

Food and Nutrition Service

Agency Information Collection Activities: WIC Participant and Program Characteristics 2024 & 2026 Study

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a reinstatement, with change, of a previously approved collection for which approval has expired for the WIC Participant and Program Characteristics 2024 and 2026 Study.

DATES: Written comments must be received on or before August 22, 2023.

ADDRESSES: Comments may be sent to: Rachel Zack at *rachel.zack@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Rachel Zack at *rachel.zack@usda.gov* or 703–305–2127.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: WIC Participant and Program Characteristics 2024 & 2026 Study.

Form Number: N/A.

OMB Number: 0584–0609.

Expiration Date: 12/31/2022.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS). WIC provides supplemental foods, health care referrals, breastfeeding promotion and support, and nutrition education to nutritionally at-risk, income-eligible pregnant, breastfeeding and non-breastfeeding postpartum women, infants, and children up to age five years. WIC is administered through 89 State agencies consisting of the 50 States, the District of Columbia, 5 territories, and 33 Indian Tribal Organizations (ITOs).

Since 1988, FNS has produced the biennial WIC Participant and Program Characteristics Study (PC) report that describes demographic, income, breastfeeding, and health-related information of a census of WIC participants as well as information on the benefits they receive through WIC. Data used to produce the PC reports are collected from participants by State agencies at the time of participant certification in WIC and then submitted to FNS biennially. FNS uses the regularly updated PC reports to evaluate the impact of the program, support State agencies, estimate budgets, submit civil rights reporting, identify research needs, and review current and proposed WIC policies and procedures.

The WIC Participant and Program Characteristics 2024 and 2026 Study will be the 19th and 20th completed in the biennial PC study series. The information collection subject to this notice includes the following, including a few changes and additions to the previous PC study collections:

1. *Collection of the WIC PC Minimum and Supplemental Data Sets from 89 State agencies:* Like all PC studies since 1992, Minimum and Supplemental Data Sets consisting of administrative information used by State agencies to certify WIC applicants and to issue benefits will be collected using a reference month of April of the PC reference year. The 20-item Minimum Data Set (*e.g.,* birth date, race, ethnicity, height, weight, hemoglobin measurements) will be obtained from all State agency's existing Management Information Systems (MIS) and the 11-item Supplemental Data Set (SDS) (*e.g.,* date of first WIC certification, years of education, birth length) will be obtained from those State agencies which can provide SDS items if they are available.

2. *Collection of longitudinal WIC PC-related data from 89 State agencies:* To enhance the utility of the PC data and allow for assessment of participant-level retention and health outcomes over time, this study will include a new pilot effort to collect up to two years of longitudinal retrospective PC-related data from as many State agencies as possible (it is possible that not all State agencies have the capability and capacity to provide these data). Longitudinal data will be collected in a similar manner as the MDS and SDS data and will include MDS and SDS variables over a specified time period plus any variables deemed necessary for useful longitudinal evaluation of WIC participant and program characteristics such as participant ID and date of first certification.

3. *Collection of WIC Electronic Benefits Transfer Data (EBT) from 4 EBT processors and 17 State agencies:* Like all PC studies since 2016, information on WIC food package issuance and costs will be reported for this study. However, this study will include a new data collection element that will allow for more accurate reporting on food package issuance and costs and will also allow for reporting on food package redemption. The new element will consist of collecting EBT data from the four WIC EBT processors and from 17 State agencies that operate EBT offline.

Affected Public: State, Local and Tribal Government include State WIC

officials. Business and other for profit include WIC EBT processor staff. Respondent groups include State WIC officials and EBT processor staff.

Estimated Number of Respondents: The total estimated number of respondents is 364. This includes, for each of the two rounds of the study: 89 WIC State agency office and administrative support staff, 89 WIC State agency state database administrators, and 4 WIC EBT processor staff.

Estimated Number of Responses per Respondent: 5.88.

Estimated Total Annual Responses: 2,158. This includes 2,140 responses from respondents and 18 responses from non-respondents.

Estimated Time per Response: 64.8 minutes (1.08 hours). The estimated time of response varies from 3 minutes (0.05 hours) for reminder emails to 35 hours for running the data reports.

Estimated Total Annual Burden on Respondents: The total estimated annual burden for respondents and non-respondents is 2325.4 hours. See the table below for estimated total annual burden for each type of respondent.

BILLING CODE 3410–30–P

Table 1. Estimated Total Annual Burden Hours

Respondent Category	Type of Respondent	Data Collection Activity	Respondents							Non-Respondents							Grand Totals		
			Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Total Annual Burden Hours	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Estimated Number of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Total Annual Burden Hours	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Estimated Annual Burden (Hours)	Hourly Wage Rate**	Estimated Total Annual Cost to Respondents
State WIC Agency Officials (2024)	Office and Administrative Support Staff	Cover Letter and Guidance	89	1	89	0.50	44.50	$20.88	$929.16	0	0	0	0.00	0.00	$20.88	$0.00	44.50	$20.88	$929.16
	Office and Administrative Support Staff	Contact Request Form	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83
	Office and Administrative Support Staff	Nutritional Risk Crosswalk	40	1	40	0.50	20.00	$20.88	$417.60	0	0	0	0.00	0.00	$20.88	$0.00	20.00	$20.88	$417.60
	Office and Administrative Support Staff	Food Code Documentation	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83
	Office and Administrative Support Staff	Local Agency Directory Updates	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83

Office and Administrative Support Staff	Reminder Email	30	1	30	0.05	1.50	$20.88	$31.32	0	0	0	0.00	0.00	$20.88	$0.00	1.50	$20.88		$31.32
Office and Administrative Support Staff	Follow-up Email and Phone Call	89	1	89	0.50	44.50	$20.88	$929.16	0	0	0	0.00	0.00	$20.88	$0.00	44.50	$20.88		$929.16
Subtotal for Office and Administrative Support Staff		89	5.79	515	0.27	137.20	$20.88	$2,864.74	0	0.00	0	0.00	0.00	$20.88	$0.00	137.20	$20.88		$2,864.74
State Database Administrator	MDS Reports	89	1	89	1.00	89.00	$46.42	$4,131.38	0	0	0	0.00	0.00	$46.42	$0.00	89.00	$46.42		$4,131.38
State Database Administrator	SDS Reports	86	1	86	1.00	86.00	$46.42	$3,992.12	0	0	0	0.00	0.00	$46.42	$0.00	86.00	$46.42		$3,992.12
State Database Administrator	Longitudinal Data	80	2	160	2.00	320.00	$46.42	$14,854.40	9	1	9	0.50	4.50	$46.42	$208.89	324.50	$46.42		$15,063.29
State Database Administrator	EBT Data from 17 State agencies	17	2	34	2.00	68.00	$46.42	$3,156.56	0	0	0	0.00	0.00	$46.42	$0.00	68.00	$46.42		$3,156.56
State Database Administrator	Technical Assistance	89	2	178	1.00	178.00	$46.42	$8,262.76	0	0	0	0.00	0.00	$46.42	$0.00	178.00	$46.42		$8,262.76
Subtotal for State Database Administrator		89	6.15	547	1.35	741.00	$46.42	$34,397.22	9	1.00	9	0.50	4.50	$46.42	$208.89	745.50	$46.42		$34,606.11
WIC EBT Process																			
Database	EBT Data from	4	2	8	35.00	280.00	$46.42	$12,997.60	0	0	0	0.00	0.00	$46.42	$0.00	280.00	$46.42		$12,997.60

	Administrator	Processors																				
	Subtotal for WIC EBT Processor Staff	4	2	8	35.00	280.00	$46.42	$12,997.60	0	0	0	0.00	0.00	$46.42	$0.00	280.00	$46.42	$12,997.60
	Total for PC Iteration	**182**	**5.88**	**1070**	**1.08**	**1158.20**	**N/A**	**$50,259.56**	**9**	**1.00**	**9**	**0.50**	**4.50**	**N/A**	**$208.89**	**1162.70**	**N/A**	**$50,468.45**
State WIC Agency Officials (2026)	Office and Administrative Support Staff	Cover Letter and Guidance	89	1	89	0.50	44.50	$20.88	$929.16	0	0	0	0.00	0.00	$20.88	$0.00	44.50	$20.88	$929.16
	Office and Administrative Support Staff	Contact Request Form	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83
	Office and Administrative Support Staff	Nutritional Risk Crosswalk	40	1	40	0.50	20.00	$20.88	$417.60	0	0	0	0.00	0.00	$20.88	$0.00	20.00	$20.88	$417.60
	Office and Administrative Support Staff	Food Code Documentation	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83
	Office and Administrative Support Staff	Local Agency Directory Updates	89	1	89	0.10	8.90	$20.88	$185.83	0	0	0	0.00	0.00	$20.88	$0.00	8.90	$20.88	$185.83
	Office and Administrative Support Staff	Reminder Email	30	1	30	0.05	1.50	$20.88	$31.32	0	0	0	0.00	0.00	$20.88	$0.00	1.50	$20.88	$31.32
	Office and Administrative	Follow-up Email and	89	1	89	0.50	44.50	$20.88	$929.16	0	0	0	0.00	0.00	$20.88	$0.00	44.50	$20.88	$929.16

Support Staff	Phone Call																			$2,864.74
Subtotal for Office and Administrative Support Staff		89	5.79	515	0.27	137.20	$20.88	$2,864.74	0	0.00	0	0.00	$20.88	$0.00	137.20	$20.88	$2,864.74			
State Database Administrator	MDS Reports	89	1	89	1.00	89.00	$46.42	$4,131.38	0	0	0	0.00	$46.42	$0.00	89.00	$46.42	$4,131.38			
State Database Administrator	SDS Reports	86	1	86	1.00	86.00	$46.42	$3,992.12	0	0	0	0.00	$46.42	$0.00	86.00	$46.42	$3,992.12			
State Database Administrator	Longitudinal Data	80	2	160	2.00	320.00	$46.42	$14,854.40	9	1	9	0.50	$46.42	$208.89	324.50	$46.42	$15,063.29			
State Database Administrator	EBT Data from 17 State agencies	17	2	34	2.00	68.00	$46.42	$3,156.56	0	0	0	0.00	$46.42	$0.00	68.00	$46.42	$3,156.56			
State Database Administrator	Communication to discuss data issues and answer questions	89	2	178	1.00	178.00	$46.42	$8,262.76	0	0	0	0.00	$46.42	$0.00	178.00	$46.42	$8,262.76			
Subtotal for State Database Administrator		89	6.15	547	1.35	741.00	$46.42	$34,397.22	9	1.00	9	0.50	$46.42	$208.89	745.50	$46.42	$34,606.11			
WIC EBT Processor																				
Database Administrator	EBT Data from Processors	4	2	8	35.00	280.00	$46.42	$12,997.60	0	0	0	0.00	$46.42	$0.00	280.00	$46.42	$12,997.60			

Subtotal for WIC EBT Processor Staff	4	2	8	35.00	280.00	$46.42	$12,997.60	0	0	0	0.00	0.00	$46.42	$0.00	280.00	$46.42	$12,997.60
Total for PC iteration	**182**	**5.88**	**1070**	**1.08**	**1158.20**	**N/A**	**$50,259.56**	**9**	**1.00**	**9**	**0.50**	**4.50**	**N/A**	**$208.89**	**1162.70**	**N/A**	**$50,468.45**
Total for PC2024 and PC2026	**364**	**5.88**	**2140**	**1.08**	**2316.40**	**N/A**	**$100,519.11**	**18**	**1.00**	**18**	**0.50**	**9.00**	**N/A**	**$417.78**	**2325.40**	**N/A**	**$100,936.89**

Notes: Hourly wage rate uses median hourly wage for Bureau of Labor Statistics labor category. Source: U.S. Department of Labor, Bureau of Labor Statistics. (2022, July). May 2021 National Occupational Employment and Wage Estimates [Web page]. Retrieved from https://www.bls.gov/oes/tables.htm. N/A = not applicable; no documentation is provided to or requested from State agencies. This activity is a reminder.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–13313 Filed 6–22–23; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: 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 certain steel racks and parts thereof from the People's Republic of China (China) to correct a ministerial error. The period of review is September 1, 2020, through August 31, 2022.

DATES: Applicable June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518.

Background

On April 10, 2023, Commerce published in the **Federal Register** the final results of the 2020–2021 administrative review of the antidumping duty order on certain steel racks and parts thereof from China.[1] On May 24, 2023, the Coalition for Fair Rack Imports (the Coalition), timely alleged that Commerce made a ministerial error in calculating the weighted-average dumping margin for Nanjing Ironstone Storage Equipment Co., Ltd. (Ironstone) in the *Final Results*.[2]

Legal Framework

Pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act), a ministerial error is an error ''in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which {Commerce} considers ministerial.'' [3] Pursuant to 19 CFR 351.224(e), Commerce will analyze any comments received and, if appropriate, correct any ministerial error by amending the final results of review.

Ministerial Error Allegation

After analyzing the Coalition's allegation, we find that Commerce made a ministerial error within the meaning of section 751(h) of the Act in calculating the Chinese movement expenses for Ironstone; we multiplied freight and brokerage and handling expenses rather than adding those expenses.[4] For details regarding this ministerial error, *see* Ministerial Error Memorandum. Consistent with 19 CFR 351.24(e), we are correcting this error and, consequently, revising Ironstone's weighted-average dumping margin in the *Final Results* (*i.e.,* from 3.13 percent to 4.92 percent).[5] Because the weighted-average dumping margin of the non-individually examined respondent to which we granted a separate rate is based on that of the mandatory respondents, we also have revised the review-specific rate assigned to the non-examined company (*i.e.,* from 10.18 percent to 10.80 percent).[6]

Amended Final Results

Correcting for the ministerial error described above results in the following weighted-average dumping margins for the period September 1, 2020, through August 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Nanjing Ironstone Storage Equipment Co., Ltd	4.92
Review-Specific Rate Applicable to the Non-Examined Company	
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	10.80

Disclosure

Commerce intends to disclose the calculations performed in connection with these amended final results to parties to the proceeding within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

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 covered by these amended final results of review. Commerce intends to issue assessment instructions to CBP for the companies listed in the table above, no earlier than 35 days after the date of publication of these amended final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For Ironstone, we calculated importer-specific per-unit assessment rates for entries of Ironstone's subject merchandise by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total quantity of those sales. We also calculated estimated *ad valorem* importer-specific assessment rates to determine whether the per-unit assessment rates are *de minimis* (*i.e.,* 0.50 percent or less).[7] Where we calculated an importer-specific estimated *ad valorem* assessment rate for entries of Ironstone's subject merchandise that is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[8] If sales of subject merchandise exported by Ironstone

[1] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021,* 88 FR 21179 (April 10, 2023) (*Final Results*) and accompanying Issues and Decision Memorandum.

[2] *See* Coalition's Letter, ''Resubmission of Ministerial Error Comments on Final Dumping Margin of Nanjing Ironstone Storage Equipment Co., Ltd.,'' dated May 24, 2023 (Ministerial Error Allegation). Commerce rejected the ministerial error allegation that the Coalition submitted on May 2, 2023, because one of the allegations in the submission was untimely filed. *See* Commerce's Letter, ''Rejection, in Part, of Untimely Filed Ministerial Error Allegation,'' dated May 22, 2023.

[3] *See also* 19 CFR 351.224(f) (Commerce has adopted the statutory definition of ''ministerial error'' in its regulations).

[4] *See* Ministerial Error Allegation and Memorandum, ''Ministerial Error Allegation,'' dated concurrently with this notice (Ministerial Error Memorandum).

[5] *See* Memorandum, ''Amended Final Results Analysis Memorandum for Nanjing Ironstone Storage Equipment Co, Ltd.,'' dated concurrently with this notice.

[6] *See* Memorandum, ''Calculation of the Dumping Margin for Respondent Not Selected for Individual Examination for the Amended Final Results,'' dated concurrently with this notice.

[7] *Id.*

[8] *See* 19 CFR 351.106(c)(2).

were not reported in its U.S. sales data, but the merchandise was entered into the United States during the POR under Ironstone's CBP case number, Commerce will instruct CBP to liquidate such entries of subject merchandise at the weighted-average dumping margin for the China-wide entity (*i.e.,* 144.50 percent).[9]

For Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd., the company not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to its weighted-average dumping margin in these amended final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice of the amended final results of review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) for the companies listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin listed for the company in the table; (2) for previously investigated or reviewed China and non-China exporters that are not under review in this segment of the proceeding that have a separate rate, the cash deposit rate will continue to be their existing cash deposit rate from the most recently completed segment of this proceeding; (3) for all China exporters of subject merchandise that do not have a separate rate, their cash deposit rate will be the cash deposit rate previously established for the China-wide entity, which is 144.50 percent; and (4) for all non-China exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be the cash deposit rate applicable to the China exporter that supplied the non-China exporter.[10] 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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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: June 16, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–13404 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 84 FR 35595 (July 24, 2019); as amended in *Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order,* 84 FR 48584, 48586 (September 16, 2019) (stating the weighted-average dumping margin for the China-wide entity is 144.50 percent).

[10] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Preliminary Results of Covered Merchandise Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a covered merchandise referral by U.S. Customs and Border Protection (CBP), the U.S. Department of Commerce (Commerce) preliminarily determines that certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) exported from Vietnam to the United States that were produced using rough fittings from China are not subject to the scope of the antidumping (AD) order. Additionally, Commerce preliminarily determines that butt-weld pipe fittings exported from Vietnam to the United States that were produced using unfinished fittings from China are subject to the scope of the AD order.

DATES: Applicable June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Miranda Bourdeau, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2021.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2022, Commerce published in the **Federal Register** a notice of a covered merchandise referral and the initiation of a covered merchandise inquiry to determine whether: (1) Chinese-origin unfinished fittings that only underwent the final stage of three production stages (*i.e.,* finishing processes) in Vietnam are within the scope of the *Order;* and (2) whether Chinese-origin rough fittings that underwent both the second and third stages of production in Vietnam are within the scope of the *Order.*[1] For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is unfinished and finished butt-weld pipe fittings. For a complete

[1] *See Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Covered Merchandise Inquiry,* 87 FR 58310 (September 26, 2022) (*Initiation Notice*); *see also Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 29702 (July 6, 1992) (*Order*).

[2] *See* Memorandum, ''Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Decision Memorandum for the Preliminary Results of Covered Merchandise Inquiry—EAPA Inv. 7335,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Merchandise Subject to the Covered Merchandise Inquiry

The products subject to this inquiry are rough and unfinished fittings originating in China and processed into butt-weld pipe fittings through two production scenarios in Vietnam. The two production scenarios are:

- *Scenario 1:* Chinese-origin unfinished butt-weld pipe fittings undergo the final stage (*i.e.,* finishing processes) of three production stages in Vietnam;
- *Scenario 2:* Chinese-origin rough butt-weld pipe fittings undergo the second and third stages of production in Vietnam.

Methodology

Commerce is conducting this covered merchandise inquiry in accordance with section 517 of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.227. For a full description of the methodology underlying Commerce's preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Findings

We preliminarily determine, pursuant to 19 CFR 351.227(f), that rough butt-weld pipe fittings from China that are processed in Vietnam into finished butt-weld pipe fittings in the final two stages of production are not subject to the scope of the *Order.* Additionally, we preliminarily find that unfinished butt-weld pipe fittings from China that are processed in Vietnam into finished butt-weld pipe fittings are subject to the scope of the *Order.* For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Suspension of Liquidation

As stated above, Commerce has made a preliminary affirmative finding that unfinished butt-weld pipe fittings originating from China and finished in Vietnam are subject to the scope of the *Order.* This affirmative in-scope finding applies on a country-wide basis, regardless of the producer, exporter, or importer, to all products from the same country with the same relevant physical characteristics as the products at issue. Therefore, in accordance with 19 CFR 351.227(l)(2), Commerce will direct CBP to: (1) continue the suspension of liquidation of previously suspended entries and apply the applicable AD cash deposit rate; (2) begin the suspension of liquidation and require a cash deposit of estimated antidumping duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after September 26, 2022, the date of publication of the notice of initiation of this covered merchandise inquiry in the **Federal Register***;* and (3) begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to September 26, 2022.[3]

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.227(d)(3), interested parties may submit case briefs no later than five days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than three days after the date of filing for case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5] Executive summaries should be limited to five pages total, including footnotes.[6] All submissions, with limited exceptions, must be filed electronically using ACCESS.[7] Comments must be received successfully in their entirety by ACCESS by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Each submission must be placed on the record of the segment of the proceeding for the AD order (A–570–814), ACCESS Covered Merchandise Inquiry segment ''CBP EAPA Inv. 7335.''

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically and received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 10 days after the date of publication of this notice.[9] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Notification to Interested Parties

This notice is issued and published pursuant to section 517 of the Act and 19 CFR 351.227(e)(1).

Dated: June 16, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Description of Merchandise Subject to This Inquiry
V. Legal Framework
VI. Discussion of the Issues
VII. Recommendation

[FR Doc. 2023–13373 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Initiation Notice.*

[4] *See* 19 CFR 351.227(d)(3); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *Id.*

[7] *See* 19 CFR 351.303.

[8] *See Temporary Rule.*

[9] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD101]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Highly Migratory Species Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, July 11, 2023, from 9 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional

information will be available at *www.mafmc.org/council-events*.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Highly Migratory Species (HMS) Committee will meet to review and provide comments on the NOAA Atlantic HMS recent and ongoing management initiative. The primary management initiatives include: (1) the proposed rule for Amendment 15 (spatial management and electronic monitoring), (2) an Advance Notice of Proposed Rulemaking for electronic HMS reporting requirements, and (3) scoping for Amendment 16 (shark management issues).

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: June 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13413 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD064]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Murphy Exploration and Production Company (Murphy) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from July 14, 2023, through September 13, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Murphy plans to conduct a zero offset vertical seismic profile (VSP) survey within Walker Ridge Block 425 in approximately 2,700 m water depth. Murphy plans to use a 6-element, 1,350 in^3 airgun array. Please see Murphy's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Murphy in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2)

location (by modeling zone);[1] (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of VSP survey effort. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern.

For the planned survey, the seismic source array will be deployed from a stationary drilling rig at or near the borehole, with the seismic receivers (*i.e.,* geophones) deployed in the borehole on wireline at specified depth intervals. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Because Murphy's planned survey would not cover any additional area beyond that ensonified by the stationary source, the coil proxy is most representative of the effort planned by Murphy in terms of predicted Level B harassment.

In addition, all available acoustic exposure modeling results assume use of a 72 element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to the differences in the airgun array (6 elements; 1,350 in^3), and in daily survey area planned by Murphy (as mentioned above), as compared to those modeled for the rule.

The survey is planned to occur for 2 days during summer in Zone 7. Therefore, the take estimates for each species are based on the summer values for the species.

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for that species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale).[3] However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403, January 19, 2021). In this case, use of the acoustic exposure modeling produces an estimate of one killer whale exposure. Given the foregoing, it is unlikely that any killer whales would be encountered during this 2-day survey, and accordingly no take of killer whales is authorized through this LOA.

In addition, in this case, use of the exposure modeling produces results that are smaller than average GOM group sizes for multiple species (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration (maximum of 2 days) and relatively small Level B harassment isopleths likely to actually be produced through use of the 6-element, 1,350-in^3 airgun array (compared with the modeled 72-element, 8,000 in^3 array) mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	10	2,207	0.4
Kogia spp	5	4,373	0.1
Beaked whales	87	3,768	2.3
Rough-toothed dolphin	15	4,853	0.3
Bottlenose dolphin	0	176,108	n/a
Clymene dolphin	[3] 38	11,895	0.3
Atlantic spotted dolphin	0	74,785	n/a
Pantropical spotted dolphin	381	102,361	0.4
Spinner dolphin	[3] 9	25,114	0.0
Striped dolphin	[3] 20	5,229	0.4
Fraser's dolphin	[3] 7	1,665	0.4
Risso's dolphin	[3] 6	3,764	0.2
Melon-headed whale	[3] 26	7,003	0.4
Pygmy killer whale	[3] 12	2,126	0.6
False killer whale	[3] 14	3,204	0.4
Killer whale	0	267	n/a
Short-finned pilot whale	[3] 2	1,981	0.1

[1] Scalar ratios were not applied in this case due to brief survey duration.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.
[3] Modeled exposure estimate less than assumed average group size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Murphy's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Murphy authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: June 20, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–13376 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Type-Approval Requirements for Vessel Monitoring Systems

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 February 13, 2023 (88 FR 9255) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Type-Approval Requirements for Vessel Monitoring Systems (VMS)

OMB Control Number: 0648–0789.

Form Number(s): None.

Type of Request: Regular submission (extension of currently approved collection).

Number of Respondents: 9.

Average Hours per Response: Initial application: 80 hours; Changes to existing type-approval: 24 hours; Response to a type-approval revocation: 24 hours; Diagnostic and troubleshooting support: 1,066 hours.

Total Annual Burden Hours: 8,680 hours.

Needs and Uses: This request is for extension of a currently approved information collection. The current Code of Federal Regulations (CFR) at title 50, part 600, subpart Q, sets forth the requirements for Enhanced Mobile Transceiver Units (EMTUs) to be type-approved by NMFS for use in federal fisheries programs. These EMTUs can either be satellite-linked systems or cellular-based hardware and software. Respondents for type-approval of vessel monitoring system (VMS) satellite- or cellular-based systems must submit a written type-approval request and electronic copies of supporting materials that include certain required information. The National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) uses the information submitted to assess whether an EMTU or EMTU–C meets minimum technical specifications and can be approved for use in the NMFS VMS program. The information currently required to accompany an application for type-approval of VMS satellite-based systems is set forth at 50 CFR 600.1502 through 600.1507. The information required for type-approval of VMS cellular-based systems will be substantially similar and identical except where specifically indicated (*e.g.,* EMTU–Cs will not be required to report the at-sea loss of communications signals, as proposed in 50 CFR 600.1503(e)(5)).

Information requested in the type-approval application for EMTU–Cs and EMTUs includes the information identified in 50 CFR 600, subpart Q, more specifically, 50 CFR 600.1501 through 600.1509. This identified information is also embodied in the Type-Approval Matrix form (available from NMFS OLE) that can be used by a respondent to more easily organize and submit the required information in their type-approval request to NMFS. The information will include information regarding: Characteristics of the EMTU–C or EMTU, Associated entities including manufacturer and sellers, Communication functionalities, Data formats, Data transmission details, Latency requirements, Messaging formats and transmission details, Electronic forms, Data security, Customer service, Durability, and Applicant's data handling requirements.

Affected Public: Business or other for-profit organizations.

Frequency: Variable. Estimated at once every 5 years.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the National Marine Fisheries Service (NMFS) and regional fishery management councils prevent overfishing and requires the collection of reliable data essential to the effective conservation, management, and scientific understanding of the nation's fishery resources, including vessel monitoring systems.

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 0648–0789.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13371 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Marine Fisheries Advisory Committee Survey on Marine Mammal Deterrents

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 22, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–XXXX in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Katie Denman, Policy Analyst, National Marine Fisheries Service, Office of Policy, 1325 East-West Hwy Silver Spring, MD 20910, (301) 427–8038, and *katie.denman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new information collection.

A recent summary of a series of marine mammal deterrent workshops by NOAA Fisheries states, ''under a recent proposed rule, NOAA Fisheries developed guidelines for deterring marine mammals under its jurisdiction, and recommended specific measures for species listed under the Endangered Species Act (ESA). The guidelines focus on how to safely use deterrents to avoid injuring or killing marine mammals. However, evaluation of the efficacy of each deterrent was beyond the scope of the rulemaking process, and available data on deterrent effectiveness is lacking.'' [1]

Consequently, the Protected Resources Subcommittee of the Marine Fisheries Advisory Committee (MAFAC) was asked to help NOAA Fisheries narrow down the scope for assessing the effectiveness of the marine mammal deterrents listed in the proposed guidelines and create a decision making process to prioritize areas to begin characterizing the effectiveness. To achieve this, the Subcommittee plans to rank relative risk of expected losses from interactions with marine mammals by various user groups nationwide, which will identify where the biggest impacts of marine mammals are likely to be occurring. The information for the relative risk and expected loss analysis will be generated through a survey of five user groups (commercial fishermen, recreational fishermen, tribal fishermen (inclusive of tribal nations and other coastal indigenous populations), aquaculture operators, and waterfront property managers (*e.g.* harbormasters and harbor facility assistants)).

II. Method of Collection

The MAFAC will employ electronic technology to conduct and analyze the survey through the open access and easy-to-use Google Forms software. The link to the form can be shared widely by announcement on the NOAA MAFAC website, through e-newsletters, email, and to the wide spectrum of NOAA partners and constituents.

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission [New information collection].

Affected Public: Individuals or households.

Estimated Number of Respondents: 150 individuals.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 12.5 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: The Secretary of Commerce approved the establishment of the Marine Fisheries Advisory Committee (MAFAC or Committee) on December 28, 1970. The Committee was initially chartered on February 17, 1971, and has been renewed periodically under the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. app. It has been determined the Committee's continuance is in the public interest in accordance with the duties and the laws imposed on the Department. The Committee advises the Secretary of Commerce (Secretary) on all living marine resource matters that are the responsibility of the Department of Commerce. Specifically, the Committee draws on the expertise of its members, its task forces, and other appropriate sources, such as the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), to evaluate and recommend priorities and needed changes in national program direction. Its objective is to ensure the Nation's living marine resource policies and programs meet the needs of commercial and recreational fishermen, aquaculture activities, and environmental, consumer, academic, tribal, governmental, and other national interests.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

[1] (Raum-Suryan et al.) p. 1.

cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13372 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD097]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) will convene an online meeting of its Ad Hoc Equity and Environmental Justice Committee (EEJC) to elect a chair and make plans for its first working meeting. This meeting is open to the public.

DATES: The online meeting will be held Tuesday, July 11, 2023, from 8 a.m. to 10 a.m. Pacific Daylight Time. The scheduled ending time for this meeting is an estimate. The meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Staff Officer, Pacific Council; telephone: (503) 820–2416.

SUPPLEMENTARY INFORMATION: The EEJC will have an organizational meeting to elect a chair and plan for its first working session. This committee was formed by the Pacific Council at its April 2023 meeting to advise the Pacific Council on working with NMFS on the forthcoming EEJ Strategy Regional Implementation Plan and the Geographic Strategic Plan. No management actions will be decided by the EEJC but recommendations may be provided to the Pacific Council at its September 7–14, 2023 meeting. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: June 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13412 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD094]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of seminar series presentation via webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a presentation on Larval Dispersal from Spawning Special Management Zones via webinar July 11, 2023.

DATES: The webinar presentation will be held on Tuesday, July 11, 2023, from 1 p.m. until 2:30 p.m.

ADDRESSES:

Meeting address: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-seminar-series/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation from Gulf of Maine Research Institute staff entitled ''Simulated larval dispersal of snapper-grouper species to evaluate the efficacy of spawning Special Management Zones.'' The presentation involves five spawning Special Management Zones (SMZs) designated off the coasts of North Carolina, South Carolina, and Florida. These are marine protected areas that were explicitly designated to increase the spawning and recruitment of species in the snapper-grouper complex by protecting important spawning areas from fishing pressure. Each location was chosen as a potential source of high recruitment for the broader region. It was unclear, however, if the oceanographic conditions around the spawning SMZs favor recruitment success. Therefore, for several species, larval dispersal via ocean currents was simulated from each SMZ to investigate whether they can effectively serve as sources of recruitment for the snapper-grouper populations in the region.

A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: June 20, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–13411 Filed 6–22–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* July 23, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7510–01–617–1441—Tape, Safety Stripe, Rubber Adhesive, Black/White, 36 yds
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

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–13353 Filed 6–22–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* July 23, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 2/17/2023, 3/3/2023, 3/10/2023, 3/17/2023, 3/24/2023, 3/31/2023, 4/7/2023, 4/28/2023, 5/5/2023, and 5/12/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7045–01–484–1765—Mouse Pad, Calculator and Supply Storage Area, Black/Silver
7520–01–451–9180—Pen, Ballpoint, Retractable, Essential LVX, Red, Medium Point
7520–01–451–9181—Pen, Ballpoint, Retractable, Essential LVX, Blue, Medium Point
Designated Source of Supply: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7510–01–600–8026—Dated 2022 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″
6645–01–467–8479—Clock, Wall, Black Custom Logo, 22″ Diameter
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–058–9976—Pen, Ballpoint, Stick, Hexagonal Barrel, Green, Medium Point
7510–00–161–6211—Cup, Supply, Self-Stacking, Clear
Designated Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7490–01–687–1136—Label Printer, Thermal, Extra Large, Black
Designated Source of Supply: Goodwill Vision Enterprises, Rochester, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

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):
7520–01–680–7012—Pencil Sharpener, Electric, Horizontal, 6 Hole Adjustable, Grey and Green
7520–01–680–7013—Pencil Sharpener, Electric, Horizontal, 1 Hole, Heavy Duty, Grey
Designated Source of Supply: Blind Center of Nevada, Inc., Las Vegas, NV
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–619–0303—Portable Desktop Clipboard, 9½″ W x 1½ D x 13½″ H, Blue
7520–01–653–5888—Clipboard, Desktop, Reflective Orange, 9½″ W x 1½″ D x 13½″ H
7520–01–653–5890—Clipboard, Desktop, Reflective Red/Green, 9½″ W x 1½″ D x 13½″
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

7510–01–020–2806—Correction Fluid, Water-Based, Type I, White
7510–01–333–6242—Correction Fluid, Solvent-Based, Type III, White
Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7530–01–425–4088—Writing Pad, Self-Stick, Repositionable, Phone Message, Assorted Pastel, 4″ x 5″
Designated Source of Supply: Goodwill Vision Enterprises, Rochester, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–484–5256—Pen, Ball Point, Retractable, Ergonomic, MD Ergo Grip, Blue Barrel, Blue Ink, Medium Point
7520–01–451–9180—Pen, Ballpoint, Retractable, Essential LVX, Red, Medium Point
7520–01–451–9181—Pen, Ballpoint, Retractable, Essential LVX, Blue, Medium Point
7520–01–587–9632—Pen, Ballpoint, Retractable, 3 Pack, Blue, Medium Point
7520–01–587–9638—Pen, Ballpoint, Retractable, 3 Pack, Blue, Fine Point
7520–01–587–9645—Pen, Ballpoint, Retractable, Hybrid Ink, 6 Pack, Blue, Medium Point
7520–01–587–9646—Pen, Ballpoint, Retractable, Hybrid Ink, 6 Pack, Black, Medium Point
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
8115–01–499–0898—Shipping Box, Type II, Style D, Brown, XD–4, 6″ x 9″ x 4½″
Designated Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–620–4671—Hole Punch, Paper, High-capacity, 3-Hole, Adjustable, 28 sheet capacity, Black Base, Black Grip
Designated Source of Supply: AbilityFirst, Pasadena, CA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7520–01–455–7233—Pen, Ballpoint, Stick Type, Recycled, Green Ink, Medium Point
Designated Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
7105–00–139–7573—Coffee Table, 36″ x 36″ x 17″, English Oak, Laminated Top
7105–00–139–7601—Coffee Table, 48″ x 22″ x 17″, English Oak, Laminated Top
7105–01–462–1067—Coffee Table, 36″ x 36″ x 17″, English Oak, Natural Finish
7105–01–462–1068—Coffee Table, 48″ x 22″ x 17″, English Oak, Natural Finish
7105–01–462–1069—End Table, 26″ x 18″ x 21″, English Oak, Natural Finish
7105–00–139–7598—End Table, 26″ x 18″ x 21″, English Oak, Laminated Top
7105–00–139–7600—Lamp Table, 27″ L x 27″ W x 21″ H, English Oak, Laminated Top
7105–01–462–1070—Lamp Table, 27″ L x 27″ W x 21″ H, English Oak, Natural Finish
Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8340–00–262–2397—Cover, Tent
Designated Source of Supply: APEX, Inc., Anadarko, OK
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7045–01–321–7456—Wipes, Alcohol, TX806 Isopropyl
Designated Source of Supply: North Central Sight Services, Inc., Williamsport, PA
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: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Designated Source of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8415–01–575–4514—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Long
8415–01–575–4427—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Regular
8415–01–575–4246—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Short
8415–01–575–4510—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Long
8415–01–575–4445—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Regular
8415–01–575–4051—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Short
8415–01–575–4508—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Long
8415–01–575–4394—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Regular
8415–01–575–4046—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Short
8415–01–575–4515—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Long
8415–01–575–4457—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Regular
8415–01–575–4254—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Short
8415–01–575–4502—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Long
8415–01–575–4031—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Short
8415–01–575–4518—Jacket, Physical Fitness Uniform, Army, LongS, Universal Camouflage, XX-Large/Long
8415–01–575–4434—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Regular
8415–01–575–4275—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Short
8415–01–575–4521—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Long
8415–01–575–4466—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Regular
8415–01–575–4288—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Short
8415–01–575–4295—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Regular
Designated Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
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):
8920–01–E62–5585—Rice, Brown, Whole Grain, Parboiled, Long Grain, CS/Four (4) Five (5) Pound Bags
Designated Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7045–01–357–9939—Tape, Electronic Data
7045–01–240–4951—Mini-Cartridge, Data, 40 MB, 3½″
Designated Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8455–01–113–2631—Qualification Badge, Air Assault, U.S. Army
Designated Source of Supply: Fontana Resources at Work, Fontana, CA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8955–01–E60–8859—Coffee, Roasted, Ground, 39 oz. bag, S&D
Designated Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
4820–00–052–4651—Valve, Ball, Piping
Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
2540–00–741–6339—Curtain Assembly
2540–00–737–3311—Cushion, Seat Back
Designated Source of Supply: APEX, Inc., Anadarko, OK
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
2540–00–473–0111—Kit, Deep Water Fording
Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
MR 11300—Water Bottle, Travel, Addison, 24 oz.
MR 13082—Water Bottle, Contigo, 24 oz
MR 13085—Tumbler, Kids, Contigo, 14 oz
MR 13089—Mug, Travel, Plastic, West Loop 2.0, 16 oz
Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s):
MR 13127—Colander, Plastic
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Defense Commissary Agency

Service(s)

Service Type: Parts Machining Service
Mandatory for: Arizona Industries for the Blind, Phoenix, AZ; 515 N 51st Ave., #130; Phoenix, AZ
Mandatory for: DLA Wide (Off-Site—515 N 51st Ave., #130, Phoenix, AZ); 515 N 51st Ave., #130; Phoenix, AZ
Designated Source of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE

Service Type: Parts Machining Service
Mandatory for: The Lighthouse for the Blind, Inc., Seattle, WA; 2601 South Plum; Seattle, WA
Mandatory for: DLA Wide (Off-Site—2601 South Plum St., Seattle, WA); 2601 South Plum St.; Seattle, WA
Designated Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE

Service Type: Parts Machining Service
Mandatory for: WISCRAFT, Inc., Milwaukee, WI; 5316 West State Street; Milwaukee, WI
Mandatory for: DLA Wide (Off-Site—5316 West State St., Milwaukee, WI); 5316 West State Street; Milwaukee, WI
Designated Source of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE

Service Type: Sourcing, Warehousing, Assembly and Kitting
Mandatory for: Montana Army National Guard, Fort Harrison, MT; 1956 MT Majo Street; Fort Harrison, MT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7NK USPFO ACTIVITY MT ARNG

Service Type: Mailroom Support Services
Mandatory for: Internal Revenue Service Mailroom: 310 West Wisconsin Avenue; Milwaukee, WI
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: TREASURY, DEPARTMENT OF THE, DEPT OF TREAS/

Service Type: Mailing Services
Mandatory for: Government Printing Office: 710 North Capitol & H Street NW: 710 North Capital & H Street; Washington, DC
Designated Source of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Government Printing Office

Service Type: Mailing Services
Mandatory for: Department of Housing and Urban Development; 52 Corporate Circle; Albany, NY
Designated Source of Supply: Northeastern Association of the Blind at Albany, Inc., Albany, NY
Contracting Activity: HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF, DEPT OF HOUSING AND URBAN DEVELOPMENT

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–13352 Filed 6–22–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9 a.m. EDT, Friday, June 30, 2023.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

(Authority: 5 U.S.C. 552b)

Dated: June 21, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–13528 Filed 6–21–23; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2023–0037]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Consumer Response Company Response Survey,'' approved under OMB Number 3170–0069.

DATES: Written comments are encouraged and must be received on or before July 24, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Company Response Survey.

OMB Control Number: 3170–0069.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 66,700.

Estimated Total Annual Burden Hours: 4,669.

Abstract: The Bureau will use this information collection to garner consumer feedback through an optional survey at the end of the consumer complaint process. Through the existing survey, consumers have the option to provide feedback on the company's response to and handling of their complaint. The results of this feedback are shared with the company that responded to the complaint to inform its complaint handling. The Bureau also uses this feedback as one of several inputs to inform its work to assess the accuracy, completeness, and timeliness of company responses to consumer complaints.

This information collection asks three questions about the company's response to and handling of any complaint and requires a narrative description in support of any provided answers. Positive feedback about the company's handling of the consumer's complaint would be reflected by affirmative answers to each question and by the narrative in support of each answer. The Company Response Survey allows consumers to offer both positive and negative feedback on their complaint experience.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on March 9, 2023, (88 FR 14610) under Docket Number: CFPB–2023–0019. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2023–13325 Filed 6–22–23; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2023–0036]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Payday, Vehicle Title, and Certain High-Cost Installment Loans,'' approved under OMB Control Number 3170–0071.

DATES: Written comments are encouraged and must be received on or before August 22, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2023–0036 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Payday, Vehicle Title, and Certain High-Cost Installment Loans.

OMB Control Number: 3170–0071.

Type of Review: Extension without change of a currently approved collection.

Affected Public: State, local, and tribal governments.

Estimated Number of Respondents: 9,887.

Estimated Total Annual Burden Hours: 3,189,587.

Abstract: 12 Code of Federal Regulations (CFR) part 1041 applies to non-depository institutions and loan brokers engaged in consumer lending, credit intermediation activities, or activities related to credit intermediation. Additionally, banks and credit unions that make loans are subject to the regulation. The purpose of this regulation is to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions, to set forth requirements for preventing such acts or practices, and to provide certain partial conditional exemptions from aspects of this rule. This regulation also contains requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2023–13326 Filed 6–22–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0008; OMB Control Number 0704–0286]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Publicizing Contract Actions

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 205, Publicizing Contract Actions, and DFARS 252–205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 5,768.

Responses per Respondent: 1.

Annual Responses: 5,768.

Average Burden per Response: Approximately 1.1 hours.

Annual Burden Hours: 6,345.

Needs and Uses: DFARS 205.470 prescribes the use of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services, which are expected to exceed $1.5 million. This clause implements 10 U.S.C. 4957 by requiring contractors to provide cooperative agreement holders, upon request, with a list of the contractor's employees or offices responsible for entering into subcontracts under DoD contracts. The contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year. Upon receipt of a contractor's list, the cooperative agreement holder, as part of the Procurement Technical Assistance Program, utilizes the information to identify and pursue contracting opportunities with DoD and expand the number of businesses capable of participating in Government contracts.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13400 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0013; OMB Control Number 0704–0477]

Information Collection Requirement; Organizational Conflicts of Interest in Major Defense Acquisition Programs

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Organizational Conflicts of Interest in Major Defense Acquisition Programs; OMB Control Number 0704–0477.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 20.

Responses per Respondent: 3.

Annual Responses: 60.

Average Burden per Response: 40 hours.

Annual Burden Hours: 2,400.

Needs and Uses: The information collection under OMB Control Number 0704–0477 pertains to organizational conflicts of interest in major defense acquisition programs (MDAPs). This collection implements section 207 of the Weapon Systems Acquisition Reform Act of 2009, which requires DoD to tighten requirements for organizational conflicts of interest by contractors in major defense programs. This statutory requirement is implemented in the solicitation provision at DFARS 252.209–7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, which requires offerors to submit a mitigation plan when there is an organizational conflict of interest that can be resolved through mitigation.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13403 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0011; OMB Control Number 0704–0232]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement, Contract Pricing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.4, Contract Pricing, and related clause at DFARS 252.215; OMB Control Number 0704–0232.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 302.

Responses per Respondent: Approximately 1.4.

Annual Responses: 427.

Average Burden per Response: Approximately 40.7.

Annual Burden Hours: 17,400.

Needs and Uses: The clause at DFARS 252.215–7002, Cost Estimating System Requirements, requires that certain large business contractors—

- Establish an acceptable cost estimating system and disclose the estimating system to the administrative contracting officer in writing;
- Maintain the estimating system and disclose significant changes in the system to the administrative contracting officer on a timely basis; and
- Respond in writing to written reports from the Government that identify deficiencies in the estimating system.

DoD contracting officers use this information to determine if the contractor has an adequate system for generating cost estimates, which forecasts costs based on appropriate source information available at the time, and has the ability to monitor the correction of significant deficiencies. The need for information collection decreases as contractor estimating systems improve and gain contracting officer approval.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13398 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0014; OMB Control Number 0704–0229]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition and Related Clauses

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition and Related Clauses at 252.225; DD Form 2139; OMB Control Number 0704–0229.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 39,221.

Responses per Respondent: Approximately 10.

Annual Responses: 382,876.

Average Burden per Response: Approximately 0.28 hours.

Annual Burden Hours: 106,995 (106,730 reporting hours and 265 recordkeeping hours).

Needs and Uses: DoD needs this information to ensure compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the defense industrial base; to ensure compliance with U.S. trade agreements and memoranda of understanding that promote reciprocal trade with U.S. allies; and to prepare reports for submission to the Department of Commerce on the Balance of Payments Program. This information collection includes requirements related to foreign acquisition in DFARS part 225, Foreign Acquisition, and the related clauses in DFARS part 252 as follows:

DFARS 252.225–7000, Buy American—Balance of Payments Program Certificate, as prescribed in DFARS 225.1101(1) and (1)(i), requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product, separately listing qualifying country and other foreign end products. The Buy American statute does not apply to acquisitions of commercial information technology.

DFARS 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission

with Offer, and 252.225–7004, Report of Intended Performance Outside the United States and Canada—Submission after Award, as prescribed in DFARS 225.7204(a) and (b) respectively, require offerors and contractors to submit a Report of Contract Performance Outside the United States for subcontracts to be performed outside the United States. The reporting threshold is $700,000 for contracts that exceed $13.5 million. The contractor may submit the report on DD Form 2139, Report of Contract Performance Outside the United States, or a computer-generated report that contains all information required by DD Form 2139.

DFARS 252.225–7005, Identification of Expenditures in the United States, as prescribed in DFARS 225.1103(1), requires contractors incorporated or located in the United States to identify, on each request for payment under contracts for supplies to be used or for construction or services to be performed outside the United States, that part of the requested payment representing estimated expenditures in the United States.

DFARS 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed at DFARS 225.7003–5(b), requires the offeror to certify that it will take certain actions with regard to specialty metals if the offeror chooses to use the alternative compliance approach when providing commercial derivative military articles to the Government.

DFARS 252.225–7013, Duty-Free Entry, prescribed at DFARS 225.1101(4), requires the contractor or an authorized agent to provide information on shipping documents and customs forms regarding those items that are eligible for duty-free entry.

DFARS 252.225–7018, Photovoltaic Devices—Certificate, as prescribed at DFARS 225.7017–4(b), requires offerors to certify that no photovoltaic devices with an estimated value exceeding the micro-purchase threshold will be utilized in performance of the contract or to specify the country of origin.

DFARS 252.225–7020, Trade Agreements Certificate, as prescribed in DFARS 225.1101(5) and (5)(i), only requires listing of nondesignated country end products. This provision is used in solicitations for all acquisitions subject to the World Trade Organization Government Procurement Agreement.

Alternate II of DFARS 252.225–7021, Trade Agreements, as prescribed in DFARS 225.1101(6) and (6)(ii), in order to comply with a condition of the waiver authority provided by the United States Trade Representative to the Secretary of Defense, requires contractors from a South Caucasus/Central or South Asian state to inform the government of its participation in the acquisition and also advise their governments that they generally will not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

DFARS 252.225–7023, Preference for Products or Services from Afghanistan, as prescribed in DFARS 225.7703–4(a), requires offerors to identify products or services that are not products or services from Afghanistan.

DFARS 252.225–7025, Restriction on Acquisition of Forgings, as prescribed in DFARS 225.7102–4, also requires contractor retention of records showing compliance with the restrictions until 3 years after final payment. The contractor agrees to make the records available to the contracting officer upon request. The contractor may request a waiver in accordance with DFARS 225.7102–3.

DFARS 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, and 252.225–7033, Waiver of United Kingdom Levies, as prescribed in DFARS 225.1101(7) and (8) respectively, require United Kingdom offerors and prime contractors, and offerors and prime contractors with subcontracts of a dollar value exceeding $1 million with United Kingdom firms, to provide certain information necessary for DoD to obtain a waiver of United Kingdom levies.

DFARS 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, as prescribed in DFARS 225.1101(9) and (9)(i), requires separate listing of qualifying country (except Australia), Free Trade Agreement (FTA) country, or other foreign end products. Alternate I, as prescribed in 225.1101(9) and (9)(ii), no longer requires listing of Canadian end products, rather than FTA country end products, in solicitations between $25,000 and the FTA threshold. The Buy American statute does not apply to acquisitions of commercial information technology.

DFARS 252.225–7046, Exports of Approved Community Members in Response to the Solicitation, as prescribed at DFARS 225.7902–5(a), requires a representation whether exports or transfers of qualifying defense articles were made in preparing the response to the solicitation. If yes, the offeror represents that such exports or transfers complied with the requirements of the provision.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13397 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0012; OMB Control Number 0704–0398]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Describing Agency Needs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 211, Describing Agency Needs, and Related Clause at 252.211; OMB Control Number 0704–0398.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 3,503.

Responses per Respondent: Approximately 119.

Annual Responses: 416,771.

Average Burden per Response: Approximately 0.1 hour.

Annual Burden Hours: 41,677.

Needs and Uses: DFARS 211.274–6 prescribes the use of the clause at DFARS 252.211–7007, which requires contractors to report data to the DoD Item Unique Identification (IUID) Registry on all serially-managed Government-furnished property (GFP), as well as contractor receipt of non-serially managed items, unless an exception applies. ''Serially managed item'' means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number. The clause provides a list of specific data elements contractors are to report to the IUID registry in the GFP module, as well as procedures for updating the registry. DoD needs this information to strengthen the accountability and end-to-end traceability of GFP within DoD. Through electronic notification of physical receipt, DoD is made aware that GFP has arrived at the contractor's facility. The DoD logistics community uses the information as a data source of available DoD equipment. In addition, the DoD organization responsible for contract administration uses the data to test the adequacy of the contractor's property management system.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13402 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0015; OMB Control Number 0704–0225]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Administrative Matters

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 204, Administrative Matters and Related Clause at 252.204; OMB Control Number 0704–0225.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 236.

Responses per Respondent: Approximately 1.56.

Annual Responses: 369.

Average Burden per Response: Approximately 3 hours.

Annual Burden Hours: 1,107.

Needs and Uses: DFARS 204.404–70(a) prescribes use of DFARS clause 252.204–7000, Disclosure of Information, in contracts that require the contractor to access or generate unclassified information that may be sensitive and inappropriate for release to the public. The clause requires the contractor to obtain approval of the contracting officer before release of any unclassified contract-related information outside the contractor's organization, unless the information is already in the public domain. In requesting this approval, the contractor must identify the specific information to be released, the medium to be used, and the purpose for the release. Upon receipt of a contractor's request, the Government reviews the information provided by the contractor to determine if it is sensitive or otherwise inappropriate for release for the stated purpose.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13396 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0010; OMB Control Number 0704–0253]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Subcontracting Policies and Procedures—DoD FAR Supplement Part 244; OMB Control Number 0704–0253.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 22.

Responses per Respondent: 2.

Annual Responses: 44.

Average Burden per Response: 8 hours.

Annual Burden Hours: 352.

Needs and Uses: Administrative contracting officers use this information in making decisions to approve or disapprove a contractor's purchase system. The disapproval of a contractor's purchasing system would necessitate Government consent to individual subcontracts and possibly prompt a financial withhold or other Government rights and remedies. DFARS 244.305, Granting, Withholding, or Withdrawing Approval, provides policy guidance for administrative contracting officers to determine the acceptability of the contractor's purchasing system and approve or disapprove the system, at the completion of the in-plant portion of a contractor purchasing system review, and to pursue correction of any deficiencies with the contractor. DFARS clause 252.244–7001, Contractor Purchasing System Administration, requires the contractor to respond within 30 days to a written initial determination from the contracting officer that identifies significant deficiencies in the contractor's purchasing system. The contracting officer will evaluate the contractor's response to this initial determination and notify the contractor in writing of any remaining significant deficiencies, the adequacy of any proposed or completed corrective action, and system disapproval if the contracting officer determines that one or more significant deficiencies remain. If the contractor receives the contracting officer's final determination of significant deficiencies, the contractor has 45 days to either correct the significant deficiencies or submit an acceptable corrective action plan.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13399 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0009; OMB Control Number 0704–0359]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement, Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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 may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing and Related Clauses at 252.232; OMB Control Number 0704–0359.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondents' Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 1,000.

Responses per Respondent: 14.

Annual Responses: 14,000.

Average Burden per Response: 1.2 hours.

Annual Burden Hours: 16,800.

Needs and Uses:

• *DFARS 252.232–7007, Limitation of Government's Obligation.* The data submitted by contractors enables contracting officers to calculate improved financing opportunities that will provide benefit to both industry (prime contractor and subcontractor level) and the taxpayer. DFARS 252.232–7007 is prescribed for use in solicitations and resultant incrementally-funded fixed-price contracts. Paragraph (c) of the clause requires a written notification from the contractor that: (1) states the estimated date when the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable items; (2) states an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds or to a mutually agreed upon substitute date; and (3) advises the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the items funded pursuant to the clause, for a subsequent period as may be specified in the allotment schedule or otherwise agreed to by the parties to the contract.

• *DFARS subpart 232.10, Performance-Based Payments, 252.232–7012, Performance Based Payments—Whole Contract Basis, and 252.232–7013, Performance Based Payments—Deliverable-Item Basis.* Contracting officers use the information provided by contractors to create a cash-flow model for use in evaluating alternative financing arrangements. The analysis tool calculates improved financing opportunities that will provide benefit to both industry (prime contractor and subcontractor level) and the taxpayer. DFARS subpart 232.10 requires the contracting officer, when considering performance-based payments, to obtain from the contractor a proposed performance-based payments schedule which includes all performance-based payments events, completion criteria and event values along with the expected expenditure profile.

DFARS 252.232–7012 requires contractors to report the negotiated value of all previously completed performance-based payments; negotiated value of current performance-based payment events; cumulative negotiated value of performance-based payment events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance based payment. DFARS 252.232–7013 requires contractors to report the negotiated value of current performance-based payment events; cumulative negotiated value of

performance-based payment events completed to date; total costs incurred to date; cumulative amount of payments previously requested; and the payment amount requested for the current performance based payment.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–13401 Filed 6–22–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

2023–2024 Award Year Deadline Dates for Reports and Other Records Associated With the Free Application for Federal Student Aid (FAFSA), the Federal Supplemental Educational Opportunity Grant Program (FSEOG) Program, the Federal Work-Study (FWS) Program, the Federal Pell Grant (Pell Grant) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2023–2024 award year. These programs, administered by the Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs. The Federal student aid programs (title IV, HEA programs) covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, Iraq and Afghanistan Service Grant, and campus-based (FSEOG and FWS) programs. Assistance Listing Numbers: 84.007 FSEOG Program; 84.033 FWS Program; 84.063 Pell Grant Program; 84.268 Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

DATES: *Deadline and Submission Dates:* See Tables A and B at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Linnea Hengst, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 114B4, Washington, DC 20202–5345. Telephone: (202) 377–3165. Email: *linnea.hengst@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: Table A—2023–2024 Award Year Deadline Dates By Which a Student Must Submit the FAFSA, By Which the Institution Must Receive the Student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students.

Table A provides information and deadline dates for receipt of the FAFSA, corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System (CPS) is June 30, 2024, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, notices of change of address or institution, or requests for a duplicate SAR is September 14, 2024.

For all title IV, HEA programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2023–2024 award year or September 21, 2024, whichever is earlier. Note that a FAFSA must be submitted and an ISIR or SAR received for the dependent student for whom a parent is applying for a Direct PLUS Loan.

Except for students selected for Verification Tracking Groups V4 and V5, verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2023–2024 award year or September 21, 2024, whichever is earlier. For students selected for Verification Tracking Groups V4 and V5, institutions must submit identity verification results no later than 60 days following the institution's first request to the student to submit the documentation.

For all title IV, HEA programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to section 479A(a) of the HEA, to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and the ISIR or SAR must be received by the institution no later than the earlier of the student's last date of enrollment for the 2023–2024 award year or September 21, 2024. For the two exceptions mentioned above, the ISIR or SAR must be received by the institution by the same dates noted in this paragraph but the ISIR or SAR is not required to have an official EFC.

For a student who is requesting aid through the Pell Grant, FSEOG, or FWS programs or for a student requesting Direct Subsidized Loans, who does not meet the conditions for a late disbursement under 34 CFR 668.164(j), a valid ISIR or valid SAR must be received by the institution by the student's last date of enrollment for the 2023–2024 award year or September 21, 2024, whichever is earlier.

In accordance with 34 CFR 668.164(j)(4)(i), an institution may not make a late disbursement of title IV, HEA program funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of title IV, HEA program funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination that the student was no longer enrolled, but not later than September 21, 2024.

Table B—2023–2024 Award Year Deadline Dates by Which an Institution Must Submit Disbursement Information for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan and TEACH Grant Programs.

For the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs, Table B provides the earliest disbursement date, the earliest dates for institutions to submit disbursement records to the Department's Common Origination and Disbursement (COD) System, and deadline dates by which institutions must submit disbursement and origination records.

An institution must submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to COD, no later than 15 days after making the disbursement or becoming aware of the need to adjust a previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV, HEA program funds are disbursed on the date that the institution: (a) credits those funds to a

student's account in the institution's general ledger or any subledger of the general ledger; or (b) pays those funds to a student directly. Title IV, HEA program funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department.

An institution's failure to submit disbursement records within the required timeframe may result in the Department rejecting all or part of the reported disbursement. Such failure may also result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Deadline Dates for Enrollment Reporting by Institutions.

In accordance with 34 CFR 674.19(f), 682.610(c), 685.309(b), and 690.83(b)(2), upon receipt of an enrollment report from the Secretary, institutions must update all information included in the report and return the report to the Secretary in a manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Consistent with the *National Student Loan Data System (NSLDS) Enrollment Reporting Guide,* the Secretary has determined that institutions must report at least every two months. Institutions may find the *NSLDS Enrollment Reporting Guide* in the ''Knowledge Center'' via Federal Student Aid's (FSA) Partner Connect website at: *https://fsapartners.ed.gov/knowledge-center.*

Other Sources for Detailed Information.

We publish a detailed discussion of the FAFSA application process in the Application and Verification Guide volume of the 2023–2024 *Federal Student Aid Handbook* and in the 2023–2024 *ISIR Guide.*

Information on the institutional reporting requirements for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs is included in the 2023–2024 *Common Origination and Disbursement (COD) Technical Reference.* Also, see the *NSLDS Enrollment Reporting Guide.*

You may access these publications by visiting the ''Knowledge Center'' via FSA's Partner Connect website at: *https://fsapartners.ed.gov/knowledge-center.*

Additionally, the 2023–2024 award year reporting deadline dates for the Federal Perkins Loan, FWS, and FSEOG programs were published in the **Federal Register** on January 18, 2023 (88 FR 2901).

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

(5) Federal Work-Study Programs, 34 CFR part 675.

(6) Federal Supplemental Education Opportunity Grant Program, 34 CFR part 676.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b-4, 1070g, 1070h, 1087a-1087j, 1087aa–1087ii, and 1087–51–1087–58.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

TABLE A—2023–2024 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	FAFSA—*fafsa.gov* (original or renewal)	Electronically to the Department's Central Processing System (CPS).	June 30, 2024.
	Signature page (if required)	To the address printed on the signature page.	September 14, 2024.
Student through an Institution.	An electronic FAFSA (original or renewal).	Electronically to the Department's CPS using ''Electronic Data Exchange'' (EDE) or ''FAA Access to CPS Online''.	June 30, 2024.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA	June 30, 2024.
Student	Electronic corrections to the FAFSA using *fafsa.gov.*	Electronically to the Department's CPS	September 14, 2024.[1]
	Signature page (if required)	To the address printed on the signature page.	September 14, 2024.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS using EDE or ''FAA Access to CPS Online''.	September 14, 2024.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 14, 2024.

TABLE A—2023–2024 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 14, 2024.
Student	A SAR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the SAR does not need to have an official EFC.	To the institution	The earlier of: –The student's last date of enrollment for the 2023–2024 award year; or –September 21, 2024.[2]
Student through CPS.	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(j), the earlier of: –The student's last date of enrollment for the 2023–2024 award year; or –September 21,2024.[2]
Student through CPS.	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	For a student receiving a late disbursement under 34 CFR 668.164(j)(4)(i), the earlier of: –180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or –September 21, 2024.[2]
Student through CPS.	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Verification documents	To the institution	The earlier of:[3] –120 days after the student's last date of enrollment for the 2023–2024 award year; or –September 21, 2024.[2]
Institution	Identity verification results for a student selected for verification by the Department and placed in Verification Tracking Group V4 or V5.	Electronically to the Department's CPS using ''FAA Access to CPS Online''.	60 days following the institution's first request to the student to submit the required V4 or V5 identity documentation.[4]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying them of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its Student Aid Internet Gateway (SAIG) mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Pell Grant applicants and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Direct Loan Program, but it cannot be later than this deadline date.

[4] Note that changes to previously submitted Identity Verification Results must be updated within 30 days of the institution becoming aware that a change has occurred.

TABLE B—2023–2024 AWARD YEAR DEADLINE DATES BY WHICH AN INSTITUTION MUST SUBMIT DISBURSEMENT INFORMATION FOR THE PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN AND TEACH GRANT PROGRAMS [1]

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	The institution has made or intends to make a disbursement.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG); or to the COD System using the COD website at: *https://cod.ed.gov*.	The earliest disbursement date for Pell Grant and Iraq and Afghanistan Service Grant Programs is January 26, 2023. The earliest disbursement date for Direct Loan Program is October 1, 2022. The earliest disbursement date for TEACH Grant Program is January 1, 2023. The earliest submission date for anticipated disbursement information is April 2, 2023. The earliest submission date for actual disbursement information is April 2, 2023, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the Heightened Cash Monitoring Payment Method 1 (HCM1); or (b) The disbursement date under the reimbursement or the Heightened Cash Monitoring Payment Method 2 (HCM2).
Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant programs.	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records for disbursements made between January 26, 2023, and April 2, 2023, must be submitted no later than April 17, 2023; or (b) September 30, 2024.
Direct Loan Program	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between October 1, 2022, and April 2, 2023, may be submitted no later than April 17, 2023; or (b) July 31, 2025.
Pell Grant and Iraq and Afghanistan Service Grant programs.	A downward (decrease) adjustment to an origination or disbursement record.	It is after the deadline submission date	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	No later than the earlier of: (a) 15 calendar days after the institution becomes aware of the need to make an adjustment to previously reported data; or (b) September 28, 2029.[2] No request for extension to the deadline submission date is required.
TEACH Grant and Direct Loan.	A downward (decrease) adjustment to an origination or disbursement record.	It is after the deadline submission date	To COD using SAIG; or to COD using the COD website at *https://cod.ed.gov*.	No later than 15 calendar days after the institution becomes aware of the need to make an adjustment to previously reported data. No request for extension to the deadline submission date is required.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An upward (increase) adjustment to an origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date. Requests for extensions to the established submission deadlines may be made for reasons including, but not limited to: (a) A program review or initial audit finding under 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(j); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment.	Via the COD website at: *https://cod.ed.gov*.	No later than the earlier of: (a) 15 calendar days after the institution becomes aware of the need to make an adjustment to previously reported data; or (b) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (c) September 28, 2029.
TEACH Grant and Direct Loan programs.	An upward (increase) adjustment or a new origination or disbursement record.	.....	.....	No later than the earlier of: (a) 15 calendar days after the institution becomes aware of the need to make an adjustment to previously reported data; or (b) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year.

TABLE B—2023–2024 AWARD YEAR DEADLINE DATES BY WHICH AN INSTITUTION MUST SUBMIT DISBURSEMENT INFORMATION FOR THE PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN AND TEACH GRANT PROGRAMS [1]—Continued

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date based on a natural disaster, other unusual circumstances, or an administrative error made by the Department.	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2025.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for administrative relief to extend the deadline submission date based on a student's reentry to the institution within 180 days after initially withdrawing[3].	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) 15 days after the student reenrolls; or (b) May 3, 2025.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2023–2024 award year.

[2] Transmissions must be completed and accepted before the designated processing time on the deadline submission date. The designated processing time is published annually via an electronic announcement posted to the Knowledge Center via FSA's Partner Connect website at: *https://fsapartners.ed.gov/knowledge-center*. If transmissions are started at the designated time, but are not completed until after the designated time, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2023–13361 Filed 6–22–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14775–005]

Marine Renewable Energy Collaborative of New England; Notice of Application Tendered and Accepted for Filing; Soliciting Motions To Intervene and Protests; Ready for Environmental Analysis; Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions; Waiving the Timing Requirement for Filing Competing Development Applications; and Intent To Prepare Environmental Assessment

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Hydrokinetic Pilot Project License.

b. *Project No.:* 14775–005.

c. *Date Filed:* June 1, 2023.

d. *Applicant:* Marine Renewable Energy Collaborative of New England.

e. *Name of Project:* Bourne Tidal Hydrokinetic Test Site Project.

f. *Location:* In the Cape Cod Canal near the Town of Bourne, in Barnstable County, MA. The project would occupy land administered by the U.S. Army Corps of Engineers (Corps) and would be within the boundary of the Corps' Cape Cod Canal Navigation Project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

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. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 30 days from the issuance date of this notice; reply comments are due 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Bourne Tidal Hydrokinetic Project (P–14775–005).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis. Based on the information in the project record, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application. The EA will be issued and circulated for public review. Comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

l. *The proposed Bourne Tidal Hydrokinetic Project would consist of:*

(1) an existing 56.2-foot-high, 23-foot-wide steel support structure comprising 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 kilowatts (kW); (4) a 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) an 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-generator units would be tested at the project, but only one will be tested at a time.

m. A copy of the application may be viewed on the Commission's website at (*https://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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	July 16, 2023.
Filing of response comments	August 15, 2023.
Commission issues EA	September 2023.
Comments on EA	October 2023.

p. *Waiver of deadline to file competing applications filed pursuant to a notice of intent (NOI):* Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application or an NOI to file such an application. Section 4.36(b)(2) of the Commission's regulations, which allows 120 days from the specified intervention deadline date for interested parties to file competing development applications in which timely NOIs have been submitted, is hereby waived. Due to the expedited nature of the pilot project licensing procedures, an interested person who submits a timely NOI must file the competing development application no later than 30 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

An NOI must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. An NOI must be served on the applicant named in this public notice.

Dated: June 16, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13381 Filed 6–22–23; 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: CP23–498–000.

Applicants: Columbia Gas Transmission, LLC, Millennium Pipeline Company, L.L.C.

Description: Joint Application of Columbia Gas Transmission, LLC, and Millennium Pipeline Company, LLC to Amend Certificates of Public Convenience and Necessity and Authorization to Abandon by Lease.

Filed Date: 6/15/23.

Accession Number: 20230615–5123.

Comment Date: 5 p.m. ET 7/6/23.

Docket Numbers: PR23–56–000.

Applicants: The Narragansett Electric Company.

Description: § 284.123(g) Rate Filing: RIE_284 Certification Periodic Rate Review_Amended SOC to be effective 6/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5015.

Comment Date: 5 p.m. ET 7/7/23.

Protest Date: 5 p.m. ET 8/15/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13382 Filed 6–22–23; 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 rate filings:

Docket Numbers: ER22–2362–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2023–06–16 Revisions to Comply with Order No. 881 to be effective 12/31/9998.

Filed Date: 6/16/23.

Accession Number: 20230616–5056.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–1732–001.

Applicants: Shady Oaks Wind 2, LLC.

Description: Tariff Amendment: Amendment to Certificate of Concurrence Filing (ER23–1732–) to be effective 4/28/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5038.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–1895–000.

Applicants: Solar Partners XI, LLC.

Description: Supplement to May 16, 2023, Solar Partners XI, LLC tariff filing.

Filed Date: 6/15/23.

Accession Number: 20230615–5162.

Comment Date: 5 p.m. ET 6/26/23.

Docket Numbers: ER23–2151–000.

Applicants: Connecticut Gas & Electric, Inc.

Description: § 205(d) Rate Filing: CG&E Notice of Succession and MBR Tariff Revisions to be effective 6/17/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5016.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2152–000.

Applicants: Energy Services Providers, Inc.

Description: § 205(d) Rate Filing: ESP Notice of Succession and MBR Tariff Revisions to be effective 6/17/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5018.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2153–000.

Applicants: Illinois Power Marketing Company.

Description: § 205(d) Rate Filing: IPMC Notice of Succession and MBR Tariff Revisions to be effective 6/17/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5019.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2154–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6424; Queue No. AG1–246 re: Breach to be effective 8/15/2022.

Filed Date: 6/16/23.

Accession Number: 20230616–5021.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2155–000.

Applicants: Massachusetts Gas & Electric, Inc.

Description: § 205(d) Rate Filing: MG&E Notice of Succession and MBR Tariff Revisions to be effective 6/17/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5024.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2156–000.

Applicants: Public Power & Utility of NY, Inc.

Description: § 205(d) Rate Filing: PP&U NY Notice of Succession and MBR Tariff Revisions to be effective 6/17/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5025.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2157–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1887R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5027.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2158–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Morgan CIAC Agreement to be effective 10/1/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5028.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2159–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1889R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5037.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2160–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1891R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5043.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2161–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Pachuta Solar A (Solar & ESS) LGIA Filing to be effective 6/5/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5069.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2162–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Three Rocks Solar Amended & Restated LGIA Termination Filing to be effective 6/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5070.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2163–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1897R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5071.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2164–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Wiregrass LGIA Termination Filing to be effective 6/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5072.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2165–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Compliance filing: Alabama Power Company submits tariff filing per 35: Amendment of OATT Attachment C to be effective 12/31/9998.

Filed Date: 6/16/23.

Accession Number: 20230616–5073.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2166–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Compliance filing: Alabama Power Company submits tariff filing per 35: Amendment of OATT Attachment T to be effective 12/31/9998.

Filed Date: 6/16/23.

Accession Number: 20230616–5074.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2167–000.

Applicants: NorthWestern Corporation.

Description: Tariff Amendment: Cancellation of SA 807 Agreement with Buffalo Trail Solar to be effective 6/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5080.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2168–000.

Applicants: NorthWestern Corporation.

Description: Tariff Amendment: Cancellation of SA 924 Agreement with TRECO to be effective 6/21/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5104.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2169–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–06–16_CTA proposal to increase application study deposit to be effective 8/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5118.

Comment Date: 5 p.m. ET 7/7/23.

Docket Numbers: ER23–2170–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: Unexecuted Amended & Restated Affected Sys Operating Agmt with Edgecomb to be effective 8/16/2023.

Filed Date: 6/16/23.

Accession Number: 20230616–5164.

Comment Date: 5 p.m. ET 7/7/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: June 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13384 Filed 6–22–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–494–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 7, 2023, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.213(b) of the Commission's regulations under the Natural Gas Act (NGA), and ANR's blanket certificate issued in Docket No. CP82–480–000, for authorization to construct and operate three new injection/withdrawal storage wells, associated storage field pipelines, and appurtenances, located in the Lincoln-Freeman Storage Field. The above facilities are in Clare County, Michigan. The project will allow ANR to maintain overall storage field performances; The proposed new wells will restore deliverability lost due to the geologic degradation overtime and deliverability lost from wells that have been previously plugged and abandoned due to integrity concerns and poor deliverability performance. The estimated cost for the project is approximately $7.7 million, all as more fully set forth in the request 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 (*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. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Determinations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, (832) 320 5477, *David_Alonzo@tcenergy.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 August 15, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available

information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] 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 August 15, 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.

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 Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is August 15, 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 August 15, 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 CP23–494–000 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 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''; or [6]

(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 CP23–494–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: 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 or email (with a link to the document) at: David A. Alonzo, Manager, Project Determinations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or by *David_Alonzo@tcenergy.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 *www.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/esubscription.asp.*

Dated: June 16, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13380 Filed 6–22–23; 8:45 am]

BILLING CODE 6717–01–P

[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).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[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.

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project and Parker-Davis Project—Rate Order No. WAPA–210

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of transmission and firm electric service rates.

SUMMARY: The Desert Southwest Region (DSW) of the Western Area Power Administration (WAPA) proposes to extend the existing transmission service rates for the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and the existing transmission and firm electric service formula rates for the Parker-Davis Project (PDP) through September 30, 2024. The existing rates and formula rates remain unchanged under Rate Schedules INT–FT5, INT–NFT4, PD–F7, PD–FT7, PD–FCT7, and PD–NFT7, which expire on September 30, 2023.

DATES: A consultation and comment period will begin June 23, 2023 and end July 24, 2023. DSW will accept written comments at any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed extension submitted by WAPA to FERC for approval should be sent to: Jack D. Murray, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or email: *dswpwrmrk@wapa.gov.* DSW will post information about the proposed rate extensions and written comments received to its website at: *www.wapa.gov/regions/DSW/Rates/Pages/intertie-rates.aspx.*

FOR FURTHER INFORMATION CONTACT: Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, (602) 605–2565 or email: *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Intertie Project Transmission Service

On August 22, 2013, FERC approved and confirmed Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–157 for five years through April 30, 2018.[1] WAPA's Administrator subsequently approved the use of the existing Intertie transmission service rates for short-term sales for the period between May 1, 2018, and October 31, 2018, or the date the extension of the Intertie transmission service rates went into effect, whichever occurred first. On September 11, 2018, the Deputy Secretary of Energy approved the extension of the Intertie transmission service rates on an interim basis.[2] On December 3, 2018, FERC approved and confirmed the extension of Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–181 through September 30, 2020.[3] On March 2, 2021, FERC approved and confirmed the extension of Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–192 through September 30, 2023.[4]

In accordance with 10 CFR 903.23(a),[5] DSW is proposing to extend the existing Intertie transmission service rates under Rate Schedules INT–FT5 and INT–NFT4 for one year, through September 30, 2024. The existing rates provide sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period consistent with the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

Parker-Davis Project Transmission and Firm Electric Service

On September 18, 2014, FERC approved and confirmed Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–162 for a 5-year period through September 30, 2018.[6] On January 31, 2019, FERC approved and confirmed the extension of Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–184 through September 30, 2023.[7]

In accordance with 10 CFR 903.23(a), DSW is proposing to extend the existing PDP transmission and firm electric service formula rates under Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 for a one-year period, through September 30, 2024. The existing formula rates provide sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period consistent with the cost recovery criteria set forth in DOE Order RA 6120.2.

Intertie Project and Parker-Davis Project Services

Concurrent with this proposed rate extension, WAPA will be initiating a public process to combine the transmission service rates and facilities use charge on Federal projects located within DSW, which includes Intertie and PDP. Extending the existing Intertie rates and PDP formula rates through September 30, 2024, will provide WAPA additional time to engage with the public and its customers and further evaluate the proposed combined transmission rate.

In accordance with 10 CFR 903.23(a), WAPA has determined that it is unnecessary to hold public information or public comment forums for this rate action but is initiating a 30-day consultation and comment period allowing the public an opportunity to comment on the proposed extension.

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA determined that this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR part 1021.410: B4.3 (Electric power marketing rate changes). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF13–4–000.

[2] 83 FR 47921 (Sept. 21, 2018).

[3] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF18–5–000.

[4] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF20–9–000.

[5] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[6] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF14–4–000.

[7] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF19–1–000.

assessment.[8] A copy of the categorical exclusion determination is available on WAPA's website at *www.wapa.gov/regions/DSW/Environment/Pages/environment.aspx.* Look for file entitled, ''Rate Order WAPA–210.''

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on June 2, 2023, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 20, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–13368 Filed 6–22–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–074]

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 June 12, 2023 10 a.m. EST
Through June 16, 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. 20230076, Draft, HCIDLA, CA, One San Pedro Specific Plan Draft EIR/EIS, Comment Period Ends: 08/21/2023, Contact: Jinderpal Bhandal 818–601–1169.

EIS No. 20230077, Draft, USFS, MT, Stillwater Mining Company, East Boulder Mine Amendment 004 Expansion EIS, Comment Period Ends: 08/09/2023, Contact: Robert Grosvenor 406–848–7375.

Dated: June 16, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–13377 Filed 6–22–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0027 and OMB 3060–0029; FR ID 148924]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Type of Review: Extension of a currently approved collection.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; Form 2100, Schedule A—Application for Media Bureau Video Service Authorization; 47 Sections 73.3700(b)(1) and (b)(2) and Section 73.3800, Post Auction Licensing; Form 2100, Schedule 301–FM—Commercial FM Station Construction Permit Application.

Form Number: FCC Form 301; Form 2100, Schedule A; and Form 2100, Schedule 301–FM.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 3,092 respondents and 4,199 responses.

Estimated Time per Response: 0.075 to 6.25 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 12,435 hours.

Total Annual Cost: $62,308,388.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Needs and Uses: FCC Form 301, used by AM broadcast stations, and Form 2100, Schedule 301–FM, used by FM broadcast stations, are used to apply for authority to construct a new commercial AM or FM broadcast station and to

[8] The determination was done in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

make changes to the existing facilities of such a station. They may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees. In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels.

Form 2100, Schedule 301–FM also accommodates commercial FM applicants applying in a Threshold Qualifications Window (TQ Window) or a Tribal Allotment. A commercial FM applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add that particular Tribal Allotment for which it is applying. Additionally, a petitioner seeking to add a new Tribal Allotment to the FM Table of Allotments must file Form 2100, Schedule 301–FM when submitting its Petition for Rulemaking. The collection also accommodates applicants applying in a TQ Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the ''threshold qualifications'' procedures.

Similarly, to receive authorization for commencement of Digital Television (DTV) operations, commercial broadcast licensees must file FCC Form 2100, Schedule A for a construction permit. The application may be filed any time after receiving the initial DTV allotment and before mid-point in the applicant's construction period. The Commission will consider the application as a minor change in facilities. Applicants do not have to provide full legal or financial qualifications information.

OMB Control Number: 3060–0029.

Title: FCC Form 2100, Schedule 340—Noncommercial Educational Station for Reserved Channel Construction Permit Application.

Form Number: FCC Form 2100, Schedule 340.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and State, local or Tribal government.

Number of Respondents and Responses: 2,820 respondents; 2,820 responses.

Estimated Time per Response: 0.5–6 hours.

Frequency of Response: On occasion reporting requirement and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 6,603 hours.

Total Annual Cost: $30,039,119.

Needs and Uses: Schedule 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational (NCE) FM and DTV broadcast station (including a DTS facility), or to make changes in the existing facilities of such a station. Schedule 340 is only used if the station will operate on a channel that is reserved exclusively for NCE use, or in the situation where applications for NCE stations on non-reserved channels are mutually exclusive only with one another. Also, Schedule 340 is used by Native American Tribes and Alaska Native Villages (Tribes), tribal consortia, or entities owned or controlled by Tribes when qualifying for the ''Tribal Priority'' under 47 CFR 73.7000, 73.7002. Additionally, Schedule 340 contains a third party disclosure requirement, pursuant to section 73.3580. This rule requires local public notice of the filing of all applications to construct a new full-service NCE FM or DTV broadcast station. Notice is given by an NCE applicant by posting notice of the application filing on its station's website, its licensee's website, its parent entity's website, or on a publicly accessible, locally targeted website, for 30 consecutive days beginning within five business days of acceptance of the application for filing. Furthermore, the online notice must link to a copy of the application as filed, either in the station's Online Public Inspection File or in another Commission database. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers section 73.3527.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–13409 Filed 6–22–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0850; FR ID 149302]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 22, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0850.

Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 130,000 respondents, 130,000 responses.

Estimated Time per Response: 0.17 hours–0.44 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement, recordkeeping & other (5 & 10 yrs).

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154, 301 sections 4 and 301.

Total Annual Burden: 57,218 hours.

Total Respondent Cost: $4,550,000.

Needs and Uses: FCC 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and is used to collect licensing data for the Universal Licensing System. The Commission is requesting OMB approval for a minor revision to the reporting, recordkeeping and/or third party disclosure requirements. The Commission is removing Certification #3 for the General Mobile Radio Service, as well as making minor clarifications to the general filing instructions.

The data collected on this form includes the Date of Birth for Commercial Operator licensees however this information will be redacted from public view.

The FCC uses the information in FCC Form 605 to determine whether the applicant is legally, technically, and financially qualified to obtain a license. Without such information, the Commission cannot determine whether to issue the licenses to the applicants that provide telecommunication services to the public, and therefore, to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. Information provided on this form will also be used to update the database and to provide for proper use of the frequency spectrum as well as enforcement purposes.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–13408 Filed 6–22–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 88 FR 39847.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, June 22, 2023 at 10:30 p.m.

CHANGES IN THE MEETING: The time of the meeting is 10:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Submitted: June 20, 2023.

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–13448 Filed 6–21–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 24, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Central Plains Bancshares, Inc., Grand Island, Nebraska;* to become a savings and loan holding company by acquiring Home Federal Savings and Loan Association of Grand Island, Grand Island, Nebraska, in connection with the conversion of Home Federal Savings and Loan Association of Grand Island from mutual to stock form.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–13405 Filed 6–22–23; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 192 3170]

Vitagene, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 24, 2023.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Vitagene, Inc.; File No. 192 3170'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex V), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Trilling (202–326–3497), or Elisa Jillson (202–326–3001), Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 24, 2023. Write ''Vitagene, Inc.; File No. 192 3170'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Vitagene, Inc.; File No. 192 3170'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex V), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before July 24, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (the ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from 1Health.io Inc. (formerly known as, and doing business as, Vitagene, Inc.) (''Vitagene''). The proposed consent order (''proposed order'') has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Since 2015, Vitagene has sold ''DNA Health Test Kits'' to consumers. In each DNA Health Test Kit, Vitagene instructs the consumer to provide a saliva sample by mail. Vitagene contracts with a testing lab to analyze the sample and map a portion of the consumer's genetic code.

Vitagene combines the testing lab's DNA analysis with the consumer's answers to an online ''health questionnaire'' that probes the individual's health history, lifestyle, and family health history. Using this information, Vitagene generates reports about the consumer's health and wellness (''Health Reports'') and ancestry. Vitagene also sells to the consumer Health Reports that it creates by using the consumer's answers to an online ''lifestyle questionnaire'' and raw DNA data that the consumer sends to Vitagene after the consumer has obtained DNA tests from certain companies other than Vitagene. The retail cost for a package that includes a Health Report has ranged from $29 to $259, with higher-priced packages including add-ons such as subscriptions to personalized vitamin packs and nutritional coaching.

The Health Reports that Vitagene creates contain numerous facts about the consumer's genetics and health. For example, one type of Health Report first lists the consumer's name, date of birth, and referring doctor or dietician, and then identifies salient genotype data, pertinent questionnaire answers, and, based on the genotype data and questionnaire answers, the level of risk for having or developing certain health conditions, such as high LDL cholesterol, high triglycerides, obesity, or blood clots.

As part of its information technology infrastructure, Vitagene stores consumers' health and genetic information in the Amazon Web Services (''AWS'') Simple Storage Service (the ''Amazon S3 Datastore'') in virtual containers, called ''buckets.'' The files Vitagene has stored in Amazon S3 Datastore buckets include, among other things, consumers' Health Reports; genotype data called single-nucleotide polymorphisms (''SNPs''), which are the most common type of genetic variation among people; and other raw genotype data.

The proposed complaint alleges that, despite the fact that Vitagene has stored consumers' sensitive personal information in the Amazon S3 Datastore, Vitagene did not uniformly apply basic safeguards to the data in each of its Amazon S3 Datastore buckets. In particular, the proposed complaint alleges that, in or about 2016,

Vitagene created a publicly accessible bucket in which the company stored Health Reports for at least 2,383 consumers and a publicly accessible bucket in which it stored raw genetic data (sometimes accompanied by first name) for at least 227 consumers. The proposed complaint alleges that Vitagene's failure to use access controls to restrict access to this sensitive data, encrypt it, log or monitor access to it, or inventory it, to help ensure ongoing security resulted in Vitagene publicly exposing the data until July 2019. According to the proposed complaint, between July 2017 and June 2019, Vitagene received at least three warnings that it was storing consumers' unencrypted health, genetic, and other personal information in publicly accessible buckets.

The proposed complaint alleges Vitagene changed its name from Vitagene, Inc. to 1Health.io Inc. in October 2020. According to the proposed complaint, the company published revised privacy policies in April and December 2020 that apply to all the company's customers, including those who purchased products and services from the company solely before April 2020. The proposed complaint alleges that, compared to Vitagene's previous privacy policy, the company's 2020 privacy policies significantly expand the types of third parties with whom, and the purposes for which, the company may share consumers' sensitive personal information. The company did not provide direct notice to consumers of the change, but it also did not implement the expanded sharing.

The proposed five-count complaint alleges that Vitagene violated section 5(a) of the FTC Act by misrepresenting the company's data security and privacy practices, and by unfairly making material retroactive changes to the company's policies regarding third-party sharing of sensitive personal information.

Proposed complaint Count I alleges Vitagene deceived consumers by misrepresenting that it exceeded industry-standard security practices. On a web page that Vitagene devoted to describing its privacy practices, Vitagene claimed that ''[w]e use the latest technology and exceed industry-standard security practices to protect your privacy.'' The proposed complaint alleges that Vitagene's public exposure of consumers' Health Reports, raw genetic data, and other personal information in AWS S3 buckets until July 2019 contradicted this claim.

Proposed complaint Count II alleges Vitagene deceptively claimed on multiple web pages that it stored consumers' DNA results without name or any other common identifying information. The proposed complaint alleges that this claim was deceptive because Vitagene stored consumers' DNA results with their names and other common identifying information.

Proposed complaint Count III alleges Vitagene deceptively claimed that it would remove all of a consumer's information if the consumer requested deletion of his or her data. Vitagene made this claim on a web page that Vitagene devoted to describing its privacy practices. The proposed complaint alleges that the claim was deceptive because, from approximately 2016 through July 1, 2019, Vitagene's lack of a data inventory made it impossible for the company to search comprehensively in response to consumers' requests for Vitagene to delete their data.

Proposed complaint Count IV alleges Vitagene deceived consumers by claiming on multiple web pages that it destroys consumers' physical DNA saliva samples shortly after analysis of them. The proposed complaint alleges that this claim was deceptive because, beginning in approximately December 2016, Vitagene did not have a contract provision with its genotyping laboratory partner requiring such destruction.

Proposed complaint Count V alleges it was unfair for Vitagene to post on its websites in April and December 2020 revised privacy policies that describe materially expanded practices for the company's sharing of consumers' sensitive health and genetic information with third parties—including the information of consumers who purchased products and services from Vitagene solely before April 2020—without taking any additional steps to notify consumers or obtain consumers' consent.

The proposed order contains provisions to address Vitagene's conduct and prevent it from engaging in the same or similar acts or practices in the future. Part I of the proposed order prohibits Vitagene from misrepresenting (1) the extent to which it meets or exceeds industry-standard security or privacy practices, (2) the extent to which it stores any Health Information (as defined in the order) with any other element of Personal Information (as also defined in the order), (3) the extent to which, or the purposes for which, it collects, uses, discloses, maintains, deletes, or destroys a consumer's (i) physical DNA sample or (ii) Personal Information upon request, (4) it is a member of, adheres to, complies with, is certified by, or otherwise participates in, any privacy or security program sponsored by a government entity or third party, (5) the extent to which it otherwise protects the privacy, security, availability, confidentiality, or integrity of Personal Information, or (6) it has received approval or authorization for its claims, products, or services from any government agency.

Part II prohibits Vitagene from disclosing Health Information to any Third Party (as defined in the order) unless the company obtains the Affirmative Express Consent (as also defined in the order) of the individual who is identifiable by the Health Information. Part III requires Vitagene to instruct any laboratory that collected physical DNA samples pursuant to a contract with Vitagene to destroy any such sample that the laboratory retained for more than 180 days after Vitagene accepted the results of the analysis of the sample.

Part IV requires Vitagene to establish, implement, and maintain a comprehensive information security program that protects the security, confidentiality, and integrity of Personal Information. Part V requires Vitagene to obtain initial and biennial data security assessments from a third-party assessor for twenty years. Part VI requires Vitagene to disclose all material facts to the assessor and prohibits Vitagene from misrepresenting any fact material to the assessments required by Part V.

Part VII requires Vitagene to submit to the Commission an annual certification that Vitagene has implemented the requirements of the Order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission. Part VIII requires Vitagene to submit a report to the Commission if it discovers any Covered Incident (as defined in the order).

Part IX requires Vitagene to pay $75,000 in monetary relief. Part X provides that the Commission may use Vitagene's monetary relief payment to provide, and pay expenses related to the administration of, consumer redress. Part XI requires Vitagene to provide the Commission customer information to enable the Commission to efficiently administer consumer redress.

Parts XII–XV are reporting and compliance provisions. Part XII requires Vitagene to acknowledge receipt of the order and distribute it to persons with responsibilities relating to the subject matter of the order. Part XIII requires Vitagene to submit an initial compliance report to the Commission and notify the Commission of changes in Vitagene's corporate status. Part XIV requires Vitagene to create and retain certain documents relating to its compliance

with the order. Part XV requires that Vitagene provide the Commission additional information or compliance reports, as requested. Part XVI states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–13329 Filed 6–22–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2204]

Formal Dispute Resolution and Administrative Hearings of Final Administrative Orders Under Section 505G of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Formal Dispute Resolution and Administrative Hearings of Final Administrative Orders Under Section 505G of the Federal Food, Drug, and Cosmetic Act.'' This draft guidance provides recommendations for industry and review staff on the formal dispute resolution and administrative hearings procedures for resolving scientific and/or medical disputes between the Center for Drug Evaluation and Research (CDER) and requestors and sponsors of drugs that will be subject to a final administrative order (final order) under section 505G of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the draft guidance by August 22, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–2204 for ''Formal Dispute Resolution and Administrative Hearings of Final Administrative Orders Under Section 505G of the Federal Food, Drug, and Cosmetic Act.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jung Lee, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5494, Silver Spring, MD 20993, 301–796–3599.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Formal Dispute Resolution and Administrative Hearings of Final

Administrative Orders Under Section 505G of the Federal Food, Drug, and Cosmetic Act.'' This draft guidance provides recommendations for industry and review staff on the formal dispute resolution and administrative hearings procedures for resolving scientific and/or medical disputes between CDER and requestors [1] and sponsors [2] of drugs that will be subject to a final order under section 505G of the FD&C Act (21 U.S.C. 355h).

Section 505G of the FD&C Act was added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136), which was enacted on March 27, 2020. After FDA issues a final order in accordance with section 505G(b)(2) of the FD&C Act, FDA must afford eligible requestors or sponsors the opportunity for formal dispute resolution (FDR) and hearings on disputes over the final order. This draft guidance describes the FDR procedures for eligible requestors or sponsors that wish to appeal a scientific and/or medical issue related to a final order. This draft guidance also outlines the procedures for an administrative hearing related to a final order. Finally, as required by section 505G(l)(4) of the FD&C Act, this draft guidance describes the procedures for consolidated proceedings for FDR and hearings to resolve the scientific and/or medical disputes.

In support of the CARES Act, FDA agreed to specific performance goals and procedures described in the document ''Over-the-Counter Monograph User Fee Program Performance Goals and Procedures—Fiscal Years 2018–2022,'' commonly referred to as the OMUFA commitment letter (the document can be accessed at *https://www.fda.gov/media/106407/download,* and the document with updated goal dates for fiscal years 2021–2025 can be accessed at *https://www.fda.gov/media/146283/download*). The OMUFA commitment letter specifies that FDA will revise the guidance for industry and review staff entitled ''Formal Dispute Resolution: Sponsor Appeals Above the Division Level'' (existing FDR guidance), available at *https://www.fda.gov/media/126910/download,* to include circumstances and procedures under which FDR may be used with respect to final orders under section 505G of the FD&C Act. In addition, consistent with the statutory requirement under 505G(l)(4), the OMUFA commitment letter explains that FDA will issue guidance on its views regarding best practices for consolidated proceedings for appeals.

For administrative efficiency, rather than amend the existing FDR guidance to include FDR procedures for final orders and issue a separate guidance for consolidated proceedings for appeals, FDA is issuing this single draft guidance. This draft guidance addresses the process for resolving scientific and/or medical disputes of final orders, including FDR, administrative hearings, and consolidated proceedings. FDA has incorporated recommendations from the existing FDR guidance as appropriate.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Formal Dispute Resolution and Administrative Hearings of Final Administrative Orders Under Section 505G of the Federal Food, Drug, and Cosmetic Act.'' 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

Under section 505G(o) of the FD&C Act, the Paperwork Reduction Act of 1995 does not apply to collections of information made under section 505G of the FD&C Act. The information collections made in this guidance implement the provisions of the following subsections of 505G:

(1) Section 505G(l)(4), which requires FDA to issue guidance that specifies the consolidated proceedings for appeal and the procedures for such proceedings where appropriate;

(2) Section 505G(b)(2)(A)(iv)(III), which requires that FDA afford requesters of drugs that will be subject to final administrative orders the opportunity for formal dispute resolution up to the level of the Director of CDER;

(3) Section 505G(b)(3) and section 505G(b)(4)(E), which allow persons who participated in each stage of FDR with respect to a drug to request a hearing concerning a final administrative order with respect to such drug. Under Section 505G(b)(3)(C)(ii), a single hearing may be conducted if more than one request is submitted with respect to the same administrative order; and

(4) Section 505G(j), which requires that all submissions must be in electronic format.

Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) is not required for these collections of information.

In addition, this guidance does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information for OTC monograph products, OTC monograph order requests, and the OTC Monograph User Fee Program have been approved under OMB control number 0910–0340.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: June 16, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–13331 Filed 6–22–23; 8:45 am]

BILLING CODE 4164–01–P

[1] Requestor is defined in section 505G(q)(3) of the FD&C Act as any person or group of persons marketing, manufacturing, processing, or developing a drug.

[2] Sponsor is defined in section 505G(q)(2) of the FD&C Act as any person marketing, manufacturing, or processing a drug that is listed pursuant to section 510(j) of the FD&C Act and is or will be subject to an administrative order under section 505G of the FD&C Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1727]

Advisory Committee; Medical Imaging Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Medical Imaging Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Medical Imaging Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the May 18, 2025, expiration date.

DATES: Authority for the Medical Imaging Drugs Advisory Committee will expire on May 18, 2025, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *MIDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Medical Imaging Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of 12 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of nuclear medicine, radiology, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/medical-imaging-drugs-advisory-committee/medical-imaging-drugs-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 16, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–13330 Filed 6–22–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Non-Federal Funds Reported by State/Jurisdiction Awardees on the Maternal, Infant, and Early Childhood Home Visiting Program for the Purposes of Meeting Maintenance of Effort Requirements (2019 and 2021)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: HRSA announces the publication of the amount of non-Federal funds each Maternal, Infant, and Early Childhood Home Visiting Program state/jurisdiction awardee has reported expending for fiscal years (FY) 2019 and 2021 for the purposes of meeting maintenance of effort requirements under this provision.

FOR FURTHER INFORMATION CONTACT: Nate Stritzinger, Policy Analyst, Division of Home Visiting and Early Childhood Systems, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: (301) 443–8590; email: *nstritzinger@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The MIECHV Program, authorized by section 511 of the Social Security Act, 42 U.S.C. 711, as amended by The Jackie Walorski Maternal and Child Home Visiting Reauthorization Act of 2022 (Section 6101 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328)), is administered by HRSA in partnership with the Administration for Children and Families. Under section 511(f)(2) of the Social Security Act (42 U.S.C. 711(f)(2)), HRSA is required to publish the amount of non-federal funds each state/jurisdiction awardee has reported expending to satisfy the maintenance of effort (MOE) requirement for FY 2019 and 2021 no later than June 30, 2023. These amounts are listed in Table 1. For the Secretary to make an award to an eligible state or jurisdiction, that entity must meet the MOE requirement outlined in authorizing statute. To meet this requirement, beginning in FY 2023 the total amount of non-federal funds obligated by the eligible entity in the state or jurisdiction in the fiscal year for a MIECHV Program must not be less than the total amount of non-federal funds reported to have been expended by any eligible entity on evidence-based home visiting and home visiting initiatives for such a program in the state in FY 2019 or 2021, whichever is the lesser.

TABLE 1—MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING PROGRAM: NON-FEDERAL FUNDS REPORTED BY STATE/JURISDICTION TO SATISFY MOE REQUIREMENT FOR FY 2019 AND FY 2021

State/jurisdiction	Awardee name	FY 2019 MOE amt.	FY 2021 MOE amt.
Alaska	Alaska Department of Health and Social Services	$0.00	$0.00
Alabama	Alabama Department of Early Childhood Education	0.00	0.00
Arkansas	Arkansas Department of Health	0.00	0.00
American Samoa	American Samoa—Department of Health	0.00	0.00
Arizona	Arizona Department of Health Services	0.00	0.00
California	California Department of Public Health	1,879,834	11,948,600.00
Colorado	Colorado Department of Human Services	5,521,422.00	5,208,778.00
Connecticut	Connecticut Office of Early Childhood	10,217,642	10,278,822
District of Columbia	Government of the District of Columbia	707,808.76	635,825.88

TABLE 1—MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING PROGRAM: NON-FEDERAL FUNDS REPORTED BY STATE/JURISDICTION TO SATISFY MOE REQUIREMENT FOR FY 2019 AND FY 2021—Continued

State/jurisdiction	Awardee name	FY 2019 MOE amt.	FY 2021 MOE amt.
Delaware	Executive Office of the Governor of Delaware	1,219,950.00	1,704,950.00
Florida	Florida Association of Healthy Start Coalitions, Inc	0.00	0.00
Georgia	Georgia Department of Public Health	0.00	0.00
Guam	Government of Guam—Department of Administration	0.00	0.00
Hawaii	State of Hawaii Department of Public Health	3,000,000.00	2,024,999.98
Iowa	Iowa Department of Public Health	734,841.00	734,000.00
Idaho	Idaho Department of Health and Welfare	0.00	0.00
Illinois	Illinois Department of Human Services	15,957,767.10	16,172,116.69
Indiana	Indiana State Department of Health	0.00	0.00
Kansas	Kansas Department of Health and Environment	0.00	0.00
Kentucky	Kentucky Cabinet for Health and Family Services	5,914,517.37	5,302,748.42
Louisiana	Louisiana Department of Health and Hospitals	2,600,000.00	2,600,000.00
Massachusetts	Massachusetts Department of Public Health	0.00	0.00
Maryland	Maryland Department of Health and Mental Hygiene	0.00	0.00
Maine	Maine Department of Health and Human Services	2,000,000.00	2,000,000.00
Michigan	Michigan Department of Health and Human Services	5,282,724.00	5,682,692.00
Minnesota	Minnesota Department of Health	6,386,100.25	14,692,443.38
Missouri	Missouri Department of Elementary and Secondary Education	0.00	0.00
Mariana Islands	Commonwealth Healthcare Corporation	0.00	0.00
Mississippi	Mississippi State Department of Health	0.00	0.00
Montana	Montana Department of Public Health and Human Services	112,255.12	139,171.16
North Carolina	North Carolina Department of Health and Human Services	0.00	0.00
North Dakota	Prevent Child Abuse North Dakota	0.00	0.00
Nebraska	Nebraska Department of Health and Human Services	1,081,807.30	952,193.13
New Hampshire	New Hampshire Department of Health and Human Services	0.00	0.00
New Jersey	New Jersey Department of Health	0.00	0.00
New Mexico	New Mexico Department of Children, Youth and Families	0.00	2,275,378.00
Nevada	Nevada Department of Health and Human Services	0.00	28,000.00
New York	New York Department of Health	2,536,808.19	2,627,455.95
Ohio	Ohio Department of Health	19,392,880.00	31,407,409.00
Oklahoma	Oklahoma State Department of Health	0.00	0.00
Oregon	Oregon Department of Human Services	0.00	0.00
Pennsylvania	Pennsylvania Department of Human Services	0.00	0.00
Puerto Rico	Puerto Rico Department of Health	0.00	0.00
Rhode Island	Rhode Island Department of Health	0.00	0.00
South Carolina	The Children's Trust Fund of South Carolina	0.00	0.00
South Dakota	South Dakota Department of Health	0.00	203,581.14
Tennessee	Tennessee Department of Health	345,000.00	345,000.00
Texas	Texas Department of Family Protective Services	4,034,177.00	3,753,104.00
Utah	Utah Department of Health	0.00	0.00
Virginia	Virginia Department of Health	0.00	0.00
Virgin Islands	Virgin Islands Department of Health Group	0.00	0.00
Vermont	Vermont Agency of Human Services	0.00	0.00
Washington	Washington State Department of Early Learning	3,709,666.00	5,962,416.00
Wisconsin	Wisconsin Department of Children and Families	985,700.00	1,985,700.00
West Virginia	West Virginia Department of Health and Human Resources	982,065.00	978,076.00
Wyoming	Wyoming Department of Family Services	0.00	0.00

Carole Johnson,

Administrator.

[FR Doc. 2023–13357 Filed 6–22–23; 8:45 am]

BILLING CODE 4165–15–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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Implementation Research on Noncommunicable Disease Risk Factors Among Low- and Middle-Income Country and Tribal Populations Living in Urban Environments.

Date: July 18–19, 2023.

Time: 9:00 a.m. to 5:00 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: Lauren Susan Penney, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–1968, *penneyls@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Craniofacial and Skeletal Biology, Diseases and Regeneration.

Date: July 19, 2023.

Time: 10:00 a.m. to 6:00 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: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–23–005: NIH Research Evaluation and Commercialization Hubs (REACH) Awards (U01).
Date: July 19–20, 2023.
Time: 10:00 a.m. to 6:00 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: Allen B. Richon, Ph.D., BS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, (240) 760–0517, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology and Infectious Diseases A.
Date: July 19–20, 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: Deanna C. Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4005, *deanna.bublitz@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory, Sensory and Cognitive Neuroscience.
Date: July 19, 2023.
Time: 11:00 a.m. to 5:00 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: Alena Valeryevna Savonenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 594–3444, *savonenkoa2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Biology.
Date: July 19, 2023.
Time: 11:00 a.m. to 6:00 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: Robert O'Hagan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 909–6378, *ohaganr2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Drug Discovery and Diagnostics for Infectious Diseases.
Date: July 19, 2023.
Time: 1:00 p.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: Haruhiko Murata, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3245, *muratah@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of the Fetal Immune System.
Date: July 19, 2023.
Time: 12:00 p.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: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Language, Communication, Speech and Motor Control.
Date: July 19, 2023.
Time: 12:30 p.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: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.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: June 16, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13321 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI) on NIDCD's Research Directions To Support Communication in Minimally Verbal/Non-Speaking People

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The National Institute on Deafness and Other Communication Disorders (NIDCD) asks for input on research directions to support communication in minimally verbal/non-speaking people. NIDCD invites anyone with interests in communication in minimally verbal/non-speaking people to provide input from a personal, service delivery, or research view. Responses to this RFI will be used for planning purposes. The NIDCD will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission.

DATES: The NIDCD's RFI is open for public comment until 11:59:59 p.m. (ET) on August 1, 2023. After the public comment period has closed, the comments received by NIDCD will be considered in a timely manner.

ADDRESSES: All responses to this RFI must be submitted at *https://www.nidcd.nih.gov/nidcd-minimally-verbal-rfi* by August 1, 2023.

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to Holly Storkel, National Institute on Deafness and Other Communication Disorders, *NIDCDMinVerbRFI@nidcd.nih.gov,* 301–451–6842.

SUPPLEMENTARY INFORMATION: This RFI is in accordance with 42 U.S.C. 285 of the Public Health Service Act, as amended. The NIDCD held a virtual workshop (*https://www.nidcd.nih.gov/news/events/minimally-verbalnon-speaking-individuals-autism-research-directions-interventions*) on January 24–25, 2023. This workshop focused on new research needed to support communication by minimally verbal/non-speaking autistic people. The workshop produced many themes for further research for these individuals including:

- increasing community engagement in research
- improving technology
- exploring the range of communication skills and needs
- using different research approaches to personalize interventions

- expanding the range of skills and outcomes that interventions focus on to improve communication
- expanding the range of evaluation and outcome measures that can reliably assess individual needs

NIDCD now seeks to understand the broader needs and priorities of:

- the larger community of minimally verbal/non-speaking people (including and beyond autistic people)
- professionals and others who support minimally verbal/non-speaking people
- researchers focusing on communication in minimally verbal/non-speaking people
- any other interested party

NIDCD is interested in receiving comments on any or all of the following questions:

1. What are the biggest communication needs for minimally verbal/non-speaking people?

2. What are the greatest roadblocks to supporting and improving communication for minimally verbal/non-speaking people?

3. What are the highest priority research targets to advance communication for minimally verbal/non-speaking individuals?

4. What are the best ways to increase partnerships between researchers and minimally verbal/non-speaking people to guide research projects?

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal Government. The Federal Government will not pay for the preparation of any information submitted or for the Government's use. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Debara L. Tucci,

Director, National Institute on Deafness and Other Communication Disorders, National Institutes of Health.

[FR Doc. 2023–13354 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Mentored Career Development Award Applications (K08/K23) and Conference Grant Applications (R13).

Date: July 18, 2023.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Drive, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 16, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13323 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: July 13–14, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marta V. Hamity, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *marta.hamity@nih.gov.*

Contact Person: Shekher Mohan, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *shekher.mohan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 16, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13322 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; HEAL Initiative: Development and Validation of Non-Rodent Mammalian Models of Pain.

Date: July 11, 2023.

Time: 8:00 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: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 435–1042, *jennifer.kielczewski@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nucleic Acid Therapeutic Delivery (NATD).

Date: July 11, 2023.

Time: 10:00 a.m. to 6:00 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: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, *jingwu.xie@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Aging, Cognition, and Neurodegenerative Diseases.

Date: July 11, 2023.

Time: 10:00 a.m. to 5:00 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: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, *todd.white@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry, Biochemistry and Biophysics Fellowship panel.

Date: July 11–12, 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: Dennis Pantazatos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2381, *dennis.pantazatos@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopaedic and Rehabilitation Sciences.

Date: July 11–12, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS–22–034: HEAL initiative.

Date: July 11, 2023.

Time: 12:00 p.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: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, *annie-sophie.wattiez@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapy, Radiation Biology and Nanoparticle Based Therapeutics (RTBN) SBIR/STTR SEP.

Date: July 12, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel. 8120 Wisconsin Avenue. Bethesda, MD 20814.

Contact Person: Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, *jennifer.sanders@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Microbial Diagnostics, Detection and Decontamination.

Date: July 12–13, 2023.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Velasco Cimica, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Conflicts in Hepatology, Pharmacology and Toxicology.

Date: July 12, 2023.

Time: 9:30 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: Frederique Yiannikouris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3313, *frederique.yiannikouris@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Anti-Infective Therapeutics.

Date: July 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: Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, *marcus.ferrone@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: June 16, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13320 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting at the following link: (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: August 31, 2023.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31/6C Rm. A/B, Bethesda, MD 20892.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: September 1, 2023.

Open: 8:00 a.m. to 4:30 p.m.

Agenda: Opening Remarks, Administrative Matters, Director's Report, Presentations, and Other Business of the Council.

Place: National Institutes of Health, 31 Center Drive, Building 31/6C Rm. A/B, Bethesda, MD 20892.

Contact Person: Paul Cotton, Ph.D., RDN, Director, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–402–1366, *paul.cotton@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: NIMHD: *https://www.nimhd.nih.gov/about/advisory-council/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: June 16, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13324 Filed 6–22–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0006; OMB No. 1660–0004]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Application for Participation in the National Flood Insurance Program (NFIP)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the collection of information under which communities submit information to FEMA for application and continued participation in the National Flood Insurance Program (NFIP).

DATES: Comments must be submitted on or before July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Adrienne L. Sheldon, Supervisory Emergency Management Specialist, Floodplain Management Division at *adriennel.sheldon@fema.dhs.gov* or (202) 212–3966.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), codified at 42 U.S.C. 4001, *et seq.,* requires all flood prone communities throughout the country to apply for participation in the NFIP one year after their flood prone status is identified. If a community does not participate in the NFIP they are not eligible for certain types of Federal and federally-related financial assistance in their floodplains. 44 CFR 59.2 authorizes previously unavailable flood insurance protection to property owners in flood-prone areas and identifies the information that communities are required to submit to FEMA for application into the NFIP. 44 CFR 59.22 and 59.24 identifies the information a community is required to submit to FEMA for continued participation in the program. This collection has been updated to account for the burden hours associated with the applicant's time to collect information as part of the community development permit process. To qualify for the NFIP, a participating community must adopt certain minimum standards in accordance with FEMA's regulations at 44 CFR 60.3, 60.4, and 60.5. To verify whether communities maintain such standards, the NFIP requires participating communities to retain documentation on development taking place in the flood hazard areas within the community. 44 CFR 59.22. Such information will be made available to FEMA upon request. This information assists FEMA in evaluating the effectiveness of a community's floodplain management program and participating property owners' eligibility for flood insurance. In the past the NFIP application did not account for burden hours associated with this collection of information.

The ''Application for Participation in the NFIP'' and the ''NFIP and the Community Development Permit Process'' are separate actions documented under the same collection. This proposed information collection previously published in the **Federal Register** on March 22, 2023, at 88 FR 17241 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Application for Participation in the National Flood Insurance Program (NFIP).

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0004.

FEMA Forms: FEMA Form FF–206–FY–22–160 (formerly 086–0–30), Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program (NFIP) provides flood insurance to the communities that apply for participation and make a commitment to protect against future flood damages. The application form and supporting documentation will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents in communities.

Affected Public: State, local or Tribal government.

Number of Respondents: 22,660.

Number of Responses: 90,460.

Estimated Total Annual Burden Hours: 271,440.

Estimated Total Annual Respondent Cost: $25,813,944.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $110,446.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption

above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–13383 Filed 6–22–23; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0020]

Agency Information Collection Activities: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), 1601–0029

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until August 22, 2023. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2023–0020, at:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2023–0020. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards'' which clearly define his vision that the Federal agencies will put the people first. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Section 1(b) of Executive Order 12862 requires government agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services'' and Section 1(e) requires agencies ''survey front-line employees on barriers to, and ideas for, matching the best in business.''

On March 30, 2016, President Obama established the Core Federal Services Council, which again emphasized the need to deliver world-class customer service to the American people. The Council, composed of the major high-volume, high-impact Federal programs that provide transactional services directly to the public, were encouraged ''to improve the customer experience by using public and private sector management best practices, such as conducting self-assessments and journey mapping, collecting transactional feedback data, and sharing such data with frontline and other staff.''

In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. Excellent service was established as a core component of the mission, service, stewardship model that frames the entire PMA, embedding a customer-focused approach in all of the PMA's initiatives. This model was also included in the 2018 update of the Federal Performance Framework in Circular A–11, ensuring 'excellent service' as a focus in future agency strategic planning efforts. The PMA included a CAP Goal on Improving Customer Experience with Federal Services, with a primary strategy to drive improvements within 25 of the nation's highest impact programs. This effort is supported by an interagency team and guidance in Circular A–11 requiring the collection of customer feedback data and increasing the use of industry best practices to conduct customer research.

These Presidential actions and requirements establish an ongoing process of collecting customer insights and using them to improve services. This new request will enable the Department of Homeland Security (hereafter ''the Agency'') to act in accordance with OMB Circular A–11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery, and increase accountability by communicating about these efforts with the public

The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify services' accessibility, navigation, and use by customers, and make improvements in service delivery based on customer insights gathered through developing an understanding of the user experience interacting with Government.

For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor.

''Service delivery'' or ''services'' refers to the multitude of diverse interactions between a customer and Federal agency such as applying for a benefit or loan, receiving a service such as healthcare or small business counseling, requesting a document such as a passport or social security card, complying with a rule or regulation such as filing taxes or declaring goods, utilizing resources such as a park or historical site, or seeking information such as public health or consumer protection notices.

Under this request, three types of activities will be conducted to generate customer insights:

Customer Research (E.g., User Persona and Journey Map Development): A critical first component of understanding customer experience is to develop customer personas and journey maps. This process enables the Agency to more deeply understand the customer segments they serve and to organize the processes customers interact with throughout their engagement with the Federal entity to accomplish a task or meet a need. In order to adequately capture the perspective of the customer and the barriers or supports that exist as they navigate these journeys, it is necessary to directly interact with customers rather than relying solely upon the Agency's stated policy of how a process should work or employees' interpretation of how services are delivered. This can occur through a variety of information collection

mechanisms that include focus groups, individual intercept interviews at a service site, shadowing a user as they navigate a Federal service and documenting their reactions and frustrations, customer free-response comment cards, or informal small discussion groups.

Regardless of the format, the Agency will apply Human Centered Design (HCD) Discovery methods to generate personas and journey maps, ultimately identifying customer insights. An approach to recruiting participants, resources for preparing and structuring interviews, and a consent form for interviewees can be found at *https://www.gsa.gov/cdnstatic/HCD-Discovery-Guide-Interagency-v12-1.pdf.* This document is also included in the package.

Insights documented, summarized and presented in customer personas and journey maps can then be shared across the program, the Agency, other Federal, State, and Local government stakeholders and even with the public to validate and discuss common themes identified. These products can be used as ''indicator lights'' for where more rigorous qualitative and quantitative research can be conducted to improve Federal service delivery.

Publicly shared personas and journey maps will include language that qualifies their use (see question #16), and high-level, non-identifying descriptive statistics of the population(s) interviewed to develop it (ex. ''25 Service members that transitioned to civilian employment within the last decade, 14 female, 11 male, 21 enlisted and 4 officers) to ensure that the perspective represented is understood. Quotes or insights will never be associated with an actual individual unless they have signed a release form (see link above for template) and this was included in the specific collection request.

Customer Feedback (Satisfaction Survey): Surveys to be considered under this generic clearance will only include those surveys modeled on the OMB Circular A–11 CX Feedback survey to improve customer service by collecting feedback at a specific point during a customer journey. This could include upon submitting a form online on a Federal website, speaking with a call center representative, paying off a loan, or visiting a Federal service center.

In an effort to develop comparable, government-wide scores that will enable cross-agency or industry benchmarking (when relevant) and a general indication of an agency's overall customer satisfaction, OMB Circular A–11 Section 280 requires high impact services to measure their touchpoint/transactional performance in as a real-time manner as possible, with respect to satisfaction and confidence/trust using the following questions, without modification. Responses will typically be assessed on a 5-point Likert scale (1 (strongly disagree) to 5 (strongly agree)). These questions align to drivers of experience developed in consultation with leading organizations in customer experience both in the private sector and industry groups that study the most critical drivers of customer experience.

- 5 point Likert scale: *I am satisfied with the service I received from [Program/Service name].*
- 5 point Likert scale: *This interaction increased my confidence in [Program/Service name].* OR *I trust [Agency/Program/Service name] to fulfill our country's commitment to [relevant population].*
- Free response: *Any additional feedback on your scores above?*
- 5 point Likert scale: *My need was addressed* OR *My issue was resolved.* OR *I found what I was looking for.*
- 5 point Likert scale: *It was easy to complete what I needed to do.*
- 5 point Likert scale: *It took a reasonable amount of time to do what I needed to do.*
- 5 point Likert scale: *I was treated fairly.*
- 5 point Likert scale: *Employees I interacted with were helpful.*
- Free response: *Any additional feedback for [Program/Service name]?*

The surveys shall include no more than 15 questions in total. The Agency may add a few additional questions to those listed above to clarify type of service received, inquiry type, service center location, or other program-specific questions that can help program managers to filter and make use of the feedback data.

As part of the Customer Experience CAP goal's strategy to increase transparency to drive accountability, the feedback data collected through the A–11 Standard Feedback survey is meant to be shared with the public. This collection is part of the government-wide effort to embed standardized customer metrics within high-impact programs to create government-wide performance dashboards. Data collected from the questions listed above will be submitted by the Agency to OMB at a minimum quarterly for updating of customer experience dashboards on *performance.gov.* This dashboard will also include the total volume of customers that passed through the transaction point at which the survey was offered, the number of customers the survey was presented to, the number of responses, and the mode of presentation and response (online survey, in-person, post-call touchtone, mobile, email). This will help to qualify the data's representation by showing both the response rate and total number of actual responses.

User Testing of Services and Digital Products: Agencies should continually review, update and refine their service delivery, including communication materials, processes, supporting reference materials, and digital products associated with a Federal program. This often requires ''field testing'' program informational materials, process updates, forms, or digital products (such as websites or mobile applications) by interacting with past, existing, or future customers and soliciting feedback. These activities can include cognitive laboratory studies, such as those used to refine questions on a program form to ensure clarity, demo kiosks at a service center where customers can provide informal feedback while waiting for a service, or more formally scheduled in-person observation testing (*e.g.,* website or software usability tests). These information collection activities are more specific than broad customer research and related to a particular artifact/product of a Federal program. As such, there will be a more structured interview/set of questions than more open-ended customer research. Findings from these activities are meant to support the design and implementation of Federal program services and digital products, and may only be shared in an anonymized/in aggregate if a particular insight is useful to include as part of a customer persona, journey map, or common lesson learned for improving service delivery.

The Agency will only submit under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes;

• Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov*. Additionally, summaries of customer research and user testing activities may be included in public-facing customer journey maps and summaries.

• Additional release of data must be done coordinated with OMB.

This clearance will help the Agency to establish a process where customer experience is regularly monitored and measured. The results will assist the Agency in the planning and decision-making processes to improve the quality of the Agency's products and services.

Results from feedback activities and surveys will be used to measure against established baseline standards and for measuring the Agency's progress toward defined goals.

There are neither legal nor technical obstacles to the use of technology in these information collection activities. The determination to use technology, and which technology to use, will be based on the type of information collected and the utility and the availability of specific technology to each respondent in a proposed customer research activity or feedback survey.

The information collected in these surveys will represent the minimum burden necessary to evaluate customer experience with the Agency's programs and processes. The Agency will minimize the burden on respondents by sampling as appropriate, asking for readily available information, and using short, easy-to-complete information collection instruments.

Without regular mechanisms for collecting and generating customer insights, the Agency is not able to provide the public with the highest level of service. These activities will be coordinated to ensure that most individual respondents will not be asked to respond to more than one survey instrument per transaction or to participate in more than one qualitative feedback or testing activity.

Activity and survey instructions will provide all necessary assurances of confidentiality to the respondents. Although there is no requirement for such an assurance in statute, the quality of this type of information requires respondent candor and anonymity.

There are no changes to the burden or information being collected.

The Office of Management and Budget is particularly interested in comments which:

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; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Number: 1601–0029.

Frequency: Annually.

Affected Public: Individuals or Household.

Number of Respondents: 2,001,500.

Total Burden Hours: 101,125.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2023–13311 Filed 6–22–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0100]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Request for the Return of Original Documents

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 22, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0100 in the body of the letter, the agency name and Docket ID USCIS–2008–0010. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0010.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0010 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Documents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–884; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form standardizes the USCIS procedures for requesting the return of original documents contained in alien files. The information provided will be used by the USCIS to determine whether a person is eligible to obtain original documents contained in an alien file.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–884 is 6,600 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,300 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $808,500.

Dated: June 16, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–13367 Filed 6–22–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6401–N–01]

Proposed Changes to the Methodology Used for Calculating Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed changes for calculating Fair Market Rents (FMRs).

SUMMARY: The United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to serve as rent ceilings for rental units in both the HOME Investment Partnerships Program and the Emergency Solutions Grants Program and a primary rent standard option for the Housing for Opportunities for Persons With AIDS (HOPWA) program. HUD also uses FMRs in the calculation of maximum award amounts for Continuum of Care grantees and in the calculation of flat rents for Public Housing units. To better determine payment standards and related parameters for HUD programs, HUD proposes changes in how FMRs are calculated in this notice and seeks public comment on the proposed changes. This notice also responds to public comments that were submitted on the publication of Fiscal Year 2023 FMRs.

DATES: *Comment Due Date:* July 24, 2023.

ADDRESSES: HUD invites interested persons to submit comments regarding the proposed changes to the calculation of the FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*. Copies of all comments submitted are available for inspection and

downloading at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to Adam Bibler, Director, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410, telephone number (202)-402–6057; or via email at *pprd@hud.gov*. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html*. **Federal Register** notices also are available electronically from *https://www.federalregister.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, the primary rent standard for the HOPWA program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that a tenant would need to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rent [1] paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

II. Response to Comments on FY 2023 FMRs

On September 1, 2022, HUD published a notice in the **Federal Register**, at 86 FR 53761 entitled ''Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2023.'' [2] This notice announced the availability of FY 2023 Fair Market Rents (FMRs), described the methods used to calculate the FY 2023 FMRs, responded to comments submitted on proposed changes to the methodology for calculating FMRs, and detailed how Public Housing Agencies (PHAs) and other interested parties could request reevaluation of their FMRs. The public comment period for the September 1, 2022, notice closed on October 3, 2022, and HUD received 16 distinct comments relating to the notice. The comments were from PHAs, community development agencies, and individuals.

General Support for the FY2023 FMRs

Some commenters generally supported the proposed 2023 FMRs. A commenter said they supported HUD's decision to change its methodology by introducing private sector rental data into the FMR calculation process to obtain more accurate gross rents. This commenter stated that calculating the FY2023 FMRs with the methodological change can ensure that FMRs accurately reflect recent steep rent increases in many communities and will make it easier for households in those communities to use their vouchers to rent affordable homes. Another commenter stated that the new methodology closely aligns with the aggregate rental housing market behavior.

HUD Response: HUD appreciates the supportive comments.

Insufficient or Decreasing FMRs Impose Hardships

Commenters expressed their concerns about rising rents. Many commenters expressed that recipients of Housing Choice Vouchers are facing decreasing success rates in finding housing at the current FMR rates due to steep rent increases. Some commenters stated that the gaps between the FMR and market rates are making it harder for assisted families to find affordable housing because FMRs fail to reflect actual rent prices and, as a result, more voucher holders are priced out of local rental housing inventories.

Some commenters said that in 2022 some of their FMRs went down, but prices in general are rising, including the cost of utilities. One commenter said in 2022 they had to obtain permission from HUD to raise their payment standard to 120 percent of the FMR to get landlords to consider accepting vouchers and that they are unable to come close to the market rents that landlords are currently getting. Another commenter said that even though the proposed FMR for their area is higher than the 2022 FMR, the increase appears to lag behind local conditions, driven by landlords who are raising rents to make up for their inability to do so throughout the pandemic. A different commenter said that between 2021 and 2022, for an aggregate national two-bedroom, FMRs lost ground to local markets by eight percentage points. This commenter further expressed that if local 2023 FMRs kept pace with local market rates of change in 2022, those FMRs would remain below rents in their respective markets by a national average of eight percentage points that accrued in 2021.

HUD Response: HUD understands the concerns noted by the commenters and the impact of steadily rising rent prices on everyday Americans. By regulation, HUD targets the 40th percentile of rents within each market. HUD agrees that measuring an accurate rate of rental inflation for recent mover rents is very important. In this Notice, HUD is proposing to use private sources of rent data in calculating the shelter rent inflation rate as described below. HUD is committed to addressing all aspects of the program's operation, including FMR calculation.

FMR Calculation Suggestions

Some commenters recommended that HUD continue its use of private sector rental data in subsequent FMR calculations in the future. Commenters also suggested additional transparency about the use of private data sources when calculating the gross rent inflation adjustment factors. These commenters specifically recommended that HUD publish reports documenting FY2023 FMRs that were adjusted using private sector rental data as well as the geographies and the prior inflation adjustment where the private data are

[1] HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards as defined at 24 CFR 982.503(e) (estimates available at: *https://www.huduser.gov/portal/datasets/50per.html*).

[2] See FR–6334–N–01, *https://www.federalregister.gov/documents/2022/07/13/2022-14913/proposed-changes-to-the-methodology-used-for-calculating-fair-market-rents*.

used. Additionally, these commenters recommended that HUD evaluate the accuracy of private sector rental data by comparing them to future American Community Survey (ACS) data to gauge the accuracy of the inflationary factors and trending methodology.

Another commenter suggested that HUD use the approach outlined in PIH Notice 2022–30 as a template to determine eligible FMR areas, while using private-market rental data to quickly identify rapidly changing rental markets on a rolling-basis throughout the year, as opposed to identifying one fixed point in time for the entire year.

One commenter said that the average person cannot understand HUD's methodology for calculating rent and that rents should be based on advertised housing prices. Another commenter stated that the FMR does not consider actual rent prices and requested that HUD abandon their current FMR calculation method. The commenter suggested that HUD calculate FMRs by utilizing the average of the rent posted in the local newspaper for the last two years and adjust that number up for low availability of rental units and stop excluding new construction from the FMR, which makes the voucher number artificially low.

HUD Response: Transparency is important to HUD. The Department maintains an online lookup tool that allows interested parties to view the calculation steps that HUD uses to determine each area's FMR. This includes viewing the shelter inflation rate calculated from private sources of rent data. HUD considers the transparency of each source's methods in evaluating whether to use the data and may make changes from year to year in which sources it uses. HUD also evaluates the data for accuracy, including through retrospective analysis and comparison with other sources of data including the ACS. HUD is committed to tracking the performance of its programs and making changes during the year in response to circumstances, with one significant example of this being PIH Notice 2022–30.

In calculating each area's FMR, HUD uses actual market data on rents paid. Respondents report their actual rent through the ACS. Private sources of rent inflation measure rents directly from properties or through online listing services. These sources are collectively more comprehensive than relying on any single source such as a newspaper.

FMR Payment Standards

Many commenters also supported increasing the payment standard above its current 40th percentile rent limits as a means for voucher holders to access high-opportunity neighborhoods and diminish concentrated poverty. A commenter noted the stringent and cumbersome process for PHAs to apply for success rate payment standards and recommended that HUD reduce the administrative burden imposed on PHAs to meet the stringent requirements considering the uptick of PHAs seeking approval for success rate payment standards. This commenter also suggested that HUD provide PHAs with discretion and flexibility to incorporate the use of 50th percentile rent levels to advance access to a broader range of housing opportunities throughout a metropolitan area. Another commenter suggested that HUD incorporate private-market rental data on a rolling basis for timely or automatic approval of exception payment standards. Another commenter suggested that HUD simplify the process for establishing payment standards between 110 and 120 percent on a permanent basis in recognition of systemic market issues confronting voucher holders.

A commenter encouraged HUD to seek statutory changes to give PHAs additional flexibility in setting payment standards.

HUD Response: HUD extended the period for PHAs to receive expedited waivers of payment standard regulations in PIH Notice 2022–30. This allows for many PHAs to use payment standards of up to 120 percent of FMR in operating the Housing Choice Voucher program through December 31, 2023. HUD will continue monitoring outcomes in the program and determine whether regulatory changes, such as setting the FMR at a higher percentile, publishing FMRs more frequently, or changing success rate payment standard criteria, are appropriate.

Requests for Reevaluations and More Time To Make Requests

Some commenters also objected to HUD's FMR reevaluation process. A commenter stated that HUD's reevaluation process leads to PHAs' maintaining their previous year's FMRs, which tend to be substantially lower than what HUD's proposed FMRs are for the current year. To help PHAs that are in areas with rapidly rising rents, this commenter recommended that HUD allow PHAs or other parties to request that the higher proposed FMRs take effect on the same scheduled effective date as all other FMRs without reevaluations, while the PHA and HUD are undergoing the FMR reevaluation process. Another commenter requested additional funding for FMR reevaluations as rental cost surveys are costly and time-consuming.

A commenter asked that HUD consider extending the January 6, 2023, reevaluation data submission due date to allow sufficient time for localities to conduct a local rent survey in the manner recommended by HUD. This commenter said ordinarily HUD publishes the FMRs in early August, however, this year they were published September 1, but the data due date remained the same. This commenter also stated that the timeframe does not allow for the required procurement processes to obtain an outside survey entity, nor does it really allow for adequate survey time given that mail surveys are now taking anywhere between 2–3 months to allow for printing delays and slowed mail due to staffing and holidays.

A commenter opposed the 2023 FMR as the methodology is not consistent with the demand on rental housing, though that commenter did not expressly request a reevaluation. Another commenter said they were writing to preserve the option to challenge the 2023 FMR for their FMR areas and that they are working on a study that would allow HUD to calculate updated 40th percentile rate calculations.

HUD Response: The deadline of January 6 is intended to allow for revision of FMRs with enough time remaining in the current fiscal year such that the revision is useful and can be taken into account in determining an agency's renewal funding. PHAs may submit data to HUD at any point in the year and are not required to file a comment formally requesting reevaluation of an area's FMR and preventing a new FMR from going into effect in order to submit data. The costs for performing rental market surveys are driven by the market for such services. Congress determines the funding available to PHAs through its annual appropriations and has not allocated specific funds for use in local ad hoc rent surveys. HUD continues to allow the use of administrative fees for such surveys.

Section 8 Voucher Reform Act (SEVRA)

A commenter suggested HUD revise the proposed legislation known as SEVRA, and the commenter noted several concerns regarding HUD's previously proposed FMR statutory amendment including: striking the statutory language from SEVRA requiring HUD to define market areas in areas sufficiently distinct as is necessary to avoid concentration of voucher holders; taking into consideration

factors such as the efficient administration of the program by PHAs and the administrative costs of HUD in establishing additional areas; the availability of data for a sufficient number of dwelling units to establish accurate fair market rentals; and the ability of PHAs to adjust the payment standard to more accurately reflect typical rental costs. This commenter also expressed concern about what the commenter said was HUD's proposed FMR statutory amendment to SEVRA that would remove a requirement for HUD to establish procedures to permit a PHA to request the establishment of separate market areas for either all or contiguous parts of the areas under the jurisdiction of such agency.

HUD Response: HUD's annual calculations of FMRs represent the Department's best estimate of an accurate 40th percentile gross rent for recent movers within each market area. In this notice, HUD proposes modifications to its recent mover and inflation adjustments to improve this accuracy. Since FY 2017 HUD has allowed for the use of Small Area FMRs to allow for a wider range of payment standards within metropolitan market areas. HUD monitors the overall success of the Housing Choice Voucher program and recommends legislative or regulatory changes as circumstances dictate.

III. FMR Calculation Methodology Changes

A. Current Methodology

From FY 2012 to FY 2022, HUD's methodology for calculating FMRs consisted of several steps (see: *https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn* for the calculations underlying each FY 2022 FMR). These steps were retained for FY 2023 FMRs but modified as described below. FY 2024 FMRs are proposed to follow the same multistep process, with further modification described subsequently.

1. *Base Rent.* First, HUD establishes a ''base rent'' for two-bedroom units from the 5-year 40th percentile estimates of gross rent from the ACS.

2. *Recent Mover Adjustments.* HUD then adjusts the base rent using a ''recent mover adjustment factor'' that is based on the ratio of the estimate of gross rent paid by recent movers from the 1-year ACS to the estimate of gross rent paid by all renters from the 5-year ACS for the smallest level of geography containing the FMR area that contains statistically reliable 1-year data.

The results of these two steps are estimates of 40th percentile rents for recent movers in two-bedroom units that are ''as of'' the current ACS year.

3. *Inflation Adjustment.* HUD then accounts for inflation from the ACS year by applying a ''gross rent inflation factor,'' which is calculated from the Consumer Price Index (CPI) as produced by the Bureau of Labor Statistics (BLS).

4. *Trend Factor.* Because it calculates FMRs ahead of each fiscal year, HUD provides a further inflation adjustment in the form of a ''trend factor.'' The trend factor represents the expected future level of the gross rent CPI for the upcoming fiscal year compared to the most recent actual gross rent CPI.

5. *State minimum FMRs.* Additionally, HUD calculates state minimum FMRs based on the median FMR for non-metropolitan portions of each state.

6. Bedroom Ratios. HUD calculates FMRs for unit sizes other than two bedrooms by applying ''bedroom ratios'' calculated from the relationships between rents for units of different sizes according to the 5-year ACS.

7. Limit on Decreases. Finally, HUD does not allow an area's FMR to decline by more than 10 percent.

For FY 2023, HUD implemented several changes to its FMR methodology. This was done in part in response to the Census Bureau's decision not to release ACS 2020 1-year data, which HUD would ordinarily have used in FY 2023. HUD retained ACS 2019 1-year data and inflated those estimates using rent inflation factors to synthesize 2020 recent mover adjustment data. These inflation factors consisted of a weighted average of the CPI rent of primary residence series that HUD has traditionally used in FMR calculation, along with additional measures of rent inflation as produced by several private companies for markets where such data were available. HUD produced similar rent inflation factors calculated from CPI rent of primary residence data and private company rent data for the inflation adjustment through 2021 of the synthesized 2020 recent mover-adjusted rents.

B. Proposed Changes

HUD is proposing two material changes to the calculation of FMRs. The first would be a change in the definition of ''recent mover'' as used in the *recent mover adjustment* described in Section A. The second would be to retain and expand the use of rent inflation factors calculated by private sector sources as was first done for FY 2023 FMRs.

C. Definition of Recent Movers

Because the 2021 ACS was not adversely affected by the COVID–19 pandemic in the way the 2020 ACS data collection was, the Census Bureau has released the usual full spectrum of 2021 ACS 1-year tabulations, and HUD does not need to synthesize recent mover adjustment data as in the FY 2023 FMRs. The discussion of the proposed change to the definition of ''Recent Mover'' below is in the context of restored normal data availability.

Prior to the creation of the American Community Survey, HUD relied in part on data collected through the ''long form'' of the decennial Census. This survey measured gross rents paid as of April 1 each year. HUD's definition of recent mover was a household that had moved into their unit in either the current decennial Census year or the year prior. This meant that the maximum length of time for a household to have lived in its current unit and still be considered a recent mover was 15 months.

When it first used ACS estimates in its FMR calculation, HUD retained the same definition of recent mover as a household that had moved into the unit in either the current ACS year or the year prior. However, unlike the decennial Census, the ACS is conducted throughout the year on a rolling basis. This meant that the maximum length of time for a household to have lived in its current unit and still be considered a recent mover was 23 months (for example, in ACS 2021 data, a household might have taken the survey in December 2021 and moved into their unit in January 2020).

To make its recent mover adjustment as reflective of current market conditions as possible, HUD is proposing to consider the rents of households who moved into their unit only in the current ACS year. For ACS 2021, this means that the maximum length of time for a household to have lived in its current unit and still be considered a recent mover under this definition would be 11 months.

However, restricting the ACS universe to recent movers limits the sample size supporting the resulting estimates, potentially harming the statistical reliability of those estimates. HUD applies two statistical reliability checks to each ACS estimate. First, the estimate must be supported by at least 100 sample cases from the ACS. Second, the estimate must have a margin of error that is smaller than half the estimate itself. HUD would maintain these criteria for the new, single-year definition of recent movers. For areas

without an ACS estimate meeting these criteria, HUD would then check the estimate tabulated from two-year recent movers, following its prior methodology.

D. Using Private Sector Rent Data To Update Rent Estimates

HUD has historically updated the latest ACS-based rent estimates with one year of gross rent inflation measured with the 24 local and 4 regional CPI components rent of primary residence and household fuels and utilities, depending on the location of the FMR area. Unlike the gross rent estimates HUD uses from the ACS, the CPI is produced by measuring the change in rents across all types of renters, ranging from households that have recently moved into their unit to those that have lived in their current unit for many years. Recent research has examined the difference between the overall CPI for shelter rent (overall rent CPI) and an alternative CPI constructed using only survey responses from households that are new tenants (new tenant CPI).[3] The research shows that the two indices tracked closely over the period from 2005 to 2020; however, they diverged significantly since then as rent increases for new tenants outpaced overall rent inflation. The research further shows that the new tenant CPI tracks closely with the reported rent inflation as produced by two companies, CoreLogic and Zillow, despite the differences in scope and methodology among the three sources. Finally, the researchers quantify the difference between the new tenant CPI and the overall rent CPI and find that the overall rent CPI lags rent inflation for new tenants by one year.

HUD has replicated the correlation between the new tenant CPI and private sources using the additional private rent data available to the Department and the results confirm that rent inflation factors derived from these data track the new tenant CPI closely. HUD is completing further analysis to determine if the use of rent inflation factors derived from these private data is the best course of action. Additionally, based on the lagged nature of the overall rent CPI, HUD is considering alternatives to including the CPI rent inflation factor alongside the private inflation factors as it did for FY 2023. One option HUD proposes is to calculate a shelter rent inflation factor consisting only of the average of multiple sources of private rent data. Alternatively, HUD could develop a new adjustment procedure for the CPI rent inflation factor based on private inflation factors. HUD proposes to maintain the FY 2023 requirement that an area must be covered by at least three private sources of rent data to use such an average. The average shelter rent inflation factor would be combined with the CPI fuels and utilities subindex to produce an overall gross rent inflation factor. This factor would be applied to the recent mover-adjusted ACS rent as in the *Inflation Adjustment* described in Section A.

Although the data available to HUD would allow it to produce local inflation factors for a large majority of the country by population, not every area is represented individually in the private rent data. In FY 2023, HUD continued its practice of applying a Census Region based CPI rent inflation factor to these areas. For FY 2024, HUD proposes to use a rental unit weighted average of the private inflation factors for these areas, rather than the CPI rent inflation for the region. This would ensure the rent estimates for these areas are not subject to the bias of the lag associated with the CPI rent as described above. As an example of calculating a weighted average, if a given region contained areas A, B, and C with 4,000; 3,000; and 1,000 rental units respectively, and private inflation factors of 10 percent, 5 percent, and 1 percent, the regional inflation factor would be 10% * 0.5 + 5% * 0.375 + 1% * 0.125 = 7 percent.

E. Aspects of FMR Methodology Not Proposed To Be Changed by This Notice

HUD is not proposing any additional changes to the FMR calculation, meaning it would still use the 5-year ACS data to establish the base rent, and use forecasts of gross rent CPI as the trend factor. Similarly, the ''bedroom ratio'' methodology used to produce FMRs for unit sizes other than two bedrooms would remain unchanged.

F. Small Area Fair Market Rents

HUD calculates FMRs for metropolitan areas, which comprise one or more counties (or towns, in the case of New England), and single, non-metropolitan counties. Within metropolitan areas, HUD also publishes Small Area FMRs, which are delineated by ZIP Code and are required for use in the Housing Choice Voucher program in certain metropolitan areas. The proposed changes to FMR calculation would affect Small Area Fair Market Rents (SAFMRs) as well.

Under its current SAFMR methodology, HUD calculates the SAFMR for areas with a statistically reliable ZIP Code-level base rent for 1-, 2-, or 3-bedroom units by adjusting the base rent with the recent mover adjustment factor and gross rent adjustment factor. Therefore, changes to those factors as described above would apply to SAFMRs as well. For areas without statistically reliable 1-, 2-, or 3-bedroom rent estimates, HUD calculates the SAFMR using the ratio of the all-bedroom ZIP Code median rent (or the median rent for the larger county containing the ZIP Code) to the median rent for the FMR area, then multiplies this ratio by the metropolitan area FMR. The proposed changes, by affecting the metropolitan FMR, would affect this step as well.

IV. Request for Public Comment on Changes

HUD is requesting public comment on the proposed changes to the FMR calculation methodology. HUD invites general comments on the appropriateness of changing the definition of recent movers as described above as well as the continued use of private rent data in calculating rent inflation factors. Additionally, HUD invites comments on the following questions:

- Should HUD continue to use overall rent CPI to control for possible selection bias in the private rent inflation data by scaling the local private rent inflation factors, using for example a national statistic like BLS's New Tenant Repeat Rent index currently under development so that the rental-unit weighted average inflation factor would match the national statistic?
- Should HUD adopt additional criteria beyond having at least 3 sources of private rent inflation data, such as a minimum population or rental unit count, to minimize undue volatility in year-to-year changes in private rent inflation factors? Should HUD consider altering the criteria of having at least 3 sources of private rent inflation data?
- For the inflation adjustment (step 3), HUD proposes calculating Census Region-wide rental unit weighted average private inflation factors for areas without a local private factor. Is this the appropriate level of geography, or should HUD consider other weighting procedures such as a nearest neighbor approach?[4]

[3] Adams, Loewenstein, Montag, and Verbrugge. ''Disentangling Rent Index Differences: Data, Methods, and Scope'', 2022.

[4] Under HUD's proposed approach, private inflation factors are given more weight for the regional calculation if area contains more rental units. In the nearest-neighbor alternative, you could assign higher weights to areas that are a closer ''distance'' to the location for which you want to calculate an inflation factor, where ''distance'' could mean geographic proximity or other observable characteristics (for example, similar median incomes).

V. Environmental Impact

This notice proposes changes in the way FMRs are calculated. The establishment and review of Fair Market Rent schedules does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Solomon Greene,

Principal Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2023–13395 Filed 6–22–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–N032; FXES11160200000–234–FF02ENEH00]

Candidate Conservation Agreement With Assurances for the Texas Pimpleback (Cyclonaias petrina), Texas Fawnsfoot (Truncilla macrodon), Texas Fatmucket (Lampsilis bracteata), and Balcones Spike (Fusconaia iheringi) in the Lower Colorado River Basin Below O.H. Ivie Reservoir

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: This notice advises the public that the Lower Colorado River Authority (LCRA) and Lower Colorado River Authority Transmission Services Corporation (LCRA TSC), have applied for an enhancement of survival (EOS) permit supported by the *Candidate Conservation Agreement with Assurances for the Texas pimpleback (Cyclonaias petrina), Texas fawnsfoot (Truncilla macrodon), Texas fatmucket (Lampsilis bracteata), and Balcones spike (Fusconaia iheringi) in the Lower Colorado River Basin below O.H. Ivie Reservoir* (CCAA). LCRA is a conservation and reclamation district in the State of Texas that provides multiple services in the Colorado River basin, including managing water supplies, managing floods along the Highland Lakes, producing and delivering power, managing parks and recreation areas, and supporting community development. LCRA TSC is a nonprofit corporation conducting electric transmission operations within Texas. They own and operate 5,500 circuit miles of electric transmission lines and maintain and operate equipment at approximately 430 electric substations across the state. The requested EOS permit, if approved, would authorize incidental take of four proposed freshwater mussel species, Texas pimpleback, Texas fawnsfoot, Texas fatmucket, and Balcones spike resulting from activities covered by the CCAA, including freshwater mussel conservation actions, operations, inspections, repairs, construction, and maintenance activities in the Colorado River basin in Texas. We have made a preliminary determination that the CCAA is eligible for categorical exclusion under the National Environmental Policy Act (NEPA). The basis for this determination is contained in a draft NEPA screening form to support the use of a categorical exclusion under NEPA, which evaluates the impacts of EOS permit issuance and implementation of the proposed CCAA. The documents available for comment include the NEPA screening form, the CCAA, and the EOS permit application.

DATES: We will accept comments received on or before July 24, 2023.

ADDRESSES: *Accessing Documents:*

Internet: The NEPA screening form, CCAA, and EOS permit application: You may obtain electronic copies of these documents on the Service's website at *https://www.fws.gov/office/austin-ecological-services/news.*

U.S. Mail: You may obtain the documents at the following addresses. In your request for documents, please reference Lower Colorado River Authority CCAA.

- *NEPA screening form and CCAA:* A limited number of CD–ROM and printed copies of the NEPA screening form and CCAA are available, by request, from Karen Myers, Field Supervisor, Austin Ecological Services Field Office, Austin, TX, 78754, telephone 512–937–7371.
- *EOS permit application:* The EOS permit application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103, Attention: Environmental Review Branch.

Submitting Comments: Regarding any of the documents available for review, you may submit written comments by one of the following methods. In your comments, please reference the Lower Colorado River Authority CCAA.

- *Email:* Submit comments to *karen_myers@fws.gov.*
- *U.S. Mail:* Karen Myers, Field Supervisor, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 1505 Ferguson Lane, Austin, TX 78754; via phone at 512–937–7371. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft screening form supporting a categorical exclusion, under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), that evaluates the impacts of implementation of the proposed *Candidate Conservation Agreement with Assurances for the Texas pimpleback (Cyclonaias petrina), Texas fawnsfoot (Truncilla macrodon), Texas fatmucket (Lampsilis bracteata), and Balcones spike (Fusconaia iheringi) in the Lower Colorado River Basin below O.H. Ivie Reservoir* (CCAA) and issuance of an associated enhancement of survival (EOS) permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) to the Lower Colorado River Authority (LCRA) and Lower Colorado River Authority Transmission Services Corporation (LCRA TSC).

This notice advises the public that we, the Service, have gathered the information necessary to determine effects of the proposed CCAA and the associated EOS permit on the four Texas mussels. We are accepting comments on the proposed CCAA, NEPA screening form, and the EOS permit application.

Background

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, in accordance with our CCAA policy (81 FR 95164) we may issue permits for the enhancement of survival (EOS) of candidate species. ''Incidental take'' is

defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32, and would cover candidates should they become listed.

Proposed Action

The LCRA and LCRA TSC applied to the Service for an EOS permit under section 10(a)(1)(A) of the ESA. Such EOS permits authorize take that is incidental to otherwise lawful activities (50 CFR 17.3). The requested EOS permit would authorize incidental take of the Texas pimpleback, Texas fawnsfoot, Texas fatmucket, and Balcones spike (Covered Species), should they become listed under the ESA. The proposed incidental take would result from activities associated with otherwise lawful activities associated with implementation of the proposed CCAA including the conservation measures, and ongoing and continuing operations, inspections, repairs, construction, and maintenance activities.

The LCRA and LCRA TSC would implement a voluntary conservation strategy for freshwater mussels in the CCAA, supporting the EOS permit, which was informed by the National Strategy for the Conservation of Native Freshwater Mussels developed by the Freshwater Mollusk Conservation Society. The conservation strategy includes conservation measures to minimize and avoid direct and indirect impacts to proposed mussels and their habitats; a comprehensive monitoring and adaptive management program; compliance with existing environmental flow standards; conducting routine water quality monitoring of sites near existing mussel populations; conducting invasive species monitoring and spread prevention programs; conducting applied research on mussel physiological tolerances, survivability in the Colorado River downstream of Austin, and assess restoration potential in the Colorado River basin for Texas fatmucket and Texas pimpleback; support for development of short-term refugia and propagation methods; public outreach and education about the resource needs affecting freshwater mussels; and, leading a conservation workgroup for Texas fatmucket in the Onion Creek basin. The expected result of the implementation of the conservation strategy and conservation measures is a net conservation benefit to the Covered Species.

The CCAA and associated EOS permit would provide the LCRA and LCRA TSC with the opportunity to voluntarily conserve freshwater mussel species and their habitat, while carrying out their existing and ongoing water supply and water delivery operations and providing a net conservation benefit to the species. If approved, the EOS permit would be for a 20-year period following the signature of the CCAA, and would authorize incidental take of the Covered Species if the species come to be listed under the ESA during the life of the CCAA and EOS permit. The terms of the CCAA and EOS permit would also ensure that the proposed action will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Alternatives

We have considered one alternative to the proposed action as part of this process: No Action. Under a No Action alternative, the Service would not issue the requested EOS permit and the applicant would either not implement the CCAA for the conservation strategy of freshwater mussels or implement the CCAA without regulatory assurances and future take authorization, should the species be listed, for on-going operations, inspections, repairs, construction, and maintenance activities of their infrastructure, or conduct those activities in a manner that avoids incidental take. Therefore, the applicant would not implement the conservation measures described in the CCAA.

Next Steps

We will evaluate the permit application, CCAA, NEPA screening form, and comments we receive to determine whether the application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we may approve the CCAA and issue the EOS permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant in accordance with the terms of the CCAA and specific terms and conditions of the authorizing EOS permit. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–13337 Filed 6–22–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.23.DJ73.UAC10.00, OMB Control Number 1028–New]

Agency Information Collection Activities: Science and Data for Water-Hazards Response

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–NEW Water Hazards Response in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Rapp by email at *jrapp@usgs.gov* or by telephone at 804–261–2635. Individuals in the

United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The United States is facing growing challenges related to water availability and quality due to shifting demographics, aging water-delivery infrastructure, the impacts of climate change, and increasing hazards risk, like floods and drought. Working with incomplete knowledge, managers must consider the needs of various demographic groups and economic sectors when making management decisions and responding to emergencies. To improve delivery of effective science to support decision-making, the USGS must adapt to meet the evolving needs of stakeholders in the water-hazard space. We will collect information regarding the decision-making process, data, and data-format needs to support daily, long-term, and emergency management decision-making. Information will also be sought on gaps in data delivery and coverage. A lack of decision-support data within water institutions can lead to poor decision-making and outcomes that may increase the risk to life, property, and environmental health resulting from a hazard event. This information will support the delivery of appropriate data, in appropriate formats, at the right time for decision-making and emergency management. The information will guide USGS support of water-resource institutions, enhancing resilience in the face of the Nation's many water-resources challenges.

Title of Collection: Science and Data for Water-Hazards Response.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: State and local water-resource managers and water-hazard responders; Tribal Nations or Tribal Serving Organizations; non-governmental organizations and community groups that use water-hazard information.

State and Local Water Resource Managers and Responders

Estimated Number of Annual Responses: 650.

Estimated Completion Time per Response: 1 hour.

Estimated Number of Annual Burden Hours: 650.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per year.

Estimated Annual Nonhour Burden Cost: None.

Tribal Nations or Tribal Serving Organizations

Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 1 hour.

Estimated Number of Annual Burden Hours: 200.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per year.

Estimated Annual Nonhour Burden Cost: None.

Non-governmental Organizations and Community Groups

Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: 1 hour.

Estimated Number of Annual Burden Hours: 150.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per year.

Estimated Annual Nonhour Burden Cost: None.

Total Estimated Number of Annual Responses: 1000.

Total Estimated Number of Annual Burden Hours: 1000.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Joseph Nielsen,

Director, Integrated Information Dissemination Division, USGS Water Mission Area.

[FR Doc. 2023–13414 Filed 6–22–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–36049; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before June 10, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 10, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 10, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

IOWA

Story County

Cranford Apartment Building, 103 Stanton Ave., Ames, SG100009150

MICHIGAN

Wayne County

Holcomb, Samuel D., School, (Public Schools of Detroit MPS), 18100 Bentler St., Detroit, MP100009147

First Congregational Church, 98 Superior Blvd., Wyandotte, SG100009148

Frances Harper Inn, (The Civil Rights Movement and the African American Experience in 20th Century Detroit MPS), 307 Horton St., Detroit, MP100009149

MINNESOTA

Goodhue County

Ȟe Mni Caŋ-Barn Bluff Historic District (Boundary Increase), Address Restricted, Red Wing vicinity, BC100009133

Lyon County

Tracy Municipal Building and Armory, 336–372 Morgan St., Tracy, SG100009130

Winona County

Lake Park Bandshell, Lake Park Dr., east of intersection with Main St., Winona, SG100009129

OHIO

Cuyahoga County

Strong, Jacob, House, 18829 Fairmount Blvd., Shaker Heights, SG100009131

Lake County

Boyce, Julia F. Country Estate, 37813–19 Euclid Ave., Willoughby, SG100009151

TENNESSEE

Shelby County

Persons, Ell, Lynching Site, Near 5400 Summer Ave., Memphis, SG100009136

Weakley County

Martin Downtown Commercial Historic District, District boundary encompasses the main commercial corridor along the 200, 300, and 400 blks. of Lindell St., and the 300 block of Broadway, Martin, SG100009137

VIRGINIA

Lynchburg INDEPENDENT CITY

Lower Basin Historic District (Boundary Increase II), Generally bounded by Concord Tpk., CSX RR tracks, East Lynch, Main, and Washington Sts., Lynchburg, BC100009146

WEST VIRGINIA

Barbour County

Valley Furnace, WV 38, approx. 750 ft. west of South Shilo Rd. (Cty. Rd. 52), Valley Furnace, SG100009138

Berkeley County

Citizens National Bank, 110 West King St., Martinsburg, SG100009139

Jefferson County

Haines, Nathan, Farm (Boundary Increase), 1673 Lloyd Rd., Charles Town, BC100009140

Marion County

Mount Zion Baptist Church, 501 Cleveland Ave., Fairmont, SG100009141

Mercer County

First Baptist Church of Bluefield, 100 Duhring St., Bluefield, SG100009142

Monroe County

Waiteville School, 1735 Rays Siding Rd., Waiteville, SG100009143

A request for removal has been made for the following resources:

MICHIGAN

Oakland County

Trowbridge Road-Grand Trunk Western Railroad Bridge, (Highway Bridges of Michigan MPS), Trowbridge Rd. over GTW Railroad, Bloomfield Hills, OT00000010

Oscoda County

Oscoda County Courthouse, 311 Morenci Ave., Mio, OT72000651

Additional documentation has been received for the following resources:

COLORADO

Douglas County

Castle Rock Elementary School (Additional Documentation), 3rd and Cantril Sts., Castle Rock, AD84000827

MINNESOTA

Goodhue County

Ȟe Mni Caŋ-Barn Bluff Historic District (Additional Documentation), Address Restricted, Red Wing vicinity, AD90001165

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

MONTANA

Ravalli County

West Fork Ranger Station, 6735 West Fork Rd., Darby vicinity, SG100009135

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 14, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–13370 Filed 6–22–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NPS0035091; PPWOCRADI0, PCU00RP14.R50000 (222); OMB Control Number 1024–0037]

Agency Information Collection Activities; Archeology Permit Applications and Reports

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 22, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive (MS–242) Reston, VA 20192 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number 1024–0037 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Karen Mudar, Archeologist, Washington Support

Office Archeology Program at *karen_mudar@nps.gov* (email); or at 202–354–2103 (telephone). Please reference OMB Control Number 1024–0037 in the subject line of your comment. 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: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency 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 response).

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 4 of the Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470cc), and Section 3 of the Antiquities Act (AA) of 1906 (54 U.S.C. 320302), authorize any individual or institution to apply to Federal land managing agencies to scientifically excavate or remove archeological resources from public or Indian lands. A permit is required for any archeological investigation by non-NPS personnel occurring on parklands, regardless of whether or not these investigations are linked to regulatory compliance. Archeological investigations that require permits include excavation, shovel-testing, coring, pedestrian survey (with and without removal of artifacts), underwater archeology, photogrammetry, and rock art documentation. Individuals, academic and scientific institutions, museums, and businesses that propose to conduct archeological field investigations on parklands must first obtain a permit before the project may begin. To apply for a permit, applicants submit Form DI–1926 *Application for Permit for Archeological Investigations.* Applicants are required to submit the following information:

- Statement of Work
- Statement of Applicant's Capabilities
- Statement of Applicant's Past Performance
- Curriculum vitae for Principal Investigator(s) and Project Director(s)
- Written consent by State or tribal authorities to undertake the activity on State or tribal lands that are managed by the NPS, if required by the State or tribe
- Curation Authorization
- Detailed Schedule of All Project Activities

Persons receiving a permit must also submit (1) Preliminary Reports (2) Annual Reports (3) Final Reports.

Title of Collection: Archeology Permit Applications and Reports.

OMB Control Number: 1024–0037.

Form Number: Form DI–1926.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals or organizations wishing to excavate or remove archeological resources from public or Indian lands.

Total Estimated Number of Annual Respondents: 172.

Total Estimated Number of Annual Responses: 172.

Estimated Completion Time per Response: Varies; up to 8 hours (depending on activity).

Total Estimated Number of Annual Burden Hours: 1,032.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–13379 Filed 6–22–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0024]

Agency Information Collection Activities; Procedures and Criteria for Approval or Disproval of State Program Submissions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 24, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC

20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0024 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 21, 2023 (88 FR 10538). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including 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 response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

Title of Collection: Procedures and Criteria for Approval or Disapproval of State Program Submissions.

OMB Control Number: 1029–0024.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 24.

Total Estimated Number of Annual Responses: 29.

Estimated Completion Time per Response: Varies from 5 hours to 350 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 4,285.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once and annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–13392 Filed 6–22–23; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–476 and 731–TA–1179 (Second Review)]

Multilayered Wood Flooring From China; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on multilayered wood flooring from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on December 1, 2022 (87 FR 73784) and determined on March 6, 2023 that it would conduct expedited reviews (88 FR 23097, April 14, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on June 16, 2023. The views of the Commission are contained in USITC Publication 5435 (June 2023), entitled *Multilayered Wood Flooring from China: Investigation Nos. 701–TA–476 and 731–TA–1179 (Second Review).*

By order of the Commission.

Issued: June 16, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–13317 Filed 6–22–23; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–066]

Notice of Information Collections

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collections.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

comment on proposed and/or continuing information collections.

DATES: Comments are due by July 24, 2023.

ADDRESSES: Written comments and recommendations for this 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: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or *b.edwards-bodmer@nasa.gov*.

SUPPLEMENTARY INFORMATION:

Job Shadowing Program

I. Abstract

The NASA Kennedy Space Center (KSC) manages and facilitates the center-specific Job Shadowing Program (JSP). The program targets high school and undergraduate students and offers an opportunity to experience the practical application of STEM, business, and other disciplines aligned to NASA's long-term workforce needs, in a NASA-unique workplace setting. Program participants receive insight into NASA and KSC's history, current activities, and other student opportunities through briefings, tours, and career panels. Each participant is then matched with a subject matter expert to gain direct exposure to the implementation of their respective fields of interest and related career paths.

II. Methods of Collection

Electronic.

III. Data

Title: Job Shadowing Program.
OMB Number: 2700–0135.
Type of Review: Reinstatement.
Affected Public: High school and college students, and faculty.
Estimated Annual Number of Activities: 4.
Estimated Number of Respondents per Activity: 20.
Annual Responses: 80.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 40.
Estimated Total Annual Cost: $784.

NASA Office of Education STEM Challenges

I. Abstract

NASA's founding legislation, the Space Act of 1958, as amended, directs the Agency to expand human knowledge of Earth and space phenomena and to preserve the role of the United States as a leader in aeronautics, space science, and technology. The NASA Office of Education has three primary goals (1) strengthen NASA and the Nation's future workforce, (2) attract and retain students in science, technology, engineering and mathematics, or STEM, disciplines, and (3) engage Americans in NASA's mission. This notice informs the public of NASA's intent to revise a currently approved information collection for a project formerly known as the NASA Summer of Innovation Project. The request for renewal pertains to the administration of surveys to youth in support of the agency's STEM challenge activities for middle school youth. The information collection was revised to collect the minimum amount of data required to (1) evaluate the activity for improvement opportunities, and (2) collect outcome data to assess the activity model's effectiveness in meeting its intended objectives. Youth surveys have been retained in this information collection, but the parent survey and teacher focus groups have been eliminated to reduce burden. The number of youth participating in this information collection has been reduced to reflect the estimated number of participants who will be engaged in this activity in the future. The cost of the information collection, to participating members of the public, has also been reduced as a result of these and other changes to the information collection.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Office of Education STEM Challenges.
OMB Number: 2700–0150.
Type of Review: Reinstatement.
Affected Public: Individuals.
Estimated Annual Number of Activities: 810.
Estimated Number of Respondents per Activity: 1.
Annual Responses: 1,620.
Estimated Time per Response: 6 minutes.
Estimated Total Annual Burden Hours: 162.
Estimated Total Annual Cost: $1,175.

NASA Human Exploration Rover Challenge

I. Abstract

The National Aeronautics and Space Administration seeks to collect information from members of the public to plan, conduct, and register participants and volunteers for the NASA Human Exploration Rover Challenge, which supports science, technology, engineering, or mathematics (STEM) education. This engineering design challenge focuses on NASA's current plans to explore planets, moons, asteroids, and comets—all members of the solar system family. The challenge will focus on designing, constructing, and testing technologies for mobility devices to perform in these different environments, and it will provide valuable experiences that engage students in the technologies and concepts that will be needed in future exploration missions. NASA collects the minimum information necessary from teams, participants, and volunteers to plan and conduct the event.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Human Exploration Rover Challenge.
OMB Number: 2700–0157.
Type of Review: Reinstatement.
Affected Public: Individuals.
Estimated Annual Number of Activities: 1,185.
Estimated Number of Respondents per Activity: 1.
Annual Responses: 1,185.
Estimated Time per Response: 71.5.
Estimated Total Annual Burden Hours: 1,415.
Estimated Total Annual Cost: $7,425.

NASA Universal Registration and Data Management System

I. Abstract

The NASA Universal Registration and Data Management System is a comprehensive tool designed to allow learners (*i.e.,* students, educators, and awardee principal investigators) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and

implementation of engagement opportunities within the Universal Registration and Data Management System. The information collected will be used by the NASA Office of STEM Engagement (OSTEM) in order to review applications for participation in NASA engagement opportunities. The information is reviewed by OSTEM project and activity managers, as well as NASA mentors who would be hosting students. This information collection will consist of student-level data such as demographic information submitted as part of the application. In addition to supporting student selection, student-level data will enable NASA OSTEM to fulfill federally mandated reporting on its STEM engagement activities and report relevant demographic information as needed for Agency performance goals and success criteria (annual performance indicators).

II. Methods of Collection

Electronic.

III. Data

Title: NASA Universal Registration and Data Management System.

OMB Number: 2700–0184.

Type of Review: Reinstatement.

Affected Public: Eligible students or educators, and/or awardee principal investigators may voluntarily apply for an internship or fellowship experience at a NASA facility, or register for a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.). Parents/caregivers of eligible student applicants (at least 16 years of age but under the age of 18) may voluntarily provide consent for their eligible student applicants to apply.

Estimated Annual Number of Activities: 40.

Estimated Number of Respondents per Activity: 4,125.

Annual Responses: 165,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 82,500.

Estimated Total Annual Cost: $1,015,207.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–13415 Filed 6–22–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–030]

Records Management; General Records Schedule (GRS); GRS Transmittal 34

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new General Records Schedule (GRS) Transmittal 34.

SUMMARY: NARA is issuing revisions to the General Records Schedule (GRS). The GRS provides mandatory disposition instructions for records common to several or all Federal agencies. Transmittal 34 includes only changes we have made to the GRS since we published Transmittal 33 in January 2023. Additional GRS schedules remain in effect that we are not issuing via this transmittal.

DATES: This transmittal is effective June 23, 2023.

ADDRESSES: You can find all GRS schedules and FAQs at *http://www.archives.gov/records-mgmt/grs.html* (in Word, PDF, and CSV formats). You can download the complete current GRS, in PDF format, from the same location.

FOR FURTHER INFORMATION CONTACT: For more information about this notice or to obtain paper copies of the GRS, contact Eddie Germino, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by telephone at 301.837.3758. Writing and maintaining the GRS is the GRS Team's responsibility. This team is part of Records Management Operations in the Office of the Chief Records Officer, at NARA. You may contact NARA's GRS Team with general questions about the GRS at *GRS_Team@nara.gov.*

Your agency's records officer may contact the NARA appraiser with whom your agency normally works for support in carrying out this transmittal and the revised portions of the GRS. You may access a list of appraisal and scheduling contacts on our website at *http://www.archives.gov/records-mgmt/appraisal/index.html.*

SUPPLEMENTARY INFORMATION: GRS Transmittal 34 announces changes to the General Records Schedules (GRS) made since NARA published GRS Transmittal 33 in January 2023. The GRS provide mandatory disposition instructions for records common to several or all Federal agencies.

Transmittal 34 includes one new schedule and alterations to four previously published schedules. As with the past few transmittals, this transmittal publishes only those schedules that are new or have changed since they were last published in a transmittal. Other schedules *not* published in this transmittal remain current and authoritative. You can find all schedules (in Word and PDF formats), general GRS FAQs, and schedule specific FAQs at *http://www.archives.gov/records-mgmt/grs.html.*

1. What changes does this transmittal make to the GRS?

GRS Transmittal 34 one new schedule:

GRS 4.5 Digitizing Records DAA–GRS–2022–0010

This transmittal also publishes four updates:

GRS 4.1 Records Management Records (see question 3 below)

GRS 4.2 Information Access and Protection Records (see question 4 below)

GRS 5.2 Transitory and Intermediary Records (see question 5 below)

GRS 5.4 Facility, Equipment, Vehicle, Property, and Supply Records (see question 6 below)

2. What changes did we make to GRS 4.1, Records Management Records?

We marked item 050, Validation records for digitized temporary records, as superseded. These records are now scheduled by GRS 4.5, item 010 (DAA–GRS–2022–0010–0001).

3. What changes did we make to GRS 4.2, Information Access and Protection Records?

We marked items 010, General information request files, and 130, Personally identifiable information extracts, as superseded. These records are now scheduled by GRS 5.2, item 010 (DAA–GRS–2022–0009–0001).

4. What changes did we make to GRS 5.2, Transitory and Intermediary Records?

We revised this schedule to remove references to source records that have been digitized. These source records are now scheduled by GRS 4.5, item 010 (DAA–GRS–2022–0010–0001).

Additionally, the item descriptions have been revised to remove specific examples of record types covered by each item. The examples will be provided in GRS 5.2 Frequently Asked Questions (FAQs). This is part of a new approach we are taking with the GRS to focus on the criteria that identify records rather than long lists of examples that may not clearly represent the entire coverage of the disposition authority.

5. What changes did we make to GRS 5.4, Facility, Equipment, Vehicle, Property, and Supply Records?

We marked items 071, Facility, space, and equipment inspection, maintenance, and service records—Records tracking completion of custodial and minor repair work, as superseded. These records are now scheduled by GRS 5.2, item 010 (DAA–GRS–2022–0009–0001).

6. How do agencies cite GRS items?

When citing the legal disposition authority for records covered by the GRS in NARA documents, either when transferring records to Federal Records Centers for storage, to NARA for accessioning, or when requesting GRS deviations on record schedules, use the ''DAA'' number in the ''Disposition Authority'' column of the table. For example, use ''DAA–GRS–2017–0007–0008'' rather than ''GRS 2.2, item 070.'' A GRS Disposition Authority Look-Up Table is available on our website at *https://www.archives.gov/records-mgmt/grs.html.*

7. Do agencies have to take any action to implement these GRS changes?

NARA regulations (36 CFR 1226.12(a)) require agencies to disseminate GRS changes within six months of receipt.

Per 36 CFR 1227.12(a)(1), you must follow GRS dispositions that state they must be followed without exception.

Per 36 CFR 1227.12(a)(3), if you have an existing schedule that differs from a new GRS item that does *not* require being followed without exception, and you wish to continue using your agency-specific authority rather than the GRS authority, you must notify NARA within 120 days of the date of this transmittal. Please send these notifications to *GRS_Team@nara.gov.*

If you do not have an already existing agency-specific authority but wish to apply a retention period that differs from that specified in the GRS, you must submit a records schedule to NARA for approval via the Electronic Records Archives.

8. How can an agency get copies of the new GRS?

You can download the complete current GRS, in PDF format, from NARA's website at *http://www.archives.gov/records-mgmt/grs.html.*

9. Whom should an agency contact for further information?

Please contact *GRS_Team@nara.gov* with any questions related to this transmittal.

Colleen J. Shogan,

Archivist of the United States.

[FR Doc. 2023–13369 Filed 6–22–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Science and Engineering Policy (SEP) hereby gives notice of the scheduling of a videoconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, June 29, 2023, from 3 p.m.–5 p.m. EDT.

PLACE: The meeting will be held by videoconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; Discussion of *S&E Indicators 2026* goals and potential products.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is Chris Blair, *cblair@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB meetings web page—*https://www.nsf.gov/nsb/meetings/index.jsp.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–13496 Filed 6–21–23; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) NSB–NSF Commission on Merit Review hereby gives notice of the scheduling of a videoconference meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, June 28, 2023, from 12 p.m.–1:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the meeting is: Commission Chair's opening remarks; Presentation and discussion of current Intellectual Merit criterion; Commission planning; Commission Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: (Chris Blair, *cblair@nsf.gov*), 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB web page.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–13495 Filed 6–21–23; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 26, July 3, 10, 17, 24, 31, 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: Closed.

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.*

MATTERS TO BE CONSIDERED:

Week of June 26, 2023

There are no meetings scheduled for the week of June 26, 2023.

Week of July 3, 2023—Tentative

There are no meetings scheduled for the week of July 3, 2023.

Week of July 10, 2023—Tentative

Tuesday, July 11, 2023

10:00 a.m. Executive Branch Briefing on NRC International Activities (Closed Ex. 1 & 9).

Week of July 17, 2023—Tentative

There are no meetings scheduled for the week of July 17, 2023.

Week of July 24, 2023—Tentative

There are no meetings scheduled for the week of July 24, 2023.

Week of July 31, 2023—Tentative

There are no meetings scheduled for the week of July 31, 2023.

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: June 21, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–13546 Filed 6–21–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–34; Order No. 6545]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing of a change in certain modifications to the Competitive Multi-Product Agreements with Foreign Postal Operators 1 products to be effective July 1, 2023. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 23, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Commission Action
III. Ordering Paragraphs

I. Introduction

On June 15, 2023, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546, giving notice of: (1) certain modifications to the competitive multi-product ''Interconnect Renumeration Agreement USPS and Specified Postal Operators II'' (IRA–USPS II Agreement); and (2) two accessions to the IRA–USPS II Agreement.[1] The IRA–USPS II Agreement is included within the Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.[2]

On December 23, 2021, the Commission approved the inclusion of the IRA–USPS II Agreement in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product as well as the initial inbound rates proposed by the Postal Service. Order No. 6074 at 5–7. Pursuant to the IRA–USPS II Agreement, any party to the IRA–USPS II Agreement can change or modify the agreement at any time and enter into separate bilateral or multilateral agreements with terms that differ from the IRA–USPS II Agreement. Notice at 2. The modifications proposed in the Notice are intended to take effect on July 1, 2023. *Id.* The Postal Service avers that it has agreed to the modifications with three parties and expects additional parties will accede to it in the future. *Id.* The Postal Service indicated its intent to update the docket as additional parties accede to the modifications. *Id.*

Specifically, the modifications revise: (1) the termination provisions and references to quality of service incentives; (2) the list of annexes with references to quality of service incentives; (3) the definitions in an annex; (4) the date of submission for certain rates to the International Post Corporation; (5) the structure of the quality of services incentives and related references; and (6) the accounting processes related to quality of service incentives and related references. *Id.* at 2–3. The Postal Service also noted that two additional Foreign Postal Operators (FPOs) acceded to the IRA–USPS II Agreement. *Id.* at 3.

Concurrent with the Notice, the Postal Service has filed: (1) the agreement to modify the IRA–USPS II Agreement and the modified version of the IRA–USPS II Agreement; (2) a certified statement concerning the rates under the modified IRA–USPS II Agreement as required by 39 CFR 3035.105(c)(2); (3) the Deed of Accession executed by the additional FPOs; and (4) supporting financial documentation. *Id.* at 4, Attachments 1–4. The Postal Service also requests that the Commission continue to treat materials filed as non-public pursuant to its Application for Non-Public Treatment, which was filed with the Postal Service's initial notice and is incorporated by reference. *Id.* at 4.

The Commission shall review the proposed IRA–USPS II Agreement modification to ensure that the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product continues to cover its attributable costs, does not cause Market Dominant products to subsidize Competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. 3633(a); 39 CFR 3035.105 and 3035.107.

II. Commission Action

The Commission seeks public comments from interested persons on whether the Postal Service's Notice concerning the IRA–USPS II Agreement as modified is consistent with 39 U.S.C. 3633 and 39 CFR 3036.105. Comments are due by June 23, 2023.

The Notice and related filings are available on the Commission's website (*http://www.prc.gov*). The Commission encourages interested persons to review the Notice for further details.

[1] Notice of United States Postal Service of Modification to Inbound Competitive Multi-Service IRA–USPS II Agreement, June 15, 2023 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

[2] Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, December 23, 2021, at 5–7 (Order No. 6074).

The Commission appoints Christopher C. Mohr to serve as the Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission seeks public comment from interested persons on whether the Notice of the United States Postal Service of Modification to Inbound Competitive Multi-Service IRA–USPS II Agreement, filed June 15, 2023, is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105.

2. Pursuant to 39 U.S.C. 505, Christopher C. Mohr is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by June 23, 2023.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–13332 Filed 6–22–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–169]

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:* June 27, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. 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).:* CP2020–169; *Filing Title:* Notice of United States Postal Service of Modification to Inbound Competitive Multi-Service Prime Agreement; *Filing Acceptance Date:* June 15, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* June 27, 2023.

[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).

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2023–13387 Filed 6–22–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 14, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 29 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–173, CP2023–177.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–13334 Filed 6–22–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 12, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–172, CP2023–176.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–13335 Filed 6–22–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 23, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 12, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–171, CP2023–175.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–13333 Filed 6–22–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97752; File No. SR–NYSENAT–2023–10]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-Location Services

June 16, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 5, 2023, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule (''Fee Schedule'') would be updated accordingly. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Partial Cabinet Solution (''PCS'') bundles offered to Users as part of its co-location services.[4] The description of the PCS bundles in the Fee Schedule would be updated accordingly.

Background

The Fee Schedule currently lists two PCS bundles, Options C and D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[5] Users are only eligible to purchase PCS bundles if they meet specified requirements.[6]

In May 2020, the Exchange amended PCS bundle Options C and D to add two 10 Gb connections to the NMS Network to each bundle. The NMS Network is an alternate dedicated network connection that Users use to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor.[7] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

The Exchange expects that the proposed rule change would become operative no later than September 1, 2023. The Exchange will announce the date through a customer notice.

[4] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–23, SR–NYSEAMER–2023–32, SR–NYSEARCA–2023–42, and SR–NYSECHX–2023–12.

[5] *See* 83 FR 26314, *supra* note 4, at 26315.

[6] *See id.* The requirements are set forth in Note 1 under ''Colocation Notes.''

[7] *See* Securities Exchange Act Release No. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19).

Proposed Changes to the Current PCS Bundles

The Exchange proposes to amend current Options C and D so that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles. There would be no change to the existing fees for the PCS bundles.

The purpose of the proposed changes to the PCS bundles is to allow a User to connect to all or a large part of the expanded Options Price Reporting Authority (''OPRA'') feed. More specifically, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[8] As a result of this change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[9] This means that a 10 Gb network connection will not suffice for a User that wants to connect to all or a large part of the expanded OPRA feed.[10] Current and potential Users with PCS bundles have requested the inclusion of 40 Gb connections in the bundles.

The ability to connect with a larger section of the OPRA feed is not the only benefit that would occur. A User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. The addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. As the Exchange understands that 40 Gb connections are increasingly considered the industry standard for options trading, and understands that smaller customers—such as those who might qualify for a PCS—often prefer to normalize all of their equipment to one connection size, this may be a benefit to some Users.

There would be no change to the initial charge and monthly recurring charge (''MRC'') for the PCS bundles. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. Users with a PCS bundle would not have to pay a second initial charge to change the content of their PCS bundles. As a result, a User would be able to upgrade its PCS bundle from 10 Gb to 40 Gb, in whole or, if it opts to retain some 10 Gb connections, in part.

To implement the proposed changes as well as remove or update obsolete text, the Exchange proposes to make the following amendments to the description of PCS bundles Options C and D:

- Update the names to Options A and B. Currently no PCS bundles use those names,[11] and the Exchange believes that continuing to use Option C and Option D as names could be confusing as a result.
- Amend the description to state that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles.
- Consistent with the requirements for NMS Network connections,[12] add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections.
- Currently, the Fee Schedule includes text regarding a reduced MRC for PCS bundles for 24 months, which applied so long as a User ordered its PCS bundle on or before December 31, 2020. Since that time has expired, the text has become obsolete, and the Exchange proposes to delete it.

The amended portion of the Fee Schedule would read as follows (proposed deletions in brackets, proposed additions *italicized*):

Type of service	Description	Amount of charge
* *	* * *	* *
Partial Cabinet Solution bundles Note*s:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 1 under ''Colocation Notes.'' *A purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e., 10 Gb or 40 Gb) as the related LCN and IP network connections.*	Option *A*[C]: 1 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol. Option *B*[D]: 2 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020:]$14,000 monthly *charge per bundle.* $10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020:]$15,000 monthly *charge per bundle.*

The PCS bundles would continue to include a 1 kw or 2 kw partial cabinet and either the Network Time Protocol Feed or the Precision Timing Protocol. The requirements set forth in Note 1 under ''Colocation Notes'' would continue to apply.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

[8] *See* Securities Industry Automation Corporation, *Memo to OPRA Multicast Subscribers,* August 31, 2022, at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/6377e5e4114b88c77be5552c_OPRA%20Migration%20to%2096%20Multicast%20Line%20Network_Q3%20Postponement.pdf.* Connectivity to the OPRA feed is an Included Data Product available over the IP network and the NMS network.

[9] *See id.,* at 2 (providing estimated bandwidth requirements).

[10] The proposed change would be of utility even if OPRA were not expanding its data distribution network, as a User cannot connect to all of the OPRA feed with the current 10 Gb connections in the PCS bundles.

[11] The previous Options A and B were deleted in 2022. *See* Securities Exchange Act Release No. 95972 (October 4, 2022), 87 FR 61416 (November 11, 2022) (SR–NYSENAT–2022–22).

[12] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size''). By way of example, if a User with a PCS bundle selected one 10 Gb LX LCN connection and one 40 Gb IP network connection, it would receive one 10 Gb NMS connection and one 40 Gb NMS connection. If the User instead chose 10 Gb for both its LCN and IP network connection, it would receive two 10 Gb NMS connections.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would allow Users to connect to all or a large part of the expanded OPRA feed. As noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[16] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[17] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

The Exchange also believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because a User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. Moreover, the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. That said, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes.

The Exchange further believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The Exchange also believes that the proposed change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because there would be no change to the initial charge and MRC for the PCS bundles. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb and 40 Gb) as the related LCN or IP network connection. The requirement would be consistent with the current requirements for NMS Network connections[18] and so all Users would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles. In this way, it would enhance the clarity and transparency of the Fee Schedule.

The Exchange believes that updating the names of the PCS bundles from Option C and D to Option A and B and removing obsolete text from the Fee Schedule would be reasonable for the same reasons. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because, even though the connectivity options available in a PCS bundle would increase, there would be no change to the initial charge and MRC for a PCS bundle. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only Users that purchased a PCS bundle would be charged for it. The proposed change would not apply differently to distinct types or sizes of market participants but would apply to all Users equally. Moreover, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory to add text stating that purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.* 10 Gb or 40 Gb) as

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 8.

[17] *See id.,* at 2 (providing estimated bandwidth requirements).

[18] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size'').

the related LCN and IP network connections. The requirement would be consistent with the current requirements for NMS Network connections,[19] and so all Users with NMS Network connections would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles.

The Exchange also believes that updating the names of the PCS bundles and removing obsolete text from the Fee Schedule would be equitable and not unfairly discriminatory, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion for all market participants.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20] The proposed expansion of the existing PCS bundles would allow Users to connect to all or a large part of the expanded OPRA feed, unlike the 10 Gb network connections currently offered in the PCS bundles. More specifically, as noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[21] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[22] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

A User with a revised PCS bundle also would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds, and the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere.

The Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users, but rather that competition among Users would be enhanced. By allowing PCS bundles to include 40 Gb connections, the proposed change would allow smaller Users to not only take advantage of the option for co-location services with a PCS bundle but also compete with Users that have 40 Gb connections. The smaller Users include those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The PCS bundles originally were designed to make it more cost effective for such Users to compete,[23] and the Exchange believes that the proposed change would enhance their ability to do so. The proposed change would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The proposed rule change would not impose a burden on competition because it would expand the existing PCS bundles without changing the initial charge or MRC or otherwise adding any fees. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part. As is true now, only Users that purchased a PCS bundle would be charged for it.

All Users would be able to choose what size connections they want, and all Users, whether or not they had a PCS bundle, would be subject to the same requirements for connectivity to the NMS network. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

Finally, the Exchange believes that removing obsolete text from the Fee Schedule would not place any burden on competition that is not necessary or appropriate. Rather, it would benefit competition, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[19] *See id.*

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 8.

[22] *See id.,* at 2 (providing estimated bandwidth requirements).

[23] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394, at 7396 (February 11, 2016) (SR–NYSE–2015–53).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSENAT–2023–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2023–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 a.m. and 3 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–NYSENAT–2023–10 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13342 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97749; File No. SR–NYSEArca–2023–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-Location Services

June 16, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule (''Fee Schedule'') would be updated accordingly. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Partial Cabinet Solution (''PCS'') bundles offered to Users as part of its co-location services.[4] The description of the PCS bundles in the Fee Schedule would be updated accordingly.

Background

The Fee Schedule currently lists two PCS bundles, Options C and D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[5] Users are only eligible to purchase PCS bundles if they meet specified requirements.[6]

In May 2020, the Exchange amended PCS bundle Options C and D to add two 10 Gb connections to the NMS Network to each bundle. The NMS Network is an alternate dedicated network connection that Users use to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor.[7] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

The Exchange expects that the proposed rule change would become operative no later than September 1, 2023. The Exchange will announce the date through a customer notice.

[4] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–23, SR–NYSEAMER–2023–32, SR–NYSECHX–2023–12, and SR–NYSENAT–2023–10.

[5] *See* Securities Exchange Act Release No. 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca–2015–102).

[6] *See id.* The requirements are set forth in Note 1 under ''Colocation Notes.''

[7] *See* Securities Exchange Act Release No. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19).

Proposed Changes to the Current PCS Bundles

The Exchange proposes to amend current Options C and D so that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles. There would be no change to the existing fees for the PCS bundles.

The purpose of the proposed changes to the PCS bundles is to allow a User to connect to all or a large part of the expanded Options Price Reporting Authority (''OPRA'') feed. More specifically, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[8] As a result of this change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[9] This means that a 10 Gb network connection will not suffice for a User that wants to connect to all or a large part of the expanded OPRA feed.[10] Current and potential Users with PCS bundles have requested the inclusion of 40 Gb connections in the bundles.

The ability to connect with a larger section of the OPRA feed is not the only benefit that would occur. A User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. The addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. As the Exchange understands that 40 Gb connections are increasingly considered the industry standard for options trading, and understands that smaller customers—such as those who might qualify for a PCS—often prefer to normalize all of their equipment to one connection size, this may be a benefit to some Users.

There would be no change to the initial charge and monthly recurring charge (''MRC'') for the PCS bundles. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. Users with a PCS bundle would not have to pay a second initial charge to change the content of their PCS bundles. As a result, a User would be able to upgrade its PCS bundle from 10 Gb to 40 Gb, in whole or, if it opts to retain some 10 Gb connections, in part.

To implement the proposed changes as well as remove or update obsolete text, the Exchange proposes to make the following amendments to the description of PCS bundles Options C and D:

- Update the names to Options A and B. Currently no PCS bundles use those names,[11] and the Exchange believes that continuing to use Option C and Option D as names could be confusing as a result.
- Amend the description to state that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles.
- Consistent with the requirements for NMS Network connections,[12] add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections.
- Currently, the Fee Schedule includes text regarding a reduced MRC for PCS bundles for 24 months, which applied so long as a User ordered its PCS bundle on or before December 31, 2020. Since that time has expired, the text has become obsolete, and the Exchange proposes to delete it.

The amended portion of the Fee Schedule would read as follows (proposed deletions in brackets, proposed additions italicized):

Type of service	Description	Amount of charge
* *	* * *	* *
Partial Cabinet Solution bundles Notes: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 1 under ''Colocation Notes.''	Option *A*[C]: 1 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter • For Users that order after December 31, 2020:] $14,000 monthly *charge per bundle*.
A purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e., 10 Gb or 40 Gb) as the related LCN and IP network connections.	Option *B*[D]: 2 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter • For Users that order after December 31, 2020:]$15,000 monthly *charge per bundle*.

[8] *See* Securities Industry Automation Corporation, *Memo to OPRA Multicast Subscribers,* August 31, 2022, at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/6377e5e4114b88c77be5552c_OPRA%20Migration%20to%2096%20Multicast%20Line%20Network_Q3%20Postponement.pdf.* Connectivity to the OPRA feed is an Included Data Product available over the IP network and the NMS network.

[9] *See id.,* at 2 (providing estimated bandwidth requirements).

[10] The proposed change would be of utility even if OPRA were not expanding its data distribution network, as a User cannot connect to all of the OPRA feed with the current 10 Gb connections in the PCS bundles.

[11] The previous Options A and B were deleted in 2022. *See* Securities Exchange Act Release No. 95969 (October 4, 2022), 87 FR 61423 (November 11, 2022) (SR–NYSEARCA–2022–64).

[12] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size''). By way of example, if a User with a PCS bundle selected one 10 Gb LX LCN connection and one 40 Gb IP network connection, it would receive one 10 Gb NMS connection and one 40 Gb NMS connection. If the User instead chose 10 Gb for both its LCN and IP network connection, it would receive two 10 Gb NMS connections.

The PCS bundles would continue to include a 1 kw or 2 kw partial cabinet and either the Network Time Protocol Feed or the Precision Timing Protocol. The requirements set forth in Note 1 under ''Colocation Notes'' would continue to apply.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would allow Users to connect to all or a large part of the expanded OPRA feed. As noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[16] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[17] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

The Exchange also believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because a User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. Moreover, the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. That said, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes.

The Exchange further believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The Exchange also believes that the proposed change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because there would be no change to the initial charge and MRC for the PCS bundles. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb and 40 Gb) as the related LCN or IP network connection. The requirement would be consistent with the current requirements for NMS Network connections[18] and so all Users would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles. In this way, it would enhance the clarity and transparency of the Fee Schedule.

The Exchange believes that updating the names of the PCS bundles from Option C and D to Option A and B and removing obsolete text from the Fee Schedule would be reasonable for the same reasons. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because, even though the connectivity options available in a PCS bundle would increase, there would be no change to the initial charge and MRC for a PCS bundle. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only Users that purchased a PCS bundle would be charged for it. The

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 8.

[17] *See id.,* at 2 (providing estimated bandwidth requirements).

[18] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size'').

proposed change would not apply differently to distinct types or sizes of market participants but would apply to all Users equally. Moreover, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory to add text stating that purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections. The requirement would be consistent with the current requirements for NMS Network connections,[19] and so all Users with NMS Network connections would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles.

The Exchange also believes that updating the names of the PCS bundles and removing obsolete text from the Fee Schedule would be equitable and not unfairly discriminatory, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion for all market participants.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20] The proposed expansion of the existing PCS bundles would allow Users to connect to all or a large part of the expanded OPRA feed, unlike the 10 Gb network connections currently offered in the PCS bundles. More specifically, as noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[21] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[22] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

A User with a revised PCS bundle also would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds, and the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere.

The Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users, but rather that competition among Users would be enhanced. By allowing PCS bundles to include 40 Gb connections, the proposed change would allow smaller Users to not only take advantage of the option for co-location services with a PCS bundle but also compete with Users that have 40 Gb connections. The smaller Users include those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The PCS bundles originally were designed to make it more cost effective for such Users to compete,[23] and the Exchange believes that the proposed change would enhance their ability to do so. The proposed change would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The proposed rule change would not impose a burden on competition because it would expand the existing PCS bundles without changing the initial charge or MRC or otherwise adding any fees. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part. As is true now, only Users that purchased a PCS bundle would be charged for it.

All Users would be able to choose what size connections they want, and all Users, whether or not they had a PCS bundle, would be subject to the same requirements for connectivity to the NMS network. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

Finally, the Exchange believes that removing obsolete text from the Fee Schedule would not place any burden on competition that is not necessary or appropriate. Rather, it would benefit competition, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[19] *See id.*

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 8.

[22] *See id.,* at 2 (providing estimated bandwidth requirements).

[23] *See* 81 FR 7401, *supra* note 5, at 7404.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEArca–2023–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEArca–2023–42. 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 (*https://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 a.m. and 3 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–NYSEArca–2023–42 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13339 Filed 6–22–23; 8:45 am]

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[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97750; File No. 4–698]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail

June 16, 2023.

I. Introduction

On March 13, 2023, the Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the Participants [1] to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'' or ''Plan''),[2] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Exchange Act [3] and Rule 608 of Regulation National Market System (''Regulation NMS'') thereunder,[4] a proposed amendment to the CAT NMS Plan (''Proposed Amendment'') to implement a revised funding model (''Executed Share Model'') for the consolidated audit trail (''CAT'') and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model (''Proposed Participant Fee Schedule'').[5] The Proposed Amendment was published for comment in the **Federal Register** on March 21, 2023.[6]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[7] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.[8]

II. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the SROs to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities.[9] On November 15, 2016, the Commission approved the CAT NMS Plan.[10] Under the CAT NMS Plan, the Operating Committee of the Company, of which each Participant is a member,

[1] The Participants are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'').

[2] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, 81 FR at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company, CAT LLC, which became the Company. *See* Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019). The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan*.

[3] 15 U.S.C. 78k–1.

[4] 17 CFR 242.608.

[5] *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Mar. 13, 2023) (''Transmittal Letter'').

[6] *See* Securities Exchange Act Release No. 97151 (Mar. 15, 2023), 88 FR 17086 (Mar. 21, 2023) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm*.

[7] 17 CFR 242.608(b)(2)(i).

[8] On June 15, 2023, the Participants submitted a letter consenting to a 30-day extension (until July 20, 2023) of the date by which the Commission shall, by order, approve or disapprove the Proposed Amendment, or institute proceedings to determine whether the Proposed Amendment should be disapproved. *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Jun. 15, 2023). Nevertheless, the Commission believes it is appropriate for the reasons stated herein to institute proceedings under Rule 608(b)(2)(i) of Regulation NMS and Rules 700 and 701 of the Commission's Rules of Practice.

[9] 17 CFR 242.613.

[10] *See* CAT NMS Plan, *supra* note 2.

has the discretion (subject to the funding principles set forth in the Plan) to establish funding for the Company to operate the CAT, including establishing fees to be paid by the Participants and Industry Members.[11]

Under the CAT NMS Plan, CAT fees are to be implemented in accordance with various funding principles, including an ''allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations'' and the ''avoid[ance of] any disincentives such as placing an inappropriate burden on competition and reduction in market quality.'' [12] The Plan specifies that, in establishing the funding of the Company, the Operating Committee shall establish ''a tiered fee structure in which the fees charged to: (1) CAT Reporters [13] that are Execution Venues,[14] including ATSs,[15] are based upon the level of market share; (2) Industry Members' non-ATS activities are based upon message traffic; and (3) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).'' [16]

On May 15, 2020, the Commission adopted amendments to the CAT NMS Plan designed to increase the Participants' financial accountability for the timely completion of the CAT (''Financial Accountability Amendments'').[17] The Financial Accountability Amendments added Section 11.6 to the CAT NMS Plan to govern the recovery from Industry Members of any fees, costs, and expenses (including legal and consulting fees, costs and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from June 22, 2020 until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements [18] (''Post-Amendment Expenses''). Section 11.6 establishes target deadlines for four Financial Accountability Milestones (Periods 1, 2, 3 and 4) [19] and reduces the amount of fee recovery available to the Participants if these deadlines are missed.[20]

III. Summary of Proposal [21]

CAT LLC proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (''Original Funding Model'') with the Executed Share Model. The Original Funding Model involved a bifurcated approach, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATSs for Eligible Securities through fixed tiered fees based on market share.[22] In contrast, the Executed Share Model would charge fees based on the executed equivalent share volume of transactions in Eligible Securities rather than based on market share and message traffic.[23] In addition, instead of charging fees to Industry Members, under the Executed Share Model, fees would be charged to each Industry Member that is a CAT Executing Broker [24] for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'').[25]

Under the Executed Share Model, CAT LLC proposes to establish two categories of CAT fees. The first category of CAT fees would be fees (''CAT Fees'') payable by Participants and Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'').[26] The second category of CAT fees would be fees (''Historical CAT Assessments'') to be payable by Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs previously paid by the Participants (''Past CAT Costs'').[27] Each Historical CAT Assessment will recover an amount of ''Historical CAT Costs'', which will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.[28]

For each category of fees, each CEBB and each CEBS will be required to pay a CAT fee for each such transaction in Eligible Securities in the prior month based on CAT Data.[29] The CEBB's CAT fee or CEBS's CAT fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate,[30] as

[11] The CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.'' *See* CAT NMS Plan, *supra* note 2, at Section 1.1. *See also id.* at Section 11.1(b).

[12] *Id.* at Section 11.2(b) and (e).

[13] The CAT NMS Plan defines ''CAT Reporter'' as ''each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c).'' *Id.* at Section 1.1.

[14] The CAT NMS Plan defines ''Execution Venue'' as ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' *Id.*

[15] *Id.*

[16] CAT NMS Plan, *supra* note 2, at Section 11.2(c). *See id.* at Article XI for additional detail.

[17] *See* Securities Exchange Act Release No. 88890, 85 FR 31322 (May 22, 2020).

[18] ''Full Implementation of CAT NMS Plan Requirements'' means ''the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).'' CAT NMS Plan, *supra* note 2, at Section 1.1.

[19] *Id.* at Section 11.6(a)(i).

[20] *Id.* at Section 11.6(a)(ii) and (iii).

[21] This section summarizes the proposed changes to the CAT NMS Plan. For a full discussion of the Proposed Amendment, including the Participants' justifications for the Proposed Amendment, such as comparability to existing fees, alternatives considered, fee pass-throughs, treatment of FINRA, cost transparency (including the Historical CAT Costs prior to 2022) and satisfaction of the Exchange Act and CAT NMS Plan requirements, *see* Notice, *supra* note 6.

[22] *See* CAT NMS Plan, *supra* note 2, at Section 11.3(a) and (b).

[23] *See* Notice, *supra* note 6, 88 FR at 17086.

[24] *See infra* Section III.A.1. for the definition of CAT Executing Broker.

[25] *See* Notice, *supra* note 6, 88 FR at 17087.

[26] *Id.* at 17086; *see also* proposed Section 11.3(a). The defined term ''CAT Fees'' applies specifically to CAT fees related to Prospective CAT Costs. *Id.*

[27] *See* Notice, *supra* note 6, 88 FR at 17086; *see also* proposed Section 11.3(b).

[28] *See* Notice, *supra* note 6, 88 FR at 17096; *see also* proposed Section 11.3(b)(i)(C).

[29] *See* Notice, *supra* note 6, 88 FR at 17093; *see also* proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

[30] *See* Notice, *supra* note 6, 88 FR at 17124 for the definition and description of the calculation of the Fee Rate.

described below.[31] Participants would incur CAT Fees only for Prospective CAT Costs and the Participant CAT Fee will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the reasonably determined Fee Rate.[32] The Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.[33]

As Plan Processor, FINRA CAT would be responsible for calculating the CAT fees and submitting invoices to the CAT Executing Brokers based on this CAT Data.[34] All data used to calculate the fees under the Executed Share Model would be CAT Data, and, therefore, it would be available through the CAT for calculating CAT fees.[35]

Once the Proposed Amendment has been approved by the Commission, the Participants would separately file proposed rule changes pursuant to Section 19(b) of the Exchange Act [36] to establish the amounts of the proposed CAT Fees and Historical CAT Assessments to be charged to Industry Members, subject to the satisfaction of applicable Financial Accountability Milestones as set forth in Section 11.6 of the CAT NMS Plan and the implementation of the billing and collection system for the CAT fees.[37] In each proposed rule change, if the Participants seek to recover amounts under the Financial Accountability Milestones, they would need to discuss their completion of the applicable milestone.[38]

A. Description of Amendments

1. Definition of CAT Executing Broker

The Executed Share Model would define ''CAT Executing Broker'' in Section 1.1 of the CAT NMS Plan as:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.

Under the Participant Technical Specifications, for transactions occurring on a Participant exchange, there is a field for the exchange to report the market participant identifier (''MPID'') of ''the member firm that is responsible for the order on this side of the trade.'' [39] The Industry Members identified in these fields for the transaction reports would be the CAT Executing Brokers for transactions executed on an exchange.

FINRA is required to report to the CAT transactions in Eligible Securities reported to a FINRA trade reporting facility (*i.e.,* the FINRA Trade Reporting Facilities (''TRF''), Over-the Counter Reporting Facility (''ORF'') and Alternative Display Facility (''ADF'')).[40] Under the Participant Technical Specifications, for such transactions reported to a FINRA trade reporting facility, FINRA is required to report the MPID of the executing party as well as the MPID of the contra-side executing party. The Industry Members identified in these two fields for the transaction reports would be the CAT Executing Brokers for over-the-counter transactions.

CAT LLC states that a CAT Executing Broker in over-the-counter transactions identified on the TRF/ORF/ADF Transaction Data Event is determined based on the tape or media report, that is, a trade report that is submitted to a FINRA trade reporting facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A CAT Executing Broker for over-the-counter transactions is *not* determined based on a non-tape report (*e.g.,* a regulatory report or a clearing report), which are not publicly disseminated.[41]

Therefore, with respect to transactions on an exchange and over-the-counter transactions, CAT LLC would use transaction reports reported to the CAT by FINRA or the exchanges to identify the transaction, as well as the CAT Executing Broker for each transaction, for purposes of calculating the CAT fees. Accordingly, all data used to calculate the fees under the Executed Share Model would be CAT Data, and, therefore, it would be available through the CAT for calculating CAT fees. FINRA CAT would be responsible for calculating the CAT fees [42] and submitting invoices to the CAT Executing Brokers [43] based on this CAT Data.

a. Treatment of ATSs

The definition of a ''CAT Executing Broker'' as proposed above would determine the CAT Executing Brokers for transactions executed on an ATS. Specifically, if an ATS is identified as the executing party and/or the contra-side executing party in the TRF/ORF/ADF Transaction Data Event, then the ATS would be a CAT Executing Broker for purposes of the Executed Share Model. If the ATS is identified as the executing party for the buyer in such transaction reports, then the ATS would be the CAT Executing Broker for the Buyer. If the ATS is identified as the executing party for the seller in such

[31] *Id.* at 17095; *see also* proposed Section 11.3(a)(iii), proposed Section 11.3(b)(iii).

[32] *See* Notice, *supra* note 6, 88 FR at 17094; *see also* proposed Section 11.3(a)(ii).

[33] *See* proposed Section 11.3(b)(ii).

[34] *See* Notice, *supra* note 6, 88 FR at 17088.

[35] *Id.*

[36] 15 U.S.C. 78s(b).

[37] *See* Notice, *supra* note 6, 88 FR at 17086, 17122.

[38] Proposed Section 11.3(b)(iii)(B)(III) would prohibit any Participant from filing proposed rule changes pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone in Section 11.6 of the CAT NMS Plan has been satisfied.

[39] *See* Section 4.7 (Order Trade Event) and Section 5.2.5.1 (Simple Option Trade Event: Side Details) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r17 (Feb. 21, 2023), *https://www.catnmsplan.com/sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf.*

[40] *See* Section 6.1 of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023).

[41] There is an exception to this statement for away-from-market trades. These are non-media trades reported to the TRF with an ''SRO Required Modifier Code'' of ''R''.

[42] According to CAT LLC, because CAT fees would be charged based on the Equity Order Trade Events, Options Trade Events and the ADF/ORF/TRF Transaction Data Events in the Participant Technical Specifications and none of these transaction reports provide for fractional quantities, CAT fees would be calculated without reference to fractional shares or fractional share components of executed orders. To the extent that FINRA's equity transaction reporting facilities or the exchanges report transactions in fractional shares in the future, then the calculation of CAT fees would reflect fractional shares as well.

[43] CAT LLC states that each CAT Executing Broker could determine, but would not be required, to pass their CAT fees through to their clients, who, in turn, could pass their CAT fees to their clients, until the fee is imposed on the ultimate participant in the transaction.

transaction reports, then the ATS would be the CAT Executing Broker for the Seller. An ATS also could be identified as both the CAT Executing Broker for the Buyer and the CAT Executing Broker for the Seller. ATSs would determine the executing party and the contra-side executing party reported to FINRA's equity trading facilities in accordance with the transaction reporting requirements for FINRA's equity trading facilities.

b. Non-Industry Members on Transaction Reports

The Executed Share Model also would address how transactions that involve a non-Industry Member would be treated (*e.g.,* for internalized trades or trades with a non-FINRA member). The FINRA trade reporting requirements state that ''[w]hen reporting a trade with a broker-dealer that is not a FINRA member, the non-member should not be identified on the trade report as the contra party to the trade.'' [44] Accordingly, when the transaction in these cases is reported to CAT via the TRF/ORF/ADF Transaction Data Event, the field for the reportingExecutingMpid would be populated with the MPID of the executing broker and the field for the contraExecutingMpid would be blank or null. As noted above, the reportingExecutingMpid is a required field (include key = 'R') that must be entered on all CAT reports, but the contraExecutingMpid field is conditional; it does not need to be populated, specifically to account for cases like those at issue here (*e.g.,* transactions with a non-FINRA member). Therefore, in those scenarios where the contraExecutingMpid is blank, the FINRA member identified in the reportingExecutingMpid field would be treated as the CAT Executing Broker for both the buy-side and the sell-side of the transaction, that is, as the CEBS and CEBB.

In addition, under the FINRA trade reporting requirements, there is a limited exception to the general rule about not reporting a non-member as the contra party to the trade. Specifically, pursuant to FINRA Trade Reporting FAQ 202.1, ''[t]here is a limited exception where a Canadian non-member firm uses the FINRA/NASDAQ TRF or ORF for purposes of comparing trades pursuant to a valid Non-Member Addendum to the NASDAQ Services Agreement. In that instance, however, the Canadian non-member must appear on the trade report as the contra party to the trade and not as the reporting party. For any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.'' In this case involving the Canadian non-member firm exception, the executing broker identified in the reportingExecutingMpid field would be billed for both sides of the transaction.

CAT LLC proposes to include language in the definition of ''CAT Executing Broker'' to address these scenarios. Specifically, CAT LLC proposes to state the following in the definition of ''CAT Executing Broker: ''in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.''

c. Cancellations and Corrections

The Executed Share Model also would provide for cancellations and corrections. CAT LLC expects to determine CAT fees based on the transaction reports for a month as of a particular day. To the extent that changes are made to the transaction reports on or before the day the CAT fees are determined for the given month, the changes will be reflected in the monthly bill. To the extent that changes are made to the transaction reports after the day the CAT fees are determined for that month, subsequent bills will reflect any changes via debits or credits, as applicable. As CAT LLC is required by Section 11.1(d) of the CAT NMS Plan to adopt policies, procedures, and practices regarding the billing and collection of fees, CAT LLC will establish specific policies and procedures regarding the treatment of such adjustments as those related to cancellations and corrections. Furthermore, CAT LLC will inform Industry Members and other market participants of these policies and procedures via FAQs, CAT Alerts and/or other appropriate methods.

2. CAT Budget

Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' CAT LLC proposes to provide additional detail regarding the CAT LLC operating budget by adding proposed subparagraphs (i) and (ii) to Section 11.1(a) of the CAT NMS Plan.

a. Budgeted CAT Costs

CAT LLC proposes to add subparagraph (i) to Section 11.1(a) of the CAT NMS Plan to list the types of CAT costs to be included in the budget. Specifically, proposed Section 11.1(a)(i) of the CAT NMS Plan would state that ''[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other categories as reasonably determined by the Operating Committee to be included in the budget.''

CAT LLC proposes to require the inclusion of five subcategories of technology costs in the budget: (1) cloud hosting services, (2) operating fees, (3) Customer and Account Information System (''CAIS'') operating fees, (4) change request fees, and (5) capitalized developed technology costs.[45] CAT LLC states that it will consider the need to provide additional cost disclosure going forward.[46]

CAT LLC proposes to amend Section 11.1(a) of the CAT NMS Plan to require CAT LLC to determine costs for the operating budget for the CAT in a reasonable manner. Specifically, the first sentence of Section 11.1(a) of the CAT NMS Plan would be revised to read: ''On an annual basis the Operating Committee shall approve a reasonable operating budget for the Company.'' Similarly, CAT LLC proposes to include the term ''reasonably'' in proposed paragraph (a)(i) of Section 11.1 of the

[44] FINRA Trade Reporting FAQ 202.1.

[45] CAT LLC states that breaking out technology costs in this manner is consistent with how such costs are broken out in the CAT budgets available on the CAT website. The CAT LLC budgets are available on the CAT website at *https://www.catnmsplan.com/cat-financial-and-operating-budget.* CAT LLC states that it currently does not propose to require the disclosure of additional subcategories of cost information, such as a further breakdown of the category of cloud hosting services into production costs, including linker costs and storage costs. Additionally, CAT LLC notes that the CAT NMS Plan requires that detailed cost information be made available to the Commission upon request, and detailed information on CAT costs and operations is regularly made available to the Commission staff and the Advisory Committee on a confidential basis. *See* Notice, *supra* note 6, 88 FR at 17090.

[46] *Id.*

CAT NMS Plan. Specifically, that section would read: ''Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.''

Finally, CAT LLC proposes to amend Section 11.1(b) of the CAT NMS Plan. Currently, Section 11.1(b) of the CAT NMS Plan states that:

> Subject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ''Consolidated Audit Trail Funding Fees.''

CAT LLC proposes to amend Section 11.1(b) to include a reference to Section 11.1 as well as Section 11.2 in the ''subject to'' clause at the beginning of the provision.

b. Reserve

Section 11.1(a) of the CAT NMS Plan states that the budget shall include ''the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' In addition, proposed Section 11.1(a)(i) of the CAT NMS Plan would state that the budgeted CAT costs shall include a reserve. Section 11.1(c) of the CAT NMS Plan states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.''

CAT LLC proposes to add paragraph (ii) to Section 11.1(a) of the CAT NMS Plan to set forth the parameters for the size of the reserve. Proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that ''[f]or the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget.'' In addition, proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that ''[f]or the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.''

CAT LLC proposes to provide additional information as to how budget surpluses would be treated for purposes of the reserve. Specifically, proposed subparagraph (ii) of Section 11.1(a) of the CAT NMS Plan would state that ''[t]o the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus will be used to offset future fees.'' In addition, CAT LLC further proposes to state in proposed Section 11.1(a)(ii) of the CAT NMS Plan that ''[f]or the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget).''

3. CAT Fees Related to Prospective CAT Costs

CAT LLC proposes to revise the introductory statement in proposed Section 11.3(a) of the CAT NMS Plan to state that the Operating Committee will establish the CAT Fees to be payable by Participants and Industry Members with regard to Prospective CAT Costs.

a. Fee Rate for CAT Fees

CAT LLC proposes to describe the timing and method for calculating the Fee Rate for the CAT Fees related to Prospective CAT Costs in proposed Section 11.3(a)(i) of the CAT NMS Plan, and to provide additional detail regarding the Fee Rate in that provision. Proposed Section 11.3(a)(i) of the CAT NMS Plan would state that CAT Fees related to Prospective CAT Costs would be calculated twice a year, once at the beginning of the year and once during the year.

Proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan would provide that at the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the Commission pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS provides that during each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the Commission pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. CAT LLC also proposes to add Section 11.3(a)(i)(A)(III) to the CAT NMS Plan to state that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees are in place with a new Fee Rate. The Executed Share Model is designed to collect CAT fees continuously to provide uninterrupted revenue to pay CAT bills.[47]

b. Executed Equivalent Shares

CAT LLC proposes to describe in proposed Section 11.3(a)(i)(B) of the CAT NMS Plan how executed equivalent shares would be counted for purposes of calculating CAT Fees. The Executed Share Model uses the concept of executed equivalent shares as the transactions subject to a CAT Fee involve NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics.

NMS Stocks. Under the Executed Share Model, each executed share for a transaction in NMS Stocks would be counted as one executed equivalent share.

Listed Options. Recognizing that Listed Options trade in contracts rather than shares, each executed contract for a transaction in Listed Options will be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction. Typically, a Listed Option contract represents 100 shares; however, it may also represent another designated number of shares.

OTC Equity Securities. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Executed Share Model would discount

[47] CAT LLC proposes to add proposed Section 11.3(a)(i)(A)(IV) to the CAT NMS Plan. This provision would state that ''[f]or the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the CAT Fee would be calculated as described in paragraph (II) of this Section.''

the share volume of OTC Equity Securities when calculating CAT Fees. To address this potential concern, the Executed Share Model would count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares.

c. Budgeted CAT Costs

The calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs requires the determination of the budgeted CAT costs for the year or other relevant period. Proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would state that the budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

In addition, proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would provide that the budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

d. Projected Total Executed Equivalent Share Volume

The calculation of the Fee Rate for CAT Fees also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for each relevant period. Pursuant to proposed Section 11.3(a)(i)(D) of the CAT NMS Plan, each year, the Operating Committee would reasonably determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior twelve months. As set forth in proposed Section 11.3(a)(iii)(B), Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to Section 19(b) of the Exchange Act. Furthermore, CAT LLC intends to calculate the CAT Fees based on a reasonable determination of the projected total executed equivalent share volume of transactions in Eligible Securities.

e. Participant CAT Fees for Prospective CAT Costs

CAT LLC proposes to add paragraph (A) to proposed Section 11.3(a)(ii) of the CAT NMS Plan to describe the CAT Fee obligation of the Participants. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of Section 11.3.

CAT LLC also proposes to include proposed paragraph (B) of proposed Section 11.3(a)(ii) of the CAT NMS Plan to clarify that Participants would only be required to pay CAT Fees when Industry Members are required to pay CAT Fees. Under the Executed Share Model, CAT Fees are designed to cover 100% of CAT costs by allocating costs between and among Participants and Industry Members. However, the CAT Fees charged to Participants are implemented via a different process than CAT Fees charged to Industry Members. CAT Fees charged to Participants are implemented via an approval of the CAT Fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan. In contrast, CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act.

f. Industry Member CAT Fees for Prospective CAT Costs

CAT LLC proposes to describe the CAT Fees related to Prospective CAT Costs that would be charged to Industry Members in proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan. Each Industry Member that is the CEBB in a transaction in Eligible Securities and each Industry Member that is the CEBS in a transaction in Eligible Securities) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

Proposed paragraph (B) of proposed Section 11.3(a)(iii) of the CAT NMS Plan would require the fee filings to be made pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder[48] for Industry Member CAT Fees to include with regard to the CAT Fee: (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget and the reason for changes in each such line item from the prior CAT Fee filing;[49] (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated and explain how the budget used in the calculation is reconciled to the collected fees.[50]

In addition, in proposed Section 11.3(a)(iii)(B), CAT LLC proposes to state that the budgeted CAT costs described in the fee filings must provide sufficient detail to demonstrate that the CAT budget used in calculating the CAT Fees is reasonable and appropriate.

The collection of CAT Fees from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to state in proposed paragraph (C) to proposed

[48] CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to CAT Fees to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–(f)(2) thereunder. In accordance with Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(2) thereunder, such fee filings would be effective upon filing.

[49] CAT LLC intends to include any other categories as reasonably determined by the Operation Committee. Accordingly, this provision refers to ''such other categories as reasonably determined by the Operating Committee to be included in the budget.''

[50] As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.

Section 11.3(a)(iii) that Participants will not make fee filings pursuant to Section 19(b) of the Exchange Act regarding CAT Fees until the Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan has been satisfied.

g. CAT Fee Details

CAT LLC proposes to add proposed Section 11.3(a)(iv)(A) to the CAT NMS Plan to state that details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.''

In addition, CAT LLC proposes to make certain aggregate statistics regarding the CAT Fees publicly available, which would include, at a minimum, the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[51]

4. Historical CAT Assessment

CAT LLC proposes to revise Section 11.3(b) of the CAT NMS Plan to provide that the Operating Committee will establish one or more Historical CAT Assessments to be payable by Industry Members with regard to Past CAT Costs.[52]

a. Historical Fee Rate for Historical CAT Assessments

Proposed paragraph (A) of proposed Section 11.3(b)(i) of the CAT NMS Plan would state that the Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the Commission pursuant to Section 19(b) of the Exchange Act such Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

b. Executed Equivalent Shares

Proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would state that the Historical CAT Assessment would be calculated based on the same executed equivalent share calculation as CAT Fees related to Prospective CAT Costs.

c. Historical CAT Costs

Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan would describe the Historical CAT Costs for calculating Historical CAT Assessments and would state that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.''

CAT LLC proposes to further clarify the amount to be collected by the Historical CAT Assessments by adding a clarifying statement in proposed Section 11.3(b)(i)(C) that ''[e]ach Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' Each CEBS and CEBB pays one-third, and, therefore, two-thirds of the Historical CAT Costs would be collected from CAT Executing Brokers.

CAT LLC also proposes to add the term ''reasonably'' to the following sentence in Section 11.1(c) of the CAT NMS Plan before the word ''incurred'': ''In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.''

d. Historical Recovery Period

Proposed Section 11.3(b)(i)(D)(I) of the CAT NMS Plan would describe the Historical Recovery Period used in calculating the Historical Fee Rate. This proposed provision would state that ''[t]he length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment.'' This proposed provision, however, would state that ''no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.''

Proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan would describe the length of the time that the Historical CAT Assessment would be in effect, which may be greater than or less than the Historical Recovery Period, depending on the amount of the Historical CAT Assessments collected based on the actual volume during the time that the Historical Assessment is in effect. Any Historical CAT Assessment would remain in effect until the relevant Historical CAT Costs are collected, whether that time is shorter or longer than the Historical Recovery Period used in calculating the Historical Fee Rate.

e. Projected Total Executed Equivalent Share Volume

The Historical Fee Rate for a Historical CAT Assessment would be calculated by using the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for such Historical CAT Assessment. As set forth in proposed Section 11.3(b)(i)(E) of the CAT NMS Plan, ''[t]he Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' In addition, CAT LLC proposes to allow the Operating Committee to base its projection on the prior twelve months, but to use its discretion to analyze the likely volume for the upcoming year. As set forth in proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan, Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to Section 19(b) of the Exchange Act for Historical CAT Assessments.

[51] *See* proposed Section 11.3(a)(iv)(B) of the CAT NMS Plan.

[52] There may be one or more Historical CAT Assessments, depending upon the timing of any approval of the amendment to the CAT NMS Plan and the completion of the Financial Accountability Milestones. For a discussion of the Financial Accountability Milestones, *see* Section 11.6 of the CAT NMS Plan.

f. Past CAT Costs and Participants

Proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Participants would not be required to pay the Historical CAT Assessment as the Participants previously have paid all Past CAT Costs. In addition, proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that ''[i]n lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.'' Furthermore, proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that ''[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.''

g. Historical CAT Assessment for Industry Members

CAT LLC proposes to describe the Historical CAT Assessment charged to Industry Members in proposed Section 11.3(b)(iii)(A) of the CAT NMS Plan. Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.

CAT LLC proposes to provide additional details regarding the fee filings to be filed by the Participants regarding each Historical CAT Assessment pursuant to Section 19(b) of the Exchange Act in proposed Section 11.3(b)(iii)(B) of the CAT NMS Plan.[53] Specifically, CAT LLC proposes to state that each Participant will be required to file a fee filing pursuant to Section 19(b) of the Exchange Act to describe each Historical CAT Assessment.[54]

CAT LLC also proposes to provide additional detail about the information that Participants would be required to include in their fee filings to be made pursuant to Section 19(b) of the Exchange and Rule 19b–4(f)(2) for Historical CAT Assessments in proposed paragraph (b)(iii)(B)(II) of proposed Section 11.3 of the CAT NMS Plan. Specifically, such filings would be required to include: (A) the Historical Fee Rate; (B) a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection.[55]

In addition, CAT LLC proposes to clarify in proposed Section 11.3(b)(iii)(B)(II) that the Historical CAT Costs described in the fee filings must provide sufficient detail to demonstrate that such costs are reasonable and appropriate.

The collection of Historical CAT Assessments from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to clarify in proposed Section 11.3(b)(iii)(B)(III) that Participants will not make CAT fee filings pursuant to Section 19(b) of the Exchange Act regarding a Historical CAT Assessment until any applicable Financial Accountability Milestone has been satisfied.

h. Historical CAT Assessment Details

CAT LLC proposes to add proposed Section 11.3(b)(iv)(A) to the CAT NMS Plan to state that details regarding the calculation of a CAT Executing Broker's Historical CAT Assessments will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

In addition, CAT LLC proposes to make certain aggregate statistics regarding Historical CAT Assessments publicly available, which would include, at a minimum, the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.[56]

5. Additional Changes From Original Funding Model

CAT LLC proposes certain revisions to Article XI of the CAT NMS Plan to implement the Executed Share Model. CAT LLC proposes to make the following changes to the CAT NMS Plan in addition to the proposed changes to the CAT NMS Plan discussed above.

a. Elimination of Definition of ''Execution Venue''

Section 1.1 of the CAT NMS Plan defines the term ''Execution Venue'' to mean ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' Currently, the term ''Execution Venue'' is used in Sections 11.2 and 11.3 of the CAT NMS Plan to describe how CAT costs would be allocated among CAT Reporters under the Original Funding Model. The Original Funding Model would have imposed fees based on market share to CAT Reporters that are Execution Venues, including ATSs, and fees based on message traffic for Industry Members' non-ATS activities. In contrast, the Executed Share Model would impose fees based on the executed equivalent shares of transactions in Eligible Securities for three categories of CAT Reporters: Participants, CEBBs and CEBSs. Accordingly, as the concept for an ''Execution Venue'' would not be relevant for the Executed Share Model, CAT LLC proposes to delete this term and its definition from Section 1.1 of the CAT NMS Plan.

b. Use of Executed Equivalent Share Volume Under Executed Share Model

The Original Funding Model set forth in the CAT NMS Plan requires Participants and Execution Venue ATSs to pay CAT fees based on market share and Industry Members (other than Execution Venue ATSs) to pay CAT fees based on message traffic. The CAT NMS Plan also describes how the market

[53] CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to Historical CAT Assessments to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act. In accordance with Section 19(b)(3)(A) of the Exchange Act, fee filings made pursuant to Section 19(b)(3)(A) of the Exchange Act would be effective upon filing.

[54] *See* proposed Section 11.3(b)(iii)(B)(I).

[55] As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee.

[56] *See* proposed Section 11.3(b)(iv)(B) of the CAT NMS Plan.

share-based fee would be calculated for Participants and other Execution Venue ATSs and how the message traffic-based fee would be calculated for Industry Members (other than Execution Venue ATSs). CAT LLC proposes to amend the CAT NMS Plan to require Participants, CEBBs and CEBSs to pay CAT fees based on the number of executed equivalent shares in a transaction in Eligible Securities, rather than based on market share and message traffic. Accordingly, the Operating Committee proposes to amend Section 11.2(b) and (c) and Section 11.3(a) and (b) of the CAT NMS Plan to reflect the proposed use of the number of executed equivalent shares in transactions in Eligible Securities in calculating CAT fees.

Section 11.2(b) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' CAT LLC proposes to delete the requirement to take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' CAT LLC represents that this requirement related to using message traffic and market share in the calculation of CAT fees, as message traffic and market share were metrics related to the impact of a CAT Reporter on the Company's resources and operations. CAT LLC represents that with the proposed move to the use of the executed equivalent shares metric instead of message traffic and market share, the requirement is no longer relevant.

Section 11.2(c) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (c) to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic.'' CAT LLC proposes to delete subparagraphs (i) and (ii) and replace these subparagraphs with the requirement that the fee structure in which the fees charged to ''Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.''

In addition, CAT LLC proposes to amend the CAT funding principles to clarify that CAT Fees and the Historical CAT Assessments are intended to be cost-based fees—that is, the fees are designed to recover the cost of the creation, implementation and operation of the CAT. CAT LLC proposes to amend the funding principle set forth in Section 11.2(c) by making a specific reference to the costs of the CAT.

CAT LLC proposes to delete Section 11.3(a) of the CAT NMS Plan, which provides additional detail regarding the market share-based fees to be paid by Participants and Execution Venue ATSs under the Original Funding Model, and replace it with a description of the CAT Fees related to Prospective CAT Costs, as described above.

CAT LLC proposes to delete Section 11.3(b) of the CAT NMS Plan, which provides additional detail regarding the message traffic-based CAT fees to be paid by Industry Members (other than Execution Venue ATSs) under the Original Funding Model, and replace it with a description of the Historical CAT Assessments, as described above.

c. Elimination of Tiered Fees

CAT LLC proposes to eliminate the use of tiered fees that were included in the Original Funding Model. Instead, under the Executed Share Model, each Participant, CEBB or CEBS would pay a fee based solely on its transactions in Eligible Securities. The Operating Committee therefore proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate tiered fees and related concepts.

Section 11.1(d) of the CAT NMS Plan states that ''[c]onsistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, assignment of tiers, resolution of disputes, billing and collection of fees, and other related matters.'' With the elimination of tiered fees, the reference to the ''assignment of tiers'' would no longer be relevant for the Executed Share Model. Therefore, CAT LLC proposes to delete the reference to ''assignment of tiers'' from Section 11.1(d). Similarly, CAT LLC also proposes to delete the following sentences from Section 11.1(d) because the Executed Share Model would not use tiered fees:

> For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

CAT LLC also proposes to delete the references to ''tiered'' fees from Section 11.2(c) of the CAT NMS Plan and paragraph (iii) of Section 11.2(c) of the CAT NMS Plan, which relates to the establishment of a tiered fee structure.

As discussed above, the Operating Committee proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes would remove the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b) of the CAT NMS Plan, along with the other proposed changes.

d. No Fixed Fees

As discussed above, CAT LLC proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Executed Share Model. These proposed changes also would remove the references to ''fixed fees'' in Sections 11.3(a), 11.3(a)(i), 11.3(a)(ii) and 11.3(b) and replaced them with references to ''fees.'' Under the Executed Share Model, the CAT fees to be paid by Participants, CEBBs and CEBSs will vary in accordance with their executed equivalent share volume of transactions in Eligible Securities, although the Fee Rate will be fixed for a relevant period.

6. Plan Amendment Process for Fee Rate Changes

Under the Executed Share Model, once any Fee Rate has been established by a majority vote of the Operating Committee in accordance with the Executed Share Model set forth in the CAT NMS Plan,[57] each Participant would be required to pay the applicable CAT Fee calculated in accordance with the requirements set forth in the CAT NMS Plan (subject to the requirement for the Industry Member CAT Fee to be in effect). CAT LLC does not plan to submit an amendment to the CAT NMS Plan each time that the Fee Rate for the CAT Fee is established or adjusted because of the length of time and burden required to amend the CAT NMS Plan for each adjustment to the Fee Rate.

[57] Participants would be required to pay the CAT Fee once the CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

B. CAT Fee Schedule for Participants

To implement the Participant CAT fees, CAT LLC proposes to add a fee schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to Appendix B of the CAT NMS Plan. Proposed paragraph (a) of the fee schedule would describe the CAT Fees to be paid by the Participants under the Executed Share Model. Specifically, paragraph (a) of the Participant fee schedule would state that ''[e]ach Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.''

IV. Summary of Comments

A. Allocation of Fee Among Participants and Industry Members

Under the Executed Share Model, CAT fees would be allocated one-third to the applicable Participant, one-third to the CEBS and one-third to the CEBB of a transaction. Two commenters opposed the proposed allocation.[58] One commenter stated that, while the Proposed Amendment justified the fairness of the Executed Share Model because it would operate like other fees, like FINRA's TAF, Section 31 fees, and the options regulatory fee,[59] the Proposed Amendment did not support why those fee frameworks should be used as a model in this context.[60] For example, the commenter stated that the TAF is designed to recover the costs of FINRA's regulatory activities, while the CAT fees are intended to align with the costs to build, operate and administer the CAT.[61] Further, the commenter stated that the Proposed Amendment has insufficiently explained the connection between the TAF and CAT fees, merely stating that they are similar fees because they are transaction-based fees to provide funding for regulatory costs.[62] The commenter stated that ''CAT LLC's observations superficially focus on the fact that these fees also use transaction-based metrics (and may be assessed on members) and neglects other factors relevant to the analysis including, for example, that these fees are used in combination with other funding mechanisms and metrics to support an overall funding framework.'' [63]

Another commenter disagreed with the Participants' statement that the Executed Share Model's similarity to other transaction-based fees approved by the Commission is adequate justification for consistency with the Exchange Act.[64] The commenter stated that similarity to other transaction-based fees is not an adequate basis to show that the Executed Share Model is consistent with relevant standards; each proposed fee must be individually supported.[65]

Commenters also questioned the Participants' justifications for the one-third allocation methodology. One commenter argued that the Proposed Amendment did not justify why the proposed allocation by thirds to the Participant, buy-side and sell-side is equitable in the context of the CAT NMS Plan.[66] The commenter also argued that the Proposed Amendment did not consider alternatives suggested by commenters on a prior proposed funding model,[67] such as a model similar to Section 31 fees and a CAT funding model based on the ''Cost Recovery Principle'' and the ''Benefits Received Principle.'' [68] The commenter urged that the Commission require those alternatives to be analyzed.[69]

One commenter stated that the Participants have not met their burden to demonstrate the proposed allocation is consistent with the Exchange Act fee standards and not arbitrary.[70] The commenter stated that because FINRA is funded by Industry Members, Industry Members would pay over 80% of CAT costs since they must pay not only their own share but FINRA's as well; therefore, the Commission should disapprove the proposal.[71] The commenter also argued that the Proposed Amendment fails to explain how allocating 80% of total CAT costs to the industry in perpetuity without a mechanism to limit the budget [72] is consistent with the Exchange Act and guidance on SRO filings related to fees when the industry has no role in the governance, oversight or design of CAT and does not benefit from the CAT.[73] The commenter quoted a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members.[74]

Additionally, this commenter stated that the Participants do not account for ''the time and expense Industry Members have devoted to developing and maintaining internal systems to be able to report the [sic] CAT, as well as the time and expense Industry Members have devoted to assisting the Operating Committee with its job of developing reporting specifications that allow the CAT to achieve its regulatory purpose.'' [75] The commenter stated that the Participants have not taken Industry Members' time and expenses into account when deciding to allocate two-thirds of the CAT costs to Industry Members and that ''this omission is a flaw with the Participants' decision to allocate two-thirds of the CAT costs to Industry Members and its inclusion would demonstrate that the Participants' Executed Share Model

[58] *See* Letters to Vanessa Countryman, Secretary, Commission, from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, dated May 25, 2023 (''FINRA May 2023 Letter''); April 11, 2023 (''FINRA April 2023 Letter''); and June 22, 2022 (''FINRA June 2022 Letter'') (the FINRA June 2022 Letter was submitted in response to the prior funding proposal and was attached and incorporated by reference in the FINRA April 2023 Letter); Letters to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, dated June 5, 2023 (''SIFMA June 2023 Letter''); May 2, 2023 (''SIFMA May 2023 Letter''); January 12, 2023 (''SIFMA January 2023 Letter''); December 14, 2022 (''SIFMA December 2022 Letter''); October 7, 2022 (''SIFMA October 2022 Letter''); and June 22, 2022 (''SIFMA June 2022 Letter'') (the SIFMA June 2022 Letter, SIFMA October 2022 Letter, SIFMA December 2022 Letter and SIFMA January 2023 Letter were submitted in response to the prior funding proposal and incorporated by reference in the SIFMA May 2023 Letter).

[59] *See* Notice, *supra* note 6, 88 FR at 17122.

[60] *See* FINRA June 2022 Letter at 4.

[61] *See* FINRA April 2023 Letter at 8.

[62] *Id.* The commenter also stated that ''it is unclear how assessing on FINRA the largest allocation of the SRO portion of CAT expenses 'provides funding for regulatory costs' in any reasonable and equitable sense comparable to the TAF . . .'' *Id.*

[63] FINRA May 2023 Letter at 3.

[64] *See* SIFMA June 2022 Letter at 4.

[65] *Id.*

[66] *See* FINRA June 2022 Letter at 3.

[67] *See* Securities Exchange Act Release Nos. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022); 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022); and Letter from Michael Simon, Chair Emeritus, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023).

[68] *See* FINRA April 2023 Letter at 5.

[69] *Id.*

[70] *See* SIFMA May 2023 Letter at 6; SIFMA June 2023 Letter at 1–2. The commenter also stated that the Proposed Amendment provides unsupported conclusory statements that it meets the requirements of the Exchange Act. *See* SIFMA June 2023 Letter at 2; *see also id.* at n 11.

[71] *See* SIFMA May 2023 Letter at 2. *See also* SIFMA June 2022 Letter at 1–2 (stating that the proposed cost allocation methodology is inconsistent with Exchange Act fee standards because most costs would be imposed on Industry Members).

[72] The commenter noted that the CAT annual budget increased over 30% in the last year. *See* SIFMA June 2023 Letter at 4.

[73] SIFMA June 2023 Letter at 3, 4. The commenter also stated that approving such a proposal would ''directly threaten[ ] efficiency, competition, and capital formation in U.S. securities markets.'' *Id.*

[74] *Id.* at 4. *See also* Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470, 65482 (Oct. 15, 2020).

[75] SIFMA June 2022 Letter at 4. *See also* SIFMA January 2023 Letter at 4.

does not provide for the equitable allocation of reasonable fees.'' [76]

The commenter also objected to statements made in the Proposed Amendment that the complexity of Industry Member business models contributes substantially to the costs of the CAT.[77] The commenter stated that the proposed allocation of two-thirds of CAT costs to Industry Members is unfair, unreasonable and arbitrary because the Participants are equally responsible for the complexity of trading activity in the markets.[78] The commenter contested the Participants' argument that the allocation satisfies Exchange Act fee standards because Industry Members and the complexity of their business models drive the costs of the CAT, by stating that the examples provided of complexities were developed to address order types, activities and fee structures (such as the maker-taker fee structure) established by the Participant exchanges.[79] The commenter argued that the Participants are just as responsible for such cost-driving complex trading activity in the equity and options markets as Industry Members due to the ''large number of equity and options exchanges established by the exchange families with fundamentally different execution models and order types.'' [80] The commenter argued that the Participant exchanges have not analyzed how their own business decisions have resulted in the complexity of Industry Member order routing practices and CAT costs.[81] The commenter also dismissed other justifications made in the Proposed Amendment for the proposed allocation; specifically, that there are more Industry Members than Participants and that Industry Members receive more in revenue than the Participants,[82] stating that these assertions are not relevant in demonstrating that the proposed allocation is fair and reasonable.[83] The commenter argued that the Participants are justifying the allocation based on the ability to pay rather than cost generation, which the commenter believes is inconsistent ''with the Participant Exchanges' proposed approach. . . of allocating CAT costs based on approximate responsibility for generating them. . .'' and ''with the historical CAT decision to allocate costs to the parties responsible for generating them.'' [84] The commenter suggested an alternative allocation that would equally split CAT costs between Participant exchanges and Industry Members, while FINRA would be subject only to a nominal regulatory user fee to access CAT Data.[85]

Commenters also argued against statements in the Proposed Amendment that CAT costs would be passed on to investors.[86] One commenter stated, ''[s]uch an assertion is inaccurate because it is almost certain that there will be scenarios faced by Industry Members in which they will not be able to figure out who was responsible for generating certain Historical CAT Costs.'' [87] The commenter warned that such assertions would minimize the Participants' obligation to allocate fees consistent with Exchange Act fee standards and could result in the inequitable allocation of CAT fees to Industry Members under the assumption that such fees would be passed down to investors.[88] Another commenter objected to statements in the Proposed Amendment that Industry Members can pass through to their customers their CAT cost allocation and additional costs resulting from an increase in FINRA fees.[89] The commenter stated that ''[s]ummarily stating that investors can be made to bear the costs resulting from the Funding Model without a detailed description of and transparency into how these fees would be determined or passed on to customers is inadequate, and does not provide interested parties sufficient information to consider the costs and benefits related to the Fee Proposal.'' [90]

In response to the comment noting that the Participants had not analyzed a suggested Section 31-style approach to a funding model,[91] CAT LLC stated that the CAT fee approach is similar to the Section 31 fee approach in how an exchange would be obligated to pay a transaction fee based on transactions occurring on that exchange, and that FINRA would be obligated to pay a transaction fee based on transactions in the over-the-counter market.[92] CAT LLC argued that the approaches are also similar because, in both, an exchange would be able to determine to pass the fee onto its members, as would FINRA.[93] CAT LLC stated that if the Section 31 approach would comply with the Exchange Act, then the proposed CAT fee approach should also comply with the Exchange Act and CEBBs and CEBSs could determine whether to pass such fees onto their clients.[94]

In response, the commenter stated that the CAT LLC Response Letter misrepresented the commenter's letter by incorrectly stating that the commenter's letter recommended an approach similar to Section 31 fees.[95] The commenter clarified that it was noting that the Commission had received comments suggesting a model like the Section 31 fees, that the Participants had not ''meaningfully analyzed'' the suggested alternatives in the Proposed Amendment, and that the Commission should require the Participants to analyze the alternatives.[96]

In response to the comments on whether Participants' models are equally to blame for the complexity of the markets,[97] CAT LLC stated that its analysis of the complexity of the industry's business models is based on the effects of those models on the costs of the CAT, which it stated are more profound than those of Participants, not on complexity of the market in general.[98] CAT LLC explained that the complexity of the Industry Members' business models results in significant data processing and storage costs, which Participants do not contribute to as they do not originate market activity or

[76] SIFMA June 2022 Letter at 4–5. *See also* SIFMA January 2023 Letter at 5.

[77] *See* Notice, *supra* note 6, 88 FR at 17104.

[78] *See* SIFMA May 2023 Letter at 3. *See also* SIFMA January 2023 Letter at 2, 3–4.

[79] *See* SIFMA May 2023 Letter at 6–7. *See also* SIFMA January 2023 Letter at 3; Notice, *supra* note 6, 88 FR at 17104.

[80] SIFMA January 2023 Letter at 3.

[81] *See* SIFMA May 2023 Letter at 7.

[82] *Id. See also* Notice, *supra* note 6, 88 FR at 17104.

[83] *See* SIFMA May 2023 Letter at 7. *See also* SIFMA January 2023 Letter at 4.

[84] *See* SIFMA May 2023 Letter at 7. The commenter cited to the funding principles in Section 11.2 of the CAT NMS Plan.

[85] *See* SIFMA January 2023 Letter at 4. *See also* SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4. This commenter also suggested another alternative allocation in which costs would be allocated to those Participants and Industry Members most directly responsible for the costs. Under this alternative, Industry Members would be responsible for the cost associated with initial ingestion of the data into the CAT system. The commenter explained that Participants would be responsible for the costs associated with the stages after the data is initially ingested into the CAT system because the regulators directly control and benefit from these stages of the CAT system after ingestion. *See* SIFMA June 2022 Letter at 5–6.

[86] *See* SIFMA May 2023 Letter at 8; FINRA April 2023 Letter at 6–7.

[87] *See* SIFMA May 2023 Letter at 8.

[88] *Id.*

[89] *See* FINRA April 2023 Letter at 6–7.

[90] *Id.* at 7.

[91] *Id.* at 5.

[92] *See* Letter to Vanessa Countryman, Secretary, Commission, from Brandon Becker, Chair, CAT NMS Plan Operating Committee, dated May 18, 2023 (''CAT LLC Response Letter''), at 9.

[93] *Id.*

[94] *Id.*

[95] *See* FINRA May 2023 Letter at 3, n.8.

[96] *Id.*

[97] *See* SIFMA May 2023 Letter at 3. *See also* SIFMA January 2023 Letter at 2, 3–4.

[98] *See* CAT LLC Response Letter at 6.

orders.[99] CAT LLC also stated that the Participants would pay the same amount as the CEBB and CEBS in each transaction.[100]

CAT LLC also disagreed with one commenter's dismissal of CAT LLC's consideration of the Industry Members' relative ability to pay,[101] stating that the Exchange Act specifically requires that the fees be fair and reasonable, which necessitates consideration of the relative ability to pay.[102] Additionally, CAT LLC objected to the commenter's statement that the proposed allocation is ''inconsistent with the historical CAT decision to allocate costs to the parties responsible for generating them.'' [103] CAT LLC stated that, while the CAT NMS Plan does not require CAT costs to be allocated to the parties responsible for generating such costs, the proposed allocation addresses cost burden on the CAT by (i) taking into account the impact of Industry Member activity on CAT costs, and (ii) using trading activity, which CAT LLC believes is a ''reasonable proxy for cost burden on the CAT,'' [104] as the metric for cost allocation.[105]

Additionally, CAT LLC responded to the commenter's suggested alternative proposal that would equally allocate CAT costs to Participant exchanges and Industry Members, stating that the commenter did not explain why the alternative would satisfy the Exchange Act standards, and noting that CAT LLC had previously considered such an allocation but believed that it would not result in a fair and equitable allocation due to the greater number of Industry Members than Participants, the greater financial resources of Industry Members, and the failure of the suggested allocation to take into account how the complexity of Industry Member business models contributes substantially to CAT costs.[106]

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about the allocation of CAT costs between Participants and Industry Members.[107]

B. Executed Equivalent Shares

a. Executed Equivalent Share Volume

One commenter stated that the Participants failed to justify why the Executed Share Model would appropriately treat high-volume trades in low-priced stocks, arguing that Section 31 fees are charged only on the sell-side of a transaction and are based on the notional value of a trade.[108]

Another commenter argued that the Proposed Amendment does not explain why the use of executed share volume as the basis of the cost allocation methodology, instead of message traffic, is equitable.[109] The commenter explained that in prior models, message traffic was the key proxy for cost generation used to align CAT fees with CAT costs, but the Executed Share Model would base its cost allocation methodology entirely on executed share volume.[110] The commenter stated that the Participants' argument that executed share volume is related to cost generation is not enough to demonstrate that its use is reasonable and equitable.[111] This commenter further stated that the Executed Share Model is inconsistent with the ''cost alignment'' funding principle in Section 11.2(b) of the CAT NMS Plan, which requires the Participants to seek to establish an allocation of costs that takes into account distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.[112] The commenter stated that ''the Proposal fails to establish a sufficient nexus between executed share volume and the technology burdens that generate CAT costs and fails to relate each reporter group's allocation to the burden that each reporter group imposes on CAT.'' [113]

CAT LLC responded to the commenter's statement that the proposed allocation is inconsistent with the cost alignment principles of the CAT NMS Plan by noting that the Proposed Amendment incorporates the concept of cost burden in at least two ways.[114] Specifically, CAT LLC stated that it does so because ''the allocation of CAT costs contemplates the effect of Industry Member activity on the cost of the CAT. . . and because trading activity provides a reasonable proxy for cost burden on the CAT, trading activity is an appropriate metric for allocating CAT costs among CAT Reporters.'' [115] CAT LLC added that because there are other examples of trading activity-based fees, the Executed Share Model would not be novel or unique.[116]

With respect to the deletion in Section 11.2(b) of the requirement that, when establishing the funding of the CAT, the Operating Committee must take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations,'' the same commenter argued that the Participants have proposed to delete the language in Section 11.2(b) because the proposed Executed Share Model is inconsistent with the language.[117] This commenter stated that the Proposed Amendment ''seeks to amend the core funding principles to align with an unjustified allocation methodology.'' [118] The commenter stated that any changes to the funding principles ''must be well-reasoned and transparent and must continue to support the achievement of a fair and equitable outcome.'' [119]

Additionally, the commenter objected to the statement in the Proposed Amendment that ''trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters.'' [120] The commenter stated that this statement is inconsistent with information that demonstrates that volume from FINRA trading facilities (''TRF'') contributes ''a very small percentage of annual CAT compute and storage costs.'' [121] The commenter stated, ''. . . despite the minimal data compute and storage costs for transactions reported to the TRF, FINRA would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined.'' [122] The commenter stated that as a result, it cannot support the Participants' assertion that trading activity is a reasonable proxy for cost burden.[123] The commenter stated that the Proposed Amendment ''fails to provide for reasonable fees that are equitably allocated and not unfairly discriminatory, does not reflect a reasonable approach to allocating costs

[99] *Id.* at 7.

[100] *Id.* at 6.

[101] *See* SIFMA May 2023 Letter at 7. *See also* SIFMA January 2023 Letter at 4.

[102] CAT LLC Response Letter at 7.

[103] *Id.;* SIFMA May 2023 Letter at 7.

[104] CAT LLC Response Letter at 7.

[105] *Id.*

[106] *Id.*

[107] *See* SIFMA June 2023 Letter at 2.

[108] *See* SIFMA October 2022 Letter at 7.

[109] *See* FINRA June 2022 Letter at 3.

[110] *Id.*

[111] *Id.* at 4.

[112] *Id. See also* FINRA April 2023 Letter at 7–9.

[113] FINRA June 2022 Letter at 4.

[114] CAT LLC Response Letter at 7.

[115] *Id.*

[116] *Id.*

[117] *See* FINRA June 2022 Letter at 4; *see also* FINRA April 2023 Letter at 7.

[118] FINRA June 2022 Letter at 4. The commenter states that the Executed Share Model instead places the greatest emphasis on the funding principle relating to the ''ease of billing and other administrative functions,'' favoring that principle over cost alignment. *Id.* at 5.

[119] *Id.;* FINRA April 2023 Letter at 8–9.

[120] Notice, *supra* note 6, 88 FR at 17103.

[121] FINRA May 2023 Letter at 2.

[122] *Id.*

[123] *See id. See also* FINRA April 2023 Letter at 8.

amongst the Participants, nor does it transparently or accurately present information regarding the true sources of cost burdens on the CAT.'' [124]

b. FINRA Allocation

Two commenters objected to the proposed allocation of Participant CAT fees to FINRA.[125] Both commenters objected to the allocation to FINRA of 34% of the total CAT costs [126] to be borne by the Participants.[127] One commenter argued that this amount was a ''disproportionate share of CAT costs,'' [128] especially as FINRA does not operate a market,[129] and that the Proposed Amendment would place an undue burden on FINRA.[130] The commenter stated that FINRA's share was ''more than double that of the next highest Participant and $4 million more than all option exchanges combined.'' [131] The commenter also stated that FINRA's allocation would largely be based on transaction volume reported to the TRF; however, the commenter stated that TRF transactions generate fewer costs for the CAT,[132] as opposed to options activity, but that only 25% of total Participant CAT fees would be assessed for options activity, while the remaining 75% would be assessed for equities activity.[133] The commenter stated that ''. . . FINRA would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 Participants, and more than all options exchanges combined.'' [134]

The commenter argued that, unlike the exchange Participants, transactions are not executed on a FINRA marketplace and FINRA does not receive commercial revenue for those transactions.[135] The commenter explained that ''while the NMS stock allocation to FINRA under the Funding Model is based on transactions that are reported to FINRA [TRFs], these transactions are not executed on a FINRA marketplace and FINRA does not retain commercial revenues from those transactions'' [136] unlike the exchanges that operate each FINRA TRF, which retain the market data and trade reporting revenue of the TRF.[137] The commenter stated that, unlike FINRA, these exchanges would thus have a revenue stream related to the transactions that would be assessed a CAT fee, and that also, unlike FINRA, exchanges generate revenue from listings and proprietary data feeds in NMS securities.[138] The commenter also stated that FINRA members can report over-the-counter transactions in listed stocks to the FINRA Alternative Display Facility, although most transactions are reported to a TRF.[139]

The commenter further stated that FINRA cannot necessarily recoup its costs through regulatory services agreements (''RSAs'') that it has entered into with certain exchanges [140] because the exchanges must first agree to be charged CAT costs under the RSAs; therefore, RSAs would not be a reliable source of CAT funding for FINRA.[141] Additionally, the commenter questioned CAT LLC's statement that the Proposed Amendment ''reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets.'' [142] Specifically, the commenter asked how CAT LLC's statement explains the size of FINRA's allocation [143] and noted that this statement ''conflates the costs to create and operate the CAT with the usage of CAT data.'' [144]

Two commenters expressed concern about alleged arbitrary treatment of FINRA by the other Participants of the CAT NMS Plan.[145] One commenter believes that FINRA's ''outsized allocation'' [146] was because of its limited voting power, only having one out of 25 votes on the Operating Committee as it does not control, nor is under common control with, any other Participant.[147] Another commenter stated that the current CAT NMS Plan voting structure results in the unfair and inequitable treatment of FINRA.[148] Both commenters believe that the exchange Participants treat FINRA arbitrarily to benefit themselves, treating FINRA as a market center in the CAT NMS Plan while not as a market center under the National Market System Plan Regarding Consolidated Equity Market Data (''CT Plan''),[149] which governs the public dissemination of real-time consolidated market data for national market system stocks.[150] One commenter argued that the Participants do not treat FINRA as a market center under the CT Plan in order to limit FINRA's voting power and therefore its ability to decide how to allocate market data revenue.[151] The commenter stated that this example demonstrates the ''. . . inherent conflicts of interest that for-profit exchanges have in operating as SROs . . .'' [152] The commenter suggested that the Commission issue an order soliciting comment on whether the Operating Committee should be reorganized consistent with the CT

[124] FINRA May 2023 Letter at 4.

[125] *See* FINRA May 2023 Letter; FINRA April 2023 Letter; FINRA June 2022 Letter; SIFMA May 2023 Letter; SIFMA June 2022 Letter; SIFMA October 2022 Letter. One of the commenters supported the points raised in the FINRA April 2023 Letter that argued that the Proposed Amendment would result in the inequitable allocation of fees and should be disapproved. *See* SIFMA May 2023 Letter at 2.

[126] One commenter stated that this estimate is based on 2021 data and urged the Commission to require the Participants to amend the Proposed Amendment to include the 2022 data and fee allocation estimates, stating that the CAT budget has grown significantly from 2021. *See* FINRA April 2023 Letter at 3, 4–5. In its response to comments, CAT LLC provided the Historical CAT Costs for 2022. *See* Notice, *supra* note 6, 88 FR at 17111; CAT LLC Response Letter at 13.

[127] *See* FINRA May 2023 Letter at 2; FINRA April 2023 Letter at 3; SIFMA May 2023 Letter at 2.

[128] FINRA April 2023 Letter at 3.

[129] *Id.*

[130] FINRA June 2022 Letter at 6.

[131] FINRA April 2023 Letter at 4; *see also* FINRA June 2022 Letter at 5.

[132] *See* FINRA April 2023 Letter at 8, n.23.

[133] *Id.;* FINRA May 2023 Letter at 2.

[134] FINRA May 2023 Letter at 2.

[135] *See* FINRA April 2023 Letter at 3.

[136] *Id.*

[137] *Id.*

[138] *Id.* at 4.

[139] *Id.* at 3, n.8.

[140] This statement was made in response to a statement in the Proposed Amendment that FINRA, like the exchange Participants, has revenue sources other than membership fees, giving as an example the RSAs. *See* Notice, *supra* note 6, 88 FR at 17107.

[141] *See* FINRA April 2023 Letter at 4.

[142] *Id.* at 7.

[143] *Id.*

[144] *Id.; see also* FINRA June 2022 Letter at 6.

[145] *See* FINRA April 2023 Letter at 6, n.16; SIFMA October 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 6, n.11.

[146] FINRA April 2023 Letter at 7; FINRA June 2022 Letter at 6.

[147] FINRA April 2023 Letter at 4, 8. *See also* FINRA June 2022 Letter at 8.

[148] *See* SIFMA January 2023 Letter at 3, n.7.

[149] *See* Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data; Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (File No. 4–757) (''Order Approving the CT Plan''). The Order Approving the CT Plan was vacated by the D.C. Circuit on July 5, 2022. *See* The NASDAQ Stock Market LLC et al. v. *SEC, Case No. 21–1167, D.C. Cir. (July 5, 2022). See also Securities Exchange Act Release No. 88827; File No. 4–757 (May 6, 2020), 85 FR 28702 (May 13, 2020) (Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data).*

[150] *See* FINRA April 2023 Letter at 6; SIFMA October 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 6, n.11. One commenter argued that the Participants treat FINRA in ways that are financially beneficial to them without considering FINRA's role in the marketplace ''. . . as the not-for-profit self-regulator for the entire brokerage industry . . .'' SIFMA October 2022 Letter at 3. *See also* SIFMA January 2023 Letter at 4; SIFMA October 2022 Letter at 4; SIFMA May 2023 Letter at 8 (recommending that FINRA be treated differently from the Participant exchanges due to its unique role).

[151] *See* SIFMA October 2022 Letter at 3–4. *See also* SIFMA May 2023 Letter at 6, n.11.

[152] SIFMA October 2022 Letter at 3. *See also* SIFMA June 2023 Letter at 4 (quoting a Commission release stating that the Participants are potentially conflicted in allocating CAT fees to themselves and the Industry Members); *supra* note 74.

Plan.[153] This commenter further stated, ''[w]e believe such a governance structure for the CAT would help facilitate a fairer structure for the views of the SROs and industry to be heard and incorporated into any further CAT funding proposal by reducing the ability of the largest exchange groups to dictate the terms of any CAT funding proposal over the objections of other SRO Participants and the industry.'' [154]

Both commenters also believe the allocation to FINRA would increase the allocation to Industry Members.[155] One commenter stated that FINRA, which relies on regulatory fees from its members for funding, must increase its member fees in order to fund CAT costs that it cannot recover from contractual arrangements with TRF business members.[156] The commenter stated that the Proposed Amendment does not adequately analyze the allocation's impact, including whether the allocation would increase Industry Members' allocation of total costs beyond two-thirds.[157] The commenter dismissed as inadequate the Participants' argument that Industry Members can pass through their costs, stating that the Proposed Amendment lacks a detailed description of and transparency into how the fees may be passed on to customers.[158] Another commenter argued that the Participants ''do not address the fact that the Executed Share Model for Prospective CAT Costs allocates two-thirds of CAT costs to Industry Members for exchange transactions and more for off-exchange transactions'' [159] because they cannot demonstrate that the proposed allocation results in an equitable allocation of reasonable fees.[160] The commenter stated that Industry Members, who would be subject to two-thirds of Prospective CAT Costs under the Executed Share Model, already pay FINRA's operating costs through regulatory fines and fees; therefore, Industry Members would additionally be indirectly assessed FINRA's one-third CAT fee for off-exchange transactions.[161] The commenter suggested an alternative allocation [162] that would subject FINRA only to a nominal regulatory user fee to access CAT Data.[163]

One commenter requested that if the Commission were to approve the Proposed Amendment, that it acknowledge ''FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission.'' [164] The commenter stated that FINRA would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.[165]

CAT LLC disagreed with one commenter's proposal to charge FINRA only a nominal regulatory fee.[166] CAT LLC stated that the proposed transaction-based CAT fee is purposely agnostic as to the location of where a trade occurs, and an intent of this design is to avoid influencing whether or where any trading activity would take place. Moreover, CAT LLC stated that FINRA is no different from the exchanges in terms of its regulatory obligations regarding the CAT.[167]

C. CAT Executing Broker

Two commenters objected to the proposed definition of ''CAT Executing Broker.'' [168] One commenter argued that the term ''CAT Executing Broker'' ''does not appear to be universally defined or accepted by Option Industry Members or Participants'' and that such lack of acceptance ''present[s] a challenge when firms try to assess the impact the 'Funding Proposal' will have on their respective businesses.'' [169] Accordingly, the commenter advocated that the Executed Share Model follow the ''structure already in place for [collecting] Regulatory Fees,'' such as charging Clearing Brokers.[170]

Another commenter argued that the proposed definition of executing broker would result in the inequitable allocation of fees.[171] While the commenter supported the change from having clearing firms be assessed Industry Member CAT fees to executing brokers having this obligation,[172] because clearing firms would have been unfairly burdened with CAT costs and could have been placed in situations in which they would have been unable to identify the client responsible for the costs,[173] the commenter expressed concerns with how the Participants determined which entities would be considered executing brokers.[174] In comment letters on the prior proposal, which was amended to require executing brokers instead of clearing firms to be assessed CAT fees, the commenter requested additional detail on how an executing broker would be defined.[175] The commenter subsequently stated that the definition in the current Proposed Amendment suffers from the same problems as the prior proposal in which CAT fees were allocated to clearing firms and would result in the inequitable allocation of CAT fees among Industry Members.[176]

The commenter explained that CAT operates on a cost-recovery basis, with costs resulting from the number of messages that Participants and Industry Members report to the CAT, the processing and linking of such

[153] SIFMA October 2022 Letter at 2.

[154] *Id.* The commenter also argued that the Industry Members are not voting members of the Operating Committee and have no way to direct the cost control efforts of the Participants or change their course if the cost control efforts prove to be unsuccessful. *See* SIFMA June 2022 Letter at 8.

[155] *See* FINRA April 2023 Letter at 5–7; SIFMA June 2022 Letter at 4. *See also* SIFMA October 2022 Letter at 2, 3.

[156] *See* FINRA April 2023 Letter at 5–6; *see also* FINRA June 2022 Letter at 7.

[157] *See* FINRA April 2023 Letter at 6.

[158] *Id.* at 6–7.

[159] SIFMA June 2022 Letter at 4. *See also* SIFMA October 2022 Letter at 3 (''. . . we believe the proposal is flawed because it fails to appropriately consider that Industry Members pay the full costs of operating FINRA.'').

[160] *See* SIFMA June 2022 Letter at 4.

[161] *Id.* The commenter also stated that the proposed allocation would result in two-thirds of CAT costs for exchange transactions being imposed on Industry Members, and that this amount would be higher for off-exchange transactions as FINRA would be assessed one-third as the venue fee and Industry Members would be indirectly assessed FINRA's portion of CAT costs as they pay the entire costs of operating FINRA. *Id. See also* SIFMA October 2022 Letter at 2.

[162] *See supra* notes 84–85 and accompanying text.

[163] *See* SIFMA January 2023 Letter at 4. *See also* SIFMA May 2023 Letter at 8; SIFMA June 2022 Letter at 5; SIFMA October 2022 Letter at 4.

[164] FINRA April 2023 Letter at 7.

[165] *Id.*

[166] *See* CAT LLC Response Letter at 8.

[167] *Id.*

[168] *See* SIFMA May 2023 Letter; Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies, LLC to Vanessa Countryman, Secretary, Commission (April 11, 2023) (''DASH April 2023 Letter''), at 1–2. The DASH April 2023 Letter also incorporated by reference a separate letter submitted by the commenter on the prior funding proposal (stating that the concerns expressed in the prior letter concerning the operating and competitive burdens of the proposed funding model are unchanged). *See* Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies LLC, to Vanessa Countryman, Secretary, Commission (Jan. 3, 2023) (''DASH January 2023 Letter'').

[169] DASH April 2023 Letter at 1.

[170] *Id.* at 2.

[171] *See* SIFMA May 2023 Letter at 3.

[172] *Id. See also* SIFMA January 2023 Letter at 7–8.

[173] *See* SIFMA May 2023 Letter at 3–4. *See also* SIFMA October 2022 Letter at 5. The commenter also argued against the assessment of CAT fees on clearing firms because clearing firms would be required to collect fees and thus would have to develop new systems and processes under the Executed Share Model, and because a clearing firm for a buyer or seller would not always be a party to a trade as it could be the clearer of a trade on behalf of an executing broker. *See* SIFMA June 2022 Letter at 9; SIFMA October 2022 Letter at 7.

[174] *See* SIFMA May 2023 Letter at 4.

[175] *See* SIFMA January 2023 Letter at 2, 8; SIFMA December 2022 Letter at 3. *See also* SIFMA May 2023 Letter at 4.

[176] *See* SIFMA May 2023 Letter at 4. *See also* SIFMA June 2022 Letter at 9–10; SIFMA October 2022 Letter at 5.

messages, and the costs of providing tools to regulators to analyze CAT data.[177] The commenter stated that the use of message traffic as the basis of fees, in the Original Funding Model, would have ensured that all CAT Reporters would contribute to CAT's funding.[178] However, the commenter stated that, since the Proposed Amendment would not impose fees on all CAT Reporters, instead imposing fees on executing brokers, it would result in an inequitable allocation of fees as the executing brokers would be the last broker among many other brokers handling an order.[179] The commenter stated that any analysis of such a funding model must evaluate whether (i) the executing brokers would pass-through or absorb the CAT fees and any negative impacts on competition, noting that the Proposed Amendment would require executing brokers to incur expenses that other Industry Members would not incur since they would be required to collect the Industry Member portion of CAT fees on behalf of the Participants,[180] and (ii) Industry Members that executed trades for introducing brokers and acting as order consolidators and ATSs would be responsible for CAT fees for transactions they did not originate and would have to either pay the fee for their clients or develop software and processes to collect the fees from their clients as they often are not capable of passing through fees to the clients that sent them the orders.[181] The commenter stated that the Proposed Amendment would subject executing brokers to unfair burdens and require them to ''shoulder CAT costs in scenarios in which they could not determine which client firm was responsible for creating the CAT costs by initiating the transaction.'' [182]

The commenter argued instead in favor of an allocation in which the Industry Member that originated an order would be treated as an ''executing broker'' and therefore be responsible for Industry Member CAT fees.[183] Under this alternative, ''the Industry Member who originates a new principal order or the Industry Member who initially receives and routes a customer order for execution on an agency basis would be directly assessed CAT Fees.'' [184] The commenter stated that this would be the most reasonable way to allocate CAT costs among Industry Members [185] and that it would be ''relatively easy to accommodate this approach.'' [186]

One commenter expressed concerns about the imposition of CAT fees on CAT Executing Brokers.[187] The commenter argued that charging CAT Executing Brokers ''inordinately burdens Broker Dealers, especially small to medium-sized firms.'' [188] This commenter recommended using instead the existing structure for regulatory fees, including ''the efficiencies afforded by the current structure, and the resulting alleviation of risk.'' [189] In this regard, the commenter stated that ''Clearing Firms are best suited to process the collection of fees as it can occur at trade settlement and the cost is ultimately borne by the end beneficiary of each transaction.'' [190] The commenter also stated that small and medium-sized executing brokers could expect a significant negative impact on their net capital as a result of the proposal, stating, ''. . . the firms will be forced to recoup these costs by passing them on to their clients, either in the form of higher commission rates or as a separate transactional fee. Using [Clearing Member Trade Agreement] commission invoicing and/or SEC 31(b) fees in a broker-to-broker relationship as a proxy, these invoices are generally paid well after the 60-day milestone to qualify the receivable as 'good capital.' '' [191]

In response to the comment about the definition of CAT Executing Broker and the billing and collection process being better suited for clearing firms, CAT LLC stated that the proposed assessment of CAT fees on CAT Executing Brokers only addresses the party obligated to pay the CAT fee.[192] CAT LLC stated that a CAT Executing Broker can decide to enter into an arrangement with its clearing broker for the clearing broker to collect and pass-through the CAT fees like it does in other contexts.[193] With respect to alternatives to the proposed definition of the CAT Executing Broker, CAT LLC stated that the ''originating broker'' suggestion was from a commenter who had previously recommended charging executing brokers in comment letters on the prior proposed funding model.[194] CAT LLC stated that the commenter's objection to charging executing brokers in the Executed Share Model was an attempt to further delay the approval of a funding model and the resultant payment of CAT fees by its members, rather than expressing a concern about the merits of charging executing brokers.[195]

In response, the commenter stated that the CAT Operating Committee mischaracterized the commenter's position on the assessment of CAT fees to executing brokers by stating in the CAT LLC Response Letter that the commenter changed its position on this proposed change to delay adoption of a CAT funding model.[196] The commenter represented that it stated in comment letters it submitted on the prior funding model that initially proposed the use of executing brokers that (1) the Participants did not define who would be an executing broker in a transaction, (2) a clear definition is necessary for Industry Members to understand when they would be assessed costs under the Executed Share Model, and (3) its understanding was that the concept of executing broker generally refers to the Industry Member that initiates an order.[197] The commenter stated that the Participants only provided a definition of executing broker in the Proposed Amendment.[198] The commenter stated that it provided concerns about the proposed definition in its May 2023 comment letter which the commenter argued were mischaracterized by the CAT Operating Committee in the CAT LLC Response Letter.[199] The commenter stated that the CAT Operating Committee mischaracterized the commenter's position to rush the Commission to a decision on the Proposed Amendment.[200]

In response to the comment that imposing fees on executing brokers would result in an inequitable allocation of fees and the suggestion that the use of message traffic as the basis of fees would have ensured that all CAT Reporters would contribute to CAT's funding, CAT LLC disagreed and stated that because the message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models.[201] CAT

[177] *See* SIFMA May 2023 Letter at 4.

[178] *Id.*

[179] *Id.* at 4–5.

[180] *Id.* at 5.

[181] *Id.*

[182] *Id.*

[183] *See* SIFMA May 2023 Letter at 5.

[184] *Id.* at 6.

[185] *Id.* at 5.

[186] *Id.* at 6.

[187] *See* DASH April 2023 Letter.

[188] *Id.* at 1; *see also* DASH January 2023 Letter at 1.

[189] DASH January 2023 Letter at 3; *see also* DASH April 2023 Letter at 1–2.

[190] DASH April 2023 Letter at 1; *see also* DASH January 2023 Letter at 1.

[191] DASH January 2023 Letter at 2.

[192] *See* CAT LLC Response Letter at 12.

[193] *Id.*

[194] *Id.* at 2.

[195] *Id.* at 3.

[196] *See* SIFMA June 2023 Letter at 5.

[197] *Id.*

[198] *Id.*

[199] *Id.* at 5–6.

[200] *Id.* at 6.

[201] *See* CAT LLC Response Letter at 4.

LLC stated that, as a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members, raising this same issue of an inequitable allocation of fees.[202] Further, in response to the commenter's criticism that in charging executing brokers, the fee would be charged to a subset of Industry Members and, as a result, that subset of Industry Members would incur expenses that other Industry Members would not incur, CAT LLC stated that it continues to believe that charging CAT Executing Brokers would satisfy the requirements of the Exchange Act.[203] CAT LLC stated that in the past, the Commission has approved fees that are charged to some, but not all, broker-dealers.[204] CAT LLC noted that, for example, FINRA's trading activity fee is assessed to a subset of FINRA members—that is, it is assessed on the sell side of member transactions.[205] CAT LLC also stated that the options exchanges charge options regulatory fees per executed contract side, and, for both options and equities, Section 31-related fees are charged to the sell-side in a transaction.[206] CAT LLC recognized that, under the proposal to charge CAT Executing Brokers, the CAT Executing Broker, but not other Industry Members involved in a given order lifecycle, would be required to pay the CAT fees, and that Industry Members that sought to recoup such fees would have to develop processes to collect such fees from their clients.[207] CAT LLC stated that this regulatory requirement would have a similar effect as other types of regulatory fees, such as the FINRA trading activity fee, the options regulatory fee and Section 31-related sales value pass-through fees because, ''[i]n each such case, a subset of broker-dealers is required to pay a transaction-based regulatory fee, and those broker-dealers seeking to recover such fees from other broker-dealers or non-broker-dealers have established processes with regard to the pass-through of such fees.'' [208]

CAT LLC further stated that it disagrees with charging an originating broker instead of an executing broker because there are already several existing examples of transaction-based fees being assessed to executing brokers as opposed to the originating broker, and it disagrees with the assertion that charging originating brokers would be easier.[209] CAT LLC stated that charging the originating Industry Member would be difficult to implement and would increase the costs of implementing CAT fees, whereas charging CAT Executing Brokers is simple, straightforward and in line with existing fee and business models because for any given trade (buy or sell), there is only one CAT Executing Broker to which shares can be allocated.[210] As such, CAT LLC stated that ''charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties.'' [211] CAT LLC argued that, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis to ''account[] for one or more layers of aggregation, disaggregation, and representation of the underlying orders.'' [212] Therefore, CAT LLC stated that the commenter's ''suggestion of a model that begins the funding analysis with new order events (*e.g.,* MENO or MONO events) and then looks for any execution or fulfillment that is directly associated with that event does not reduce or mitigate the complexity associated with aggregation.'' [213] Further, CAT LLC argued that the commenter's recommendation would not work with the design of the CAT system, stating that ''[w]hile CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages.'' [214] Finally, CAT LLC stated that charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, but charging CAT Executing Brokers would avoid such complications.[215]

D. Prospective CAT Fees

a. Budgeted CAT Costs

One commenter argued that the budget line item categories are too high level.[216] The commenter urged the inclusion of much greater detail and specificity on the budget spending choices, especially in technology,[217] to allow Industry Members and the public to understand and evaluate CAT spending decisions.[218]

The commenter also stated that an independent cost review mechanism is necessary to ensure future CAT fees are fair and reasonable and to safeguard against unchecked spending.[219] The commenter urged the inclusion of a mechanism to allow the public to review the annual CAT budget before it is finalized, since, as proposed, the public would only have the opportunity to review the CAT budget when the Participants submit proposed rule changes, pursuant to Section 19(b) of the Exchange Act,[220] to implement CAT fees on Industry Members.[221] The commenter also stated that it is unlikely that the Commission would decide that a proposed CAT fee does not meet Exchange Act fee standards and require the Participants to modify the CAT budget because it would be a lengthy, time-consuming process and due to ''the regulatory value of CAT data and the CAT system to the Commission.'' [222] The commenter stated that the Commission is ''directly conflicted in its role as the user and beneficiary of the CAT system for regulatory functions and its role as the reviewer of the CAT budget and fee filings, a conflict that is only heightened due to a lack of a Commission funding obligation for CAT.'' [223] As a result, the commenter urged the adoption of an independent cost review mechanism to ensure that CAT spending will be appropriate and consistent with the Exchange Act.[224] The commenter also requested that ''the Participants' proposed budget include as a separate line-item projected usage costs and system change costs related to the Commission's use and design of the CAT system.'' [225]

In response, CAT LLC stated that such an independent cost review is not necessary, because such a review process would go beyond what is required by either Rule 613 or the CAT

[202] *Id.*

[203] *Id.* at 3.

[204] *Id.*

[205] *Id.*

[206] *See* CAT LLC Response Letter at 3.

[207] *Id.* at 4.

[208] *Id.*

[209] *Id.* at 5.

[210] *Id.*

[211] *Id.*

[212] *See* CAT LLC Response Letter at 5.

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] *See* SIFMA January 2023 Letter at 6.

[217] The commenter stated that CAT spending on technology should be broken into further refined cost breakdowns of the following categories: cloud hosting services, operating fees, CAIS operating fees and change request fees. *Id.*

[218] *Id.*

[219] *See* SIFMA May 2023 Letter at 3, 8–10. *See also* SIFMA October 2022 Letter at 5–6; SIFMA January 2023 Letter at 2, 5–6; SIFMA June 2023 Letter at 2, n.10, 4.

[220] 15 U.S.C. 78s(b).

[221] *See* SIFMA May 2023 Letter at 8–9. *See also* SIFMA June 2022 Letter at 8–9; SIFMA October 2022 Letter at 6; SIFMA January 2023 Letter at 5, 6.

[222] SIFMA May 2023 Letter at 9.

[223] *Id.* at 9–10.

[224] *Id.* at 10.

[225] *Id. See also* SIFMA January 2023 Letter at 6.

NMS Plan, and would be superfluous since any CAT fees must, prior to being implemented, undergo the review process detailed in Rule 608 and Section 19(b) of the Exchange Act.[226] CAT LLC also noted that the Commission is entitled to request additional budget or cost information it views as necessary to better evaluate those fees.[227] CAT LLC also stated that it already provides significant cost transparency through the public disclosure of its quarterly budget information and its financials, and that it is already actively engaged in cost discipline efforts, including through a designated cost-management working group.[228] CAT LLC further explained that Participants are subject to regulatory requirements to implement CAT and oversee their members and cannot have their compliance subject to a third party without such restrictions.[229] CAT LLC added that the Commission itself could have its ability to oversee the securities markets undermined if CAT is subject to review by a third party without regulatory restrictions.[230]

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address its concerns about the lack of a cost control mechanism.[231]

In response to the suggested inclusion of the Commission's line item costs associated with its usage and design of the CAT in the budget,[232] CAT LLC responded that, because all costs related to CAT are a result of the Commission's adoption of Rule 613 and the total costs are reflected in the budget, it would be impractical to break out Commission-specific costs and would not be useful as a practical matter.[233]

b. Reserve

One commenter argued that the proposed reserve of not more than 25% of the CAT budget is excessive.[234] The commenter noted that the support provided for the proposed change was the Participants' difficulty in forecasting CAT costs, which the commenter stated demonstrates a need for an independent cost review mechanism.[235]

E. Historical CAT Assessment

One commenter disagreed with the proposed method of calculating the Historical CAT Assessment using current transaction activity ''due to difficulty of using current volumes and trading activity by individual Industry Members as a mechanism for assessing costs in the past where the trading volumes and individual Industry Member trading activity likely were different.'' [236] The commenter also argued that the proposed assessment of Past CAT Costs on current Industry Members based on their current trading activity is not fair or reasonable because new Industry Members would be assessed a share of Past CAT Costs even if they were not in operation when those costs were incurred, and that such costs would be attributable to Industry Members that are no longer in business.[237] The commenter added that the Proposed Amendment has not explained how allocating ''approximately $350 million in historical costs . . . to a small group of executing broker firms based on current market volumes'' is consistent with the Exchange Act or how it would impact liquidity and competition.[238] The commenter stated that since the proposed allocation would be based on current market share and unrelated to the firms or activity that contributed to historical costs, there would be little ability for executing brokers to pass on such costs.[239] The commenter also stated that the assessment of ''retroactive liability for monies spent that private parties had no control over'' for public purposes would violate the Fifth Amendment Takings Clause.[240]

The commenter recommended a reevaluation of the use of transaction fees to assess Past CAT Costs,[241] and suggested an alternative approach in which Past CAT Costs would be assigned to Industry Members ''based on the lesser of (i) the CAT Fees that would be assessed on an Industry Member under the Participants' proposed approach of using current trading activity or (ii) the CAT Fees that would be assessed on such member based on their prior trading activity in the years since 2016 when the CAT was being built and then operationalized . . .'' [242] The commenter stated that the share of Past CAT Costs belonging to Industry Members that are no longer in business could be calculated using this approach and then divided equally among the current Industry Members, while Industry Members that entered into business after certain Past CAT Costs were incurred would be assessed Past CAT Costs starting in the year after which they started operating based on the above approach.[243] The commenter acknowledged that, while this approach would require more effort by the Participants, it would be ''significantly closer to the fair and reasonable standard in the Exchange Act than the approach set forth by the Participants in the Executed Share Model.'' [244]

Additionally, the commenter stated that the Participants have failed to justify the allocation of Past CAT Costs to Industry Members during the period when only Participants were reporting to the CAT.[245] The commenter argued that Industry Members should not be assessed any fees related to the decision to employ Thesys Technologies, LLC as the Plan Processor or legal or consulting fees incurred by the Participants in the creation of the CAT NMS Plan.[246] The commenter stated that the Proposed Amendment fails to provide how of much of the allocation to Industry Members is related to Thesys Technologies, LLC, and, therefore, the Participants have not demonstrated how the Executed Share Model is consistent with the Exchange Act.[247] The commenter also argued that Industry Members were not subject to CAT obligations before the CAT NMS Plan's approval, had no input into the selection of the service providers, and that ''it is difficult to envision how the Participants could demonstrate that such an allocation provides for the equitable allocation of reasonable fees due to the fact that the CAT NMS Plan did not exist during the period prior to its approval.'' [248]

The commenter also argued that the Participants have not analyzed different alternatives to collecting Past CAT Costs and the costs associated with such alternatives or the costs associated with the proposed approach.[249] The commenter urged collaboration between the Participants and Industry Members on the allocation of Past CAT Costs.[250]

[226] CAT LLC Response Letter at 10.
[227] *Id.*
[228] *Id.*
[229] *Id.*
[230] *Id.*
[231] *See* SIFMA June 2023 Letter at 2.
[232] *See* SIFMA May 2023 Letter at 10.
[233] CAT LLC Response Letter at 11.
[234] *See* SIFMA January 2023 Letter at 6, n.15.
[235] *Id.*
[236] SIFMA October 2022 Letter at 5.
[237] *See* SIFMA January 2023 Letter at 7.
[238] SIFMA June 2023 Letter at 4.
[239] *See id.*
[240] *Id.* at 8.
[241] *See* SIFMA October 2022 Letter at 5.
[242] SIFMA January 2023 Letter at 7.
[243] *Id.*
[244] *Id.*
[245] *See* SIFMA October 2022 Letter at 7.
[246] *See* SIFMA June 2022 Letter at 7; SIFMA January 2023 Letter at 6–7.
[247] *See* SIFMA June 2022 Letter at 7.
[248] *Id.*
[249] *See* SIFMA October 2022 Letter at 5.
[250] *Id. See also* SIFMA October 2022 Letter at 2 (''[w]e also reiterate our call for the Participants to work with SIFMA and the industry in a

With respect to the commenter's criticisms of the calculation and assessment of the Historical CAT Assessment,[251] CAT LLC stated that the commenter had a ''persistent misunderstanding'' of the Historical CAT Assessment, explaining that, contrary to the commenter's assertions in its comment letters, the Historical CAT Assessment would be assessed based on current market activity, not past market activity.[252] While the fee rate would be calculated based on Historical CAT Costs, the fee rate would be applied to current market transactions.[253] CAT LLC stated that the process of assessing fees for the Historical CAT Assessment would be exactly the same as with CAT Fees related to Prospective CAT Costs, and could be passed through in the same manner if a CEBB or CEBS so chooses.[254] CAT LLC also stated that it would provide CAT Executing Brokers with details of their CAT fees to facilitate this process.[255]

In response, the commenter stated that the CAT LLC Response Letter did not meaningfully address the concerns it raised about ''the inability of firms defined as 'executing brokers' to transfer fees to those who may be more appropriate to bear certain historical CAT costs in the first place.'' [256]

F. Other Comments

a. Lack of Industry Input

Two commenters argued that the Proposed Amendment lacks input from the industry.[257] One commenter stated that the Participants did not meaningfully solicit input from the industry when developing the Executed Share Model.[258] Another commenter stated that the Proposed Amendment reflects a lack of representation by executing brokers and offered its participation in future discussions and advisory committees on the topic of CAT funding.[259]

In response, CAT LLC stated that it has engaged with the industry on the funding model over the past seven years, explaining that it has discussed funding model issues with the CAT Advisory Committee, which includes representation from the industry, as well as with industry associations such as SIFMA and the Financial Information Forum, and with individual Industry Members; analyzed and responded to comment letters on the prior proposals; and hosted webinars for the industry on funding issues.[260] CAT LLC stated that it welcomes industry input on the funding model but believes a decision on the model is overdue.[261]

In response, one commenter stated that Industry Members are willing to work with the Commission and the Participants to develop a CAT funding model.[262] The commenter urged collaboration and dialogue between the Participants and the Industry Members before the filing of a formal proposal with the Commission.[263] The commenter stated that limiting industry input to the notice and comment process for NMS plan amendments is an inefficient process resulting in significant delays.[264]

b. Implementation

One commenter suggested that upon approval of any CAT funding model, Industry Members should be given at least a year ''to implement any necessary changes to systems and processes for them to be able to capture their portion of CAT costs.'' [265] CAT LLC responded that it was unlikely to take Industry Members a year to implement any needed changes, particularly given the relatively small fees likely to be incurred by most small Industry Members that would not require extensive new processes to pay.[266]

c. Rule 613 and the CAT NMS Plan

One commenter stated that the Proposed Amendment is not what was originally envisioned by the Commission in Rule 613 of Regulation NMS and in the CAT NMS Plan as approved in 2016,[267] and recommended that the Commission come up with a new structure for the CAT.[268] The commenter argued that Rule 613 and the 2016 CAT NMS Plan do not support CAT as it is currently structured [269] and provided examples where it believes that subsequent changes to the CAT requested by the Commission have caused the CAT to become inconsistent with the requirements of Rule 613 and the 2016 CAT NMS Plan.[270] The commenter stated that the changes resulted from discussions between the Commission and the Participants, that such changes ''significantly increased CAT costs,'' and that Industry Members with ''no voice and little transparency'' into the building of the CAT system would be allocated most of the increased CAT costs.[271] The commenter stated that the Commission cannot approve a funding proposal for a system that is not consistent with Rule 613 and the CAT NMS Plan, stating that this would be arbitrary and capricious action.[272]

d. Funding in the Appropriation Process

The commenter stated that the Proposed Amendment would ''evade'' [273] the separation of powers established by the Constitution, arguing that since the CAT is a ''Commission system used for enforcement'' [274] and that law enforcement ''is an executive prerogative,'' [275] Congress must approve public funds to build the CAT through the appropriations process.[276] The commenter stated ''[t]he Constitution does not permit the Commission to fund its *own* enforcement apparatus through the backdoor—to require the SROs to raise and spend hundreds of millions of dollars to build a new law enforcement tool for the Commission.'' [277]

e. Rule 608 of Regulation NMS and Rule 19b–4

One commenter preliminarily believes the assessment of CAT fees through filings submitted by each exchange under Rule 19b–4 is likely inconsistent with Rule 608.[278] The commenter stated that the Commission amended Rule 608 in 2020 to remove the effective-upon-filing procedure for NMS plan fees by requiring that NMS plan fees be subject to notice and comment and Commission approval

collaborative manner to establish a viable CAT funding model.'').

[251] *See* SIFMA May 2023 Letter at 8; SIFMA October 2022 Letter at 4–5; *supra* notes 87–88 and accompanying text.

[252] *See* CAT LLC Response Letter at 9.

[253] *Id.*

[254] *Id.*

[255] *Id.*

[256] *See* SIFMA June 2023 Letter at 2.

[257] *See* DASH April 2023 Letter at 2; DASH January 2023 Letter at 3; SIFMA June 2023 Letter at 4; SIFMA May 2023 Letter at 2; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2. *See also* FINRA June 2022 Letter at 8, 9 (advocating for a more inclusive development process that would include input from the industry).

[258] *See* SIFMA May 2023 Letter at 2; *see also* SIFMA June 2023 Letter at 4, 5; SIFMA June 2022 Letter at 2; SIFMA January 2023 Letter at 2.

[259] *See* DASH April 2023 Letter at 2; DASH January 2023 Letter at 3.

[260] *See* CAT LLC Response Letter at 12.

[261] *Id.*

[262] *See* SIFMA June 2023 Letter at 4.

[263] *Id.*

[264] *Id.* at 4–5.

[265] SIFMA May 2023 Letter at 2.

[266] *See* CAT LLC Response Letter at 12.

[267] *See* SIFMA June 2023 Letter at 2, 6.

[268] *Id.* at 6.

[269] *Id.* at 6–7.

[270] *Id.* at 6.

[271] *Id.* at 7.

[272] *Id.*

[273] *See* SIFMA June 2023 Letter at 8.

[274] *Id.*

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] *Id.* at 4, 9.

prior to becoming effective.[279] The commenter stated that Rule 608 was amended by the Commission due to concerns about the assessment of SIP market data fees by the SROs without a meaningful review opportunity.[280] The commenter also stated that the 2020 amendment specifically contemplates that CAT fees would be subject to Rule 608.[281] The commenter stated that the Commission was considering approving a process for CAT fees that would not permit a meaningful review opportunity, contrary to the Rule 608 amendment.[282] The commenter acknowledged that the CAT NMS Plan provides for Section 19(b) fee filings but also stated that the CAT NMS Plan is silent about whether Section 19(b) fee filings would need to be made after the CAT Operating Committee receives approval to assess the fees under Rule 608.[283] The commenter suggested that the CAT Operating Committee create a new funding process consistent with Rule 608 and stated that the Commission cannot find that the Proposed Amendment is consistent with the Exchange Act.[284]

f. Miscellaneous

One commenter stated that the Commission failed to address data security concerns associated with the CAT,[285] and that the Commission is rushing to approve the Proposed Amendment without careful consideration.[286] The commenter also argued that the Commission is prematurely moving forward with the Proposed Amendment while simultaneously considering revisions of the rules governing equity and options market structure and proceeding with other proposals that will impose costs on Industry Members.[287] The commenter stated that ''[t]he unequitable distribution of CAT costs contemplated by the Funding Proposal will exacerbate these problems, harming the functioning of U.S. securities markets.'' [288] The commenter argued that the Commission cannot determine whether the proposed allocation of costs is equitable without assessing the distribution of costs and benefits under the other pending proposals.[289]

[279] *See* SIFMA June 2023 Letter at 9.

[280] *Id.*

[281] *Id.*

[282] *Id.*

[283] *Id.* at 9, n.45.

[284] *Id.*

[285] *See* SIFMA June 2023 Letter at 2.

[286] *Id.* at 3.

[287] *Id.*

[288] *Id.*

[289] *Id.*

V. Proceedings to Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[290] and Rules 700 and 701 of the Commission's Rules of Practice,[291] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the complex issues raised by Proposed Amendment, including comments received. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.'' [292] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[293] In the Notice, the Commission sought comment on the Proposed Amendment, including whether the Proposed Amendment is consistent with the Exchange Act.[294] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[295] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Participants have demonstrated how the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act; [296]
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(4) [297] and Section 15A(b)(5),[298] of the Exchange Act, which require that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'' and that the rules of a national securities association ''provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;''
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(5) [299] and Section 15A(b)(6),[300] of the Exchange Act, which require that the rules of a national securities exchange or national securities association ''promote just and equitable principles of trade. . . protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;''
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with Section 6(b)(8) [301] and Section 15A(b)(9) [302] of the Exchange Act, which require that the rules of a national securities exchange or national securities association ''do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act];'' and
- Whether the Participants have demonstrated how the Proposed Amendment is consistent with the funding principles of the CAT NMS Plan that are not proposed to be amended by the Proposed Amendment, which principles state that the Operating Committee shall seek, among other things, ''to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company,'' [303] ''to provide for ease of billing and other administrative

[290] 17 CFR 242.608.

[291] 17 CFR 201.700; 17 CFR 201.701.

[292] 17 CFR 242.608(b)(2).

[293] *Id.*

[294] *See* Notice, *supra* note 6.

[295] 17 CFR 242.608(b)(2)(i).

[296] 17 CFR 242.608(b)(2).

[297] 15 U.S.C. 78f(b)(4).

[298] 15 U.S.C. 78o–3(b)(5).

[299] 15 U.S.C. 78f(b)(5).

[300] 15 U.S.C. 78o–3(b)(6).

[301] 15 U.S.C. 78f(b)(8).

[302] 15 U.S.C. 78o–3(b)(9).

[303] *See* CAT NMS Plan, *supra* note 1, at Section 11.2(a).

functions,'' [304] ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,'' [305] and ''to build financial stability to support the Company as a going concern.'' [306]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder. . . is on the plan participants that filed the NMS plan filing.'' [307] The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[308] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[309]

VI. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Amendment. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Amendment is consistent with Section 11A, Section 6(b)(4), Section 6(b)(5), Section 6(b)(8), Section 15A(b)(5), Section 15A(b)(6), Section 15A(b)(9), or any other provision of the Exchange Act, or the rules and regulations thereunder, or the funding principles of the CAT NMS Plan. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[310] any request for an opportunity to make an oral presentation.[311] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,[312] in addition to any other comments they may wish to submit about the proposed rule changes. In addition, the Commission seeks comment on the following:

1. Commenters' views on any questions in the Solicitation of Comments Section of the Order Instituting Proceedings related to a prior funding model amendment that are relevant to the Proposed Amendment; [313]

2. Commenters' views on whether the proposed definition of ''CAT Executing Broker'' is clear and whether identification of those brokers who meet the definition is easily available through CAT Data; and

3. Commenters' views on the incentives of the Participants to control Prospective CAT Costs.

The Commission also requests that commenters provide analysis to support their views, if possible.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Amendment should be approved or disapproved by July 14, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by July 28, 2023. 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 4–698 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 4–698. 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 (*https://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 a.m. and 3 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 4–698 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[314]

J. Matthew DeLesDernier,

Deputy Secretary.

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[304] *Id.* at Section 11.2(d).

[305] *Id.* at Section 11.2(e).

[306] *Id.* at Section 11.2(f).

[307] 17 CFR 201.701(b)(3)(ii).

[308] *Id.*

[309] *Id.*

[310] 17 CFR 242.608(b)(2)(i).

[311] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[312] *See* Notice, *supra* note 6.

[313] *See* Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558, 54577–79 (Sept. 6, 2022).

[314] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97745; File No. SR–NYSENAT–2023–11]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements

June 16, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 5, 2023, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .09 under NYSE National Rule 2.2 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Rule 2.2(e)(3)) applicable to ETP Holders to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (''MQP''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of NYSE National members is codified under Rule 2.2(e).[4] This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.[5] The proposed rule change is discussed in detail below.

On May 25, 2022, the Exchange amended NYSE National Rules 2.1210 (Registration Requirements) and 2.2(e) (Continuing Education Requirements) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.[6] By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the ''two-year qualification period''). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.[7] Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under NYSE National Rule 2.2, Commentary .09, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') under NYSE National Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder) immediately prior to May 25, 2022 (collectively, ''Look-Back Individuals'').[8]

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21–41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the ''First Enrollment Period''). In addition to the announcement in Regulatory Notice 21–41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (''FinPro'') accounts.[9]

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.[10] In addition, the original six-

[4] *See also* Commentary .06 to Rule 2.1210 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

[5] *See* Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program) (''FINRA Rule Change'').

[6] *See* Securities Exchange Act Release No. 95062 (June 7, 2022), 87 FR 35836 (June 13, 2022) (SR–NYSENAT–2022–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

[7] The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.,* they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

[8] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. NYSE National stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[9] Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

[10] According to FINRA, this may have been a result of the timing of FINRA's announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''Second Enrollment Period''). For similar reasons, NYSE National is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.[11] The Second Enrollment Period will be between the date of filing of this proposed rule change, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[12]

NYSE National believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program's launch.[13] NYSE National believes that greater public awareness of the MQP, coupled with a seven-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.[14] NYSE National also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.[15]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

NYSE National believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. NYSE National believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE National has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] 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

[11] The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and May 25, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

[12] Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of $100 for both 2022 and 2023 at the time of their enrollment.

[13] *See, e.g.,* Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, InvestmentNews (June 23, 2022), *https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942.*

[14] In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. *See* Enrolling in the MQP, *https://www.finra.org/registration-exams-ce/finpro/mqp* (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

[15] For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. NYSE National has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. NYSE National also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, NYSE National additionally indicated that the immediate operation of the proposed rule change is appropriate because it would ensure that there is sufficient time for Look-Back Individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2023–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2023–11. 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 (*https://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 a.m. and 3 p.m. Copies of such 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–NYSENAT–2023–11 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13347 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97748; File No. SR–NYSEAMER–2023–32]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-Location Services

June 16, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule (''Fee Schedule'') would be updated accordingly. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Partial Cabinet Solution (''PCS'') bundles offered to Users as part of its co-location services.[4] The description of the PCS bundles in the Fee Schedule would be updated accordingly.

Background

The Fee Schedule currently lists two PCS bundles, Options C and D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[5] Users are only eligible to purchase PCS bundles if they meet specified requirements.[6]

In May 2020, the Exchange amended PCS bundle Options C and D to add two 10 Gb connections to the NMS Network to each bundle. The NMS Network is an alternate dedicated network connection that Users use to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor.[7] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

The Exchange expects that the proposed rule change would become operative no later than September 1, 2023. The Exchange will announce the date through a customer notice.

Proposed Changes to the Current PCS Bundles

The Exchange proposes to amend current Options C and D so that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles. There would be no change to the existing fees for the PCS bundles.

The purpose of the proposed changes to the PCS bundles is to allow a User to connect to all or a large part of the expanded Options Price Reporting Authority (''OPRA'') feed. More specifically, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[8] As a result of this change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[9] This means that a 10 Gb network connection will not suffice for a User that wants to connect to all or a large part of the expanded OPRA feed.[10] Current and potential Users with PCS bundles have requested the inclusion of 40 Gb connections in the bundles.

The ability to connect with a larger section of the OPRA feed is not the only benefit that would occur. A User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. The addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. As the Exchange understands that 40 Gb connections are increasingly considered the industry standard for options trading, and understands that smaller customers—such as those who might qualify for a PCS—often prefer to normalize all of their equipment to one connection size, this may be a benefit to some Users.

There would be no change to the initial charge and monthly recurring charge (''MRC'') for the PCS bundles. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. Users with a PCS bundle would not have to pay a second initial charge to change the content of their PCS bundles. As a result, a User would be able to upgrade its PCS bundle from 10 Gb to 40 Gb, in whole or, if it opts to retain some 10 Gb connections, in part.

To implement the proposed changes as well as remove or update obsolete text, the Exchange proposes to make the following amendments to the description of PCS bundles Options C and D:

- Update the names to Options A and B. Currently no PCS bundles use those names,[11] and the Exchange believes that continuing to use Option C and Option D as names could be confusing as a result.
- Amend the description to state that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles.
- Consistent with the requirements for NMS Network connections,[12] add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections.
- Currently, the Fee Schedule includes text regarding a reduced MRC for PCS bundles for 24 months, which applied so long as a User ordered its PCS bundle on or before December 31, 2020. Since that time has expired, the text has become obsolete, and the Exchange proposes to delete it.

The amended portion of the Fee Schedule would read as follows (proposed deletions in brackets, proposed additions *italicized*):

[4] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–23, SR–NYSEARCA–2023–42, SR–NYSECHX–2023–12, and SR–NYSENAT–2023–10.

[5] *See* Securities Exchange Act Release No. 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89).

[6] *See id.* The requirements are set forth in Note 1 under ''Colocation Notes.''

[7] *See* Securities Exchange Act Release No. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19).

[8] *See* Securities Industry Automation Corporation, *Memo to OPRA Multicast Subscribers,* August 31, 2022, at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/6377e5e4114b88c77be5552c_OPRA%20Migration%20to%2096%20Multicast%20Line%20Network_Q3%20Postponement.pdf.* Connectivity to the OPRA feed is an Included Data Product available over the IP network and the NMS network.

[9] *See id.,* at 2 (providing estimated bandwidth requirements).

[10] The proposed change would be of utility even if OPRA were not expanding its data distribution network, as a User cannot connect to all of the OPRA feed with the current 10 Gb connections in the PCS bundles.

[11] The previous Options A and B were deleted in 2022. *See* Securities Exchange Act Release No. 95970 (October 4, 2022), 87 FR 61426 (November 11, 2022) (SR–NYSEAMER–2022–43).

[12] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size''). By way of example, if a User with a PCS bundle selected one 10 Gb LX LCN connection and one 40 Gb IP network connection, it would receive one 10 Gb NMS connection and one 40 Gb NMS connection. If the User instead chose 10 Gb for both its LCN and IP network connection, it would receive two 10 Gb NMS connections.

Type of service	Description	Amount of charge
* *	* * *	* *
Partial Cabinet Solution bundles Notes: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 1 under ''Colocation Notes.'' *A purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e., 10 Gb or 40 Gb) as the related LCN and IP network connections*	Option *A*[C]: 1 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol Option *B*[D]: 2 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol	$10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter • For Users that order after December 31, 2020:]$14,000 monthly *charge per bundle*. $10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020:]$15,000 monthly *charge per bundle*.

The PCS bundles would continue to include a 1 kw or 2 kw partial cabinet and either the Network Time Protocol Feed or the Precision Timing Protocol. The requirements set forth in Note 1 under ''Colocation Notes'' would continue to apply.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would allow Users to connect to all or a large part of the expanded OPRA feed. As noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[16] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[17] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

The Exchange also believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because a User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. Moreover, the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. That said, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes.

The Exchange further believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The Exchange also believes that the proposed change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because there would be no change to the initial charge and MRC for the PCS bundles. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb and 40 Gb)

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 8.

[17] *See id.,* at 2 (providing estimated bandwidth requirements).

as the related LCN or IP network connection. The requirement would be consistent with the current requirements for NMS Network connections [18] and so all Users would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles. In this way, it would enhance the clarity and transparency of the Fee Schedule.

The Exchange believes that updating the names of the PCS bundles from Option C and D to Option A and B and removing obsolete text from the Fee Schedule would be reasonable for the same reasons. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because, even though the connectivity options available in a PCS bundle would increase, there would be no change to the initial charge and MRC for a PCS bundle. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only Users that purchased a PCS bundle would be charged for it. The proposed change would not apply differently to distinct types or sizes of market participants but would apply to all Users equally. Moreover, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory to add text stating that purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections. The requirement would be consistent with the current requirements for NMS Network connections,[19] and so all Users with NMS Network connections would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles.

The Exchange also believes that updating the names of the PCS bundles and removing obsolete text from the Fee Schedule would be equitable and not unfairly discriminatory, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion for all market participants.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20] The proposed expansion of the existing PCS bundles would allow Users to connect to all or a large part of the expanded OPRA feed, unlike the 10 Gb network connections currently offered in the PCS bundles. More specifically, as noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[21] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[22] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

A User with a revised PCS bundle also would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds, and the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere.

The Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users, but rather that competition among Users would be enhanced. By allowing PCS bundles to include 40 Gb connections, the proposed change would allow smaller Users to not only take advantage of the option for co-location services with a PCS bundle but also compete with Users that have 40 Gb connections. The smaller Users include those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The PCS bundles originally were designed to make it more cost effective for such Users to compete,[23] and the Exchange believes that the proposed change would enhance their ability to do so. The proposed change would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The proposed rule change would not impose a burden on competition because it would expand the existing PCS bundles without changing the initial charge or MRC or otherwise adding any fees. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part. As is true now, only Users that purchased a PCS bundle would be charged for it.

All Users would be able to choose what size connections they want, and all Users, whether or not they had a PCS bundle, would be subject to the same requirements for connectivity to the NMS network. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

[18] *See* 85 FR 28671, *supra* note 7, at 28674 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size'').

[19] *See id.*

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 8.

[22] *See id.,* at 2 (providing estimated bandwidth requirements).

[23] *See* 81 FR 7382, *supra* note 5, at 7384.

Finally, the Exchange believes that removing obsolete text from the Fee Schedule would not place any burden on competition that is not necessary or appropriate. Rather, it would benefit competition, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 a.m. and 3 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–NYSEAMER–2023–32 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13338 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97742; File No. SR–NYSEAMER–2023–33]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements

June 16, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 5, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to the Exchange's rules regarding continuing education requirements (Rules 341A and 2.21E) applicable to member organizations [4] and Equity Trading Permit (''ETP'') Holders (collectively, ''members'') to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (''MQP''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] References to ''member organization'' as used in Exchange rules include American Trading Permit (''ATP'') Holders, which are registered brokers or dealers approved to effect transactions on the Exchange's options marketplace. Under the Exchange's rules, an ATP Holder has the status as a ''member'' of the Exchange as that term is defined in Section 3 of the Act. *See* Rule 900.2NY(4) & (5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of NYSE American members is codified under Rules 341A and 2.21E.[5] This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.[6] The proposed rule change is discussed in detail below.

On May 25, 2022, the Exchange amended NYSE American Rules 2.1210 (Registration Requirements), 341A (Continuing Education for Registered Persons), and 2.21E (Employees of ETP Holders Registrations) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.[7] By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the ''two-year qualification period''). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.[8] Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under NYSE American Rule 341A, Commentary .06, and Rule 2.21E, Commentary .06, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') under NYSE American Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member Organization or ETP Holder) immediately prior to May 25, 2022 (collectively, ''Look-Back Individuals'').[9]

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21–41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the ''First Enrollment Period''). In addition to the announcement in Regulatory Notice 21–41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (''FinPro'') accounts.[10]

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.[11] In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''Second Enrollment Period''). For similar reasons, NYSE American is also proposing to amend its rules to provide Look-Back Individuals with a Second

[5] *See also* Commentary .06 to Rule 2.1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

[6] *See* Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program) (''FINRA Rule Change'').

[7] *See* Securities Exchange Act Release No. 95064 (June 7, 2022), 87 FR 35812 (June 13, 2022) (SR–NYSEAMER–2022–20) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

[8] The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.,* they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

[9] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. NYSE American stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[10] Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their Fin.Pro accounts.

[11] According to FINRA, this may have been a result of the timing of FINRA's announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

Enrollment Period.[12] The Second Enrollment Period will be between the date of filing of this proposed rule change, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[13]

NYSE American believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program's launch.[14] NYSE American believes that greater public awareness of the MQP, coupled with a seven-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.[15] NYSE American also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.[16]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

NYSE American believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. NYSE American believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE American has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[22] 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. NYSE American has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards

[12] The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and May 25, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

[13] Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of $100 for both 2022 and 2023 at the time of their enrollment.

[14] *See, e.g.,* Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, InvestmentNews (June 23, 2022), *https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942.*

[15] In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. *See* Enrolling in the MQP, *https://www.finra.org/registration-exams-ce/finpro/mqp* (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

[16] For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. NYSE American also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, NYSE American additionally indicated that the immediate operation of the proposed rule change is appropriate because it would ensure that there is sufficient time for Look-Back Individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–33. 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 a.m. and 3 p.m. Copies of such 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–NYSEAMER–2023–33 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13344 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97746; File No. SR–ICEEU–2023–015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments Part HH of Its Delivery Procedures

June 16, 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 June 6, 2023, ICE Clear Europe Limited filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe Limited. ICE Clear Europe Limited filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend Part HH of its Delivery Procedures (''Delivery Procedures'' or ''Procedures'')[5] to make certain corrections and clarifications with respect to the ICE Endex French PEG Natural Gas Contracts to be consistent with relevant exchange contract specifications.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part HH of the Delivery Procedures which applies to ICE Endex French PEG Natural Gas Contracts to make certain corrections and clarifications to be consistent with exchange contract specifications. In paragraph 3.2, the amendments would clarify that the contract trades in megawatt hours (MWh) per day and would correctly reflect that the contract is delivered in kilowatt hours (kWh) rather than MWh. The delivery documentation summary in paragraph 9.1 would also be amended to reflect the correction from MWh to kWh for deliveries under the contract. In paragraph 9.2, a correction would be made for invoice report and account sale report requirements to reflect that ICE Endex French PEG Daily Futures are priced in Euros per MWh (rather than pence per Therm). The amendments do not otherwise change the terms and conditions of deliveries under the relevant contract.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to make certain clarifications and corrections in Part HH relating to settlement for ICE Endex French PEG Natural Gas Contracts, for consistency with relevant exchange contract specifications. The amendments do not otherwise change the manner in which the contracts are cleared or settled. Accordingly, ICE Clear Europe believes that the Delivery Procedures, as amended, would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[8] (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[9])

In addition, Rule 17Ad–22(e)(10) [10] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' As discussed above, the amendments would make certain corrections and clarifications relating to settlement under ICE Endex French PEG Natural Gas Contracts, including with respect to deliveries being made in kWh. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to the contracts. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[11]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to make certain corrections and clarifications relating to ICE Endex French PEG Natural Gas Contracts. The amendments would not change the obligations of market participants under those contracts. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ICEEU–2023–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ICEEU–2023–015. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(10).

[11] 17 CFR 240.17Ad–22(e)(10).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

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 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2023–015 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97744; File No. SR–NYSECHX–2023–13]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements

June 16, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2023, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to the Exchange's rules regarding continuing education requirements (Article 6, Rule 11) applicable to Participants[4] to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (''MQP''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of NYSE Chicago members is codified under Article 6, Rule 11.[5] This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.[6] The proposed rule change is discussed in detail below.

On May 25, 2022, the Exchange amended NYSE Chicago Article 6, Rule 11 (Continuing Education for Registered Persons) and Rule 13 (Registration Requirements) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.[7] By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the ''two-year qualification period''). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.[8] Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Participant is a ''member'' of the Exchange for purposes of the Act. *See* Article 1, Rule 1(s).

[5] *See also* Interpretations and Policies .06 to Article 6, Rule 13 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

[6] *See* Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program) (''FINRA Rule Change'').

[7] *See* Securities Exchange Act Release No. 95063 (June 7, 2022), 87 FR 35826 (June 13, 2022) (SR–NYSECHX–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

[8] The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.,* they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under NYSE Chicago Article 6, Rule 11, Interpretations and Policies .07, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') under NYSE Chicago Article 6, Rule 13, Interpretations and Policies .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Participant) immediately prior to May 25, 2022 (collectively, ''Look-Back Individuals'').[9]

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21–41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the ''First Enrollment Period''). In addition to the announcement in Regulatory Notice 21–41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (''FinPro'') accounts.[10]

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.[11] In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''Second Enrollment Period''). For similar reasons, NYSE Chicago is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.[12] The Second Enrollment Period will be between the date of filing of this proposed rule change, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[13]

NYSE Chicago believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program's launch.[14] NYSE Chicago believes that greater public awareness of the MQP, coupled with a seven-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time .to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.[15] NYSE Chicago also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.[16]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

NYSE Chicago believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled

[9] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. NYSE Chicago stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[10] Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

[11] According to FINRA, this may have been a result of the timing of FINRA's announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

[12] The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and May 25, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

[13] Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of $100 for both 2022 and 2023 at the time of their enrollment.

[14] *See, e.g.,* Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, InvestmentNews (June 23, 2022), *https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942.*

[15] In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. *See* Enrolling in the MQP, *https://www.finra.org/registration-exams-ce/finpro/mqp* (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

[16] For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

individuals, providing investors with the advantage of greater experience among the individuals working in the industry. NYSE Chicago believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE Chicago has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time 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. NYSE Chicago has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. NYSE Chicago also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, NYSE Chicago additionally indicated that the immediate operation of the proposed rule change is appropriate because it would ensure that there is sufficient time for Look-Back Individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2023–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2023–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 a.m. and 3 p.m. Copies of such 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–NYSECHX–2023–13 and should be submitted on or before July 14, 2023.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97743; File No. SR–NYSEARCA–2023–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements

June 16, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to the Exchange's rules regarding continuing education requirements (Rules 2.23 and 2.24) applicable to Equity Trading Permit (''ETP'') Holders, Options Trading Permit (''OTP'') Holders and OTP Firms (collectively, ''members'') to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (''MQP''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The continuing education program for registered persons of broker-dealers (''CE Program'') currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of NYSE Arca members is codified under Rules 2.23 and 2.24.[4] This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.[5] The proposed rule change is discussed in detail below.

On May 25, 2022, the Exchange amended NYSE Arca Rules 2.1210 (Registration Requirements), 2.23 (Registration—OTPs), and 2.24 (Registration—Employees of ETP Holders) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.[6] By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the ''two-year qualification period''). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.[7] Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under NYSE Arca Rule 2.23, Commentary .07, and Rule 2.24, Commentary .07, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'') under NYSE Arca Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder, OTP Holder or OTP Firm) immediately prior to May

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See also* Commentary .06 to Rule 2.1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

[5] *See* Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program) (''FINRA Rule Change'').

[6] *See* Securities Exchange Act Release No. 95065 (June 7, 2022), 87 FR 35820 (June 13, 2022) (SR–NYSEARCA–2022–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

[7] The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.,* they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

25, 2022 (collectively, ''Look-Back Individuals'').[8]

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21–41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the ''First Enrollment Period''). In addition to the announcement in Regulatory Notice 21–41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (''FinPro'') accounts.[9]

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.[10] In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the ''Second Enrollment Period''). For similar reasons, NYSE Arca is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.[11] The Second Enrollment Period will be between the date of filing of this proposed rule change, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.[12]

NYSE Arca believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program's launch.[13] NYSE Arca believes that greater public awareness of the MQP, coupled with a seven-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.[14] NYSE Arca also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.[15]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. NYSE Arca believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. NYSE Arca believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market

[8] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. NYSE Arca stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[9] Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

[10] According to FINRA, this may have been a result of the timing of FINRA's announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

[11] The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and May 25, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

[12] Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of $100 for both 2022 and 2023 at the time of their enrollment.

[13] *See, e.g.,* Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, InvestmentNews (June 23, 2022), *https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942*.

[14] In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. *See* Enrolling in the MQP, *https://www.finra.org/registration-exams-ce/finpro/mqp* (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

[15] For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NYSE Arca has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] 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. NYSE Arca has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. NYSE Arca also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, NYSE Arca additionally indicated that the immediate operation of the proposed rule change is appropriate because it would ensure that there is sufficient time for Look-Back Individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2023–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–43. 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 a.m. and 3 p.m. Copies of such 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–NYSEARCA–2023–43 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13345 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97751; File No. SR–NYSECHX–2023–12]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-Location Services

June 16, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule (''Fee Schedule'') would be updated accordingly. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Partial Cabinet Solution (''PCS'') bundles offered to Users as part of its co-location services.[4] The description of the PCS bundles in the Fee Schedule would be updated accordingly.

Background

The Fee Schedule currently lists two PCS bundles, Options C and D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[5] Users are only eligible to purchase PCS bundles if they meet specified requirements.[6]

In May 2020, the Exchange amended PCS bundle Options C and D to add two 10 Gb connections to the NMS Network to each bundle. The NMS Network is an alternate dedicated network connection that Users use to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor.[7] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

The Exchange expects that the proposed rule change would become operative no later than September 1, 2023. The Exchange will announce the date through a customer notice.

Proposed Changes to the Current PCS Bundles

The Exchange proposes to amend current Options C and D so that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles. There would be no change to the existing fees for the PCS bundles.

The purpose of the proposed changes to the PCS bundles is to allow a User to connect to all or a large part of the expanded Options Price Reporting Authority (''OPRA'') feed. More specifically, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[8] As a result of this change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[9] This means that a 10 Gb network connection will not suffice for a User that wants to connect to all or a large part of the expanded OPRA feed.[10] Current and potential Users with PCS bundles have requested the inclusion of 40 Gb connections in the bundles.

The ability to connect with a larger section of the OPRA feed is not the only benefit that would occur. A User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. The addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. As the Exchange understands that 40 Gb connections are increasingly considered the industry standard for options trading, and understands that smaller customers—such as those who might qualify for a PCS—often prefer to normalize all of their equipment to one connection size, this may be a benefit to some Users.

There would be no change to the initial charge and monthly recurring charge (''MRC'') for the PCS bundles. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. Users with a PCS bundle would not have to pay a second initial charge to change the content of their PCS bundles. As a result, a User would be able to upgrade its PCS bundle from 10 Gb to 40 Gb, in whole or, if it opts to retain some 10 Gb connections, in part.

To implement the proposed changes as well as remove or update obsolete text, the Exchange proposes to make the following amendments to the description of PCS bundles Options C and D:

- Update the names to Options A and B. Currently no PCS bundles use those names,[11] and the Exchange believes that continuing to use Option C and Option D as names could be confusing as a result.
- Amend the description to state that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles.

[4] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–23, SR–NYSEAMER–2023–32, SR–NYSEArca–2023–42, and SR–NYSENAT–2023–10.

[5] *See* 84 FR 58778, *supra* note 4, at 58782.

[6] *See id.* The requirements are set forth in Note 1 under ''Colocation Notes.''

[7] *See* Securities Exchange Act Release No. 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (SR–NYSECHX–2020–18).

[8] *See* Securities Industry Automation Corporation, *Memo to OPRA Multicast Subscribers,* August 31, 2022, at *https://assets.website-files.com/5ba40927ac854d8c97bc92d7/6377e5e4114b88c77be5552c_OPRA%20Migration%20to%2096%20Multicast%20Line%20Network_Q3%20Postponement.pdf.* Connectivity to the OPRA feed is an Included Data Product available over the IP network and the NMS network.

[9] *See id.,* at 2 (providing estimated bandwidth requirements).

[10] The proposed change would be of utility even if OPRA were not expanding its data distribution network, as a User cannot connect to all of the OPRA feed with the current 10 Gb connections in the PCS bundles.

[11] The previous Options A and B were deleted in 2022. *See* Securities Exchange Act Release No. 95971 (October 4, 2022), 87 FR 61374 (November 11, 2022) (SR–NYSECHX–2022–22).

• Consistent with the requirements for NMS Network connections,[12] add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections.

• Currently, the Fee Schedule includes text regarding a reduced MRC for PCS bundles for 24 months, which applied so long as a User ordered its PCS bundle on or before December 31, 2020. Since that time has expired, the text has become obsolete, and the Exchange proposes to delete it.

The amended portion of the Fee Schedule would read as follows (proposed deletions in brackets, proposed additions underlined):

Type of service	Description	Amount of charge
* *	* * *	* *
Partial Cabinet Solution bundles Notes: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 1 under ''Colocation Notes'' *A purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e., 10 Gb or 40 Gb) as the related LCN and IP network connections.*	Option *A*[C]: 1 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol. Option *B*[D]: 2 kW partial cabinet, 1 LCN connection (10 Gb LX *or 40 Gb*), 1 IP network connection (10 Gb *or 40 Gb*), 2 NMS Network connections (10 Gb *or 40 Gb* each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020:]$14,000 monthly *charge per bundle.* $10,000 initial charge per bundle plus [monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020:]$15,000 monthly *charge per bundle.*

The PCS bundles would continue to include a 1 kw or 2 kw partial cabinet and either the Network Time Protocol Feed or the Precision Timing Protocol. The requirements set forth in Note 1 under ''Colocation Notes'' would continue to apply.

General

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it would allow Users to connect to all or a large part of the expanded OPRA feed. As noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[16] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[17] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

The Exchange also believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because a User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. Moreover, the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. That said, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes.

The Exchange further believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to expand the connectivity options in the PCS bundles because it

[12] *See* 85 FR 34472, *supra* note 7, at 34474 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size''). By way of example, if a User with a PCS bundle selected one 10 Gb LX LCN connection and one 40 Gb IP network connection, it would receive one 10 Gb NMS connection and one 40 Gb NMS connection. If the User instead chose 10 Gb for both its LCN and IP network connection, it would receive two 10 Gb NMS connections.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* note 8.

[17] *See id.,* at 2 (providing estimated bandwidth requirements).

would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The Exchange also believes that the proposed change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because there would be no change to the initial charge and MRC for the PCS bundles. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

The Exchange believes that it is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest to add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb and 40 Gb) as the related LCN or IP network connection. The requirement would be consistent with the current requirements for NMS Network connections [18] and so all Users would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles. In this way, it would enhance the clarity and transparency of the Fee Schedule.

The Exchange believes that updating the names of the PCS bundles from Option C and D to Option A and B and removing obsolete text from the Fee Schedule would be reasonable for the same reasons. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because, even though the connectivity options available in a PCS bundle would increase, there would be no change to the initial charge and MRC for a PCS bundle. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only Users that purchased a PCS bundle would be charged for it. The proposed change would not apply differently to distinct types or sizes of market participants but would apply to all Users equally. Moreover, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory to add text stating that purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (*i.e.,* 10 Gb or 40 Gb) as the related LCN and IP network connections. The requirement would be consistent with the current requirements for NMS Network connections,[19] and so all Users with NMS Network connections would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles.

The Exchange also believes that updating the names of the PCS bundles and removing obsolete text from the Fee Schedule would be equitable and not unfairly discriminatory, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion for all market participants.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20] The proposed expansion of the existing PCS bundles would allow Users to connect to all or a large part of the expanded OPRA feed, unlike the 10 Gb network connections currently offered in the PCS bundles. More specifically, as noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.[21] As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.[22] This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

A User with a revised PCS bundle also would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds, and the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere.

The Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users, but rather that competition among Users would be enhanced. By allowing PCS bundles to include 40 Gb connections, the proposed change would allow smaller Users to not only take advantage of the option for co-location services with a PCS bundle but also compete with Users that have 40 Gb connections. The smaller Users include those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The PCS bundles originally were designed to make it more cost effective for such

[18] *See* 85 FR 34472, *supra* note 7, at 34474 (stating that ''if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size'').

[19] *See id.*

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 8.

[22] *See id.,* at 2 (providing estimated bandwidth requirements).

Users to compete,[23] and the Exchange believes that the proposed change would enhance their ability to do so. The proposed change would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The proposed rule change would not impose a burden on competition because it would expand the existing PCS bundles without changing the initial charge or MRC or otherwise adding any fees. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part. As is true now, only Users that purchased a PCS bundle would be charged for it.

All Users would be able to choose what size connections they want, and all Users, whether or not they had a PCS bundle, would be subject to the same requirements for connectivity to the NMS network. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

Finally, the Exchange believes that removing obsolete text from the Fee Schedule would not place any burden on competition that is not necessary or appropriate. Rather, it would benefit competition, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2023–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–12. 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 (*https://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 a.m. and 3 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–NYSECHX–2023–12 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–13341 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12106]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces the meeting of the U.S. State Department's Overseas Security Advisory Council on July 14, 2023. Pursuant to section 10(d) of the Federal Advisory Committee Act (5 U.S.C. appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures, will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, global threat overviews, and other

[23] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394, at 7396 (February 11, 2016) (SR–NYSE–2015–53).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Kristen Coll, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2223.

Kristen Coll,

Deputy Executive Director, Overseas Security Advisory Council, Department of State.

[FR Doc. 2023–13336 Filed 6–22–23; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–1737; Summary Notice No. 2023–07]

Petition for Exemption; Summary of Petition Received; Nova Sky Stories, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 13, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1737 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–1737.
Petitioner: Nova Sky Stories, LLC.
Section of 14 CFR Affected: § 48.100.
Description of Relief Sought: Nova Sky Stories, LLC is a drone light show technology provider with approximately 12,000 unmanned aircraft systems (UAS) in inventory. The petitioner is requesting an exemption from the requirement for individual UAS registration and/or registration renewal through the Federal Aviation Administration's Drone Zone portal.

[FR Doc. 2023–13362 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0952; Summary Notice No. –2023–20]

Petition for Exemption; Summary of Petition Received; The Balloon Training Academy

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 13, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0952 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–0952.

Petitioner: The Balloon Training Academy.

Sections of 14 CFR Affected: §§ 141.35(e) and 141.36(e).

Description of Relief Sought: The Balloon Training Academy petitions for an exemption from 14 CFR 141.35(e) and 141.36(e). The petitioner seeks relief from § 141.35(e) to permit its instructor, Mr. Adam Magee, to be designated as its chief ground instructor by using his previous aviation experience in lieu of meeting the requirement to have one year of experience as a ground school instructor at a certificated pilot school. The petitioner seeks relief from § 141.36(e) to permit Ms. Kimberly Magee to be designated as its assistant chief ground instructor by using her previous aviation experience in lieu of meeting the requirement to have 6 months of experience as a ground school instructor at a certificated pilot school.

[FR Doc. 2023–13385 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0385]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Competition Plans, Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection.

DATES: Written comments should be submitted by August 22, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Danielle Hinnant, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Ave. SW, Suite 620, Washington, DC 20591.

By fax: 202–267–5302.

FOR FURTHER INFORMATION CONTACT: For further information please contact Jane Johnson by email at: *jane.johnson@faa.gov;* phone: 202–267–5878.

SUPPLEMENTARY INFORMATION: The FAA, 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 FAA assess the impact of its information collection requirements and minimize the public's reporting burden.

The FAA invites comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the FAA's performance; (b) the accuracy of the estimated burden; (c) ways for the FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0661.

Title: Competition Plans, Passenger Facility Charges.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The DOT/FAA will use any information submitted in response to this requirement to carry out the intent of title 49, sections 40117(k) and 47106(f). These rules assure that a covered airport has, and implements, a plan that provides opportunities for competitive access by new entrant air carriers or air carriers seeking to expand. The affected public includes public agencies controlling medium or large hub airports.

Respondents: 5 affected airports annually.

Frequency: On occasion.

Estimated Average Burden per Response: Approximately 150 hours.

Estimated Total Annual Burden: Approximately 750 annually.

Issued in Washington, DC.

David F. Cushing,

Manager, Airports Financial Assistance Division, APP–500.

[FR Doc. 2023–13358 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–1264; Summary Notice No. 2023–21]

Petition for Exemption; Summary of Petition Received; Midwest ATC Service, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 13, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1264 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time.

Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–1264.

Petitioner: Midwest ATC Service, Inc.

Section of 14 CFR Affected: § 65.39(a).

Description of Relief Sought: Midwest ATC Service, Inc. petitions for relief from 14 CFR 65.39(a) regarding the location of training under the requirement that an applicant for a facility rating at an air traffic control contract tower under the FAA Contract Tower Program must serve as an air traffic control tower operator at that control tower without a facility rating for at least six months. The petitioner proposes to allow recent Embry Riddle Aeronautical University (ERAU) graduates with an Air Traffic Management degree to credit time spent in a four-month air traffic control classroom and simulation training program at ERAU towards the six-month on-the-job training requirement to be eligible for a facility rating.

[FR Doc. 2023–13364 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1426]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves protection of voluntarily submitted information. Part 193 of the Federal Aviation Administration (FAA) regulations provides that certain information submitted to the FAA on a voluntary basis is not to be disclosed. This part implements a statutory provision. The purpose of part 193 is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System (NAS). The information collection associated with part 193 also supports the Department of Transportation's Strategic Goal of Safety and Security.

DATES: Written comments should be submitted by August 22, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0646.

Title: Protection of Voluntarily Submitted Information.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: Part 193 of the FAA regulations provides that certain information submitted to the FAA on a voluntary basis is not to be disclosed. Part 193 implements a statutory provision. Section 40123 was added to title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996 to encourage people to voluntarily submit desired information. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues.

The purpose of part 193 is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System. FAA programs that are covered under part 193 are Voluntary Safety Reporting Programs, Air Traffic and Technical Operations Safety Action programs, the Aviation Safety Action Program, and the Voluntary Disclosure Reporting Program. This rule imposes a negligible paperwork burden for certificate holders and fractional ownership programs that choose to submit a letter notifying the Administrator that they wish to participate in a current program.

The number of respondents has greatly increased since the initial approval of this information collection. In order to accurately reflect the burden of this information collection going forward, the FAA has included total current participants in the programs.

Respondents: 2604.

Frequency: Varies per response time.

Estimated Average Burden per Response: Varies per response time.

Estimated Total Annual Burden: 493,723 Hours.

Issued in Washington, DC, on June 20, 2023.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2023–13394 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0471; Summary Notice No. 2023–22

Petition for Exemption; Summary of Petition Received; 417 Drone Imaging LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's

awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 13, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0471 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–0471.
Petitioner: 417 Drone Imaging LLC.
Section(s) of 14 CFR Affected: §§ 48.110(a)(6) and 48.110(a)(7).
Description of Relief Sought: 417 Drone Imaging LLC seeks relief from 14 CFR 48.110(a)(6) and 48.110(a)(7) to apply a single registration number to all small unmanned aircraft system (sUAS), weighing less than 55 pounds, in their system to commercially operate a multiple sUAS swarm drone light show.

[FR Doc. 2023–13363 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FRA–2022–1712]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Flight Attendant Fatigue Risk Management Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 16, 2022. The collection involves submission of Fatigue Risk Management Plans (FRMP) for flight attendants of certificate holders. The certificate holders will submit the information to be collected to the FAA for review and acceptance as required by the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by July 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0789.

Title: Flight Attendant Fatigue Risk Management Plan.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 16, 2022 (87 FR 77158). On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 335(b) of the Act required each certificate holder operating under 14 CFR part 121 to submit to the FAA for review and acceptance a Fatigue Risk Management Plan (FRMP) for each certificate holder's flight attendants. Section 335(b) contains the required contents of the FRMP, including a rest scheme consistent with current flight time and duty period limitations and development and use of methodology to continually assess the effectiveness of the ability of the plan to improve alertness and mitigate performance errors. Section 335(b) requires that each certificate holder operating under 14 CFR part 121 shall update its FRMP every two years and submit the update to the FAA for review and acceptance. Further, section 335(b) of the Act requires each certificate holder operating under 14 CFR part 121 to comply with its FRMP that is accepted by the FAA.

Respondents: 55 Part 121 Air Carriers and 2 new entrants.

Frequency: 1 initial submission and then updates every 2 years.

Estimated Average Burden per Response: 20 Hours for Initial Submission, 5 Hours for Updates.

Estimated Total Annual Burden: 40 Hours per year for Initial Submission, 275 Hours per year for updates.

Issued in Washington, DC, on June 20, 2023.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2023–13419 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0055]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Training Certification for Entry-Level Commercial Motor Vehicle Operators

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The ICR, titled ''Training Certification for Entry-Level Commercial Motor Vehicle Operators,'' will continue to be used to register providers of entry-level driver training and to provide State Drivers' Licensing Agencies with information on individuals who have completed the required training. If approved, this renewal will allow FMCSA to continue to collect information on registered training providers and entry-level driver training certification information until 2026.

DATES: Comments on this notice must be received on or before July 24, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Joshua Jones, Commercial Driver's License Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–7332; *Joshua.jones@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators.

OMB Control Number: 2126–0028.

Type of Request: Renewal of a currently-approved ICR.

Respondents: Training providers.

Estimated Number of Respondents: 7,774.

Estimated Time per Response: 0.55 hours.

Expiration Date: June 30, 2023.

Frequency of Response: All training providers must initially register to be listed on the Training Provider Registry (TPR). Additionally, once registered, all training providers must update their information at least biennially in order to remain listed on the TPR. They are also required to provide an update if any key information (company name, address, phone number, types of training offered, etc.) changes prior to their biennial update. After an individual driver-trainee completes training administered by a training provider listed on the Training Provider Registry (TPR), that training provider must submit training certification information regarding the driver-trainee to the TPR.

Estimated Total Annual Burden: 80,299 hours.

Background

The Federal Motor Carrier Safety regulations require minimum training standards for entry-level drivers, and include two separate information collection actions: (1) Training providers must electronically submit registration information to FMCSA's TPR to ensure that they meet the training provider eligibility requirements and may therefore be listed on the TPR; and (2) after an individual driver-trainee completes training administered by a training provider listed on the TPR, that training provider must electronically submit training certification information regarding the driver-trainee to the TPR. (49 CFR part 380, subpart G.) These requirements were implemented February 7, 2022. The information collection estimates included in this renewal action are based on training certification data obtained from the TPR over the past year.

FMCSA received three comments during the 60-day notice comment period. The commenters, the Commission on Proprietary Schools and College Registration (CPSCR), the National Association of State Administrators and Supervisors of Private Schools (NASASPS), Commercial Vehicle Training Association (CVTA) and National Association of Publicly Funded Truck Driving Schools (NAPFTDS). CPSCR stated that ''FMCSA should collect more information from TPR registrants to ensure that training providers meet state licensure requirements to validly train in the state'' and provided three supporting arguments. NASASPS stated ''that FMCSA [. . .] move past a provider registration process that relies wholly on self-certification and require TDTIs to provide documentation of state authorization to operate'' and provided six supporting recommendations. The CVTA and NAPFTDS submitted a joint comment recommending FMCSA collect ''a copy of state licensure documentation, an identifier for that documentation in the form of a license number, or other documentation that would allow FMCSA to ensure compliance with the state licensure requirement'' and ''a copy of curriculum documentation (*e.g.,* lesson plans) that would allow FMCSA to ensure compliance with training provider curriculum requirements.''

In response, FMCSA notes that the comments, while pertaining to the information collection, would both require that FMCSA revise the regulations regarding training provider requirements. As these rules have only been in effect for less than two years, no revisions are scheduled at the present time. The Agency notes that when training providers initially register for listing on the TPR, they must certify, under penalty of perjury, that they comply with all applicable regulatory requirements, including the requirement that they be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations of any State where in-person training is conducted (49 CFR 380.703(5)(i)). Further, in accordance with 49 CFR 380.719(a)(4), to remain eligible for continued listing on the TPR, training providers must maintain documentation of State licensure, registration, or certification verifying that the provider is authorized to provide training in that State, if applicable. If FMCSA or its authorized representative conducts an audit or investigation of a training provider, the training provider's compliance with applicable State requirements would be evaluated. Training providers determined to be non-compliance with State requirements could be subject to a notice of prosed removal from the TPR or emergency removal, depending on the circumstances. The Agency believes these existing requirements sufficiently

address training providers' compliance with applicable State requirements.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–13365 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0163]

Agency Information Collection Activities; Approval of a New Information Collection Request: Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems and Advanced Driver Assistance Systems

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This notice invites comments on a proposed information collection titled *Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems and Advanced Driver Assistance Systems.* It is a driving simulator study with a series of questionnaires that will evaluate how commercial motor vehicle (CMV) drivers engage in CMVs equipped with SAE International Level 2 (L2) advanced driver assistance systems (ADAS) and Level 3 (L3) automated driving systems (ADS). Approximately 100 CMV drivers will participate in the study. The study will examine the effect of non-driving secondary task engagement, transfer of control, and training on driver behavior in CMVs equipped with ADAS and ADS.

DATES: Comments on this notice must be received on or before July 24, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Theresa Hallquist, Office of Research and Registration, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–1064; *theresa.hallquist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Human Factors in CMVs Equipped with ADS and ADAS.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: Commercial motor vehicle drivers.

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hours.

Expiration Date: This is a new ICR.

Frequency of Response: Two responses.

Estimated Total Annual Burden: 476 hours.

Background

Higher levels of ADAS and lower levels of ADS present an environment that is ripe for overreliance. An L2 vehicle offers longitudinal and lateral support to the driver; however, the driver is still responsible for driving at all times. An L2 vehicle is an example of higher levels of ADAS. At this level, engaging in non-driving secondary tasks can be highly detrimental to driving performance as the driver may not recognize and respond to hazards timely or appropriately. In an L3 vehicle, the role of distraction is blurred. L3 is the lowest level considered to be ADS. The driver takes on a more supervisory role and is in full control of the vehicle in a limited number of situations. When an L3 vehicle alerts the driver that a takeover is required, the driver needs to have situational awareness to resume full control of the vehicle. Engagement in non-driving secondary tasks may prevent the driver from maintaining situational awareness of the driving environment.

A recently completed study by FMCSA on research involving ADSs in CMVs found a lack of research related to ADS-equipped CMVs. To date, most commercial ADSs on U.S. roadways are in passenger vehicles, and CMV ADSs have only recently begun being implemented in real-world operations. Therefore, FMCSA needs more data on ADS-equipped CMVs to understand driver behavior and policy implications.

The purpose for obtaining data in this study is to evaluate driver readiness to assume control in SAE L2 ADAS and L3 ADS-equipped CMVs and develop and test a CMV driver distraction training program designed to improve driver readiness. Specifically, there are three primary objectives for the data collection:

(1) determine the effect of distraction on CMV drivers of L2 vehicles;

(2) determine the effect of transfer of control on CMV drivers in L3 vehicles; and

(3) develop and evaluate a training program that is designed to decrease the levels of distraction that were identified in CMV drivers in L2 vehicles and designed to improve the problems with the transfer of control that were identified in L3 vehicles.

Answers to these research questions will provide insight into the human factors associated with semi-automated CMVs. Moreover, these findings will inform training materials to educate drivers on distraction and the functionality of ADAS and ADS as well as policy pertaining to the implications of ADASs and ADSs in CMVs.

The study includes data collection from a series of questionnaires and a driving simulator-focused experiment. The collected survey data will support the simulator experiment data. The survey data will be used in two ways: in the assessment of driving performance data as covariates in the model (to control for certain demographic variables, such as age, gender, and experience) and to answer a research question on the relationship between driver characteristics and driver readiness and performance. Data on driver readiness and performance will be collected from the simulator experiment. Eligible drivers will hold a valid commercial driver's license, currently drive a CMV, be 21 years of age or older, and pass the motion sickness history screening questionnaire.

Data will be collected over two study sessions. The first study session will collect data on the effects of non-driving secondary tasks and readiness to resume control of an L2- or L3-equipped CMV. The second study session will assess the effectiveness of driver training to improve safety while operating an L2 or L3 CMV. Questionnaire data will be

collected prior to the simulator study, during the simulator study, and after the simulator study. In addition, participants will complete questionnaires about the training in the second study session. All questionnaires will be preloaded in an app format for drivers to complete on a tablet.

We anticipate 100 participants in total for the driving simulator study. Fifty drivers will participate in the L2 study sessions, and the other 50 drivers will participate in the L3 study sessions. During consent, each participant will agree to participate in both the L2/L3 simulator study session and the training study session. For a participant who chooses not to continue, a new driver will be recruited to fill their position. These new participants will not have data from the L2/L3 study but will need to complete a new consent form, pre-/post-study questionnaires, and the training questionnaire. Each study session will be completed in 4 hours, resulting in a total of up to 8 hours of participation for drivers that complete both study sessions.

Multiple analyses will be used, including an assessment of driver distraction and its effects on driver readiness and driving performance. In the L2 and L3 studies, general linear mixed models (GLMMs) will be used to answer the research questions. In the transportation safety field, GLMMs are often used to analyze driver behavior and assess relationships between driving scenarios and behaviors. To evaluate the effectiveness of the training program, linear mixed models will be used with random intercepts. Driver random intercepts will account for participants' correlated behaviors and expectations in the L2 or L3 system before and after training.

FMCSA published the 60-day **Federal Register** notice on September 21, 2022, and the comment period closed on November 21, 2022 (87 FR 57750). A total of 93 comments were received from the public. These comments revolved around nine issues: general safety concerns with CMVADS, concern for job loss due to ADS-equipped CMVs, concerns related to the operation of ADS within specific operational design domains, concerns with specific ADS and/or ADAS, the failure of ADS sensors, the security of ADS-equipped CMVs, driver inattention/distraction when operating an ADS, data collection efforts, and support for the study. Responses to these issues are below. Many comments touched on multiple issues; however, the comments below are organized based on the primary feedback provided.

General Safety Concerns With ADS-Equipped CMVS

Fifty percent of the comments received expressed general safety concerns related to ADS-equipped CMVs. FMCSA is actively engaged in many research and administrative activities to help improve the safety of CMV drivers and the general public, including research on ADS. There are many research questions that need to be answered before ADS-equipped CMVs are deployed at scale. Some of these research questions are focused on the ADS technology itself to ensure that the ADS technology functions as intended and incorporates the appropriate redundant failsafe systems. However, other research questions are focused on the human factors related to how individuals within the CMV industry will interact with ADS-equipped CMVs.

Crashes involving ADAS illustrate why research focused on human factors is critical prior to full-scale deployment of ADS. Many of the incidents involve a mismatch between driver expectations of the technology and the driver's true role and responsibility to monitor vehicle features. This study is focused on L2 and L3-equipped CMVs. The systems included in this study would require a driver inside the vehicle who is ready to resume control of the vehicle when needed or requested (*e.g.,* during icy conditions).

Results from this study will be used to develop and evaluate a training program designed to improve drivers' understanding and expectation of ADS. This training program will also attempt to improve drivers' attention maintenance and hazard anticipation while operating L2 and L3 vehicles. Although FMCSA believes this is a critical research study to understand how driver inattention may affect performance of L2 and L3 CMVs, it is only one research study of many that are needed to ensure the safety of drivers on the roadways.

Concerns for Loss of Jobs Due to ADS-Equipped CMVS

Ten comments from the public focused on the potential loss of jobs as a result of ADS-equipped CMVs. The trucking industry employs millions of individuals in the U.S. who are vital to the U.S. economy. Additionally, there are millions of other individuals who work in roles that support the transportation industry (*e.g.,* gas stations, truck stops, maintenance facilities, etc.). Better pay for drivers, effective training, safe equipment, and improved quality of life for drivers are important factors for retaining safe drivers within the industry.

ADAS and ADS offer possible solutions that help drivers maintain a better quality of life. For example, they may offer improved health through crash reductions and allow more home time through more regional operations for drivers who so desire. As mentioned above, this study is focused on L2 and L3 ADS-equipped CMVs. Both systems under investigation in this study would require a driver to be in the truck at all times and ready to resume control of the vehicle when requested. Thus, the technologies investigated in this study would not result in driver job loss.

Concerns for ADS in Specific Operational Domains

Seven comments provided by the public focused on concerns related to ADS-equipped CMVs operating outside of their intended operational design domain. Each ADS is designed to operate within specific conditions. These conditions provide parameters for the safe operation of ADS on the road. Before widespread deployment of ADS, more development, testing, and verification of ADS-equipped CMVs is needed to understand safe parameters and before they can operate in all conditions or anticipate and respond to all possible infrequent events.

As mentioned above, the safety technologies being investigated require a driver inside the vehicle at all times who could assume control of the CMV if conditions dictate. Drivers operating an L2 or L3-equipped CMV must be ready to assume control in these situations. These situations demonstrate why it is important to research driver inattention and vigilance of the driver when operating L2 and L3 vehicles. This research will provide information to ensure drivers are capable and safe to assume control of the CMV when needed through the development and evaluation of a training program to educate drivers on ADS capabilities and highlight the importance of maintaining attention while operating L2 and L3 vehicles.

Concerns With Specific ADAS/ADS

Six comments expressed concerns related to a specific advanced driver assistance feature or a particular ADS. These comments illustrate how additional research and development are needed for many of the features that will support ADS in CMVs. Although the technology to support ADS (*i.e.,* automatic emergency braking) has improved, there are still areas in need of improvement prior to the deployment of ADS-equipped CMVs. One of the

objectives of this study is to better understand the effect of driver inattention while operating a CMV equipped with these support technologies. Ensuring drivers of L2 vehicles maintain attention to the road is important so that the drivers can anticipate hazards and potential scenarios where the L2 features may not operate as intended. Similarly, research to study inattention while operating an L3 vehicle is needed to determine what training and education will help drivers prepare to resume control when requested. This research, conducted in a simulator, will help the industry better understand how drivers of L2 and L3 vehicles can be prepared to take over control when necessary to ensure the safe operation of the CMV and the safety of the general public.

Concerns Related to Sensor Failure

Twelve comments primarily discussed concerns related to the failure of ADS sensors. Drivers' concerns related to the importance of properly maintained and functioning sensors are valid. Sensors do fail and/or become dirty if covered in debris, making them inoperable. It is critical for ADS to have redundant sensors or a backup alternative sensor system in case of failure. Research on the functionality of the technologies and sensors is ongoing. However, human factors-focused research is also necessary to ensure the safety of L2 and L3 vehicles. The technologies researched in this study require a driver to be in the vehicle and ready to take over control when needed or alerted. This study will examine how driver inattention affects a driver's ability to successfully respond to or anticipate hazards or scenarios that may require human control of the vehicle. This research is critical to help in-vehicle drivers be prepared when a sensor does fail or if the technology does not anticipate a hazard appropriately.

Concerns Related to the Security of ADS

Two comments focused on securing ADS against threats. The security of ADS-equipped CMVs is of incredible importance. Research and efforts related to the security of the vehicles is needed. However, this is a separate area of research and development and should not detract from the importance of human-factors research. As mentioned above, the purpose of this study is to ensure in-vehicle drivers are capable and ready to respond to unexpected hazards, scenarios, and requests to take over control of the vehicle when needed.

Concerns That Inattention/Distraction Will Increase With ADAS and ADS

Five comments discussed concerns related to potential increases in driver distraction, inattention, and reduced vigilance with the use of crash mitigation technologies. There is a need for research focused on driver inattention while operating CMVs equipped with ADAS and ADS. More data are needed to understand the prevalence of inattention when using, and drivers' overreliance on, crash mitigation technologies. This study is designed to gather data on these concerns in a safe environment without putting the CMV driver and the general public at risk. Results from this study will be used to develop training materials and information that may reduce this risk.

Concerns With the Data Collection Efforts

One comment focused on this study's proposed data collection methodology. As mentioned in the **Federal Register** notice, each study session will last approximately 4 hours. Although driver fatigue is an important area of research, this study is focused on driver distraction. However, driver fatigue may be observed in the study and will be identified and documented via eye tracking technologies.

Power analyses were performed to approximate the number of participants needed to find statistically significant results (if present). The sample included in this study was based on this power analysis with additional participants to account for attrition. However, the sample is a convenience sample, and there are no attempts to say the sample is representative of the U.S. CMV industry. Demographic information (*e.g.,* gender, age, health, etc.) will be collected and may be used to help control for potential confounding or extraneous variables during the statistical analyses.

Support for the Study

Three comments provided support for the study and provided additional insights based on recent investigations or research. Additional comments expressed the importance of focusing research on higher levels of ADS (*i.e.,* L4 or L5). Although FMCSA agrees much more research and data are needed on more advanced ADS, some original equipment manufacturers and developers of L2 and L3 vehicles are deploying vehicles with lower levels of driver assistance or automation. For example, L2 CMVs are available for purchase now. Research is needed to understand how inattention affects performance in vehicles with these levels of ADS and to ensure the safety of the CMV driver and the general public.

FMCSA agrees that distinguishing between features of L2 and L3 vehicles is important. This study focuses on both advanced driver assistance features (via L2 vehicles) and the lowest level of ADS (via L3 vehicles). Additional distinctions are provided in the supporting documentation, and FMCSA will ensure that distinctions between functionalities are included in the discussion of the results. To help improve this clarity, FMCSA proposes to revise the study title to include ADAS (in reference to the L2 sub study).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–13366 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT–NHTSA–2022–0106]

National Emergency Medical Services Advisory Council Notice of Public Meeting

AGENCY: National Highway Traffic Safety Administration, U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Emergency Medical Services Advisory Council (NEMSAC).

DATES: This meeting will be held in-person and simultaneously transmitted via virtual interface. It will be held on August 9–10, 2023, from 12 to 5 p.m. ET. Pre-registration is required to attend this meeting. Once registered, a link permitting access to the meeting will be distributed to registrants by email. If you wish to speak during the meeting,

you must submit a written copy of your remarks to DOT by August 4, 2023.

Notifications containing specific details for this meeting will be published in the **Federal Register** no later than 30 days prior to the meeting dates.

ADDRESSES: General information about the Council is available on the NEMSAC internet website at *www.ems.gov.* The registration portal and meeting agenda will be available on the NEMSAC internet website at *www.ems.gov* at least one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation is available by phone at (202) 868–3275 or by email at *Clary.Mole@dot.gov.* Any committee-related requests should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The NEMSAC was established pursuant to Section 31108 of the Moving Ahead for Progress in the 21st Century (MAP–21) Act of 2012, under the Federal Advisory Committee Act. The purpose of NEMSAC is to serve as a nationally recognized council of emergency medical services (EMS) representatives to provide advice and consult with:

a. The Federal Interagency Committee on Emergency Medical Services (FICEMS) on matters relating to EMS issues; and

b. The Secretary of Transportation on matters relating to EMS issues affecting DOT.

The NEMSAC provides an important national forum for the non-Federal deliberation of national EMS issues and serves as a platform for advice on DOT's national EMS activities. NEMSAC also provides advice and recommendations to the FICEMS. NEMSAC is authorized under Section 31108 of the MAP–21 Act of 2012, codified at 42 U.S.C. 300d–4.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Informational sessions
- Updates on NHTSA Initiatives
- Subcommittee Reports on Advisory Statuses
- Strategic Planning

III. Public Participation

This meeting will be open to the public. We are committed to providing equal access to this meeting for all participants. Persons with disabilities in need of an accommodation should send a request to the individual in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than August 4, 2023.

A period of time will be allotted for comments from members of the public joining the meeting. Members of the public may present questions and comments to the Council using the live chat feature available during the meeting. Members of the public may also submit materials, questions, and comments in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Members of the public wishing to reserve time to speak directly to the Council during the meeting must submit a request. The request must include the name, contact information (address, phone number, and email address), and organizational affiliation of the individual wishing to address NEMSAC; it must also include a written copy of prepared remarks and must be forwarded to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than August 4, 2023.

All advance submissions will be reviewed by the Council Chairperson and Designated Federal Officer. If approved, advance submissions shall be circulated to NEMSAC representatives for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

Authority: 42 U.S.C. 300d–4(b); 49 CFR part 1.95(i)(4).

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2023–13390 Filed 6–22–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 20, 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. NANDO, James (a.k.a. MARK, James Nando; a.k.a. NANDO, James Marko), Juba, South Sudan; Yambio, South Sudan; Congo, Democratic Republic of the; DOB 1970 to 1972; POB Sudan; nationality South Sudan; Gender Male (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(E) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (''E.O. 13664''), for being responsible for or complicit in, or to have engaged in, directly or indirectly, in or in relation to South Sudan, the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law.

2. FUTUYO, Alfred (a.k.a. FATIYO, Alfred; a.k.a. FUTOYI, Alfred; a.k.a. KARABA, Alfred Fatuyo; a.k.a. KARABA, Alfred Futuyo), Yambio, Western Equatoria, South Sudan; DOB 1971 to 1973; POB Sudan; Gender Male (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(E) of E.O. 13664 for being responsible for or complicit in, or to have engaged in, directly or indirectly, in or in relation to South Sudan, the targeting of women, children, or

any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law.

Dated: June 20, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–13386 Filed 6–22–23; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 91

Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 91

[Docket No. FAA–1351; Notice No. 23–09]

RIN 2120–AL61

Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: As directed by the FAA Reauthorization Act of 2018, the FAA proposes to allow pilots conducting public aircraft operations (PAO) to credit their flight time towards FAA civil regulatory requirements. Additionally, consistent with the James M. Inhofe National Defense Authorization Act for 2023 (2023 NDAA), the FAA proposes to amend the operating rules for experimental aircraft to permit certain flight training, testing, and checking in these aircraft without a letter of deviation authority (LODA). The FAA proposes to extend the same relief to certain flight training, testing, and checking in limited category, primary category, and experimental light sport aircraft. The FAA also proposes miscellaneous amendments related to recent flight experience, flight instructor privileges, flight training in certain aircraft holding special airworthiness certificates, and the related prohibitions on conducting these activities for compensation or hire. These proposed changes will clarify existing regulatory requirements, align the regulations with current industry practice, and ensure compliance with the FAA Reauthorization Act of 2018 and the 2023 NDAA.

DATES: Send comments on or before August 22, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1351 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 (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), 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.*

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.

FOR FURTHER INFORMATION CONTACT: Jabari Raphael, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267–1088; email *Jabari.Raphael@faa.gov.*

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

ATC Air Traffic Control
ELSA Experimental Light-Sport Aircraft
ICAO International Civil Aviation Organization
IFR Instrument Flight Rules
LODA Letter of Deviation Authority
NAS National Airspace System
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
PAO Public Aircraft Operation
PIC Pilot-in-command
SIC Second-in-command
SLSA Special Light-Sport Aircraft
VFR Visual Flight Rules

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I. Executive Summary

As directed by section 517 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254), the FAA proposes to allow pilots conducting public aircraft operations (PAO) under Title 49 of the United States Code (U.S.C.) 40102(a)(41) and 40125 to credit their flight time towards FAA civil regulatory requirements. While section 517 requires the FAA to issue regulations to allow the logging of flight time in aircraft used in PAO under direct operational control of forestry and fire protection agencies, the FAA proposes to more broadly consider all PAO for flight time. Moreover, the FAA proposes to expand the regulatory framework to allow pilots serving in PAO as second in command to log flight time, under certain circumstances. Enabling pilots to log SIC time while operating a PAO encourages the use of a second pilot where one may not be required and increases overall safety in the NAS.

The FAA also proposes to clarify recent flight experience requirements and the authorized flight training activities under part 61. The FAA proposes to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). Additionally, the FAA proposes to add ''maintaining or improving skills for certificated pilots'' to the list of flight instructor privileges found in §§ 61.193(a)(7) and 61.413(a)(6) to clarify that flight instructors are authorized to conduct certain specialized and elective training.

The proposed rule would also amend part 91 operating rules to clarify

prohibited operations and create limited exceptions to the general prohibition on carriage of persons for compensation or hire for flight training, testing, and checking in aircraft holding certain special airworthiness certificates. Currently, part 91 regulations broadly prohibit a person from operating certain aircraft with special airworthiness certificates (*i.e.,* limited category, experimental, or primary category aircraft) [1] carrying persons and property for compensation or hire. These part 91 regulations use broad terms that the FAA has defined either in regulation (*i.e.,* operate, person) or through interpretation and guidance (*i.e.,* compensation). The broad language in these regulations was the subject of recent litigation [2] that identified a discrepancy between the plain language of the regulation and the FAA's longstanding application of the regulation to certain flight training activity. Therefore, the FAA initiated this rulemaking to remove the requirement for owners (and certain persons affiliated with owners) to obtain a LODA to accomplish flight training in their aircraft and to clarify the general prohibition on operating aircraft with certain special airworthiness certificates while carrying persons or property for compensation or hire.

During the development of this NPRM, President Joseph R. Biden, Jr. signed into law the James M. Inhofe National Defense Authorization Act for 2023 (2023 NDAA), which included a self-implementing provision that amended the operating rules to permit certain flight training, testing, and checking in experimental aircraft without a letter of deviation authority (LODA). The FAA proposes to extend the same relief to certain flight training, testing, and checking in limited category, primary category, and experimental light sport aircraft. The FAA anticipates that the proposed changes will provide greater access to specialized training in aircraft with special airworthiness certificates.

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing, and checking in certain aircraft with special airworthiness certificates separately. The provisions related to PAO impose no new costs and the FAA expects the proposal will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings.[3] The provisions related to training, testing and checking impose approximately $100,000 in total one-time costs (undiscounted) over a period of two years. These costs stem from the requirement for current LODA holders who broadly offer certain aircraft with special airworthiness certificates for training to reapply within two years of the effective date. However, the FAA expects the cost savings from the elimination of LODA requirements for pilots receiving training in their own aircraft, the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with special airworthiness certificates to exceed the initial costs. Overall, the FAA concluded that this proposal would enhance safety with minimal impact on cost.

II. Authority for the Rulemaking

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

The FAA is proposing this rulemaking under the authority described in Subtitle VII, Part A, Subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; and section 44703, Airman Certificates. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. The FAA is also authorized to issue certificates, including airman certificates, and medical certificates, to qualified individuals. This rulemaking proposal is within the scope of that authority.

Furthermore, section 517 of Public Law 115–254, Public Aircraft Eligible for Logging Flight Times, directs the Administrator to revise 14 CFR 61.51(j)(4) to include aircraft under direct operational control of forestry and fire protection agencies as public aircraft eligible for logging flight times. The FAA also proposes to codify section 5604 of the 2023 NDAA, which directs that under certain conditions, flight training, testing, and checking in experimental aircraft does not require a LODA from the FAA.

III. Logging Flight Time, Recent Flight Experience, and Flight Instructor Privileges

In 14 CFR part 61, the FAA proposes to modify §§ 61.51, 61.57, 61.193, and 61.413. First, the FAA proposes to modify § 61.51 to expand PAO under which a pilot may credit flight time towards FAA civil regulatory requirements. Second, the FAA proposes to modify § 61.57(e) to include an exception to the recent flight experience requirements for flight instructors and certificated pilots while conducting flight training for the purpose of meeting recent flight experience requirements. Third, the FAA proposes to modify §§ 61.193 and 61.413 to clarify the privileges an authorized flight instructor may exercise within the limits of their certificate.

A. Logging Flight Time in Public Aircraft Operations (§ 61.51)

1. Aircraft Requirements for Logging Flight Time

As specified in 14 CFR part 61, pilots must document and record certain aeronautical experience.[4] Section 61.51 provides the requirements for logging aeronautical experience for airman certificates, ratings, privileges, and flight experience. In particular, § 61.51(j) specifies the aircraft requirements for logging flight time. Section 61.51(j) states that, for time to be logged, it must be acquired in an aircraft that is identified as an aircraft under § 61.5(b) [5] and is (1) an aircraft of U.S. registry with either a standard or special airworthiness certificate, (2) an aircraft of foreign registry with an airworthiness certificate that is approved by the aviation authority of a foreign country that is a Member State to the Convention on International Civil Aviation Organization (ICAO), (3) a military aircraft under the direct operational control of the U.S. Armed Forces, or (4) an aircraft engaged in a public aircraft operation (PAO) while engaged on an official law enforcement

[1] Section 21.175(b) identifies special airworthiness certificates as primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates.

[2] *Warbird Adventures, Inc.* v. *Fed. Aviation Admin.,* Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).

[3] The FAA does not maintain counts of pilots who fly PAO for federal, state, and local governments and there is insufficient data for the FAA to estimate the number of pilots affected by this proposal. See ''How to Become a Government Pilot'' in Flying Magazine by James Wynbrandt, Dec. 13, 2017. Available at: *https://www.flyingmag.com/how-to-become-government-pilot/* Last accessed Jul. 22, 2022.

[4] Section 61.51(a) specifies that certain training time and aeronautical experience must be documented and recorded in a ''form and manner acceptable to the Administrator.'' Often, this is accomplished through maintaining a logbook.

[5] Section 61.5(b) lists the aircraft ratings that are placed on pilot certificates issued under part 61. The ratings include category ratings (*e.g.,* airplane, rotorcraft) and class ratings (*e.g.,* multiengine land, helicopter).

flight for a Federal, State, county, or municipal law enforcement agency.

The FAA added § 61.51(j) in 2009, after Congress passed Public Law 106–424.[6] Section 14 of Public Law 106–424 specified that an aircraft must hold an airworthiness certificate, with some exceptions, for a pilot to log flight time to meet the certificate, rating, or recent flight experience requirements under part 61.[7] Before promulgation of § 61.51(j), the FAA did not expressly prescribe in regulation aircraft or airworthiness requirements for when a pilot may log flight time.[8] In earlier versions of the regulation, the type of aircraft that could be flown to log flight time was not specified. Rather, FAA guidance to inspectors stated that, ''[u]nless the vehicle is [type certificated] as an aircraft in a category listed in § 61.5(b)(1) or as an experimental aircraft, or otherwise holds an Airworthiness Certificate, flight time acquired in such a vehicle may not be used to meet requirements of part 61 for a certificate or rating or to meet the recency-of-experience requirements.'' [9]

Given the specific mandate from Congress, in § 61.51(j), the FAA codified its existing guidance, added a provision for logging time in military aircraft, and as directed by the legislation, included § 61.51(j)(4) to permit individuals to log flight time in aircraft used in PAO for official law enforcement activities.

The current language of § 61.51(j)(4) applies only to law enforcement pilots and does not permit other pilots who conduct PAO to credit flight time toward FAA requirements if the aircraft does not also meet another provision under § 61.51(j). Section 517 of the FAA Reauthorization Act of 2018, Public Law 115–254 (section 517) directs the FAA to expand PAO logging opportunities by permitting pilots to log flight time in aircraft under the direct operational control of forestry and fire protection agencies when conducted as PAO. Notwithstanding the limited scope of section 517, the FAA is proposing to amend § 61.51(j)(4) to allow logging of flight time for pilots engaged in any PAO in accordance with 49 U.S.C. 40102(a)(41) and 40125(a)(2). This proposal would expand § 61.51(j)(4) not only to law enforcement and forestry and fire protection services as directed by Congress, but to any PAO including, but not limited to, those involving national defense, intelligence missions, search and rescue, aeronautical research, and biological or geological resource management.

This proposal would also broaden the scope of aircraft requirements in § 61.51(j) for logging flight time. The FAA recognizes that the 2009 rule change, which codified these requirements in response to section 14, prohibited individuals conducting PAO, with the exception of law enforcement personnel, from logging flight time unless the aircraft could meet another provision under § 61.51(j). The FAA now proposes to eliminate this distinction between law enforcement personnel and all other individuals engaged in PAO by allowing logging of flight time for PAO conducted in aircraft other than those listed in § 61.51(j)(1) through (3).

The FAA finds that amending the regulatory language to include all aircraft engaged in PAO would not adversely affect safety. PAO already occur within the national airspace system (NAS), and the FAA is now proposing to allow pilots to credit these operations towards certain civil regulatory requirements under part 61 like total flight time and recent flight experience.

Flight experience gained during PAO is relevant to a pilot's qualifications and currency under FAA regulations. Whether a pilot is engaged in civil or public aircraft operations, the pilot must follow flight rules in part 91. The pilots engaged in PAO interact with air traffic control (ATC) and aircraft in the NAS the same as those engaged in civil aircraft operations. In addition, pilots conducting PAO abide by the same rules governing airspace classifications, right-of-way, aircraft speed, and airspace restrictions. Pilots conducting PAO also must act consistently with FAA weather minima, minimum altitude requirements, instrument approach procedures, and other operating rules applicable to certain persons and aircraft. Pilots conducting PAO also employ many of the same aeronautical skills and accomplish the same flight time as their counterparts performing civil operations, including takeoffs and landings, visual and instrument procedures, risk management, and enroute operations.

The FAA understands that pilots engaged in PAO may have been memorializing their flight time in accordance with the requirements of the government entities under which they operate, even though the FAA does not currently recognize this time under § 61.51 to satisfy civil regulatory requirements. Those pilots who have not documented this time may begin recording their PAO flight time in accordance with this proposed rule in the event that this proposed rule becomes final. In this regard, the proposed modification would permit PAO pilots to credit their recorded flight time towards satisfying FAA requirements retroactively. Any prior PAO aeronautical experience logged by a pilot must meet the requirements in § 61.51.

Although a pilot's total time may be used to meet certain flight time requirements for certificates, ratings, or recent flight experience, like that required for § 61.57, the FAA notes that flight time in PAO may not satisfy all part 61 requirements, such as a flight review, a pilot-in-command (PIC) proficiency check, or practical test. However, the recorded time may not be creditable toward any pilot qualification or requirement if the rule does not become final.

Finally, the FAA notes that, a pilot logging flight time is responsible for knowing whether they are engaging in operations that are PAO or civil operations.

2. Second-in-Command Flight Time in Aircraft Engaged in Public Aircraft Operations

The current second-in-command (SIC) logging regulations do not adequately address aircraft used in PAO that do not also hold airworthiness certificates issued by the FAA. For example, the SIC logging requirements in § 61.51(f) permit a person to log time as SIC based on the number of pilots required by the type certification of the aircraft or the regulations under which the flight is conducted. In addition, since 2018, part 135 SICs who are not required by the type certification of the aircraft or the part 135 operating rules also may log SIC flight time under § 61.51(f)(3) as part of an approved SIC professional development program (SIC PDP) consistent with the requirements in § 135.99(c).[10] For aircraft exclusively used in PAO that do not hold airworthiness certificates, there may be no type certificate designating that two pilots are required. In addition, PAO are not subject to FAA regulations on SIC

[6] Public Law 106–424, section 14, Crediting of Law Enforcement Flight Time (Nov. 1, 2000). In determining whether an individual meets the aeronautical experience requirements imposed under section 44703 of Title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of Title 49, United States Code, if that aircraft is—(1) identifiable by category and class; and (2) used in law enforcement activities.

[7] Pilot, Flight Instructor, and Pilot School Certification, 74 FR 42499 (Aug. 21, 2009).

[8] Pilot, Flight Instructor, and Pilot School Certification, 74 FR 42499, 42515 (Aug. 21, 2009).

[9] FAA Order 8900.1, Volume 5, Chapter 2, Section 5, Paragraph 5–316B.

[10] 83 FR 30232 (Jun. 27, 2018).

requirements (*e.g.,* § 91.531). As such, under § 61.51(f), an assigned second pilot in a PAO does not meet the requirements to log SIC time.

While section 517 is silent as to how pilot time may be logged, whether as PIC or SIC, the FAA now proposes to clarify the pilot time that may be logged to meet FAA requirements in response to questions from the regulated community. Pilots conducting qualified PAO are not required to meet FAA pilot certification requirements. Instead, the government entity may develop its own pilot qualification requirements for these operations. Therefore, the FAA proposes to explicitly allow the logging of SIC time during PAO, with certain limitations, to encourage safety and promote consistency with the regulated community.

To determine the appropriate scope of the proposal regarding SIC logging during PAO, the FAA considered the requirements set forth in § 91.531 and 14 CFR part 135. For operations under part 91, § 61.51(f) allows a pilot to log SIC time in those airplanes when operating in accordance with § 91.531(a). Section 91.531 specifies requirements to operate with an SIC in certain airplanes, such as those type certificated for more than one required pilot, large airplanes, and commuter category airplanes. Likewise, for a part 135 pilot to log SIC time under § 61.51(f), a second pilot must either be required by the aircraft type certificate, operating rule, or as prescribed in § 135.99.[11] These operating rules under which a pilot may log SIC time are established based on complexity of the operation. Examples of aircraft that may require additional flightcrew members include large aircraft or turbojet-powered airplanes, or complex operations such as part 135 passenger carriage under instrument flight rules. Often, large aircraft [12] and turbojet-powered airplanes have a requirement for a second pilot listed in the limitations section of the flight manual or on the type certificate data sheet, if applicable. Section 91.9 requires that a person must operate a civil aircraft in accordance with the aircraft flight manual.

Since aircraft used in PAO might not hold an airworthiness certificate, there may be no associated aircraft flight manual or type certificate. Additionally, the FAA regulations governing crew complement discussed earlier do not apply to PAO. Finally, because a PAO is not a part 135 operation, the part 135 operating rules (*i.e.,* § 135.99(c)) that allow for logging SIC time are unavailable to PAO pilots.

As previously discussed, certain aircraft used in civil operations require a second pilot for safety due to design complexity or operational requirement. Enabling pilots to log SIC time while operating a PAO encourages the use of a second pilot where one may not be required and increases overall safety in the NAS. In addition, the presence of a second pilot onboard the aircraft provides additional resources to reduce PIC workload during critical phases of flight, monitor for emergency circumstances, survey weather conditions, and ensure safe operations. Thus, the FAA seeks to encourage the presence of a second pilot in aircraft that would otherwise require a second pilot under civil operations.

Consistent with the foregoing discussion, the FAA proposes to enable logging of SIC time to meet FAA requirements in large aircraft and turbojet powered airplanes. Likewise, the FAA proposes that, if an aircraft holds or held a type certificate that requires a second pilot, PAO pilots may also log SIC time. This proposal is similar to the regulatory framework under which pilots serving in civil operations may log flight time [13] and, therefore, would allow PAO pilots to credit their flight time towards FAA requirements in a similar manner to pilots conducting civil operations. The proposal would permit PAO pilots to credit their recorded flight time towards satisfying FAA requirements retroactively.

Additionally, although PAO are conducted outside of FAA aircraft and airmen certification requirements and certain safety oversight regulations, each government entity is responsible for its own pilot qualifications. For many government entities, this includes adopting the same standards as those codified in 14 CFR to ensure pilot and public safety. Logging flight time in PAO also provides a record of the pilot's experience. By allowing pilots to credit their time conducting PAO, the proposed rule would enable the FAA to review the totality of an individual pilot's flight experience to satisfy civil requirements. Likewise, enabling this time to be credited toward civil requirements will create efficiency for affected pilots by removing the need for duplicative flight time to be accomplished. In turn, the FAA could more effectively ensure and oversee safety in the NAS. Accordingly, the FAA proposes to add § 61.51(f)(4) to clarify that a person designated as SIC by a government entity may log SIC time if the aircraft used was a large aircraft as defined in § 1.1, a turbo-jet powered airplane, or if the aircraft holds or originally held a type certificate that requires a second pilot.

The FAA reviewed the minimum aeronautical experience requirements for certification and ratings and found that the proposed SIC logging time should be limited to pilots seeking an airplane transport pilot (ATP) certificate. The FAA continues to find that ATP hours are largely related to building time and experience whereas flight time necessary to meet minimum aeronautical experience requirements for private pilot, commercial, and instrument rating is more directly related to building specific skillsets. Moreover, the required training and aeronautical experience pilots accumulate in order to obtain these certifications and ratings are fundamental building blocks necessary for the development of proper aeronautical decision-making and skills.

In this regard, the FAA does not believe that pilots utilizing proposed § 61.51(f)(4) for building time towards meeting the aeronautical experience requirements for a private pilot certificate, commercial certificate, and instrument rating would be in the interest of safety. This distinction is supported by the fact that the aeronautical experience requirements for the ATP certificate explicitly enable crediting of SIC time, whereas the aeronautical experience requirements for the private and commercial certificates and instrument rating do not explicitly reference SIC flight time. Therefore, the FAA proposes adding § 61.51(f)(4)(i) to explicitly state that SIC time logged under paragraph (f)(4) may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating.

The FAA notes that ICAO standards do not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operating rules under which the flight is being conducted. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate would have

[11] Section 135.99(a) provides that no certificate holder may operate an aircraft with less than the minimum flight crew specified in the aircraft operating limitations or the Aircraft Flight Manual for that aircraft. Paragraph (b) states that no certificate holder may operate an aircraft without a second in command if that aircraft has a passenger seating configuration, excluding any pilot seat, of ten seats or more. Paragraph (c) establishes the SIC PDP, which permits a pilot employed by the certificate holder to log SIC flight time under certain conditions for operations conducted under parts 91 and 135.

[12] See 14 CFR 1.1 defining ''large aircraft'' as ''aircraft of more than 12,500 pounds, maximum certificated takeoff weight.''

[13] See 14 CFR 91.531, 135.99(a).

a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. For this reason, the FAA proposes to add § 61.51(f)(4)(ii) to clearly delineate that an applicant for an ATP certificate who logs SIC time under § 61.51(f)(4) is issued an ATP certificate with the limitation, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 ''Personnel Licensing'' to the Convention on International Civil Aviation. The FAA notes that an applicant is entitled to an ATP certificate without the ICAO limitation specified under this provision when the applicant presents satisfactory evidence of having met the ICAO requirements and otherwise meets the aeronautical experience requirements of § 61.159.[14]

Additionally, to streamline the proposed revisions to § 61.51(f) with other pilots who apply for an ATP certificate with an ICAO limitation, the FAA proposes to amend §§ 61.159(e) [15] and 61.161(d) [16] to reference § 61.51(f)(4). This proposed revision to the aeronautical experience requirements of §§ 61.159 and 61.161 would allow a pilot to credit SIC time logged under PAO toward the total time for an ATP certificate.

B. Recent Flight Experience (§ 61.57)

Section 61.57 contains recent flight experience requirements to maintain privileges to act as PIC under certain scenarios, including requirements to complete takeoffs and landings in order continue to act as PIC of a flight that is carrying passengers.[17] The FAA proposes to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). Specifically, the FAA proposes that an otherwise qualified pilot could act as PIC while receiving flight training given by an authorized flight instructor only for the purpose of meeting recent flight experience requirements, even if that person does not meet the requirements of § 61.57(a) or (b). This person must meet all other requirements to act as PIC, except for the recent flight experience requirements of § 61.57(a) or (b), and the authorized instructor and person receiving training must be the sole occupants of the aircraft.

The FAA has published numerous legal interpretations indicating the aforementioned operations are already permissible under existing regulations, notwithstanding the prohibition on passenger-carrying flights; however, upon reconsideration, the FAA has determined the plain text of the regulations does not support the conclusions in these interpretations. For example, in the FAA Legal Interpretation to Kris Kortokrax, Mr. Kortokrax suggested that a flight instructor who has not met the recent night takeoff and landing experience in § 61.57(b) should be able to accompany a pilot without being considered a passenger.[18] At that time, the FAA agreed and stated this training may take place even though neither pilot has met the § 61.57(b) requirement. Similarly, in the FAA Legal Interpretation to Roger Schaffner, Mr. Schaffner asked whether a flight instructor with an expired medical could provide flight training to a certificated pilot, even though the person receiving instruction did not comply with the recent flight experience requirement of § 61.57.[19] The FAA asserted that the person receiving the instruction could act as the PIC if that person met all other requirements to act as PIC, other than the recent flight experience requirements of § 61.57(a) or (b).

The FAA legal interpretations were based on the unsupported conclusion that a flight instructor and a person receiving flight training are not considered passengers to one another. In the FAA Legal Interpretation to Kris Kortokrax, the FAA stated that an authorized instructor providing flight training in an aircraft is not considered a passenger with respect to the person receiving training, even where the person receiving the flight training is acting as PIC. This conclusion was based on the premise that the instructor is not a passenger because the instructor is present specifically to train the person receiving flight training, and the person receiving flight training is similarly not a passenger with respect to the instructor. Likewise, the FAA Legal Interpretation to Roger Schaffner stated that a flight instructor with an expired medical certificate may instruct a person who is a private pilot with a current medical certificate and flight review, even if that person is not current to carry passengers per § 61.57(a) because the instructor is not considered a passenger when the instructor is present specifically to train the person receiving instruction.[20] Although the FAA makes the regulatory distinction in § 61.47(c) that during a practical test, the applicant and the (14 CFR part 183) examiner are not subject to the requirements or limitations for the carriage of passengers, the rule does not assert that the persons are not passengers to one another. Instead, it specifies that those persons are not subject to the limitations related to carriage of passengers. No such regulatory provision exists to make the same assertion regarding flight instructors and persons receiving flight training. Therefore, the aforementioned legal interpretations had no regulatory basis to assert that flight instructors and flight students were not considered passengers to one another. This proposed rule seeks to remedy the disparity between the aforementioned legal interpretations and current regulations by creating an exception to § 61.57(a) and (b) to enable the activities enumerated in the legal interpretations. Importantly, the proposed rule will not change the relationship between instructors and persons receiving flight training. The proposed rule does not assert that these persons are not passengers to one another. Instead, the proposal clarifies when these operations can be accomplished. Specifically, the FAA is proposing to codify the privileges described in the Kortokrax and Schaffner interpretations. Under the proposed rule, and consistent with the aforementioned legal interpretations,

[14] Section 61.159 specifies the aeronautical experience requirement for obtaining an ATP certificate with an airplane category and class rating.

[15] Section 61.159(e) specifics the activities that necessitates the limitation ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO'' on an ATP certificate with an airplane category and class rating.

[16] Section 61.161(d) specifics the activities that necessitates the limitation ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO'' on an ATP certificate with a rotorcraft category and helicopter class rating.

[17] Section 61.57(a)(1) states that no person may act as PIC of an aircraft carrying passengers or of an aircraft certificated for more than one pilot flightcrew member unless that person has made at least three takeoffs and three landings within the preceding 90 days. Moreover, § 61.57(b)(1) specifies that no person may act as PIC of an aircraft carrying passengers during the period beginning one hour after sunset and ending one hour before sunrise, unless within the preceding 90 days, that person has made at least three takeoffs and three landings to a full stop during the period beginning one hour after sunset and ending one hour before sunrise.

[18] The FAA addressed Mr. Kortokrax's concerns regarding night takeoff and landing experience for a PIC. The scenario included a pilot, who meets the rating and currency requirements except for § 61.57(b), seeking to have an authorized instructor in the aircraft when the pilot attempts to meet the requirements of § 61.57(b). *Legal Interpretation to Kris Kortokrax* (Aug. 22, 2006).

[19] Legal Interpretation to Roger Schaffner (May 5, 2014).

[20] Legal Interpretation to Roger Schaffner (May 5, 2014).

the FAA contemplates a scenario whereby neither the flight instructor nor the person receiving instruction has met the recent flight experience requirements of § 61.57(a) or (b). In this scenario, the person receiving instruction, if otherwise qualified, [21] would be permitted to act as the PIC and would not be subject to the requirements of § 61.57(a) or (b) to act as PIC.

To ensure safety, the FAA proposes to limit the types of operations and persons who may be on board. The proposed exception is limited to flight training to meet the recent flight experience requirement of § 61.57 (a) or (b), and no other persons may be on board the aircraft. Additional aircraft occupants could cause distractions, would not necessarily possess the knowledge and skills to operate the aircraft, and would not be in a position to act in the event of a problem; therefore, any additional persons would not enhance safety.

The FAA finds having a flight instructor on board promotes safety because a flight instructor is trained to monitor for pilot errors and can provide input on technique and best practices during critical phases of flight. The FAA continues to find, regardless of whether the flight instructor can act as PIC, the flight instructor's experience, knowledge, and risk management skills are valuable to the person receiving instruction and increase safety, both while in flight and for the public. In support of this proposal, the FAA emphasizes its longstanding recognition that flight training is a valuable activity and having a flight instructor onboard effectuates the FAA's goal of promoting safety especially in a scenario where a pilot is reestablishing privileges. Likewise, safety is enhanced because two pilots, one of whom is an authorized instructor, who are otherwise qualified to operate the aircraft are onboard and are available to act in the event of a problem. In accordance with § 61.23(a)(3)(ii), (b)(5), and (c)(1)(vi), a flight instructor who does not meet medical or driver's license requirements, as applicable, cannot act as PIC. In all cases, the person acting as PIC must meet all applicable medical or driver's license requirements to act as PIC.[22] The proposed rule does not change these requirements to act as PIC.

The FAA notes that the proposed rule would not codify the position in certain legal interpretations that were an outgrowth of the Kortokrax and Schaffner interpretations. In FAA Legal Interpretation to John Olshock,[23] the FAA concluded that it would be permissible for a properly rated and current instructor (except for § 61.57(b)), and a student pilot (who is not yet rated in the aircraft but receiving training) to be on board an airplane together during night hours because neither was considered to be a passenger to the other. The proposed rule would not codify the conclusion made in Olshock that a flight instructor need not comply with § 61.57(a) or (b) when conducting flight training with someone receiving training who is not qualified to act as PIC or a person holding only a student pilot certificate. There is no adequate safety justification to continue to enable this activity.

In the proposed rule, the safety justification is supported by the fact that there are two certificated and otherwise qualified pilots who could each provide knowledge and skills appropriate to the operation of the aircraft. Not only is there a qualified flight instructor on board with the additional training and aeronautical skills necessary to become an authorized instructor, but the second pilot has also demonstrated PIC proficiency in the aircraft to an FAA examiner. Each of these pilots has the necessary skillset to operate the aircraft.

Similar to the legal interpretations related to § 61.57 exceptions for flight instructors, the FAA published interpretations that speak to the student/instructor relationship for the purpose of enabling certain operations for flight instructors who do not hold an FAA medical certificate.[24] The FAA amended § 61.23 in April 1997 to clarify when a flight instructor must hold a medical certificate or driver's license, as applicable. Because § 61.23 was already amended and the proposed addition to § 61.57(e) provides a regulatory exception to § 61.57(a) and (b) for persons receiving flight training in certain circumstances, the FAA proposes to rescind the Legal Interpretation to Kris Kortokrax, Legal Interpretation to John Olshock, Legal Interpretation to Roger Schaffner, and Legal Interpretation to E.V. Fretwell 30 days after the publication of this NPRM. These legal interpretations are not supported by current FAA regulations and with the publication of the proposed final rule, would no longer be necessary to support the operations they intended to clarify.

C. Flight Instructor Privileges (§§ 61.193 and 61.413)

Sections 61.193 and 61.413 set forth the privileges of flight instructors and sport pilot instructors, respectively. Under §§ 61.193(a)(1) through (9) and 61.413(a)(1) through (9), an authorized flight instructor may train and provide endorsements required for certificates, ratings, operating privileges, recency of experience requirements, and tests. The areas listed do not specifically address elective and specialized training activities that the FAA encourages but which are not required to meet FAA regulations. These activities include, but are not limited to, transition training to a new make and model for which a pilot is already rated but has never flown or lacks familiarity, and conventional instrumentation to technically advanced aircraft training.

The FAA proposes clarifying amendments to §§ 61.193 and 61.413 to conform the regulations with current FAA policy and industry practice. First, the FAA proposes to modify the introductory text of §§ 61.193(a) and 61.413(a) to clarify that, within the limits of their certificates, authorized flight instructors may conduct ground and flight training, and certain checking events, in addition to issuing endorsements. Second, the FAA proposes to add ''maintaining or improving skills for certificated pilots'' to §§ 61.193(a)(7) and 61.413(a)(6) to clarify that flight instructors are authorized to conduct certain specialized and elective training. Third, the FAA proposes to add §§ 61.193(c) and 61.413(c) to clarify that the privileges afforded to authorized flight instructors under these provisions do not permit operations that would require an air carrier or operating

[21] A flight instructor may not be able to act as PIC for other reasons including a lack of medical qualification. Under §§ 61.3(c)(2)(viii) and 61.23(b)(5), a flight instructor does not need to hold a medical certificate while exercising the privileges of flight instructor certificate if the flight instructor is not acting as a required flightcrew member. To act as PIC or as a required flight crewmember, under § 61.23(a)(3)(ii) and 61.23(c)(1)(vi), when exercising the privileges of a flight instructor certificate, a flight instructor must possess at least a third-class medical certificate, or a U.S. driver's license if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

[22] Section 61.23(a)(3)(ii) requires that a person must hold at least a third-class medical certificate when exercising the privileges of a flight instructor and acting as PIC or as a required flight crewmember. Section 61.23(b)(5) states that a person is not required to hold a medical certificate when exercising the privileges of a flight instructor certificate if the person is not acting as PIC or serving as a required flight crewmember. Section 61.23(c)(1)(vi) requires a person hold either a medical certificate issued under part 67 or a U.S. driver's license when exercising the privileges of a flight instructor certificate and acting as PIC or as a required flight crewmember if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

[23] Legal Interpretation to John Olshock (May 4, 2007).

[24] See Legal Interpretation to E.V. Fretwell (Sept. 18, 1995).

certificate or specific authorization from the Administrator.

Under the current text of §§ 61.193 and 61.413, an authorized flight instructor may conduct training related only to endorsing a person for certificates, ratings, operating privileges, recency of experience requirements, and tests. First, this proposal amends the introductory text in paragraphs of §§ 61.193(a) and 61.413(a) to clarify that an authorized flight instructor may provide training and certain checking events even when the training is not conducted in furtherance of issuing an endorsement required by FAA regulation. The FAA notes that current §§ 61.193(a) and 61.413(a), and their corresponding reliance on endorsements listed in §§ 61.193(a)(1) through (9) and 61.413(a)(1) through (9), excludes an express reference to elective and specialized training activities that are elsewhere encouraged.

For example, although the FAA encourages specialized elective pilot training under Advisory Circular 90–109,[25] current § 61.193 does not explicitly list these types of flight training activities in the flight instructor privileges. Similarly, while the FAA flight instructor handbooks promote specialized elective training, such as transition training and upset recovery training, §§ 61.193 and 61.413 do not list this type of activity as flight instructor privileges. These examples illustrate that amending §§ 61.193 and 61.413 is necessary to align the regulatory text with current policy and industry practice and encourage flight training activities in the interest of public safety.

The proposed modification to §§ 61.193(a) and 61.413(a) also clarifies that flight instructor privileges include certain checking events, when the instructor is appropriately authorized. This may include instrument proficiency checks (IPC), night vision goggle proficiency checks (NVG), sport pilot proficiency checks, and part 141 checks. To date, these functions have been an implicit privilege for flight instructors. This proposed modification to §§ 61.193(a) and 61.413(a) makes these privileges explicit.

Next, the FAA proposes to modify §§ 61.193(a)(7) and 61.413(a)(6) to clarify that an authorized instructor may conduct pilot training related to maintaining or improving skills for certificated pilots, consistent with FAA publications and current industry practice. For example, the aforementioned Advisory Circular 90–109 provides recommendations to pilots transitioning to an unfamiliar aircraft, which includes training with a flight instructor. Additionally, Advisory Circular 61–98, recommends recurrent training to maintain proficiency. For instances, Advisory Circular 61–98, states that ''recurrent training, including a flight to a towered airport with an experienced flight instructor, is a good way to gain proficiency with airport operations and to develop the required skills to avoid runway incursions.'' [26] The proposed modification to §§ 61.193(a)(7) and 61.413(a)(6) refers to training that advances a pilot's preexisting flying knowledge or skills. Pilots may undergo this type of training to increase their proficiency in areas that may not require specific endorsements. Thus, the training contemplated under proposed §§ 61.193(a)(7) and 61.413(a)(6) may include transition training to operate a new aircraft of the same category and class, aerobatic training, formation training, and mountain flying. While none of these skills require an endorsement, this training is highly beneficial and increases safety for already certificated pilots who intend to perform these types of operations. The proposed training does not contemplate learning basic flying skills, as in the case of a student pilot. Instead, the proposed training includes only training for pilots to maintain or advance preexisting skills, not the initial inception or development of pilot knowledge.[27]

The FAA finds that having an authorized instructor present in the aircraft during specialized and elective training events, and in other scenarios not undertaken in furtherance of meeting a specific regulatory requirement, promotes safety. Flight training, regardless of whether it is necessary to meet a regulatory requirement, improves pilot skills and abilities. As noted, it has been longstanding industry practice, and the proposed regulation merely clarifies that such training is an appropriate exercise of a flight instructor's privileges.

Section 61.1 defines flight training as training received from an authorized instructor. This section generally defines an authorized instructor as a person who holds a flight instructor certificate and who is conducting training in accordance with the privileges and limitations of the flight instructor's certificate. As previously described, the privileges enumerated in § 61.193 do not currently list training related to maintaining or improving skills for certificated pilots; therefore, this time would not be considered flight training under the express text of the regulation.[28] The proposed modification to this rule would legitimize this time and enable authorized flight instructors to log this time as flight training. In addition, permitting authorized flight instructors to log their flight time during these operations promotes training and incentivizes instructors to engage in this activity.

If these amendments are finalized as proposed, the FAA proposes to rescind the Mostofizadeh legal interpretation.[29] In pertinent part, this interpretation found that certificated flight instructors providing flight training during formation flights were not acting as authorized instructors.[30] The interpretation concluded that the definition of ''instruction'' from § 61.193 only included training activities conducted to satisfy a pilot's certificates, ratings, operating privileges, recency of experience requirements, and testing. The FAA recognizes that the interpretation, although consistent with the current regulations, would be inconsistent with this proposal if finalized. As such, the FAA will rescind the interpretation if it finalizes this rule.

The FAA's third proposal would add new §§ 61.193(c) and 61.413(c) to clarify that no privileges beyond bona fide ground and flight training, and certain authorized checking events, are contemplated within flight instructor privileges. Specifically, the proposed paragraphs would clarify that an authorized flight instructor cannot utilize the privileges afforded under §§ 61.193(a) and 61.413(a) to conduct any operation that would otherwise require an air carrier certificate, operating certificate, or specific authorization from the Administrator.

For example, an instructor is not authorized under this section to solely provide transportation or conduct commercial air tours or otherwise engage in transportation under the guise

[25] Advisory Circular 90–109A, Transition to Unfamiliar Aircraft (Jun. 29, 2015).

[26] Advisory Circular 61–98D, *Currency Requirements and Guidance for the Flight Review and Instrument Proficiency Check,* paragraph 2.3.6.1 (Apr. 30, 2018).

[27] For example, this training would not include aerobatic flights offered to non-pilots.

[28] Under § 61.51(e)(3), an authorized instructor may log PIC time for all flight time ''while serving as the authorized instructor'' in an operation if the instructor is rated to act as pilot in command of that aircraft.

[29] Legal Interpretation to Djavad Mostofizadeh (Apr. 19, 2013).

[30] Section 61.1 defines ''authorized instructor,'' in relevant part, as a person who holds a valid flight instructor certificate when conducting ground training or flight training ''in accordance with the privileges and limitations'' of their flight instructor certificate. Those privileges are set forth in § 61.193(a).

of flight training.[31] Likewise, offering introductory or ''orientation'' flights to non-pilots that maintain no intention of, or interest in, obtaining pilot credentials would likely not fall within the purview of a flight instructor's privileges, but would likely be considered to be air tours.[32] As specified in proposed §§ 61.193(c) and 61.413(c), an authorized instructor may not engage in commercial operations that would otherwise require an air carrier certificate, operating certificate, or a specific authorization from the Administrator, under the auspices of flight training. Misuse of §§ 61.193 and 61.413 to provide commercial air tours, is not permitted.

When ascertaining whether an operation is considered flight training, the FAA may examine the primary purpose of the flight and whether the person being carried for compensation or hire is interested in flight training.[33] Flights for compensation or hire that would likely not be construed as flight training include a one-time aerobatic or barnstorming flight for a person who holds no pilot credentials or an individual ''fulfilling a one-time bucket list item.'' [34] In these scenarios, the person has no intention of obtaining flight training, but rather is on board for the experience of the flight itself. Operations of this nature would not fall under the § 119.1(e)(1) ''student instruction'' exclusion and would continue to require an air carrier or commercial operator certificate issued in accordance with part 119 or a specific authorization from the Administrator, such as a commercial air tour letter of authorization. Conversely, persons who may be interested in pursuing flight training will necessarily have a first introductory flight with an authorized instructor where basic flying skills are introduced. This type of introductory flight, conducted for educational purposes, would be considered flight training.

The FAA also notes that, aside from permitting an authorized flight instructor to conduct certain checking events and training related to maintaining or improving skills for certificated pilots, the requirements in §§ 61.193 and 61.413 remain unchanged. For example, the list of endorsements an authorized instructor may issue remains unchanged under both affected sections. In this regard, the proposed amendments do not change the requirement that an instructor must be authorized in accordance with the definitions provided in § 61.1(b) to conduct flight training.

Authorized flight instructors that conduct training and checking events under this proposed amendment may begin documenting and recording their flight time to prepare if this proposal becomes final. The FAA notes that many instructors have historically logged this time, despite the fact that the regulatory language did not explicitly enable it. If the proposals related to flight instructors are adopted in a final rule, the FAA will permit instructors to credit their prior flight time consistent with this amendment retroactively. As a result, the FAA encourages authorized instructors to begin documenting and recording this time, if not already part of their standard practice, to receive credit if this proposal is adopted.

While the FAA did not evaluate similar changes to § 61.133(a)(2)(i)(E) and (ii)(D) for airship and balloon flight training, the Administrator seeks public comment on the merits of making the same change for commercial pilots with lighter-than-air category ratings who provide flight training in the final rule, if adopted.

IV. Aircraft Holding Certain Special Airworthiness Certificates

A. Background: Emergency Cease and Desist Order, Litigation, and FAA Notice

The restrictions on operating aircraft that hold special airworthiness certificates carrying people for compensation or hire recently came under review as a result of an emergency cease and desist order issued to Warbird Adventures, Inc. by the FAA in 2020.[35] In that case, the operator maintained a publicly available website that advertised opportunities to fly in a limited category aircraft at upcoming airshows and allowed members of the public to book flights in exchange for compensation. The operator brought a petition for review of the emergency order before the court.[36] The operator argued it was conducting flight training for compensation in its limited category aircraft, which it claimed is not a prohibited activity under § 91.315.[37] In response, the FAA argued that, under the plain language of § 91.315, flight training for compensation constitutes operating a limited category aircraft carrying a person for compensation or hire and, therefore, is a violation of the regulation.[38]

On April 2, 2021, the Court dismissed the petition for review of the cease and desist order.[39] Following the Court's dismissal, several aviation industry groups sought clarification from the FAA on how the decision affected flight training in experimental aircraft, since the prohibitory language of § 91.315 for limited category aircraft is the same as that in § 91.319 for experimental aircraft. In particular, industry advocates sought clarification on whether the owner of an experimental aircraft who receives and pays for flight training in that aircraft is operating the aircraft carrying a person for compensation or hire. Similarly, industry advocates asked whether the flight instructor also was operating the aircraft in violation of the prohibition in § 91.319. Industry noted that FAA guidance at that time allowed an experimental aircraft to be used in such a way without running afoul of the requirement to obtain a LODA to conduct flight training.[40]

[31] See Legal Interpretation to Doug McQueen, p. 3 (Apr. 16, 2013).

[32] See Legal Interpretation to William Grannis (Aug. 3, 2017) (explaining that ''flight training'' contemplates that ''purpose of the flight must be student instruction''); see also Legal Interpretation to Doug McQueen, p. 3 (Apr. 16, 2013) (explaining that ''a flight conducted for compensation or hire . . . where a purpose of the flight is sightseeing'' is a ''commercial air tour''); and Legal Interpretation to Michael Mason (Oct. 3, 2012) (quoting 2007 Final Rule for proposition that ''sightseeing is not always a purpose of the barnstorming or vintage aircraft flight [but] the FAA considers the overall character of the flight to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft'') (internal brackets and citation omitted).

[33] Legal Interpretation to Michael Mason (Oct. 3, 2012) (explaining that FAA may consider several factors when determining whether a flight is conducted for flight training).

[34] See Legal Interpretation to William Grannis (Aug. 3, 2017) (explaining that because ''persons being carried for compensation or hire are not interested in flight training . . . [i]t is therefore unlikely that the purpose of these flights would be student instruction'').

[35] Emergency Cease and Desist Order Issued by the Federal Aviation Administration (July 28, 2020).

[36] *Warbird Adventures, Inc.* v. *Fed. Aviation Admin.,* Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).

[37] The FAA has not conceded that the flights being operated were for the purpose of legitimate flight training.

[38] Section 91.315 states, ''No person may operate a limited category civil aircraft carrying persons or property for compensation or hire.''

[39] The Court stated: ''A flight student is a ''person.'' *Id.* § 91.315; *see also id.* § 1.1. When a student is learning to fly in an airplane, the student is ''carr[ied].'' *Id.* § 91.315. And when the student is paying for the instruction, the student is being carried ''for compensation.'' *Id.*'' *Warbird Adventures, Inc.* v. *Fed. Aviation Admin.,* 843 F. App'x 331 (D.C. Cir. 2021).

[40] The guidance (FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3–292) stated that flight instructors may receive compensation for providing flight training in an experimental aircraft but may not receive compensation for the use of the aircraft in which they provide that flight training unless they obtain a LODA issued under § 91.319(h). Likewise, the guidance stated that owners of experimental aircraft may receive and provide compensation for flight training in their aircraft without a LODA, but owners may not receive compensation for the use

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In response, the FAA published a Notification of Policy in the **Federal Register** laying out its position that, when compensation is provided for flight training, it is contrary to the prohibition on operating an aircraft carrying a person for compensation or hire even when no compensation is provided for the use of the aircraft.[41] The FAA announced that it would rescind the agency guidance that conflicted with the plain meaning of the regulation and noted it would consider a future rulemaking to remove obstacles to flight training for owners of aircraft with certain special airworthiness certificates while maintaining prohibitions on broadly offering these aircraft for flight training to the public. This NPRM proposes those changes.

In addressing the flight training concerns, the FAA has also found conflicts between the general prohibitions in §§ 91.315, 91.319, and 91.325 (applicable to limited category, experimental and primary category aircraft respectively) and operating limitations placed on these aircraft during the aircraft certification process, legal interpretations, and guidance related to carriage of persons or property aboard these aircraft during operations involving compensation or hire. Terms within these regulations are either broadly defined (*e.g.,* operate, person) or have been broadly interpreted over time (*e.g.,* compensation), resulting in obstacles to certain flight training that the FAA did not intend.

For example, since the FAA considers a flight instructor to be operating an aircraft carrying a person for compensation or hire (even when the compensation is paid only for the flight training), then any pilot who receives compensation for piloting a limited category, experimental, or primary category aircraft would be in violation of the rule when operating an aircraft for compensation with another person is on board.[42] The FAA did not intend to prohibit a pilot's receipt of compensation for operations which may incidentally carry persons in aircraft with certain special airworthiness certificates. In fact, as discussed later in this section, the FAA finds that some operations of these aircraft necessarily involve carrying people when compensation is provided to the operator or flightcrew.

The following discussion provides further explanation of the obstacles created by the current regulatory language. With respect to an aircraft, the word ''operate'' is broadly defined in § 1.1 as ''use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).'' While the term ''operate'' may refer to the person piloting an aircraft, it also extends to aircraft owners who use an aircraft without piloting it, to owners who authorize someone else to use the aircraft, and to the persons that the owner authorizes to use the aircraft. Under the regulatory definition, an aircraft may be operated by more than one person for purposes of part 91 regulations.[43]

Likewise, the phrase ''operate carrying persons or property for compensation or hire'' has been viewed to mean that the receipt of compensation is in exchange for the carriage of persons or property rather than that there is receipt of compensation for operating while carrying persons or property. Importantly, ''carriage'' does not necessarily mean transportation from place to place nor does it speak to the reason a person is being carried. Any person on board an aircraft with another is considered to be ''carried.''[44] Therefore, the regulations could be interpreted to mean that no person may receive compensation for an operation which carries persons or property, regardless of the nature of the operation or whether compensation is provided for some service other than the carriage of persons.

Furthermore, the FAA has consistently construed ''compensation'' broadly.[45] Given this broad definition, there are a number of scenarios where operations may be precluded that the FAA did not intend to foreclose. For instance, flights involving an aircraft manufacturer carrying prospective customers in an aircraft with an experimental special airworthiness certificate utilizing the experimental market survey purpose or a flight instructor providing customer crew training under this purpose could be in violation if the pilot or instructor, respectively, is being compensated.[46]

With this proposed rule, the FAA seeks to narrow and more clearly define the types of operations that are precluded in aircraft holding certain special airworthiness certificates. Therefore, the FAA is proposing changes to clarify how these aircraft may be operated.

Should the modifications to the part 91 regulations proposed by this rule become final, the FAA will rescind certain legal interpretations related to the carriage of persons or property for compensation or hire in limited category, experimental, and primary category aircraft (*i.e.,* Legal Interpretation to Bob Shaw (Feb. 4, 2008), Legal Interpretation to Joy Ratini (Apr. 30, 2014), Legal Interpretation to Gregory Morris (Oct. 7, 2014), and Legal Interpretation to E.J. Sinclair (Jul. 22, 2015)). The purpose of those affected legal interpretations was to explain the circumstances under which persons or property could be carried for compensation or hire under §§ 91.315, 91.319, and 91.325. However, the modifications proposed by this rule would implement a new regulatory structure which would replace the explanations provided by the legal interpretations.

B. Part 91 Regulations Governing the Operation of Aircraft With Certain Special Airworthiness Certificates (§§ 91.315, 91.319, 91.325, and 91.327)

The FAA proposes to amend the part 91 regulations governing the operation of limited category, experimental, and primary category aircraft to reflect two modifications. First, the FAA proposes to modify §§ 91.315, 91.319(a)(2), and

of their aircraft for flight training except in accordance with a LODA issued under § 91.319(h).

[41] Notification of Policy for Flight Training in Certain Aircraft, 86 FR 36493 (Jul. 12, 2021).

[42] The FAA notes that, while it may seem inappropriate to apply the word ''operate'' to required flightcrew in this scenario, other part 91 regulations that use the word ''operate'' are clearly intended to apply to both the owner of an aircraft and the required flightcrew. For example, it would create an absurd result to suggest that § 91.111(a), which states ''no person may operate an aircraft so close to another aircraft as to create a collision hazard,'' should not be applied to the flightcrew. It would result in confusion if the regulated community cannot rely on a consistent application of the term ''operate'' throughout part 91.

[43] For example, § 91.7(a) prohibits any person from operating a civil aircraft unless it is in an airworthy condition. A violation of this regulation would likely involve the pilot in command who is responsible for determining whether that aircraft is in condition for safe flight under § 91.7(b), but it may also involve the owner of the aircraft if the owner is shown to have authorized the use of the aircraft in an unsafe condition.

[44] There are a number of operations permitted under part 91 operating rules that involve the carriage of persons that are not point-to-point transportation.

[45] *See* Legal Interpretation to Joseph Kirwan (May 27, 2005). Compensation ''does not require a profit, a profit motive, or the actual payment of funds.'' Rather, compensation is the receipt of anything of value. *See also* Legal Interpretation to John W. Harrington (Oct. 23, 1997); *Blakey* v. *Murray*, NTSB Order No. EA–5061 (Oct. 28, 2003). The FAA has previously found that reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation.

[46] See § 21.191(f), which describes the market survey purpose as, ''Use of aircraft for purposes of conducting market surveys, sales demonstrations, and customer crew training only as provided in § 21.195.''

91.325(a) (applicable to limited category, experimental, and primary category aircraft, respectively) to change the existing language from a general prohibition on carrying persons or property for compensation or hire to more specifically identify the commercial operations that may not be conducted in these aircraft if persons or property are carried on board. These operations would include air carrier or commercial operations [47] as well as other commercial operations in which persons or property are carried. Specifically, except as provided in proposed § 91.326 (discussed more fully later in the preamble), the proposed amendments would prohibit conducting operations which: (1) require an air carrier or commercial operator certificate issued under part 119; (2) are listed in § 119.1(e); (3) require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or (4) are conducted under parts 129, 133, or 137. The proposed modifications are intended to narrow the prohibition on the carriage of persons or property for compensation or hire and to clarify the FAA's intent, which is to prohibit the operation of aircraft holding certain special airworthiness certificates as air carriers, commercial operators, or otherwise carrying persons or property for hire in a manner that would require authorization from the Administrator, such as an air carrier or a commercial air tour. These aircraft are purpose-built for specific operations and do not meet the same rigorous design, build, and maintenance standards as aircraft that are eligible for use in passenger and property carrying operations for hire. Therefore, aircraft holding certain special airworthiness certificates require additional restrictions on operations for compensation or hire.

Second, in proposed § 91.326(a), the FAA proposes to codify the 2023 NDAA provision to allow certain flight training, checking, and testing in experimental aircraft without a LODA and apply this allowance to limited and primary category aircraft and establish a consistent LODA framework for limited category and experimental aircraft in § 91.326(b).

Section 91.326(a) would establish the conditions under which a person may operate these aircraft to accomplish training, checking, and testing without the need to obtain a LODA from the FAA. For those operations that cannot meet the conditions for operating without a LODA, § 91.326(b) would codify a consistent framework for requesting a LODA to conduct flight training, checking, and testing in limited category and experimental aircraft similar to the allowance currently reflected in § 91.319(h) for experimental aircraft. The FAA also proposes corresponding amendments to the general prohibitions in §§ 91.315, 91.319(a)(2), and 91.325(a) to reflect the exception in newly proposed § 91.326. Section 91.326 is discussed more fully later in this preamble.

1. Prohibited Commercial Operations

The FAA proposes to identify part 119 and other regulatory parts pertaining to specific commercial operations to clearly delineate the operations involving the carriage of persons and property for compensation and hire that are prohibited in aircraft holding certain special airworthiness certificates. This proposal balances the additional safety benefits afforded by § 91.326 for flight training, checking, and testing with the public expectation and safety mitigations necessary for operations involving aircraft holding certain special airworthiness certificates. Where there is receipt of compensation for transportation, the public expects, and the FAA demands, a higher level of safety.[48]

Importantly, transportation does not necessarily mean ''from place to place,'' as evidenced by numerous interpretations and guidance referencing ''common carriage,'' whereby the FAA has qualified two of the four tenets of common carriage as ''(2) to transport persons or property (3) from place to place.'' [49] The FAA notes that, from a regulatory standpoint, transportation can simply mean conveyance for a purpose, such as a non-stop commercial air tour that takes off and lands at the same airport or carriage of an aerial photographer. Each of these examples represents an operation where a person has paid to be carried in an aircraft and which is precluded under the text of the current rule and would continue to be precluded under the proposed rule. Operations where people are carried in an aircraft, but are not paying for that conveyance, are discussed in greater detail later in this section.

Part 119 contains basic requirements that apply to each person that operates or intends to operate a civil aircraft as an air carrier or commercial operator, or both, in air commerce. This part specifies the types of operations that the FAA has determined require greater oversight, maintenance, training, and operational requirements to ensure public safety when carrying persons or property for compensation or hire. Depending on the type of operation and aircraft used, an air carrier or commercial operator conducts these operations under the operating rules in either part 121 or part 135.

Part 119 likewise excepts certain commercial operations from certification under that part. Carriage of persons or property for compensation or hire during these excepted operations will continue to be prohibited in aircraft holding certain special airworthiness certificates under the proposed modifications to the rules. Section 119.1(e) enumerates various types of commercial operations that may be conducted without an air carrier or commercial operator certificate. For example, § 119.1(e)(2) refers to nonstop commercial air tours, § 119.1(e)(4) lists various forms of aerial work operations, and § 119.1(e)(6) refers to intentional parachute drop operations. These types of commercial operations are conducted under the general operating rules in part 91. In addition to these commercial operations that may be conducted under part 91, subpart K of part 91 allows for carriage of persons or property in fractional ownership programs without part 119 certification. Other parts, such as parts 129, 133, and 137, specify regulations related to other highly-specific commercial operations that require additional oversight by the FAA but do not require part 119 certification.

Each of these parts, as they relate to carriage of persons or property for compensation or hire, contain operating rules intended to ensure the safety of those being carried, as well as the non-participating public on the ground. The restrictions on using aircraft with special airworthiness certificates to conduct these operations are based on a safety continuum,[50] which assigns

[47] Section 1.1 defines ''Air carrier'' as a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Section 1.1 defines ''Commercial operator'' as a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of part 375 of this title. Where it is doubtful that an operation is for ''compensation or hire'', the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

[48] See Advisory Circular No. 61–142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR 61.113(c), (2020).

[49] See Advisory Circular No. 61–142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR 61.113(c), (2020).

[50] Safety Continuum is described as the level of safety established by regulation, guidance and oversight that changes based on risk and societal expectations of safety. The safety continuum applies an appropriate level of safety from small unmanned aircraft systems to large transport

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aircraft privileges based on the corresponding level of design, build, maintenance, and operational requirements. Aircraft that are built specifically for the purpose of carrying persons or property for compensation or hire are required to meet higher design and build standards, such as those required by 14 CFR parts 23, 25, 27, and 29 and appear at the highest levels of the safety continuum. These aircraft may be used for compensation or hire, and they are generally not limited to specific areas of operation or special operating rules. Aircraft used for unique commercial operations, such as part 133 rotorcraft external load operations and part 137 agricultural aircraft operations are purpose-built and have operating limitations assigned to perform those tasks safely. By contrast, aircraft holding limited category, experimental, and primary category airworthiness certificates were not built or certificated for the aforementioned purposes, nor were they contemplated for use in those regulatory frameworks. As such, these aircraft fall lower on the safety continuum than standard category aircraft. Specifically, limited aircraft fall lower on the continuum as they were built to a standard but retain special airworthiness certification since they were designed for military uses. Experimental aircraft are on the opposite end of the continuum from standard category aircraft. Experimental aircraft have not necessarily been found to meet airworthiness standards and are excepted from many of the regulatory maintenance and inspection requirements of standard category aircraft.[51] For these reasons, experimental aircraft are assigned the most restrictive operating limitations. Finally, primary category aircraft were built for personal and recreational use. As such, aircraft holding special airworthiness certificates continue to have associated regulations which limit certain activities.

The intent of this proposal is to update regulatory language to align the FAA's intent with the public's expectation for operations in aircraft with certain special airworthiness certificates, while ensuring no adverse effect on safety. To continue to ensure public safety and more clearly identify those operations prohibited in aircraft that hold certain special airworthiness certificates, the FAA proposes to list in §§ 91.315, 91.319, and 91.325, the specific operations (*i.e.,* operations that require a part 119 air carrier or commercial operator certificate or are identified in § 119.1(e), operations that require management specifications under subpart K of part 91, operations under part 129, part 133, and part 137) that are prohibited in aircraft that hold certain special airworthiness certificates. This more specific language would replace the broad language in the current part 91 regulations that, as previously discussed, forecloses operations that the FAA did not intend to prohibit.

The FAA finds that listing out the specific operations that are prohibited rather than relying on the broad language currently reflected in §§ 91.315, 91.319, and 91.325 would better advise the regulated community on how to comply. Notably, part 119 did not exist when the FAA introduced these special airworthiness categories into its regulations. However, today part 119 is a widely used regulatory part supported by legal interpretations, FAA advisory circulars, and case law. The regulations and associated guidance will more clearly inform the owners and operators of aircraft with special airworthiness certificates that operations requiring part 119 certification as well as those commercial operations excepted from part 119 certification are not permitted in their aircraft when persons or property are carried on board for compensation. For this reason, the FAA does not believe that further discussion of the operations requiring or excepted from part 119 certification is necessary in this NPRM.

Permitting the listed operations in aircraft with certain special airworthiness certificates is not in the interest of public safety. These operations were not intended for aircraft holding certain special airworthiness certificates in the original regulations when they were developed, and they would continue to be excluded from these types of operations under the proposed rules. The FAA finds that there are sufficient aircraft that are appropriately certificated (*e.g.,* standard and restricted category) to conduct the types of commercial operations previously described. The FAA understands the interest by owners and operators of aircraft with special airworthiness certificates to broaden their opportunities to receive compensation for the use of their aircraft; however, there is simply no compelling reason to lower the existing standard and expand the operating footprint for aircraft that hold these special airworthiness certificates.

For these reasons, the FAA proposes to revise the regulatory language of §§ 91.315, 91.319(a)(2), and 91.325(a) to clarify that, except for flight training, checking, and testing as specified in § 91.326, persons may not operate these aircraft carrying persons or property for compensation or hire in operations that require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137.

2. Limited Category Airworthiness Certificates (§ 91.315)

The limited category airworthiness certification was developed shortly after World War II. This certification enabled the large number of available military surplus aircraft to continue to be useful after the war, but only for limited purposes.[52] To be granted a limited category airworthiness certificate, the aircraft's military records could not disclose any characteristics which would render it unsafe when operated as a civil aircraft in accordance with the limitations and conditions prescribed by the Administrator.[53] Additional operating limitations were required for limited category aircraft to account for the difference in certification requirements between limited and standard category aircraft. These limitations included the prohibition on carrying passengers and cargo for hire. Eventually, the limited category regulatory language became even more restrictive to prohibit the carriage of persons, not just passengers, for compensation or hire.[54]

The history of limited category airworthiness certificates illustrates the

category aircraft. The differing levels of safety balance the needs of the flying public, applicants and operators while facilitating both the advancement of safety and the encouragement of technological innovation. *https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/transformation/csp/concepts.*

[52] Pilot Certificates, 14 CFR, 1946 Supp. 2132. Specifically, the Civil Air Regulations (CAR) part 09 explained that the limited category airworthiness classification was developed ''for the purpose of making available to the public certain military surplus aircraft which were originally designed for the military services of the United States for combat and other specialized purposes and which experience in military service has shown to be safe for operation so long as the operation is confined to flights in which neither passengers nor cargo are carried for hire.''

[53] Pilot Certificates, 14 CFR 09.10(c), 1946 Supp. 2130.

[54] While earlier versions of § 91.315 only prohibited the carriage of ''passengers'' for compensation or hire, the regulation was subsequently amended to prohibit the carriage of any ''persons'' for compensation or hire. Compare Pilot Certificates, 14 CFR 09.10(c), 1946 Supp. 2130, note (confining use of limited category aircraft to flights ''in which neither passengers nor cargo are carried for hire'') *with* 54 FR 34284, 34309 (Aug. 18, 1989) (prohibiting ''carrying persons or property for compensation or hire'').

FAA's original intent of who may be carried in these aircraft. The FAA finds that this history, in conjunction with current industry practice and ensuring consistency with other special airworthiness certificated aircraft, supports this proposal to modify the language in § 91.315 to better articulate the types of operations permitted in these aircraft. Overall, this proposed rule would increase the operational privileges afforded to limited category aircraft by enabling, with certain limitations, flight training, checking, and testing, as well as modify the generally prohibitive language to be more specific with regard to operations that cannot be conducted for compensation or hire with persons or property on board. Therefore, the FAA is proposing to amend § 91.315 to clarify that, except as provided in § 91.326 (discussed later in this section), persons may not operate these aircraft carrying persons or property for compensation or hire in operations which require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137.

3. Experimental Airworthiness Certificates (§ 91.319)

a. Experimental Aircraft—General

Experimental aircraft do not meet the same design, build, and maintenance requirements as aircraft that hold standard airworthiness certificates. Experimental aircraft fall lower on the safety continuum than limited and primary category aircraft, as they are not necessarily built to any standard. For this reason, experimental aircraft are assigned additional operating limitations in § 91.319, to include types of operations (§ 91.319(a)(1)) [55] that may be conducted and areas of operation (§ 91.319(c)) in which operations may take place.[56]

The FAA proposes to modify the broad language in § 91.319(a)(2) regarding the operation of these aircraft carrying persons or property for compensation or hire to further clarify its intent. As previously discussed, the plain language in the current regulatory text of § 91.319(a)(2) results in an outcome that the FAA finds overly restrictive. The current language results in the prohibition of operations that the experimental purposes listed in § 21.191 were specifically designed to enable.[57] For example, the experimental purpose of research and development (R&D) in § 21.191(a) was designed to accommodate testing new aircraft design concepts, new aircraft equipment, new aircraft installations, new aircraft operating techniques, or new uses for aircraft. Often, aircraft manufacturers and equipment or component manufacturers work in tandem during development and testing to ensure safe system integration. This testing may require experts from both manufacturers to participate in the test flights. However, the plain language of § 91.319(a)(2) would prohibit the operator from carrying persons if the aircraft or system is being developed for compensation [58] because both the manufacturer and the pilot could be construed to be operating while carrying persons or property for compensation or hire. The exclusion of persons performing an essential function that is directly related to the experimental purpose unnecessarily places a burden on the operator to obtain an exemption to complete this work and was not intended to fall under the broad language of the regulation.

There are other experimental purposes where compensation may be a result of the operation. For instance, the experimental crew training purpose (§ 21.191(c)) is silent as to whether pilots (instructor or trainee) are compensated during training. Likewise, the experimental market survey purpose (§ 21.191(f)), developed specifically to demonstrate the aircraft to persons who are in a position to make a purchase decision in hopes of selling an aircraft or component (expected future economic benefit), is also silent as to whether pilots are compensated during such an operation.

The FAA finds there would be no adverse effect on safety from the proposed modified language because experimental aircraft are assigned additional operating limitations that mitigate risk. Experimental aircraft are limited by § 91.319(a)(1) in the types of operations they may perform. Section 91.319(a)(1) specifies that persons are prohibited from operating an experimental aircraft for other than the purpose for which the certificate was issued.[59] This means, for example, that an experimental aircraft certificated for the purpose of R&D can only be operated to perform those R&D tests identified at the time of certification. R&D certificates have a maximum expiration date of one year. This affords the FAA an opportunity to reevaluate the validity of the proposed test. Likewise, an experimental aircraft certificated for the purpose of crew training can only be operated to train the applicant's flight crews. There is no experimental purpose which would support the carriage of persons or property as a major enterprise for profit.[60]

Furthermore, experimental aircraft are restricted by § 91.319(c) from overflight of densely populated areas unless specifically authorized by the Administrator. This prohibition mitigates risk to non-participating public on the ground. In addition, under § 91.319(i), the Administrator may impose additional operating limitations on experimental aircraft based on aircraft characteristics and associated risks. These additional operating limitations further mitigate risks associated with various hazards that may be introduced in experimental aircraft. For these reasons, the FAA sees no adverse effect on safety in the proposed modification of § 91.319(a)(2) to more accurately reflect the prohibited operations contemplated for experimental aircraft.

b. Experimental Light-Sport Aircraft (§ 91.319)

Section 91.319(e) contains specific limitations on the use of certain experimental aircraft certificated under § 21.191(i)(1).[61] The FAA proposes to modify § 91.319(e)(2) to remove the date restriction on flight training in these aircraft and direct readers to the flight training, checking, and testing in proposed § 91.326. Likewise, the FAA proposes to modify paragraph (f),

[55] Section 91.319(a)(1) specifies that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued.

[56] Section 91.319(c) specifies that unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

[57] See § 21.191 Experimental Certificates for a list of experimental purposes.

[58] Compensation can come in many forms. For example, an aircraft manufacturer might be compensated by way of a Department of Defense contract to build aircraft for the military or to test certain equipment.

[59] See § 21.191 Experimental Certificates for a complete listing of all experimental purposes.

[60] The § 1.1 Commercial Operator definition explains that ''[w]here it is doubtful that an operation is for 'compensation or hire,' the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.''

[61] Section 21.191(i)(1) covers light-sport aircraft that have not been issued a U.S. or foreign airworthiness certificate and do not meet the criteria for ''ultralight vehicles'' provided in § 103.1.

regarding the leasing of aircraft issued an experimental certificate under § 21.191(i).

Before 2004, the FAA granted exemptions to permit two-seat ultralight-like aircraft, which did not meet the part 103 requirements of this chapter, to be used for compensation or hire for the purpose of flight training.[62] On July 27, 2004, the FAA issued a final rule defining light-sport aircraft to include simple, small, lightweight, low-performance aircraft. Additionally, in the 2004 final rule the FAA created a new special airworthiness certificate in the light-sport category for special light-sport aircraft (SLSA) in § 21.190 and added light-sport aircraft to the existing experimental special airworthiness certificate for experimental light-sport aircraft (ELSA) in § 21.191(i).[63]

The 2004 final rule permitted instructors to conduct flight training in these ELSA aircraft for compensation or hire until January 31, 2010, which diminished the need for the part 103 training exemptions that allowed the operation of two-seat ultralight-like aircraft that did not conform to part 103. As stated in the 2004 final rule, a significant purpose of the rule was to certificate those two-seat ultralight-like aircraft previously operated under part 103 training exemptions and those two-seat and single-seat unregistered ultralight-like aircraft operating outside of the regulations.

Specifically, SLSA regulations include aircraft manufactured according to an industry consensus standard rather than a type certificate. ELSA regulations include provisions for: (1) a temporary allowance for migration of two-seat ultralight-like aircraft that did not conform to 14 CFR part 103 and were previously operated under part 103 training exemptions, (2) kit-built versions of SLSA aircraft, and (3) aircraft previously issued a special airworthiness certificate in the light-sport category under § 21.190.

When publishing the 2004 final rule, the FAA anticipated that the newly manufactured SLSA would replace the former two-seat ultralight-like aircraft that did not conform to 14 CFR part 103 (newly certificated as ELSA) such that flight training in ELSA would no longer be necessary. The FAA, knowing that the manufacture of the new SLSA aircraft would take time, created provisions in existing § 91.319 to allow for an extension of the time period to permit the use of properly registered aircraft with ELSA airworthiness certificates to be used for flight training by the same owner until January 31, 2010. After January 31, 2010, ELSA aircraft were no longer permitted to be used for flight training for compensation or hire.

The FAA predicted that 60 months would be an adequate amount of time for the new SLSA to enter service to replace the ELSA and meet flight-training demands. The FAA also anticipated that 60 months would provide the owners of the transitioning ELSA with additional time to purchase SLSA to provide flight training under the new rule, thereby delaying replacement costs. In addition, the FAA believed the action would further expand the growth of the industry as a whole. However, the new SLSA has not materialized in the way that was projected, especially for two-seat aircraft used for light-sport and ultralight training. Industry production of all aircraft slowed during the projected period, resulting in lower acquisition costs of standard category aircraft that could be operated as light-sport aircraft. This caused the projected production of SLSA to no longer be considered financially viable, in many cases.

Experimental light-sport aircraft are good training aircraft for light-sport and ultralight vehicles because they may be low mass/high drag aircraft that contain a second seat that may be occupied by an authorized flight instructor. The use of ELSA as a training option for light-sport aircraft and ultralights provides an avenue for structured flight training from an FAA certificated flight instructor. The FAA does not wish to impede individuals who want to take advantage of flight training that is relevant to the type of aircraft they operate. Additionally, the FAA recognizes the importance of availability of training aircraft for new light-sport pilots and existing pilots who are transitioning from a conventional aircraft to a low mass/high drag aircraft. While two-seat, light-sport, low mass/high drag trainers with SLSA airworthiness certificates can be found on the market for use in flight training, they do not exist in numbers that provide for widespread availability.

Given the aforementioned considerations and the delayed timeline for availability of SLSA aircraft, the FAA undertook a new rulemaking in 2014. On October 24, 2014, the FAA published a NPRM titled Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft.[64] To ensure these aircraft are used solely for the purpose of flight training, and to better control and monitor the use of ELSA for flight training, the FAA proposed to require a LODA for persons who intended to conduct flight training for compensation or hire using ELSA. The FAA proposed this change to allow for increased availability of flight training in aircraft with similar characteristics to light-sport aircraft and ultralights. As mentioned previously, the 2004 final rule permitted training in ELSA for compensation or hire for the purpose of flight training until January 31, 2010. The NPRM proposed to remove the date restriction in § 91.319(e)(2) and add language to permit training in certain ELSA for compensation or hire through existing deviation authority provided in § 91.319(h) of this part.

For the reasons provided in the concurrently issued Withdrawal of the Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft, the FAA is withdrawing the NPRM titled Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft, and instead is developing this rule that resolves the discrepancy more broadly for all experimental aircraft and better serves the public interest.

This proposed rule will address the parameters of flight training in experimental light-sport aircraft more comprehensively than the 2014 NPRM would have. This rule also proposes to create a consistent flight training framework for limited category and experimental aircraft. Therefore, flight training in ELSA is more appropriately incorporated into this rulemaking.

The FAA is incorporating changes to § 91.319(e) and (f) to increase the availability of light-sport aircraft for training, and aid individuals who wish to train in the type of aircraft they operate. This rulemaking proposes to change §§ 91.319(e)(2) and 91.319(f) to direct stakeholders to proposed § 91.326, which describes exceptions for flight training, checking, and testing. The FAA recognizes that training in an ELSA is beneficial for pilots to gain familiarity with the performance and handling qualities of other light-sport aircraft and ultralights.

In addition, proposed § 91.319(f)(2) would allow a person receiving flight training to lease certain ELSA for the purpose of accomplishing solo flight and practical test in accordance with a training program included in the

[62] By regulation, an ultralight vehicle must be used or intended to be used for manned operation in the air by a single occupant and may be used or intended to be used for recreation or sport purposes only. 14 CFR 103.1(a), (b). Because two-place aircraft do not meet this requirement, they cannot be operated as ultralight vehicles under part 103.

[63] 69 FR 44881 (Jul. 27, 2004). Under § 21.191(i)(1), no experimental certificates may be issued for these aircraft after January 31, 2008.

[64] 83 FR 53590 (Oct. 24, 2018).

deviation authority authorized in accordance with proposed § 91.326(b). Currently, § 91.319(f) prohibits the leasing of certain ELSA, except to tow a glider or unpowered ultralight vehicle. If the proposed rule becomes final, certain ELSA aircraft will be eligible to operate for the purpose of flight training in accordance with proposed § 91.326. Removing the leasing restriction under certain circumstances is necessary to meet the part 61 pilot certification requirements of this chapter. Because of the unique characteristics of these aircraft, the FAA has determined that training in accordance with a § 91.326(b) LODA, to include solo flight and practical tests required for pilot certification, enhances safety. Solo flight and practical tests may require leasing of the aircraft.

c. Miscellaneous Amendments

The FAA also proposes a few miscellaneous amendments to § 91.319. First, the FAA proposes to modify § 91.319(d)(3) to use ''air traffic control'' (ATC) in place of ''control tower.'' This language is consistent with the other regulatory sections that reference ''air traffic control'' instead of ''control tower.'' [65] Although the current requirement for notification is limited to only the control tower, if present, expanding the requirement to notify all ATC facilities with which the pilot interacts during the course of a flight, if any, increases safety by informing controllers of the experimental nature of the aircraft. This information can help ATC to understand there may be limitations associated with the aircraft. It will remain the responsibility of the operator to comply with those limitations, however notification to all ATC facilities will help controllers maintain better awareness of the aircraft to which they are providing service. If no ATC services are utilized, there is no additional requirement for notification.

The FAA also proposes to remove the current deviation authority in § 91.319(h). The proposed removal of paragraph (h) would provide additional clarity to current LODA holders and potential LODA applicants by maintaining one LODA framework under proposed § 91.326(b). Current and potential LODA holders would be directed to proposed § 91.326(b) with the introductory language in § 91.319(a). Additionally, proposed § 91.326(c) would inform current§ 91.319(h) LODA holders on the status of their LODAs if this proposal is adopted as a final rule.

[65] For example, see §§ 65.45, 91.123, 105.13, and 170.13.

4. Primary Category Airworthiness Certificates (§ 91.325)

The primary category was created in 1992 to stimulate the production of a new class of simpler personal use and recreational aircraft.[66] To achieve this intent, the primary category required a simplified certification process though still requiring aircraft to be built to a design standard. At that time, the FAA indicated that flight training could be conducted in these aircraft.[67] However, as previously discussed, the broad language prohibiting operations carrying persons or property for compensation or hire precludes a flight instructor from receiving compensation while carrying a person who is receiving flight training.

For consistency with the limited category and experimental aircraft operating limitations, the FAA proposes to modify the language in § 91.325(a) and (b) and create new paragraph (c). First, the FAA proposes to modify the language in § 91.325(a) to clarify that persons may not operate these aircraft carrying persons or property for compensation or hire in operations that require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137. Second, to align the primary category regulatory language with the original intent at the time of its inception, the FAA proposes to modify § 91.325(b) and add new (c) to enable primary category aircraft to be used for flight training, checking, and testing without the need to obtain deviation authority.

Consistent with the limitation in current § 91.325(b), primary category aircraft are divided into two groups, with different privileges afforded to each, due to differences in maintenance requirements. The first group consists of primary category aircraft that are maintained by the pilot-owner under an approved special inspection and maintenance program. The second group consists of primary category aircraft that are maintained by part 65 certificated mechanics or authorized repair stations.[68]

Primary category aircraft that are maintained by FAA certificated mechanics or authorized repair stations fall higher on the safety continuum than those that are pilot-owner maintained. To determine the precise position of primary category aircraft on the safety continuum, and thereby determine the corresponding privileges, the FAA compares the regulatory privileges and the design, build, and maintenance requirements to those of light-sport aircraft (LSA).

LSA do not meet 14 CFR airworthiness standards. Instead, these aircraft must be designed, built, and maintained in accordance with industry consensus standards. In accordance with § 91.327(b), LSAs must be maintained by FAA certificated mechanics, authorized repairmen, or authorized repair stations. Under § 91.327(a)(2), operators of LSA are authorized to conduct flight training without a requirement to hold a LODA.[69] The FAA proposes to grant similar regulatory privileges to primary category aircraft with similar certification and maintenance requirements. To that end, the FAA proposes granting certain primary category aircraft privileges similar to those afforded to LSAs.

For these reasons, the FAA proposes to add § 91.325(c) to permit primary category aircraft maintained by FAA certificated mechanics or authorized repair stations to be operated for compensation or hire for the purposes of conducting flight training, checking, and testing without deviation authority or an exemption.

Under proposed § 91.325(c), primary category aircraft which are maintained by an FAA certificated mechanic or repair station will be enabled to be utilized for compensated flight training, checking, and testing without restriction, even when those services are broadly offered to the public. In the proposed modification to § 91.325(b), operators of primary category aircraft which are maintained by a pilot-owner under an approved program who wish to receive flight training, checking, or testing are directed to § 91.326(a), which would specify the circumstances under which persons may conduct those operations. That pilot-owner is prohibited from receiving compensation, except as provided in proposed § 91.326(a). This prohibition precludes operation under a LODA. However, these pilot-owners are not precluded from exercising the privileges of proposed § 91.326(a). For these reasons, primary category aircraft would not be eligible to receive a LODA.

The FAA proposes that previously issued exemptions from § 91.325 for the purposes of flight training, checking, or

[66] 57 FR 41360 (Sept. 9, 1992).

[67] 57 FR 41360 (Sept. 9, 1992).

[68] 14 CFR part 145.

[69] Notably, as a miscellaneous amendment, the FAA is also proposing to clarify in § 91.327(a)(2) that checking and testing are also permitted.

testing will not be renewed or extended if the proposed rule becomes final.

5. Light-Sport Category Special Airworthiness Certificates (§ 91.327)

The FAA proposes modifying § 91.327(a)(2) to update the nomenclature for consistency with the other amendments proposed in this rulemaking. Currently, § 91.327(a)(2) authorizes flight training for compensation or hire in a light-sport category aircraft. The FAA proposes to add that a person may conduct checking and testing, in addition to the explicit permission for flight training.[70] These activities have been implicit with the language authorizing ''flight training,'' as flight instructors are authorized to conduct certain checks, and testing is a demonstration of skills learned during training. These activities do not pose any additional safety risk beyond that associated with flight training. Further, the FAA finds value in training and testing in the aircraft that will be regularly operated. The FAA acknowledges that individuals may already utilize § 91.327(a)(2) to conduct checking and testing for compensation or hire. Therefore, this modification merely codifies existing implicit privileges. The FAA does not anticipate any substantive or practical change from the proposed addition of checking and testing in § 91.327(a)(2).

D. Flight Training, Checking, and Testing (§ 91.326(a))

As discussed, currently, §§ 91.315, 91.319, and 91.325 prohibit operating limited category, experimental, and primary category aircraft carrying persons or property for compensation or hire. Consistent with the outcome of the Warbird litigation, these regulations generally prohibit flight training, checking, and testing when compensation is provided.

In July 2021, the FAA established a streamlined process that allowed owners and flight instructors to apply for a LODA through an expedited process and accomplish certain flight training in experimental aircraft.[71] Given the language in the regulations, aircraft owners seeking to receive flight training in their own personal-use experimental aircraft, and flight instructors providing that training for compensation, applied for a LODA through the aforementioned streamlined process.[72]

However, as noted earlier, section 5604 of the 2023 NDAA contains a provision that removes the LODA requirement for flight training, testing, and checking in experimental aircraft under certain conditions. Flight training, checking, and testing that is broadly offered to the public, or that does not conform to the stipulations of the 2023 NDAA will continue to require a LODA.

Therefore, the FAA proposes an exception in § 91.326 to codify the legislation for experimental aircraft and extend what is already permissible for experimental aircraft by legislation, to other aircraft that hold certain special airworthiness certificates. Proposed § 91.326 would also more clearly outline who may receive and provide flight training, checking, and testing without deviation authority and to specify when deviation authority is required for these operations.

Specifically, the FAA proposes adding § 91.326(a) to provide an exception to the general limitations of operating an aircraft under §§ 91.315, 91.319(a)(2), and 91.325(a) for compensation or hire. Section 91.326(a) would codify the legislation to allow authorized instructors, aircraft owners, lessors, or lessees to accomplish certain flight training, checking, and testing in experimental aircraft without obtaining a LODA. The FAA also proposes to include limited category and primary category aircraft in the proposed rule, in addition to experimental aircraft, because current regulations prohibit the same training, checking, and testing for compensation in limited and primary category aircraft, and the safety justification for enabling these activities applies equally. The proposed provision would maintain the safety benefits of using standard category aircraft to accomplish most flight training, checking, and testing while acknowledging the safety benefits of permitting pilots to perform these activities in the aircraft they own or regularly operate.

The following preamble sections discuss the conditions in the legislation as set forth in proposed § 91.326(a)(1) through (3).

1. Prohibition on Authorized Instructor Providing Both Training and Aircraft (§ 91.326(a)(1))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(1) of the 2023 NDAA prohibits an authorized instructor from providing both the training and the aircraft when there is compensation exchanged for flight training, checking, or testing. This provision would be codified in § 91.326(a)(1) and extended to flight training, testing, and checking in limited and primary category aircraft, in addition to the experimental aircraft addressed in the legislation. As such, any flight training, checking, or testing given by an authorized instructor in the authorized instructor's own aircraft must either be given without any compensation or must be given in accordance with a LODA. The FAA notes that compensation can be non-monetary because compensation is the receipt of anything of value.[73] For example, the FAA previously found that reimbursement of expenses such as fuel, oil, transportation, lodging, and meals, accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation.[74]

2. Prohibition on Broadly Offering the Aircraft as Available for Flight Training, Checking, or Testing (§ 91.326(a)(2))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(2) of the 2023 NDAA prohibits any person from broadly offering the aircraft as available for the activity. Proposed § 91.326(a)(2) would codify this provision and extend it to limited category aircraft and primary category aircraft that are pilot-owner maintained.

Under proposed § 91.326(a)(2), the persons listed in § 91.326(a) who wish to receive or provide training in one of these aircraft may do so without obtaining deviation authority, as long as they do not broadly offer or advertise services in those aircraft to the public. To highlight this distinction, the FAA notes that when an owner seeks to receive training in their own aircraft, there is no need for the owner to advertise or broadly offer any services to receive that flight training. An aircraft owner would not need to advertise their aircraft as available for flight training.

[70] *See* § 61.1 definition: ''*Flight training* means that training, other than ground training, received from an authorized instructor in flight in an aircraft.'' Flight checking and testing are not flight training but rather are proficiency evaluations that are in most instances administered by persons other than authorized instructors; therefore, the FAA proposes to add these to explicitly permit these activities.

[71] *See* Notification of Policy for Flight Training in Certain Aircraft. This policy has been superseded by the 2023 NDAA.

[72] 86 FR 96493 (Jul. 12, 2021).

[73] Legal Interpretation to Joseph Kirwan (May 27, 2005) (Compensation ''does not require a profit, a profit motive, or the actual payment of funds'').

[74] Legal Interpretation to John W. Harrington (Oct. 23, 1997); *Blakey* v. *Murray,* NTSB Order No. EA–5061 (Oct. 28, 2003).

Rather, the owner would simply hire a flight instructor of their choosing.

This prohibition on offering the aircraft to the public forecloses flights devoid of instructional or educational value and conducted solely for entertainment or leisure under the guise of flight training. The FAA underscores the importance of pilots understanding and being familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will regularly operate. Data has shown that this increased understanding and familiarity results in fewer accidents over time.[75]

Importantly, advertising or broadly offering an aircraft for flight training can take many forms. In general, an entity or individual advertises its services when it communicates to the public, or a segment of the public, that flight training services are indiscriminately available to any person with whom contact is made. Currently, advertisers can promote material in more than just traditional print sources such as magazines or newspapers. Advancing technology allows individuals to reach consumers through electronic communications and internet postings. Moreover, even if an individual limits efforts to solicit flight training services to a class or segment of the general public, it may still be considered ''broadly offering'' its services. For example, if a person posts advertisements only on select social media websites, or within particular groups on a social media website or other internet platform, it may still be deemed to ''broadly offer'' its services if the advertisements express a willingness to provide flight training to all users within a class or segment of those platforms. The FAA also considers establishing a reputation of a willingness to perform a service broadly as contrary to the prohibition in the legislation and the proposed rule.[76] The FAA emphasizes that any leasing scenario remains subject to the prohibition on offering and advertising the aircraft for use. In any case, no person may broadly offer the aircraft or profit from the use of the aircraft and any receipt of compensation is limited to the expenses discussed in the next section.

In support of this prohibition on advertising, the FAA maintains that when aviation operations are offered broadly to the public for compensation, the public expects, and the FAA demands, a higher level of safety. This expectation is evidenced by the requirements that charter operators comply with part 135, scheduled airlines comply with part 121, and flight schools utilize standard category aircraft for flight training unless they possess a LODA. Limited category, experimental, and primary category aircraft do not meet the same certification requirements as standard category aircraft. Therefore, additional restrictions are necessary to maintain the public's expectation of safety.

theirWhile the FAA places great value on the need for pilots to understand and be familiar with the particular systems, procedures, operating characteristics and limitations of the aircraft they will operate, the FAA must also ensure public safety for services broadly offered. Paragraph (a)(2) seeks to balance these interests by imposing restrictions for flight training only outside the scope of personal use. Beyond this, flight training offered to the public is broadly available in standard category aircraft or, if deemed necessary, in a limited category or experimental aircraft in accordance with a LODA under proposed § 91.326(b), discussed later in this preamble.

3. Compensation for Use of the Aircraft (§ 91.326(a)(3))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(3) of the 2023 NDAA limits the type of compensation that may be received for the use of the aircraft. Proposed § 91.326(b) would codify this provision and extend it to limited category, experimental, or primary category aircraft. Under the proposed rule (and consistent with the legislative provision for experimental aircraft), no person would be permitted to receive compensation for use of the aircraft for a specific flight during which flight training, checking, or testing was accomplished, other than expenses for owning, operating, and maintaining the aircraft. Compensation for the use of the aircraft that yields a profit for the operator is prohibited under the legislation and the proposed rule. The FAA makes this distinction to foreclose the use of aircraft holding certain special airworthiness certificates for profit without the safety mitigations provided by a LODA.

The FAA recognizes that operating an aircraft naturally incurs expenses, such as ongoing maintenance of the aircraft, fuel used during a flight, and other expenses associated with aircraft ownership. The FAA notes that the legislation ties the compensation to the costs associated with the specific flight.

When money is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public.[77] Accordingly, operations for compensation involving aircraft holding special airworthiness certificates require additional regulations to ensure public safety. The use of standard category aircraft remains broadly available for those members of the public seeking to receive flight training.

Consistent with these principles, a person may operate for the purpose of flight training in a limited category, experimental, or primary category aircraft without a LODA only when no compensation is exchanged for the use of the aircraft, other than expenses for owning, operating, and maintaining the aircraft.[78] Operations involving compensation for the use of the aircraft that yields a profit will continue to require a LODA.

E. LODA Framework (§ 91.326(b) and (c))

While the FAA maintains that, in general, limited category, experimental, and primary category aircraft should not be broadly offered for flight training, checking, and testing, the FAA finds that there is certain specialized training that may be effectively and safely accomplished in these aircraft under certain conditions. Currently, persons seeking to offer this type of flight training for compensation or hire in limited and primary category aircraft are required to obtain a grant of exemption.[79] By contrast, persons seeking to offer this type of flight training in experimental aircraft may apply for a LODA under § 91.319(h).

In § 91.326(b), the FAA proposes that any person who wants to conduct flight

[75] NTSB Safety Recommendation, A–12–28 through –39 (Jul. 12, 2012), available online: *https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.*

[76] AC 61–142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR 61.113(c), (2020), states,). ''Physically holding out, without advertising, where the pilot gains a reputation of serving all, is sufficient to constitute an offer to carry all customers. There are many means by which physically holding out can take place, *e.g.,* personal solicitation and course of conduct. A pilot's course of conduct can be sufficient to find that there has been a holding out of service to the public because the course of conduct can indicate a willingness to serve all who apply for service. The actions or conduct used to develop the reputation would be considered to be holding out.''

[77] *See* legal interpretation for General Aviation Manufacturers Association, addressed to Mr. Bunce, dated Nov. 19, 2008.

[78] *See* proposed § 91.326(a)(1) which specifies that the authorized instructor cannot provide both the training and the aircraft without a LODA.

[79] *See* **Federal Register** Docket FAA–2013–0506 and FAA–2017–0942 for examples of grants of exemption from § 91.315 for the purpose of flight training in limited category aircraft issued to Delaware Aviation Museum Foundation and Stallion 51 Corporation, respectively.

training, checking, or testing in limited category and experimental aircraft [80] outside the restrictions and limitations of proposed § 91.326(a) may apply for deviation authority. Flight training, checking, or testing operations that would require a LODA include, but are not limited to, receiving compensation for flight training while also receiving compensation for the use of the aircraft and/or advertising or broadly offering the use of an aircraft for flight training, checking, or testing. For example, under the proposed framework, a person who owns an aircraft holding an experimental or limited category special airworthiness certificate, such as a North American B–25 or Curtiss P–40, would be required to hold a LODA to offer transition or proficiency training to the public.

The FAA first introduced deviation authority in a 2004 final rule [81] to allow for training that was, at that time, only available through exemption. Pursuant to § 91.319(a)(2), the 2004 final rule prohibited carrying persons or property in experimental aircraft for compensation or hire. As flight training is considered to be carrying persons for compensation or hire, the deviation authority offered in the 2004 final rule allowed for issuance of a LODA in lieu of an exemption for flight training in experimental aircraft.

NTSB Safety Recommendation A–12–035 advises the FAA to develop and publish an advisory circular, or similar guidance, for the issuance of a Letter of Deviation Authority to conduct flight instruction in an experimental aircraft, to include sample documentation and sample training materials.[82] This recommendation was in response to the NTSB's finding that providing pilots of experimental amateur-built aircraft with better access to training would enhance flight safety. In response to NTSB Safety Recommendation A–12–035, the FAA is proposing LODA framework to provide the FAA with an opportunity to evaluate the operation and impose any additional pilot qualifications and maintenance requirements necessary for safety when offering services to the public. Although § 91.319(h) authorizes the FAA to issue deviation authority for the purpose of flight training in experimental aircraft, the FAA also recognizes that, in certain circumstances, there is value in flight training in limited category aircraft. For that reason, the FAA is proposing to remove the LODA provision in § 91.319(h) and incorporate, expand, and clarify the LODA framework in proposed § 91.326(b) to apply to both limited category and experimental aircraft. The FAA has drafted an advisory circular describing the LODA application process and identifying the factors that the FAA will consider in determining whether a LODA should be issued. The advisory circular is available in the docket for this rulemaking for public comment concurrently with publication of this NPRM. In a 2012 safety recommendation report referencing recommendations A–12–28 through –39, the NTSB concluded that experimental amateur-built aircraft accidents involving loss of aircraft control could be reduced if more pilots received transition training.[83] Since promulgation of the 2004 final rule, FAA and industry research indicates that the training conducted under § 91.319(h) deviation authority continues to reduce accidents in experimental aircraft when conducted in accordance with the conditions and limitations of that deviation authority. Therefore, expanding this deviation authority to permit some flight training, checking, and testing in limited category aircraft is also likely to increase safety and reduce accidents in those aircraft because it would provide a greater incentive to operators of limited category aircraft to seek out and complete such training.

The FAA anticipates that using a single rule to cover deviation authority for limited category and experimental aircraft will promote a streamlined process and relieve the burden on the public to apply for an exemption for limited category aircraft. Additionally, incorporating the LODA framework from § 91.319 into proposed § 91.326(b) would make the application process consistent for limited category and experimental aircraft. The proposed § 91.326(b) framework would apply to owners, operators, and training providers who broadly offer, or receive compensation for, the use of certain aircraft for specialized flight training, checking, and testing.

Flight training, checking, or testing in limited category aircraft are currently only available by grant of exemption from the regulations. The FAA finds this burdensome and labor intensive not only for the agency but also the persons offering this specialized training. Since the 2004 final rule, § 91.319 has provided this training through deviation authority, while maintaining an equivalent level of safety. As a result, the FAA concludes that implementing the LODA framework on a broader scale will similarly support public safety, reduce administrative costs and burdens, and increase operator efficiency.

In further support of codifying a consolidated LODA framework in § 91.326(b), the FAA emphasizes the safe and successful use of LODAs under § 91.319. Under § 91.319(h), the FAA has historically granted LODAs for specialized training in experimental aircraft that could not otherwise be obtained in aircraft holding standard airworthiness certificates, *e.g.,* model-specific training and jet upset recovery training. These LODAs have been issued to operators who demonstrate that their flight instructors, trainees, and aircraft meet specific additional requirements above those generally required to operate experimental aircraft. As currently used under § 91.319, LODAs increase public safety because they support minimum pilot qualifications, structured training curricula, and additional aircraft maintenance inspection requirements. Issuance of a LODA enables the FAA to provide oversight of training and maintenance of the aircraft and place certain restrictions on those who participate. The FAA finds it necessary to place these restrictions within the LODA to ensure safety to the public paying for training in these aircraft who may not be familiar with aircraft holding special airworthiness certificates. Evaluation of the training program ensures a structured and complete training syllabus. The operator and participant must comply with certain conditions and limitations issued with a LODA. Each operator must use aircraft-specific flight and ground training curricula. The operator must keep a record of the training given for a period of three years. Persons providing training, checking, and testing must be authorized under part 61 or part 183, as applicable, for the specific operation and must be qualified in the aircraft to be used. These parameters and oversight requirements ensure the safety of the

[80] The FAA notes that certain primary category aircraft would be excluded from § 91.326(c) because proposed § 91.325(c) would make a LODA unnecessary, as that rule would explicitly enable flight training, checking, and testing without the need for deviation authority.

[81] Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 FR 44771 (Jul. 27, 2004). In the final rule, the FAA amended § 91.319 by adding § 91.319(h) to allow deviation authority from the provisions of § 91.319(a) for the purpose of conducting flight training.

[82] NTSB Safety Recommendation, A–12–28 through –39 (Jul. 12, 2012), available online: *https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.*

[83] NTSB Safety Recommendation, A–12–28 through –39 (Jul. 12, 2012), available online: *https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.*

public during these activities and operations.

1. Granting, Amending, and Cancelling a LODA (§ 91.326(b)(1) and (2))

The FAA proposes to add § 91.326(b)(1) and (2) to prescribe the manner in which the FAA may issue, cancel, and amend LODAs. Particularly, § 91.326(b)(1) clarifies that operators would be granted relief from §§ 91.315 or 91.319(a) through a LODA. In offering this deviation authority in the form of a letter, the FAA intends to model the proposed deviation authority after the current deviation authority provided in § 91.319(h) that would be superseded by proposed § 91.326(b) if adopted.

In addition, the FAA proposes to add § 91.326(b)(2) to enable the FAA to cancel or amend a LODA if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety. For example, the FAA would be able to cancel a LODA for non-compliance with the terms and conditions of the LODA. Likewise, a LODA could be cancelled when a significant number of identical aircraft holding standard airworthiness certificates become available. Once an aircraft is certificated in the standard category and significant numbers are available, the need for the LODA may be unnecessary.

Under proposed § 91.326(b)(2), a LODA could also be amended for safety concerns. For example, the FAA may, when necessary, revise the conditions and limitations or require corrective action to adequately mitigate safety concerns and risk factors as they become known. In conclusion, proposed § 91.326(b)(2) affords the FAA flexibility to modify or cancel the LODA, as needed, based on changing circumstances.

2. Requirements for a LODA (§ 91.326(b)(3))

In § 91.326(b)(3), the FAA proposes to codify a timeline for operators to submit LODA applications, the form and manner requirements for submission, and the information that the applicant should provide. As proposed, an applicant must submit the request for a LODA in a form and manner acceptable to the Administrator. As set forth in the draft LODA AC, *Application and Issuance Process for a Letter of Deviation Authority Issued in Accordance with Part 91, § 91.326,* the form and manner of an application submission may include email, fax, regular mail, or in-person delivery. Consistent with the current application process under § 91.319(h), applicants may apply for a LODA by contacting the Flight Standards District Office (FSDO) nearest their primary place of business. FSDO personnel can provide the applicant with specific instructions on how to present the LODA request to that FSDO and provide the applicant with reference material and supporting information.[84] A draft of the advisory circular has been published for comment concurrently with this NPRM and is available in the rulemaking docket.

The proposed regulation would also require that the application package be submitted at least 60 days before the date of intended operations. The 60-day requirement is proposed to allow the Administrator adequate time to review stakeholder applications and supporting documents. The current § 91.319(h) LODA process has demonstrated that this is a reasonable time allowance. The FAA has determined a need for a 60-day review period to ensure the effectiveness of the LODA and the proper conditions specified within each LODA. The FAA notes that not all LODA training syllabi or justifications will be identical. Therefore, the 60-day review period is intended to provide sufficient time to assess each unique application on a case-by-case basis.[85]

Proposed § 91.326(b)(3)(i) through (ix) enumerate the items an applicant would be required to include in their request for deviation authority. The FAA proposes to require this information from the applicant to evaluate the application to determine whether granting the request for a LODA would be in the interest of safety. Information required by this proposed section includes, for example, in § 91.326(b)(3)(ii), the name and contact information of the individual with ultimate responsibility for operations authorized under the LODA. Likewise, applicants must include a detailed training program demonstrating that the proposed activities would meet intended training objectives. The training program description may include a training overview, a syllabus, minimum instructor qualifications, prerequisites for persons receiving training, a description of teaching aids, special equipment, simulators, and flight training devices, as applicable, and a method for recordkeeping.[86] The FAA proposes to request this training program information from applicants to ensure that, if granted, the requested LODA would solely be used for appropriate, limited training purposes, which would in turn support safe operation of the aircraft.

Additionally, the FAA proposes § 91.326(b)(3)(viii), which specifies additional information required to be submitted by LODA applicants when formation and aerobatic training, or training leading to the issuance of an endorsement is requested. The information required to be submitted for this purpose would describe a process by which a LODA holder will identify whether a trainee has a specific need for that training. The FAA is proposing to require LODA applicants to provide additional reasoning for conducting formation or aerobatic training, or training leading to the issuance of an endorsement because those types of training, generally, can be conducted in standard category aircraft. Because the FAA encourages training to be conducted in the aircraft which a trainee would most often operate, the additional explanation would enable the agency to determine whether granting the applicant's request for a LODA is necessary in the interest of safety. Persons with a specific need include, for example, aircraft builders, purchasers, owners, test pilots, and qualified additional pilots under AC 90–116. The aircraft used for training must have similar handling qualities and flight characteristics to the aircraft being built or flown by the trainee to be eligible. These persons will have regular access to substantially similar aircraft and would benefit from the additional training, as training can expand pilot skills that are transferrable to the aircraft they will regularly fly. Persons without a specific need can receive this training in an aircraft holding a standard airworthiness certificate.

3. Limitations in the LODA (§ 91.326(b)(4))

Currently, under § 91.319(i), the Administrator may prescribe additional limitations that the Administrator finds

[84] FAA Order 8900.1, Vol. 3, Chpt. 11, Sec. 1, Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire, provides information about the issuance of a LODA for conducting flight training under § 91.319(h). Additionally, the FAA is producing a new advisory circular that would provide information, guidance, and recommendations on the application and issuance process for obtaining a LODA to operate a limited category, primary category, or experimental aircraft for compensation or hire while providing flight training, checking, and testing.

[85] For those operators who currently hold an exemption or a LODA, section IV(E)(6) of this NPRM explains how operators would transition to a LODA issued under the proposed rule.

[86] Additional information describing the items applicants are encouraged to submit for a complete LODA application is provided in the LODA advisory circular, which has been placed in the docket for this rulemaking.

necessary for aircraft holding experimental airworthiness certificates. The conditions and limitations the FAA places in LODAs under the discretion provided in § 91.319(i) allow the FAA to authorize appropriate training activity not otherwise permitted by regulation while ensuring the safety of the NAS and persons and property on the ground. Historically, the FAA has included a list of general conditions and limitations related to aircraft inspection and maintenance requirements, airman qualifications, operating limitations, and training requirements in all LODAs authorizing flight training. For example, current LODAs contain a limitation that requires the operator to keep a record of the training given for a period of three years. This condition ensures that the FAA may conduct appropriate safety oversight of operations conducted under the LODA. Likewise, given the unique risks posed by aircraft with ejection seats, LODAs have contained a requirement that trainees must complete an acceptable course of ejection seat training before training in an aircraft with an ejection seat. The FAA also includes conditions and limitations for trainees and flight instructors with regard to minimum qualifications such as certificate, ratings, and endorsements even when the trainee or flight instructor is not acting as PIC of the flight. LODA holders must comply with the conditions and limitations imposed under § 91.319 while conducting activity under the LODA unless the FAA provides relief from the conditions and limitations in the LODA.

The FAA proposes to add a provision similar to § 91.319(i) in proposed § 91.326(b)(4) to allow the Administrator to continue to prescribe additional conditions and limitations in LODAs for experimental aircraft and extend that allowance to LODAs issued for training, testing, and checking in limited category aircraft when necessary for safety. The FAA would continue to impose these safety conditions and limitations on future training, checking, and testing conducted under LODAs issued under proposed § 91.326(b). The FAA reiterates that, when training, checking, and testing can be successfully accomplished in a standard category aircraft, a LODA to conduct such training in aircraft with special airworthiness certificates is not appropriate. Where training, checking, and testing is allowed in experimental and limited category aircraft, the FAA must have a means to ensure that safety is maintained given the nature of the aircraft used. The full list of conditions and limitations is further described in the LODA Advisory Circular (AC), Table 4, ''Additional Limitations,'' which has been placed in the docket for this rulemaking. The FAA is proposing slight modifications to the standard conditions and limitations imposed under § 91.319(i) and specifically requests comment on all of the conditions and limitations set forth in Table 4 of the AC.

4. Persons Permitted on Board During Operations Under a LODA (§ 91.326(b)(5))

The FAA proposes to add § 91.326(b)(5) to limit the persons permitted to be on board an aircraft during operations under a LODA. The airworthiness certification standards for aircraft that hold special airworthiness certificates do not rise to the level of demonstrated safety and reliability of those holding standard airworthiness certificates. Besides the instructor, designated examiner and the person receiving the training, checking, or testing, only persons deemed essential to the safe operation of the aircraft would be permitted to be carried on board the aircraft. Notably, a pilot who holds a temporary letter of authorization (LOA) to act as PIC in an experimental aircraft who also holds a flight instructor certificate is generally not authorized to conduct flight training under a LODA. Temporary LOAs are issued to a pilot to act as PIC in unique, highly specific circumstances, such as in the case of a first flight of a new or first-of-a-kind aircraft. Temporary LOAs are not issued to flight instructors for the purpose of flight training under a LODA.

In addition to authorized instructors, designated examiners, and those receiving the flight training or being checked or tested, the FAA proposes to permit persons essential for the safe operation of the aircraft to be on board during operations under a LODA. The FAA notes that, to be conducted effectively, flight training, checking, and testing operations do not require persons besides authorized flight instructors, designated examiners, those receiving flight training or being checked or tested, and other persons essential for the safe operation of the aircraft to be on board. The addition of persons not directly related to flight training, testing, checking, or operation of the aircraft may create unnecessary distraction.

However, some aircraft holding special airworthiness certificates may have unique characteristics or design features that necessitate additional persons for safety. For example, operators of certain vintage, multi-engine aircraft, like the North American B–25 or Boeing B–17, choose to utilize persons to perform certain functions related to aircraft safety. These functions may include observing engines to monitor for smoke/malfunction, observing engine instruments to monitor for anomalies, or operation of mechanical systems that may not be in easy reach of the flightcrew. Importantly, the determination of whether a person is essential for safety would be determined based on several factors. The FAA would consider whether these persons are trained and designated by the operator for these functions and are not members of the general public. The FAA would be unlikely to consider persons unaffiliated with the operator and designated to perform essential functions ''on the spot'' to be genuinely performing a duty essential to safety. This precludes an operator from assigning ''essential functions'' to persons who do not normally participate in the operation of the aircraft. For example, a non-pilot friend in the back seat given a nominal task or observing training could be construed as a ride for hire which is not contemplated by the proposed regulation. The FAA will also consider whether the operator routinely fills a particular position to determine if it is essential. For example, if an operator routinely utilizes a crew complement of two pilots, but one day decides to put a third person on board to ''monitor engines'', the Administrator would likely not consider that additional person to be essential. However, if an operator routinely utilizes a trained crew chief who is present because there is emergency mechanical equipment beyond the reach of the flightcrew, like an emergency gear extension crank, the Administrator may consider that person to be essential for safety. Likewise, additional person(s) would not be allowed to be present solely to receive transportation or for recreational purposes.

The specification of the persons permitted to be carried on board the aircraft in the proposed § 91.326(b)(5) is meant to provide clarity to those applying for a LODA under § 91.326. In this regard, the list of recognized persons is exclusive. Outside of the personnel delineated in the proposed § 91.326(b)(5), the FAA does not contemplate the additional carriage of persons on board the aircraft even with the issuance of a LODA. Such activity, therefore, would remain prohibited under this proposed rule.

5. Types of Training (§ 91.326(b)(6))

The FAA proposes to limit the types of training, testing, and checking that may be authorized under the proposed deviation authority. Currently, LODAs are issued for certain specialized types of experimental aircraft training. Aircraft holding special airworthiness certificates are not designed, built, or maintained to the same standard as those holding standard airworthiness certificates. Therefore, the FAA proposes to limit the availability of the use of experimental and limited category aircraft in flight training offered to the public by limiting the types of training available.

The types of training currently available under a LODA are limited in nature and generally contemplate only specialized training that cannot be accomplished in aircraft holding standard airworthiness certificates. For example, private pilot certification training and testing is not available for LODA training, as this can be accomplished in aircraft holding standard airworthiness certificates. Conversely, jet upset recovery training is available for LODA training because there are no standard category jet aircraft with limitations that allow for aerobatic flight.

Except in specific circumstances, LODAs should not be issued to permit flight training toward the issuance of a pilot certificate, rating, or operating privilege that can be obtained through training and testing in an aircraft with a standard category airworthiness certificate. For example, syllabi developed solely for aerobatic training or flight training that leads to the issuance of an endorsement (*e.g.,* tailwheel or pressurized aircraft, or a complex or high performance airplane) would not be considered appropriate for issuance of a LODA. In addition, no demonstration or discovery flights would be authorized. Demonstration flights, discovery flights, sales demonstrations, introductory flights, experiential flights, and other flights not related to the flight training syllabus are not authorized under a LODA.

On the contrary, a LODA may be requested to facilitate specialized training necessary to gain skills and abilities to safely operate specific aircraft. In addition, a LODA may be used to receive training that cannot otherwise be conducted in aircraft holding a standard airworthiness certificate. For example, an applicant may utilize a LODA to participate in model-specific transition training. Similarly, an applicant may request a LODA to conduct training and testing that leads to the issuance of a specific experimental aircraft authorization, limited category type rating, rotorcraft gyroplane training at all levels, a sport pilot certificate, or sport pilot operating privilege.

The FAA includes a description of each type of training contemplated under this section in the draft LODA AC placed in the docket to this rulemaking. The FAA welcomes public comment on the types of training authorized under a LODA and the accompanying safety rationale in response to publication of the draft LODA AC.

The FAA notes that LODAs are intended to bolster specialized training in aircraft holding certain special airworthiness certificates that cannot otherwise be accomplished in aircraft holding standard airworthiness certificates. In support of this intent, as noted, LODAs will not be issued exclusively to permit aerobatic or formation training or to permit training for the sole purpose of issuance of an endorsement. However, there are certain circumstances which may warrant aerobatic training, formation training, or issuance of an endorsement as part of a broader training program. This type of training will only be available to trainees who have a specific need to receive such training. The AC published concurrently with this NPRM provides greater detail on when a person may be considered to have a ''specific need'' to receive this type of training, and the other corresponding requirements for airmen certification and flight characteristics.

6. Status of Current LODAs (§ 91.326(c))

The FAA proposes to add § 91.326(c) to provide clarity to those who hold a LODA issued under § 91.319(h) at the time of publication of the final rule if the proposal is adopted. In § 91.326(c)(1) and (2), the FAA proposes that any person who holds a LODA which is still active as of the date of the final rule (should this proposal be adopted) would be permitted to continue to operate under that LODA subject to its terms and conditions for 24 months after the effective date of the final rule. This proposed language would ensure that LODA holders continue to comply with the conditions and limitations under which their LODA was issued between the publication of a final rule and the termination of their LODAs granted under § 91.319(h). The FAA proposes to permit § 91.319(h) LODA holders to continue operating under those LODAs for 24 months after the effective date of a final rule because it would ensure those LODA holders have adequate time to apply for a new LODA under the § 91.326(b) framework. In § 91.326(c)(3), the FAA proposes to add that any existing LODAs issued under § 91.319(h) may be cancelled or amended at any time, as is currently provided for under § 91.319(h). Permitting those existing LODAs to be cancelled or amended at any time would enable the FAA to ensure the continuing safety of operations permitted under the existing LODAs. Finally, in § 91.326(c)(4), the FAA proposes to terminate all preexisting LODAs issued under § 91.319(h) 24 months after the effective date of a final rule. Current exemption holders would instead apply for a LODA under proposed § 91.326(b). Some operators have been granted exemptions in limited category aircraft for the purpose of offering flight training to the public. Except for exemptions issued for Living History Flight Experiences (LHFE), exemptions from § 91.315 issued for the purpose of flight training in limited category aircraft will not be renewed or extended. LHFE exemptions are granted for the purpose of providing flight experiences in certain historically-significant aircraft. These LHFE exemptions will be unaffected by this proposed rulemaking.

In anticipation of the initial volume of applications, the FAA encourages applicants to submit their LODA applications at least 180 days prior to the 24-month expiration date. Although present LODA holders are not guaranteed deviation authority under this new provision, this 180 days would help current LODA holders ensure that there is no gap in LODA coverage between their existing LODA terminating and their new LODA under § 91.326(b), should it be issued. In addition, the FAA notes that currently, LODAs are no longer required for owners and operators of experimental aircraft who comply with section 5604 of the 2023 NDAA (proposed to be codified in § 91.326(a)).

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes

on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product.

In conducting these analyses, the FAA has determined that this rule: (1) will result in benefits that justify costs; (2) is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policy and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

1. Summary

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing and checking in certain aircraft with special airworthiness certificates separately. The provisions related to PAO impose no new costs and the FAA expects the proposal will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings.[87] The provisions related to training, testing and checking impose approximately $100,000 in total one-time costs (undiscounted) over a period of two years. Roughly half of these costs stem from the requirement for the current approximately 180 LODA holders who broadly offer certain aircraft with special airworthiness certificates for training to reapply within two years of the effective date of a final rule, if this proposed rule is adopted. The other half of the costs include the time costs to the FAA which must process these applications over the first two years. However, the FAA expects the cost savings from the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with certain special airworthiness certificates, to exceed the initial costs. Overall, the FAA concluded that this proposal would maintain and promote safety with minimal impact on cost.

2. Logging Flight Time in Public Aircraft Operations

The FAA requires pilots to log flight time used to meet training, aeronautical experience and recent flight experience requirements for civil pilot certificates and ratings.[88] Currently, logging of flight time in aircraft used for PAO is limited to official law enforcement flights. The FAA proposes to extend logging pilot flight time in PAO not only to forestry and fire protection services, as directed by section 517 of the FAA Reauthorization Act of 2018, but also to any PAO including operations involving national defense, intelligence missions, search and rescue, aeronautical research and biological or geological resource management. The FAA expects the rule to lower the cost for pilots conducting PAO to maintain their civil certificates and ratings. Although pilots conduct PAO outside of FAA civil certification and certain safety oversight regulations, each government entity may maintain its own certification system and requirements for pilots. For many government entities, this includes adopting the same standards as those codified in 14 CFR to ensure safety and comply with liability insurance requirements.[89] For example, the California Department of Forestry and Fire Protection (CAL FIRE), a state agency that is the largest firefighting air force in the world [90] with over 50 aircraft, requires its fixed-wing and helicopter pilots to maintain FAA commercial pilot certificates, various FAA ratings, and recent flight experience requirements.[91] Additionally, the CAL FIRE 8300 manual contains specific references and obligations for compliance with FAA regulatory requirements applicable to civil operations.[92]

Allowing pilots to credit their PAO flight time would enable PAO pilots to meet FAA flight experience and recency requirements in the course of their duties, thereby avoiding costs required to accrue flight time and recent experience in civil aircraft operations. These avoided costs could include avoided travel time, flight time, fuel costs, and costs for use of a civil aircraft. Additionally, the FAA finds that recording PAO flight time will not impose additional costs because PAO pilots already record their flight time to meet the safety and insurance requirements of their employers. For this reason, the FAA proposes to allow pilots to retroactively credit PAO flight time. The FAA concludes that the proposal to allow pilots to record and credit PAO flight time will not adversely affect safety, impose any additional costs, or pose novel policy or legal issues.

3. Flight Training, Testing, or Checking for Compensation in Certain Aircraft With Special Airworthiness Certificates

Consistent with the 2023 NDAA, the proposal allows owners or operators of experimental aircraft to receive training, testing, and checking in their aircraft without a LODA, in certain circumstances. The proposed rule would extend the provision to training, testing, and checking in limited category and primary category aircraft. Additionally, the proposal moves the current LODA process for experimental aircraft in § 91.319(h) to proposed § 91.326(b) and extends the LODA process to include limited category and experimental light sport aircraft. The goal is to promote safety by making it simpler for pilots to receive elective or specialized training relevant to aircraft they regularly fly, while also ensuring effective training and maintenance standards in certain aircraft with special airworthiness certificates broadly offered for training, checking or testing, for compensation.

Overall, the FAA expects the training proposal to increase safety, clarify and simplify regulatory requirements, reduce compliance costs for operators, administrative costs for the FAA and

[87] The FAA does not maintain counts of pilots who fly PAO for federal, state and local governments and there is insufficient data for the FAA to estimate the number of pilots affected by the PAO proposal. See ''How to Become a Government Pilot'' in Flying Magazine by James Wynbrandt, Dec.13, 2017. Available at: *https://www.flyingmag.com/how-to-become-government-pilot/*. Last accessed Jul. 22, 2022.

[88] 14 CFR 61.51(a) does not require pilots to log all flight time. Pilots are only required to record aeronautical experience used to obtain civil certificates and ratings and meet recent flight experience requirements.

[89] Wynbrandt, James W. ''How to Become an Airborne Law Enforcement Pilot'' in Flying, Dec. 18, 2017. Accessed Feb. 8, 2022, *https://www.flyingmag.com/how-to-become-an-airborne-law-enforcement-pilot/#:~:text=Most%20state%20and%20municipal%20ALE,aren't%20hard%20to%20find*.

[90] Joiner, Stephen. ''The Pilots Who Fight California's Wildfires'' Smithsonian, August 2019. Accessed Feb. 15, 2022, *https://www.smithsonianmag.com/air-space-magazine/wildfire-wars-180972602/*.

[91] CAL Fire Petition for Exemption 14 CFR 61.51(j), Nov. 23, 2020.

[92] CAL Fire Petition for Exemption 14 CFR 61.51(j), Nov. 23, 2020.

time and travel costs for pilots seeking elective or specialized training, testing, or checking. The FAA evaluated costs and benefits against the baseline established by the ''Notification of Policy for Flight Training in Certain Aircraft,'' published in the **Federal Register** July 12, 2021,[93] as well as the recently passed 2023 NDAA, and concluded the cost impacts are modest and the proposal poses no novel legal or policy issues.

4. Cost Savings

The FAA expects the proposal to generate cost-savings for owners or operators of certain aircraft with special airworthiness certificates who seek specialized training, testing, or checking in aircraft they own or regularly operate. Under current rules, owners or operators of limited and primary category aircraft must petition the FAA for an exemption.[94] The recently passed 2023 NDAA eliminated the LODA requirement for owners and operators of experimental aircraft receiving training in their own aircraft. The proposal in § 91.326(a) would codify the legislation with regard to LODAs for experimental aircraft and eliminate the LODA requirement for owners and operators who receive training, testing, or checking in their aircraft and pay compensation for instruction. The elimination of the exemption requirements would result in time savings for owners and operators who would no longer need to apply for an exemption. Likewise, the proposal would reduce the administrative costs at the FAA associated with evaluating and tracking exemption petitions.

5. Costs and Cost Savings for Operations Broadly Offered or Advertised

Under the proposed § 91.326(b), if an operator of experimental or limited category aircraft broadly offers or advertises flight training, checking, and testing in these aircraft, the operator must obtain prior approval from the FAA in the form of a LODA. To obtain a LODA, the operator must submit an application to the FAA that includes an aircraft-specific training program at least 60 days in advance of training operations. Under the proposed change to § 91.325, operators of certain primary category aircraft will not require a LODA and will no longer need to petition for an exemption to conduct training, testing, or checking.

Importantly, the proposed LODA requirements under § 91.326(b) are similar to the current LODA requirements under § 91.319(h) for operators of certain experimental aircraft who broadly offer their aircraft for training, testing, or checking. The FAA also proposes to terminate current training LODAs within two years of the effective date of a final rule. However, to ensure that all operations in which an aircraft with a special airworthiness certificate is ''held out'' for training, testing, or checking comply with the proposed requirements, holders of current exemptions and LODAs permitting these training operations will need to apply for a LODA under the proposed § 91.326(b). The FAA proposes that these exemption and LODA holders reapply within two years of the effective date of the final rule.

The FAA finds that the cost impacts of the LODA requirement for training operations in experimental and limited category aircraft ''held out'' broadly for training will be small relative to the current regulatory baseline. The costs and cost savings will vary across groups affected by the regulation. Therefore, the FAA evaluated the cost impacts separately for each of the identifiable interest groups expected to realize costs or savings.

Experimental aircraft operators who currently hold LODAs under § 91.319(h) to offer their aircraft broadly for training will incur the cost of reapplying for their LODA within two years of the effective date of a final rule. The FAA estimates the reapplication requirement would generate approximately $100,000 in total undiscounted costs within the first two years following the effective date of a final rule. This estimate includes the time costs to the approximately 180 current LODA holders [95] who reapply and the FAA which must process these applications.[96] [97] [98]

Under current guidance,[99] LODA applicants already submit most of the proposed requirements related to training plans, instructor qualifications, maintenance, airworthiness, and record-keeping in order to successfully obtain and maintain a LODA. For the most part, the cost of reapplying will consist of the time to gather the relevant information and submit the new application. Current LODA holders who reapply successfully will gain the benefit of broadly offering their aircraft for flight testing and checking. Current LODAs only allow operators to broadly offer or advertise their aircraft for flight training and do not permit checking or testing.

Similarly, the FAA expects minimal costs for operators of limited category aircraft with exemptions to apply for a LODA prior to expiration of their exemptions. Currently, there are fewer than five active training exemptions for limited category aircraft. Moreover, these exemptions normally only have a duration of two years and the FAA expects most exemption holders to already meet most of the LODA requirements outlined in the accompanying LODA Advisory Circular. The cost will consist of the time to gather the required information and submit a new LODA application.

For future LODA applicants who seek to broadly offer their experimental or limited category aircraft for training, testing, or checking, the proposal is expected to lower compliance costs. Although the proposed LODA requirements are similar to current requirements for operators who broadly offer aircraft holding certain special airworthiness certificates for training,

[93] 86 FR 36493 (Jul. 12, 2021), ''Notification of Policy for Flight Training in Certain Aircraft.'' The FAA published this policy statement to establish simplified procedures for owners and operators of certain aircraft with special airworthiness certificates to obtain prior approval from the FAA for training in their own aircraft. The policy clarification also reaffirmed the need for certain operators to obtain prior approval from the FAA in the form of a LODA or exemption.

[94] Under 14 CFR 11.5, a petition for exemption is a request from an individual or entity requesting relief from a current regulation.

[95] Estimate of current LODA holders under § 91.319(h) obtained from FAA Aviation Safety (AVS) line of business. AVS currently tracks active LODAs in FAA's Web-based Operations Safety System (WebOPSS).

[96] The FAA estimated 4 hours per application for the LODA holder to reapply. The undiscounted applicant cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed Apr. 12, 2022, *https://www.bls.gov/oes/current/oes532012.htm.*

[97] The undiscounted FAA cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG–13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

[97] FAA *Order 8900.1, Flight Standards Management Information System, Vol. 3, Chpt. 11, Sec. 1.* Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire.

[98] The undiscounted FAA cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG–13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

[99] FAA *Order 8900.1, Flight Standards Management Information System, Vol. 3, Chpt. 11, Sec. 1.* Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire.

the simplified regulatory structure and guidance in the accompanying advisory circular is expected to make it easier for potential applicants to understand requirements and submit a successful application.

Overall, the FAA does not expect the proposal to significantly increase administrative costs at the FAA. The FAA will incur costs within the first two years of a final rule's effective date to process LODA applications from the small subset of current holders of LODAs or exemptions required to reapply under the proposal. However, in the long run the streamlined regulatory structure and guidance is expected to reduce the amount of time the FAA must spend obtaining additional information from applicants and evaluating applications.

Finally, the clarification and simplification of the LODA process for operators of aircraft with certain special airworthiness certificates who advertise or broadly offer their aircraft for training-might ultimately lower travel costs for pilots seeking the types of supplemental and specialized training envisioned under the proposed § 91.326(b). If more operators successfully apply for LODAs to broadly offer specialized training, pilots interested in receiving this optional specialized training might not have to travel as far to receive it. For example, the FAA recognizes that training in an Experimental Light-Sport Aircraft (ELSA) is beneficial for pilots to gain familiarity with the performance and handling qualities of other light-sport aircraft and ultralights. Currently, there are some two-seat aircraft that perform and handle similarly to an ultralight, certificated as Special Light-Sport Aircraft (SLSA) available to conduct training, but not available in sufficient numbers for widespread availability. Under the proposal, the availability of ELSA for training through LODAs might enable pilots of other light-sport aircraft and ultralights to receive optional training without traveling as far, consequently, reducing fuel costs incurred from travel, as well as the time cost of travel.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination with a reasoned explanation.

While the proposed rule would likely impact a substantial number of small entities, it would have a minimal economic impact. The PAO proposal does not impose any new requirements or costs on small entities. It fulfills the mandate in section 517 of the FAA Reauthorization Act of 2018 that directs the FAA to allow pilots of aircraft under the control of forestry and fire protection agencies engaged in PAO to credit their flight time towards FAA civil regulatory requirements. It enables pilots to log aeronautical experience and recent flight experience accumulated during PAO and to credit this experience toward FAA civil certificates and ratings.

The proposal also simplifies the regulations for operators of certain aircraft with special airworthiness certificates to obtain a LODA allowing them to broadly offer their aircraft for elective or specialized flight training, testing, and checking. Relative to current requirements to obtain a LODA or exemption for these training operations, the proposal clarifies requirements and creates uniform standards. The proposal also expands the types of aircraft eligible for flight training, testing, and checking under a LODA. The only new cost imposed by the proposal affects the holders of approximately 180 active training LODAs who will be required to reapply within two years of the effective date of a final rule. The FAA proposes to require these operators to reapply to ensure compliance with the proposed standardized LODA process. The FAA estimates that each current LODA holder would spend approximately four hours to resubmit a LODA application at an average cost of approximately $250 per LODA.[100]

The draft LODA advisory circular, published concurrently with this proposed rule, provides guidance, sample documentation, and training materials to fulfill Recommendation A–12–035 of the National Transportation Safety Board (NTSB). The FAA expects the LODA advisory circular to clarify the application process, thereby making it easier for potential applicants to understand requirements and submit a successful application.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis of this certification.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective such as the protection of safety and does not operate in a manner that excludes imports, that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that the proposal responds to a domestic safety objective. The FAA has determined that this proposed rule is not considered an unnecessary obstacle to trade.

[100] Cost per resubmitted LODA calculated as four hours times the average labor rate, including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed Apr. 12, 2022, *https://www.bls.gov/oes/current/oes532012.htm.*

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $165 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

As part of this rulemaking action, the FAA is also requesting OMB approval for a new one-time information collection request. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection revisions to OMB for its review.

Summary: The proposed rule creates § 91.326(b) which establishes unified requirements for operators who broadly offer certain aircraft with special airworthiness certificates for flight training, testing, or checking to obtain prior approval from the FAA in the form of a LODA. Through the LODA process the FAA provides oversight of operators who advertise or broadly offer certain aircraft with special airworthiness certificates for elective and specialized flight training, testing, and checking. The advisory circular published concurrently with this proposed rule provides guidance, sample documentation, and training materials to fulfill Recommendation A–12–035 of the National Transportation Safety Board (NTSB). The FAA expects that the proposed § 91.326(b) and advisory circular will ensure consistency and clarify the application process, thereby making it easier for potential applicants to understand requirements and submit a successful application.

Under the current § 91.319(h), operators of certain experimental aircraft already have the opportunity to apply for LODAs permitting them to advertise or broadly offer their aircraft for flight training, testing, or checking in exchange for compensation that includes use of the aircraft. The proposed § 91.326(b) extends the opportunity to apply for a LODA to operators of aircraft not currently eligible for LODAs under § 91.319(h). Previously ineligible aircraft that would be eligible for operations under a LODA in the proposed § 91.326(b) include experimental light-sport aircraft (ELSA) and limited category aircraft. Under current rules, operators of primary category and limited category aircraft are required to petition the FAA for an exemption [101] to broadly offer their aircraft for flight training, testing or checking. Under proposed changes to § 91.325 operators of primary category aircraft will be permitted to conduct training operations without obtaining a LODA or exemption.

In addition to extending LODA eligibility to operators of additional limited category aircraft, the proposed rule will also terminate all active § 91.319(h) LODAs for training operations for compensation in experimental aircraft within two years of the effective date of the final rule. Exemptions issued for flight training in limited and primary category aircraft will not be renewed. Exemptions issued for Living History Flight Experiences are not affected by the proposed rule. The FAA expects operators of experimental or limited category aircraft with active LODAs or exemptions,[102] respectively, who broadly offer their aircraft for training to apply for a LODA under the proposed § 91.326(b) within this time period. The FAA currently issues LODAs without expiration dates for eligible operators who broadly offer their aircraft for training. The FAA is proposing to terminate current LODAs in order to ensure that all operators are in compliance with the proposed requirements.

[101] Under 14 CFR 11.5, a petition for exemption is a request from an individual or entity requesting relief from a current regulation. The FAA expects that the new guidance associated with the LODA process will reduce burden hours relative to petitioning for exemptions.

[102] Exemptions are typically only valid for two years. Therefore, the FAA does not expect current exemption holders to be materially affected by the requirement to apply for a LODA within 2 years. The FAA expects that the information and time requirements to apply for a LODA under § 91.326(c) for current exemption holders will be similar to the time and information requirements to renew an exemption, but substantially less than the time requirements to petition for a new exemption.

The burden analysis in this proposed rule only applies to holders of active LODAs who must reapply within two years of the effective date of a final rule. On February 14, 2022, the FAA published a separate notice to revise OMB Control Number 2120–0005 for information collection related to LODAs for flight training, testing, and checking in certain experimental aircraft.[103]

Use: The FAA will use the information provided by LODA applicants to promote safety for specialized flight training, testing, or checking offered to the public in experimental and limited category aircraft. The LODA framework enables the FAA to provide oversight to ensure effective training and maintenance of the aircraft.

Respondents: The FAA estimates that within the first two years of the effective date of a final rule, approximately 180 current LODA holders will reapply for LODAs.[104]

Frequency: One time per applicant. The proposed LODAs do not have an expiration period.

Annual Burden Estimate: For current LODA holders who reapply within the first two years of the effective date of a final rule, the FAA estimates a one-time burden of four hours per applicant. The FAA expects the applicant to keep the required information as a condition of the current LODA, so the burden of reapplying will consist of the time to gather the required information and resubmit. Current LODA holders are already required to meet the recordkeeping and other proposed requirements. Therefore, the proposal creates no new annual burden for current LODA holders who reapply. The proposed LODAs do not have an expiration date, so there will be no renewal costs. The FAA assumes the burden hours per application for the FAA to process applications from current LODA holders who reapply will be four hours.

Table 1 presents the annual burden hours and undiscounted costs for the approximately 180 current LODA holders required to reapply within the first two years of the effective date of a final rule. Table 2 presents the burden estimate and costs for the Federal Government to process these LODA applications. The total undiscounted cost of burden hours for applicants and the FAA combined is estimated to be

[103] *See* 87 FR 8335 (Feb. 14, 2022) ''Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107.''

[104] The FAA Web-based Operations Safety System (WebOPSS) contains 180 LODAs for experimental aircraft under § 91.319(h).

$102,642 over two years. Total discounted (at 7 percent) cost of burden hours is estimated to be $91,743 over two years. Total annualized costs at a 7 percent discount rate are $47,423.

TABLE 1—TOTAL BURDEN HOURS AND COSTS FOR CURRENT LODA HOLDERS WHO MUST REAPPLY

Year	Number of LODA applications from current LODA holders [1]	Hours per application current LODA holders	Total burden hours	Total cost for applicants undiscounted [2]
1	60	4	240	$15,181
2	120	4	480	30,362
Total			720	45,543
Mean			360	22,772

LODA = Letter of Deviation Authority.
[1] The FAA assumes that approximately one third of current LODA holders will reapply the first year after the effective date of a final rule and the remaining LODA holders will reapply in the second year.
[2] Undiscounted applicant cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed April 12, 2022, *https://www.bls.gov/oes/current/oes532012.htm.*

TABLE 2—TOTAL BURDEN HOURS AND COST TO FEDERAL GOVERNMENT TO PROCESS APPLICATIONS FROM CURRENT LODA HOLDERS WHO MUST REAPPLY

Year	Number of LODA applications from current LODA holders [1]	Hours per application FAA	Total burden hours FAA	FAA cost undiscounted [2]
1	60	4	240	$19,033
2	120	4	480	38,066
Total	180		720	57,098
Mean	90		360	28,549

LODA = Letter of Deviation Authority.
[1] The FAA assumes that approximately one third of current LODA holders will reapply the first year after the effective date of the final rule and the remaining LODA holders will reapply in the second year.
[2] Undiscounted government cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG–13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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 hours and cost;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by August 22, 2023. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified a difference with these proposed regulations. The FAA notes that, under proposed § 61.51(f)(4), pilots designated by a government entity as an SIC may log SIC time during authorized PAO with certain limitations. The FAA determined that this provision is inconsistent with the ICAO standard for logging. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate would have a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that he or she has met the ICAO standards.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rule qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rulemaking under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a

substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should 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.

B. Confidential Business Information

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

C. Electronic Access and Filing

A copy of this notice of proposed rulemaking, all comments received, any final rule, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this rulemaking will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Flight instruction, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation Safety, Charter flights, Freight, Reporting and recordkeeping requirements, Security measures, Transportation.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, and 45301–45302, and sec. 2307, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); and sec. 318, Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44703 note).

■ 2. Amend § 61.51 by revising paragraphs (f) and (j)(4) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(f) *Logging second-in-command flight time.* A person may log second-in-command time only for that flight time during which that person:

(1) Is qualified in accordance with the second-in-command requirements of § 61.55, and occupies a crewmember station in an aircraft that requires more than one pilot by the aircraft's type certificate;

(2) Holds the appropriate category, class, and instrument rating (if an instrument rating is required for the flight) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted;

(3) Serves as second-in-command in operations conducted in accordance with § 135.99(c) of this chapter when a second pilot is not required under the

type certification of the aircraft or the regulations under which the flight is being conducted, provided the requirements in § 61.159(c) are satisfied; or

(4) Is designated by a government entity as second in command when operating in accordance with paragraph (j)(4) of this section provided the aircraft used is a large aircraft or turbo-jet powered airplane; or holds or originally held a type certificate that requires a second pilot provided that:

(i) Second-in-command time logged under paragraph (f)(4) of this section may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating; and

(ii) An applicant for an airline transport pilot certificate who logs second in command time under paragraph (f)(4) of this section is issued an airline transport pilot certificate with the limitation, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 ''Personnel Licensing'' to the Convention on International Civil Aviation. An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under this paragraph when the applicant presents satisfactory evidence of having met the ICAO requirements and otherwise meets the aeronautical experience requirements of § 61.159.

* * * * *

(j) * * *

(4) An aircraft used to conduct a public aircraft operation under 49 U.S.C. 40102(a)(41) and 40125.

* * * * *

■ 3. Amend § 61.57 by adding paragraph (e)(5) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(e) * * *

(5) Paragraphs (a) and (b) of this section do not apply to a person receiving flight training from an authorized instructor, provided:

(i) The flight training is limited to the purpose of meeting the requirements of paragraphs (a) and (b) of this section;

(ii) Notwithstanding the provisions of paragraphs (a) and (b), the person receiving flight training meets all other requirements to act as pilot in command of the aircraft; and

(iii) The authorized instructor and the person receiving flight training are the sole occupants of the aircraft.

■ 4. Amend § 61.159 by revising paragraph (e) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

* * * * *

(e) An applicant who credits time under paragraphs (b), (c), and (d) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

■ 5. Amend § 61.161 by revising paragraph (d) to read as follows:

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

* * * * *

(d) An applicant who credits time under paragraph (c) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

■ 6. Amend § 61.193 by:

■ a. Revising paragraphs (a) introductory text and (a)(7); and

■ b. Adding paragraph (c).

The revisions and addition read as follows:

§ 61.193 Flight Instructor Privileges.

(a) A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings to conduct ground training, flight training, certain checking events, and to issue endorsements related to:

* * * * *

(7) A flight review, operating privilege, or recency of experience requirement of this part, or training to maintain or improve the skills of a certificated pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

■ 7. Amend § 61.413 by:

■ a. Revising paragraphs (a) introductory text and (a)(6); and

■ b. Adding paragraph (c).

The revisions and addition read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

(a) If you hold a flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to conduct ground training, flight training, certain checking events, and to issue endorsements. The kind of training and the endorsements that may be issued are those required for, or related to:

* * * * *

(6) A flight review or operating privilege for a sport pilot, or training to maintain or improve the skills of a sport pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 8. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Sec. 5604 of Pub. L. 117–263.

■ 9. Revise § 91.315 to read as follows:

§ 91.315 Limited category civil aircraft: Operating limitations.

Except as provided in § 91.326 of this part, no person may operate a limited category civil aircraft carrying persons or property for compensation or hire in operations that:

(a) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(b) Are listed in § 119.1(e) of this chapter;

(c) Require management specifications for a fractional ownership program issued in accordance with Subpart K of part 91 of this chapter; or

(d) Are conducted under parts 129, 133, or 137 of this chapter.

■ 10. Amend § 91.319 by:

■ a. Revising paragraphs (a) introductory text, (a)(2), (d)(3), (e)(2) and (f); and

■ b. Removing and reserving paragraph (h).

The revisions read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) Except as provided in § 91.326 of this part, no person may operate an

aircraft that has an experimental certificate—

(1) * * *

(2) Carrying persons or property for compensation or hire in operations that:

(i) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(ii) Are listed in § 119.1(e) of this chapter;

(iii) Require management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter; or

(iv) Are conducted under parts 129, 133, or 137 of this chapter.

* * * * *

(d) * * *

(3) Notify air traffic control of the experimental nature of the aircraft when utilizing air traffic services.

(e) * * *

(2) Conduct operations authorized under § 91.326 of this part.

(f) No person may lease an aircraft that is issued an experimental certificate under § 21.191(i) of this chapter, except—

(1) In accordance with paragraph (e)(1) of this section; or

(2) To conduct a solo flight in accordance with a training program included as part of the deviation authority specified under § 91.326(b) of this part.

* * * * *

(h) [Reserved]

* * * * *

■ 11. Revise § 91.325 to read as follows:

§ 91.325 Primary category aircraft: Operating limitations.

(a) Unless provided for in this section, no person may operate a primary category aircraft carrying a person or property for compensation or hire in operations that:

(1) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(2) Are listed in § 119.1(e) of this chapter;

(3) Require management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter; or

(4) Are conducted under parts 129, 133, or 137 of this chapter.

(b) Except as provided in § 91.326(a), no person may operate a primary category aircraft that is maintained by the pilot-owner under an approved special inspection and maintenance program except—

(1) The pilot-owner; or

(2) A designee of the pilot-owner, provided that the pilot-owner does not receive compensation for the use of the aircraft.

(c) A primary category aircraft that is maintained by an appropriately rated mechanic or an authorized certificated repair station in accordance with the applicable provisions of part 43 of this chapter may be used to conduct flight training, checking, and testing for compensation or hire.

■ 12. Add § 91.326 to subpart D to read as follows:

§ 91.326 Exception to Operating Certain Aircraft for Compensation or Hire.

(a) For purposes of §§ 91.315, 91.319, and 91.325 of this part, an authorized instructor, registered owner, lessor, or lessee may operate an aircraft for the purpose of flight training, checking, or testing, and in the case of an experimental aircraft, for a purpose other than that for which the certificate was issued, provided—

(1) The authorized instructor is not providing both the training and the aircraft;

(2) No person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and

(3) No person receives compensation for the use of the aircraft for a specific flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft. Compensation for the use of the aircraft for profit is prohibited.

(b) Except as provided in paragraphs (a) and (c) of this section, no person may conduct flight training, checking, or testing in a limited category or experimental aircraft without deviation authority issued under this paragraph.

(1) No person may operate under this section without a letter of deviation authority issued by the Administrator.

(2) The FAA may cancel or amend a letter of deviation authority if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety.

(3) An applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation which establishes a level of safety equivalent to that provided under the regulations for the deviation requested, including:

(i) A letter identifying the name and address of the applicant;

(ii) The name and contact information of the individual with ultimate responsibility for operations authorized under the deviation authority;

(iii) Specific aircraft make(s), model(s), registration number(s), and serial numbers to be used;

(iv) Copies of each aircraft's airworthiness certificate, including the FAA-issued operating limitations, if applicable;

(v) Ejection seat information, if applicable;

(vi) An exemption issued under part 11, if applicable;

(vii) A detailed training program that demonstrates the proposed activities will meet the intended training objectives;

(viii) A description of the applicant's process to determine whether a trainee has a specific need for formation or aerobatic training, or training leading to the issuance of an endorsement, if those types of training are being requested; and

(ix) Any other information that the Administrator deems necessary to evaluate the application.

(4) The Administrator may prescribe additional limitations in a letter of deviation authority that the Administrator considers necessary for safety. The holder of a letter of deviation authority must comply with any limitations and conditions mandated in the deviation authority.

(5) No person other than the authorized flight instructor, designated examiner, person receiving flight training or being checked or tested, or persons essential for the safe operation of the aircraft may be on board during operations conducted under the deviation authority.

(6) The Administrator may limit the types of training, testing, and checking authorized under this deviation authority. Training, testing, and checking under this deviation authority must be conducted consistent with the training program submitted for FAA review.

(c) For deviation authority issued under § 91.319 of this part prior to [EFFECTIVE DATE OF FINAL RULE], the following requirements apply—

(1) The deviation holder may continue to operate under the letter of deviation authority until [DATE 24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE];

(2) The deviation holder must continue to comply with the conditions and limitations in the letter of deviation authority when conducting an operation under the letter of deviation authority in accordance with § 91.326(c)(1);

(3) The letter of deviation authority may be cancelled or amended at any time; and

(4) The letter of deviation authority terminates on [DATE 24 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

■ 13. Amend § 91.327 by revising paragraph (a)(2) to read as follows:

§ 91.327 Aircraft having a special airworthiness certificate in the light-sport category: Operating limitations.

(a) * * *

(2) To conduct flight training, checking, and testing.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701–44703, sec. 517 of Public Law 115–254, and Sec. 5604 of Public Law 117–263 in Washington, DC.

Wesley L. Mooty,

Acting Deputy Executive Director, Flight Standards Service.

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U.S. Customs and Border Protection

19 CFR Part 111

Continuing Education for Licensed Customs Brokers; Final Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 111

[USCBP–2021–0030; CBP Dec. 23–04]

RIN 1651–AB03

Continuing Education for Licensed Customs Brokers

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

ACTION: Final rule.

SUMMARY: This document adopts as final, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations requiring continuing education for individual customs broker license holders (individual brokers) and the framework for administering this requirement. By requiring individual brokers to remain knowledgeable about recent developments in customs and related laws as well as international trade and supply chains, CBP's framework will enhance professionalism and competency within the customs broker community. CBP has determined that this framework will contribute to increased trade compliance and better protection of the revenue of the United States.

DATES: This final rule is effective as of July 24, 2023.

FOR FURTHER INFORMATION CONTACT: Elena D. Ryan, Special Advisor, Programs and Policy Analysis, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325–0001 or *CONTINUINGEDUCATION@cbp.dhs.gov;* and, Sharolyn J. McCann, Director, Commercial Operations, Revenue and Entry, Office of Trade, U.S. Customs and Border Protection, at (202) 384–8935, *Sharolyn.j.mccann@cbp.dhs.gov.*

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I. Background and Summary

A. Authority for the Continuing Broker Education Requirement

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits, provides for disciplinary action against customs brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties and provides for the assessment of monetary penalties against persons for conducting customs business without the required broker's license.

Section 641 authorizes the Secretary of the U.S. Department of the Treasury (Treasury) to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the other provisions of section 641. *See* 19 U.S.C. 1641(f). That authority was delegated to the Secretary of the U.S. Department of Homeland Security (DHS) as a result of the enactment of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2142).[1] Accordingly, the Secretary of DHS is authorized to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the other provisions of section 641. *See* 19 U.S.C. 1641(f).

Furthermore, 19 U.S.C. 1641(b)(4) imposes upon customs brokers the duty to exercise responsible supervision and control over the customs business that it conducts. The statute also permits the Secretary of DHS to test persons for their knowledge of customs and related laws prior to issuing a license. *See* 19 U.S.C. 1641(b)(2). Based upon 19 U.S.C. 1641, U.S. Customs and Border Protection (CBP) has promulgated regulations setting forth additional obligations of customs brokers pertinent to the conduct of their customs business. CBP believes that maintaining current knowledge of customs laws and procedures is essential for customs brokers to meet their legal duties. Requiring a customs broker to fulfill a continuing education requirement is the most effective means to ensure that the customs broker keeps up with an ever-changing customs practice after passing the broker exam and subsequently receiving the license.

B. Prior Related Publications

On October 28, 2020, CBP published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (85 FR 68260) soliciting comments on a potential framework of continuing education requirements for licensed customs brokers. CBP sought to gather information and data from the broader customs community, analyze the potential impact of such a framework on the customs brokers, and consider whether such a requirement would contribute to increased trade compliance. The ANPRM provided for a 60-day public comment period, which closed on December 28, 2020. CBP received 29 comments in response to the ANPRM.

These comments were addressed in a notice of proposed rulemaking (NPRM) that CBP published in the **Federal Register** (86 FR 50794) on September 10, 2021, announcing a proposed framework for individual customs broker license holders (individual brokers) to administratively maintain their license through completion of qualified continuing broker education.[2]

[1] The Homeland Security Act of 2002 generally transferred the functions of the former U.S. Customs Service from the Secretary of the Treasury to the Secretary of DHS and provided that the Secretary of the Treasury retain authority over customs revenue functions, unless specifically delegated to the Secretary of DHS. *See* 6 U.S.C. 212(a)(1). Paragraph 1(a)(i) of Treasury Department Order No. 100–16 contains a list of subject matters over which the Secretary of the Treasury retained authority. *See* Appendix to part 0 of title 19, Code of Federal Regulations (Appendix to 19 CFR part 0). The other functions of the former U.S. Customs Service not expressly listed in paragraph 1(a)(i) of Treasury Department Order No. 100–16 were transferred from the Secretary of the Treasury to the Secretary of DHS. As paragraph 1(a)(i) of Treasury Department Order No. 100–16 does not list the regulation of customs brokers, the Secretary of the Treasury did not retain authority over this subject matter.

[2] For clarity, in this document, CBP will refer to individuals who obtained a valid customs broker's license as an ''individual customs broker license holder,'' ''individual customs broker,'' or ''individual broker.'' ''Customs brokers'' refers to the entire body of individuals, partnerships, associations, and corporations that have obtained a valid customs broker's license. *See* 19 CFR 111.1.

CBP proposed to require individual brokers to complete at least 36 continuing education credits per triennial period with limited exceptions. The NPRM provided for a 60-day public comment period, which closed on November 9, 2021.[3] CBP received 70 comments in response to the NPRM.

Below is a summary of the rationale provided for the rule. For a more detailed discussion, including background information for the development of this rule, please refer to the NPRM.

C. Overview of Licensing Requirements for Individual Brokers

CBP is responsible for administering the licensing requirements for customs brokers and sets forth those requirements in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111). A prospective customs broker must pass a broker exam administered by CBP which is designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters. Subsequently, the individual submits an application for a broker's license. If CBP finds that the applicant is qualified, following an investigation, and has paid all applicable fees, then CBP will issue a broker's license. In order to qualify for a license, an individual must be a United States citizen who is at least 21 years of age and not an officer or employee of the United States Government, be in possession of good moral character, and pass a broker exam administered by CBP. *See* 19 CFR 111.11.

Customs brokers administratively maintain a license through the filing of reports pursuant to 19 U.S.C. 1641(g) and 19 CFR 111.30(d) (the triennial status report), the payment of fees required in 19 CFR 111.96, and notifications to CBP as set forth in 19 CFR 111.30, as well as fulfilling other legal obligations.[4] *See generally* 19 CFR 111.21–111.45. This document finalizes an additional administrative requirement, *i.e.,* completion of the continuing broker education requirement, for individual brokers to maintain their licenses. As discussed in greater detail in the NPRM, recent developments have demonstrated the need for key parties involved in importing, exporting, claiming drawback, etc., to keep up to date on training and continuously build and maintain their knowledge of current requirements.[5]

D. Initial Certification Date

As detailed in Section II and in the responses to relevant comments in Section III below, individual brokers will be required to certify compliance with the continuing broker education requirements (trainings and educational activity that have been accredited by a CBP-selected accreditor or identified by CBP per § 111.103(a)) as part of the filing of their 2027 triennial status reports (approximately between December 15, 2026, and February 28, 2027). To allow for the full implementation of the continuing education requirement, CBP will reduce the number of required continuing education credits for the triennial period beginning on February 1, 2024. It is important to note that the proration will only affect the triennial period between 2024 and 2027 and all triennial periods thereafter will require the completion and certification of completion of 36 continuing education credits. For the triennial period beginning on February 1, 2024, CBP will reduce the 36 continuing education credits, required to be completed, by six credits for approximately every six months that elapse between February 1, 2024 and the compliance date on which individual brokers may begin completing qualified continuing broker education courses, as announced in a **Federal Register** notice, following the publication of this final rule. Along with specifying the number of required continuing education credits the **Federal Register** notice will also announce the date on which qualified continuing broker education courses will be available to individual brokers to begin meeting the requirement. CBP will publish this **Federal Register** notice at least 30 days prior to the compliance date announced therein. No educational activities or trainings completed before the compliance date announced in the **Federal Register** notice will qualify towards the continuing education credits required to be completed by the filing of the 2027 triennial status report.

E. CBP Implementation of the Continuing Broker Education Requirement

To ensure qualified trainings and educational activities are available to individual brokers, CBP will take certain necessary steps to implement the continuing broker education requirement. To collect information about standards and to identify qualified accreditors, CBP is utilizing the System for Award Management (SAM), which will involve a Request for Information (RFI) and Request for Proposals (RFPs).[6] Subsequently, CBP will announce the CBP-selected accreditors on its website at CBP.gov, to ensure that all individual brokers are aware of the selected accreditors. Afterwards, CBP, in conjunction with the CBP-selected accreditors, will establish standards and guidelines for qualified continuing broker education, including information on how and when CBP-selected accreditors will begin considering trainings and educational activities for accreditation. Finally, CBP will announce the initial qualified continuing broker education trainings and educational activities available to individual brokers and the means through which individual brokers may identify additional qualified trainings and educational activities.

II. Summary of Changes From the Proposed Regulations

CBP received 70 comments in response to the NPRM. As more fully discussed in Section III below, CBP carefully considered all public comments to the NPRM and determined to finalize the continuing broker education framework with minor changes. While considering the public comments, CBP identified five changes that would reduce confusion and increase the intended flexibility of the continuing broker education requirement, and one nomenclature change intended to provide clarity and consistency. CBP is also changing one amendatory instruction to account for an amendment made by another final

[3] The comments received in response to the NPRM can be viewed in their entirety on the public docket, Docket No. USCBP–2021–0030, which can be accessed through *https://www.regulations.gov.*

[4] Customs brokers have legal obligations, to CBP and to the broker's clientele, including, but not limited to, the exercising of due diligence in making financial settlements, answering correspondence, and preparing paperwork or filings related to customs business. *See* 19 CFR 111.29(a). Under 19 U.S.C. 1641(b)(4), a customs broker has the statutory duty to exercise responsible supervision and control over the customs business that he or she conducts. *See also* 19 CFR 111.1 and 111.28(a).

[5] Recent developments, include, but are not limited to, drawback modernization, 83 FR 64942 (Dec. 18, 2018), implementation of the Agreement between the United States of America, the United Mexican States, and Canada (the USMCA), United States–Mexico–Canada Agreement Implementation Act, Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), the dramatic increase in low-value shipments (19 U.S.C. 1321(a)(2)(C)), and CBP's updates to 19 CFR part 111, the regulations governing customs brokers and their obligations to clients and CBP. *See* 87 FR 63267 (Oct. 18, 2022) and 87 FR 63262 (Oct. 18, 2022).

[6] Access to and additional information about the SAM may be viewed at *www.sam.gov.*

rule document [7] that amended the broker regulations in part 111 between the issuance of the NPRM and this document, as described in more detail below.

In the NPRM, CBP did not specify when individual brokers would be expected to certify completion of the initial three-year cycle of the continuing broker education requirement. *See* 86 FR 50794 (Sept. 10, 2021). In this rule, as discussed in more detail below in the relevant comments, CBP is specifying that the first time at which individual brokers will be required to certify completion of the continuing broker education requirement will be with the filing of their 2027 triennial status reports.

In the NPRM, at § 111.1, CBP proposed the smallest unit of continuing education credit as one credit per one hour of continuous participation in qualified continuing broker education. *See* 86 FR 50794 (Sept. 10, 2021). In this rule, as discussed in more detail below in the relevant comments, CBP will allow for the recognition of ''half credits'' (30 minutes of continuous participation in qualifying continuing broker education) as the smallest unit of continuing education credit.

In the NPRM, in § 111.103(a)(1), CBP proposed that qualified continuing broker education must be offered by a government agency or be approved and assigned continuing education credit by a CBP-selected accreditor. *See* 86 FR 50794 (Sept. 10, 2021). In this rule, as discussed in more detail below in the relevant comments, when qualified continuing broker education is offered by a government agency, CBP will identify the specific qualified continuing broker education opportunities offered by CBP or another government agency, after consultation with the other government agency, that are relevant to customs business and may provide continuing education credit upon completion.

In the NPRM, in § 111.103(a)(2), CBP proposed four broad categories of recognized trainings or educational activities. *See* 86 FR 50794 (Sept. 10, 2021). In this rule, as discussed in more detail below in the relevant comments, CBP will amend the description of the first category (allowing for seminars, webinars, or workshops) and add a fifth category to allow for self-guided trainings and educational activities which culminate in a retention test.

In the NPRM, in § 111.103(d), CBP outlined the responsibilities of CBP-selected accreditors towards the accreditation process. *See* 86 FR 50794 (Sept. 10, 2021). In this rule, as discussed in more detail below in the relevant comments, CBP will explicitly prohibit CBP-selected accreditors from denying accreditation to training or educational activity solely because it was previously denied by the CBP-selected accreditor or any other CBP-selected accreditor.

Additionally, CBP has decided to use the phrase ''individual brokers'' in the regulations for clarity and consistency when referring to the specific subset of customs brokers affected by the continuing broker education requirement. For clarity, CBP differentiates between the entire body of entities with a valid customs broker license and individuals with a valid customs broker license. For consistency, the entire licensed body is referred to as ''customs brokers'' and licensed individuals are referred to as ''individual brokers.'' The continuing education requirement only applies to individual brokers and not to the entire body of customs brokers (which includes individuals, partnerships, associations, and corporations). This final rule document adds the phrase ''individual brokers'' in §§ 111.0 and 111.1 when referring to the continuing education requirement and adds ''individual brokers'' elsewhere in the following other §§ of the newly added title of subpart F of part 111: 111.101, 111.102, 111.103, and 111.104. For additional information, please see the relevant comments in Section III below.

Finally, on October 18, 2022, CBP published a final rule document in the **Federal Register** entitled ''Modernization of the Customs Broker Regulations'' (the Part 111 Rewrite). *See* 87 FR 63267. That final rule substantially rewrote part 111 of title 19 of the CFR and made certain changes to 19 CFR 111.30. As such, in this document, CBP has made technical and conforming changes to 19 CFR 111.30(d) from what was proposed in the NPRM to incorporate the structural changes made in the Part 111 Rewrite. CBP is further making a minor change to the section heading of 19 CFR 111.30. CBP had included a sightly revised section heading in the Part 111 Rewrite final rule, as well as in the preceding NPRM [8] but inadvertently failed to include an instruction for the **Federal Register** to make that change. In addition, CBP is correcting a grammatical error in § 111.19(c) that was made in a concurrent final rule, published in the **Federal Register** on the same day, entitled ''Elimination of Customs Broker District Permit Fee'' (87 FR 63262). The term ''permit user fee'' was inadvertently written as ''user permit fee.''

III. Discussion of Comments

CBP has carefully considered all comments submitted in response to the NPRM. During the 60-day public comment period, CBP received 70 comments. Of the 70 comments, 68 comments were responsive, one comment was a duplicate, and one comment was beyond the scope of the proposed rule. Of the 68 responsive comments, 57 comments explicitly supported the continuing broker education requirement, while seven comments explicitly disputed the need to have a continuing broker education requirement, with one of the seven comments disputing the application of the requirement to brokers only. Four commenters sought additional information. Generally, the 68 responsive comments addressed multiple topics that CBP has divided, grouped, and addressed below.

A. The Continuing Broker Education Requirement

In the NPRM, CBP proposed an additional administrative requirement for individual brokers to maintain their licenses by completing qualified continuing broker education. CBP received many comments expressing support for the continuing broker education requirement and multiple comments disputing the need for a continuing broker education requirement.

Comment: Many commenters stated that a continuing broker education requirement was necessary. Certain commenters highlighted that the requirement would ensure better outcomes for clients, professionalize the field, ensure individual brokers remained knowledgeable about the law, and help individual brokers avoid costs such as fines and time spent correcting filings. Commenters also highlighted that continuing education promotes compliance and engagement that assists CBP in protecting U.S. borders, increases trade compliance, and helps protect the revenue of the United States.

Response: CBP appreciates the supportive comments regarding the need for the continuing broker education requirement. CBP concurs with the comments as summarized above and in CBP's opinion those comments support CBP's assessment of the need for a continuing education requirement.

[7] On October 18, 2022, CBP published a final rule document in the **Federal Register** entitled ''Modernization of the Customs Broker Regulations'' (the Part 111 Rewrite). *See* 87 FR 63267.

[8] 85 FR 34836 (June 5, 2020).

Comment: Multiple commenters stated that a continuing broker education requirement is unnecessary because the customs broker licensing exam was a sufficiently effective barrier to entry of unqualified individuals and clearly demonstrated the superior and sufficient knowledge base of individuals passing the exam. Commenters also highlighted that open access to the statutes and regulations and CBP's public communications are sufficient to keep individual brokers informed and knowledgeable.

Response: CBP disagrees that the licensing exam, free webinars and symposiums, open access to governing statutes and regulations, etc., continue to be sufficient to ensure a professional and up-to-date broker community. For example, the licensing exam ensures an extensive and accurate knowledge base at a certain point in time. (Section 111.102(a)(2) explicitly recognizes this reality and provides newly licensed individual brokers with a waiver of the continuing broker education requirement for the triennial period in which they receive their licenses.) However, the exam does not ensure that an individual broker will maintain an up-to-date knowledge base in the future, particularly when dealing with a very dynamic international trade environment that is changing frequently. Furthermore, free and easy access to CBP information and the regulations does not ensure individual brokers are taking advantage of access and staying informed. Accordingly, continuing education is required, and 36 continuing education credits over three years is a reasonable expectation of someone who holds a Federally issued, professional license.

Comment: Multiple commenters stated that a continuing broker education requirement was an unnecessary expense and a burden on individuals and companies.

Response: CBP disagrees that the continuing broker education requirement is an unnecessary expense and a burden. CBP has examined the costs and burdens that the continuing broker education requirement will place on individual brokers and companies and has determined it is not overly burdensome. *See* Section V, Statutory and Regulatory Requirements, below for more information. Furthermore, CBP will ensure that there will be free qualified continuing broker education activities available to individual brokers through CBP and other U.S. government agency offerings that is available on CBP's website *CBP.gov*.

Comment: Multiple commenters requested that the continuing broker education requirement should not present additional costs to individual brokers.

Response: CBP agrees in principle and does not intend to create a specific financial burden on individual brokers. There will be some burden imposed by the continuing broker education requirement because individual brokers will need to receive 36 continuing education credits over three years. However, CBP believes this burden will not be significant and has taken steps to lessen the burden. *See* Section V, Statutory and Regulatory Requirements, below for more information. For example, CBP will be providing enough free continuing education credits from CBP online modules and in-person events to cover the 36 continuing education credits required in a triennial period.

Comment: Multiple commenters expressed concern that a continuing broker education requirement will have an outsized effect concerning time, expense, etc., on small businesses and individual brokers who are working for themselves.

Response: CBP recognizes that this requirement will have an outsized impact on small businesses relative to larger firms. However, as more fully discussed in the Regulatory Flexibility Act section, CBP does not consider this rule to have a significant economic impact on a substantial number of small entities. *See* Section V, Statutory and Regulatory Requirements. While CBP realizes that a greater number of employees of smaller firms will be required to begin continuing education as a result of the rule, CBP designed the continuing broker education requirement so that it is the same for every individual broker. First, every individual broker is required to complete qualified continuing broker education and maintain his or her own records. Second, all qualified continuing broker education must be identified by CBP, as explained in Subsection G below, or accredited by a CBP-selected accreditor. As such, all individual brokers must complete the same requirements and the sources for completing those requirements are restricted in the same way. CBP does recognize that small businesses and individuals, sometimes operating in remote locations, may have a more difficult time finding accredited continuing broker education than individual brokers working in a larger entity in a metropolitan area. Therefore, CBP will ensure that there is a central location on CBP's website for individual brokers to access and find qualified continuing broker education. Additionally, as discussed in the comment response above, CBP will be offering enough free continuing education courses in the form of online modules and in-person events to cover the required 36 continuing education credits in a triennial period.

Comment: Multiple commenters expressed concern that CBP may be creating a conflict of interest in setting continuing broker education requirements that would benefit CBP as an entity offering continuing broker education, may disadvantage other education providers, create a CBP education monopoly, or allow CBP to create a private education monopoly.

Response: CBP disagrees that it is creating a conflict of interest that would benefit CBP. The new requirements will give individual brokers significant flexibility on how to meet the continuing broker education requirement. CBP intends for individual brokers to have access to a wide range of private- and public-offered qualified continuing broker education. CBP has provided free, online, education modules and in-person workshops to customs brokers, importers, and other members of the trade community for many years. The modules and workshops are designed to inform participants about practices and procedures when conducting customs business and provide updates to laws, regulations, and policies. CBP will continue to produce and disseminate the modules and workshops because doing so ensures that the trade community is aware of the most important changes or updates. More importantly, CBP will continue to offer the modules for free so that individual brokers have a baseline option to satisfy their continuing broker education requirement that will not allow the formation of a private continuing broker education monopoly and will ensure that CBP does not financially profit from instituting a continuing broker education requirement. CBP will work closely with CBP-selected accreditors to create standards that ensure robust and diverse private sector education offerings exist for individual brokers to access.

Comment: Two commenters requested that qualified continuing broker education be administered by a government entity and stated that it should not be outsourced to any private parties.

Response: CBP disagrees as it does not have the resource capabilities to create or administer all trainings or educational activities, nor does it have the capacity to vet or accredit every potentially valid training or educational

activity that could arise. As mentioned throughout this document, CBP believes a continuing broker education requirement will substantially benefit CBP, importers, exporters, customs brokers, and the trade community in general. CBP intends the continuing broker education requirement to be as attainable and as flexible as possible for individual brokers. Therefore, CBP has determined that a private sector continuing broker education option needs to exist, and that option needs to contain certain safeguards, explained elsewhere in this document, which guarantee individual brokers are receiving the requisite level of quality in the private sector offerings. However, CBP understands the commenter's concerns and believes that, by providing enough CBP-identified, free qualified continuing broker education alternatives, individual brokers will have the flexibility and alternatives that allow the individual broker to complete the continuing broker education requirement in a manner and at a cost that suits his or her individual needs.

Comment: One commenter requested that the continuing broker education framework include fewer participating entities to allow for easier implementation and to avoid overwhelming or confusing individual brokers.

Response: CBP disagrees that the number of participating entities should be limited. The continuing broker education program will involve as many parties as are necessary to provide individual brokers with a wide range of trainings, educational activities, and topics, while still being a manageable program. CBP believes individual broker confusion will be minimized by allowing an individual broker to certify that he or she has completed the continuing broker education requirement with the filing of the triennial status report and by allowing an individual broker to maintain his or her own records.

Comment: One commenter asked CBP to hold monthly meetings in person or virtually with a uniform format to meet the continuing broker education requirement rather than the proposed process.

Response: CBP already holds regular information sessions, local industry days, and conference calls to inform the trade community of changes in trade law, regulations, procedures, etc. However, CBP has found attendance to be sub-optimal and believes mandating attendance at such sessions would not provide individual brokers enough flexibility. CBP recognizes that many individual brokers specialize in certain areas, and not every topic or new development is equally important to every individual broker. As such, CBP has determined that the best approach to guarantee an informed customs broker community is to allow an individual broker to choose the topics he or she believes will help him or her stay current, informed, and effective in his or her practice area.

B. Certification Dates

In the NPRM, CBP proposed that individual brokers be required to certify, with the filing of their triennial status reports, pursuant to 19 U.S.C. 1641(g) and 19 CFR 111.30(d), the completion of 36 continuing education credits of qualified continuing broker education over the prior three years. Multiple commenters expressed concern or sought clarification regarding the requirement's initial and ongoing certification date.

Comment: Two commenters sought clarification concerning the start and end dates of the three-year triennial period as it relates to the continuing broker education requirement. Specifically, the commenters sought clarification concerning the interaction between the end of a continuing broker education cycle and the triennial reporting period. One commenter suggested new dates for the continuing broker education cycle to better accommodate early filing of the triennial status report. One commenter suggested that CBP consider allowing brokers who exceed the 36-hour requirement for one triennial period to carry over and apply a limited number of continuing education credits to the subsequent triennial period.

Response: CBP appreciates the opportunity to clarify. The timeline for triennial status reporting is prescribed by 19 U.S.C. 1641(g). Every three years after 1985 is a reporting year and a triennial status report is due on February 1st of the reporting year (the triennial reporting period). However, 19 U.S.C. 1641(g)(2) provides that a customs broker license is suspended only when a customs broker fails to file the required triennial status report by March 1st of the reporting year. CBP allows licensed customs brokers to file triennial status reports over a multi-month period, starting mid-December on a date announced on CBP's website and ending on the last day of February of the reporting year. CBP determined that requiring individual brokers to certify completion of continuing broker education requirements at the same time as filing the triennial status report would significantly simplify and alleviate administrative reporting burdens on individual brokers. CBP does not have discretion to adjust the triennial reporting period. As such, the 36-month cycle of the continuing broker education requirement will end on January 31st and begin on February 1st every three years coinciding with the due date of the triennial status report. That means participation in any qualified continuing broker education on or before the last day of January, marking the end of a triennial reporting period, can only count as qualified continuing broker education for that cycle. Any participation in qualified continuing broker education after the last day of January, marking the end of a triennial reporting period, can only count as qualified continuing broker education for the next three-year triennial reporting period. Individual brokers may continue to file their triennial status reports earlier than the due date but should be certain they have completed 36 continuing education credits in the slightly shorter timeframe. To respond to the last comment, CBP does not allow for individual brokers to carry over any continuing education credits they completed in one triennial period in excess of the 36-hour requirement into the subsequent triennial period. This requirement is meant to encourage individual brokers to maintain a current knowledge base by completing training or educational activities within a three-year period. Training or educational activities completed any time between three to six years prior to the credit being applied to the next triennial period would undercut that purpose.

Comment: Two commenters requested that CBP implement the continuing broker education requirement with a delayed effective date. The commenters highlighted that a continuing broker education requirement is a significant change within the customs broker community and time must be given for the accreditation process to progress so that enough qualified trainings and educational activities are available for use by individual brokers. Similarly, one commenter requested that CBP establish an effective date that coincides with a complete triennial reporting period.

Response: CBP agrees that time will be needed to set up the accreditation process. In this final rule, the first triennial reporting period that will require individual brokers to complete the continuing broker education requirement will close on January 31, 2027 (with the triennial status report due on February 1, 2027). *See* 19 U.S.C. 1641(g). As such, CBP is modifying § 111.101 by adding a sentence to the

end of the section to make it clear that the requirement to certify completion of the continuing broker education requirement will be with the filing of the 2027 status report, and every status report thereafter. Therefore, the first time at which individual brokers will be required to certify completion of the continuing broker education requirement will be with the filing of the 2027 triennial status report. As discussed above, CBP will reduce the number of required continuing education credits for the triennial period beginning on February 1, 2024 and ending on January 31, 2027 by six credit hours for approximately every six month that elapse between February 1, 2024 and the compliance date on which individual brokers may begin meeting the requirement, as announced in a **Federal Register** notice following the publication of this final rule. Following the 2027 triennial status report, individual brokers will be required to certify completion of the 36-credit continuing broker education requirement with every triennial status report, unless an exception applies as outlined in § 111.102(a).

C. Individuals to Whom the Requirement Applies

In the NPRM, CBP proposed a continuing broker education requirement that applies to all individual brokers. CBP proposed that individual brokers who voluntarily suspended their licenses, under 19 CFR 111.52, and individual brokers who have not held their licenses for an entire triennial period, be excepted from the requirement. Multiple comments were received regarding the scope of the continuing broker education requirement, including to whom the requirement would apply.

Comment: One commenter requested that the continuing broker education requirement not extend to those who are working at a brokerage firm or company because the person practices with customs rulings every day.

Response: CBP disagrees because individual brokers working in a brokerage firm or company do not transact customs business differently, for the purposes of the continuing broker education requirement, from other individual brokers to warrant different treatment. Individuals transacting customs business are required to have a license unless specifically excepted. *See* 19 CFR 111.2(a). Any individual holding an active customs broker license will be required to certify completion of the continuing broker education requirement when submitting his or her triennial status report, with two limited caveats. Those caveats are: if an individual has not held his or her license for an entire triennial period or if an individual license is voluntarily suspended. If an individual has not held an active customs broker license for an entire triennial period or is reactivating a license that was voluntarily suspended, then that person is required to complete a prorated version of the requirement. In these two scenarios, the required number of continuing education credits that an individual broker must complete will be calculated on a prorated basis of one continuing education credit for each complete remaining month until the end of the triennial period. *See* 19 CFR 111.102(b). Furthermore, the continuing broker education requirement is not linked to the nature of the customs business the individual transacts. Individual brokers have different experiences, specializations, knowledge bases, and day-to-day interactions with customs business. Differentiating among individual brokers based on things such as experience, employer, or specialization would be unworkable and controversial. CBP believes the only fair and consistent way to implement the continuing broker education requirement is to apply the same requirement to all individual brokers.

Comment: One commenter requested that CBP exempt individual brokers from the requirement if the licensee is not actively engaged in customs business.

Response: CBP has determined that an individual holding an active license is the most fair and administrable distinction to determine whether an individual must complete qualified continuing broker education. In the NPRM, CBP explicitly stated that all individual brokers are required to complete the same continuing broker education requirement due to the complex and evolving realm of international trade. As mentioned above, on October 18, 2022, CBP published a final rule entitled ''Modernization of the Customs Broker Regulations,'' in the **Federal Register**, which substantially rewrote certain provisions of part 111 of title 19 of the CFR and made certain changes to 19 CFR 111.30. As such, in this document, CBP has made technical and conforming changes to 19 CFR 111.30(d) while maintaining the original intent of the NPRM to apply the continuing broker education requirement to all individual brokers. CBP, through the Part 111 Rewrite, does recognize a difference, under 19 CFR 111.30, between the contents required in a triennial status report submitted by individual brokers ''actively engaged in transacting business as a broker'' and brokers who are ''not actively engaged in transacting business as a broker.'' However, filing a triennial status report is required for non-active individual brokers and the continuing broker education requirement will be as well. CBP intends for all individual brokers to be current in their knowledge of transacting customs business and to complete the same continuing broker education requirement. Even brokers who are not actively engaged in transacting business as a broker might nonetheless be leveraging their broker license in other ways, for example, as an employee of a company or as a consultant. Furthermore, a broker could become active at any point in time from a period of inactivity and such brokers must then meet the same levels of professionalism and knowledge as any other broker who has been actively engaged in transacting business. Lastly, if a broker expects to not actively engage in transacting business as a broker for a longer period of time, then that broker could have his or her license voluntarily suspended in accordance with 19 CFR 111.52, and thereby, not be subject to the broker continuing education requirement during the period of voluntary suspension.

Comment: One commenter asked CBP to extend the continuing broker education requirement to an importer or exporter who transacts customs business solely on his or her own account.

Response: CBP disagrees with the request because those individuals do not need a customs broker license as they are not transacting customs business on behalf of others. CBP wants to ensure that licensed individual brokers who handle business on behalf of others and are paid for those services are knowledgeable and informed about the applicable laws and regulations in order to provide high quality service to their clients. CBP has consistently recognized that certain limited circumstances and certain specific individuals performing customs business do not require a license. *See* 19 CFR 111.2(a)(2). This final rule does not change the nature of, nor the reason for, those exceptions.

Comment: One commenter requested that the continuing broker education requirement extend to CBP Officers and personnel.

Response: CBP disagrees with this request because it is unnecessary. The duties and responsibilities of CBP Officers and personnel are significantly different from those of individual

brokers. The continuing broker education requirement is designed to address the needs, value, and credibility of individual brokers. This continuing broker education requirement is not designed for any other professional service involved in transacting customs business. It should be noted that CBP Officers and personnel do receive regular training to address their dynamic environments as well as to conduct compliance and enforcement activities related to new laws, regulations, and policies.

D. Completing the 36 Continuing Education Credits

In the NPRM, CBP proposed that individual brokers complete 36 continuing education credits of qualified continuing broker education over the three years of a triennial period. CBP also created a definition for continuing education credit. CBP received many comments regarding the definition of continuing education credit and hours required.

Comment: Many commenters expressed agreement with CBP that 36 continuing education credits of qualifying continuing broker education each triennial period is a reasonable and attainable requirement.

Response: CBP agrees and notes that 36 continuing education credits over three years is easily prorated as circumstances dictate. For individual brokers, one credit per month should be easy to track and provide sufficient time to identify qualified continuing broker education opportunities capable of meeting the requirement.

Comment: One commenter felt that 36 continuing education credits should be required annually and not per every triennial period.

Response: CBP disagrees with this commenter because requiring 36 credits of continuing broker education every triennial period is attainable and easily prorated when necessary. CBP believes that requiring significantly more continuing education credit in an annual or triennial period would significantly increase the burden of the continuing broker education requirement on all individual brokers and may increase non-compliance with the requirement. CBP does not intend to create a new barrier for individuals seeking or maintaining a customs broker license that outweighs the benefits of continuing broker education.

Comment: One commenter requested that small businesses or businesses with under 10 employees be required to complete fewer continuing broker education credits, such as 24 credit hours.

Response: CBP disagrees with this request to lower the number of credit hours. Requiring the same number of credit hours ensure fairness and a similar level of education for all brokers. Furthermore, CBP has assessed the effect of this final rule on small businesses, which may be reviewed below in Section V, Statutory and Regulatory Requirements. CBP has determined that there would not be a significant economic impact on small businesses. CBP believes that completing 36 continuing education credits over the span of three years will not be a significant hurdle for individual brokers or the businesses with which they are associated, regardless of the business size, especially given the availability of low-cost or free options.

Comment: Many commenters requested that CBP recognize the smallest unit of continuing broker education credit as a 30-minute half credit due to the frequency of trainings and educational activities offered for this length of time.

Response: CBP agrees and has adopted this suggestion in the final rule by revising the definition of continuing education credit found in the proposed amendments to § 111.1. The NPRM had proposed that the first continuing education credit provided by a qualified continuing broker education provider must be one hour of continuous participation in the activity and additional half credits would be approved for each 30 minutes of continuous participation in continuing education thereafter. In this final rule, qualified continuing broker education may award half a credit for 30 minutes of continuous participation and an additional half a credit for each full 30 minutes of continuous participation in continuing education thereafter. CBP believes individual brokers should have the maximum flexibility to complete the continuing broker education requirement. Allowing half credit trainings or educational activities provides for more specialization of topics and more diversity among qualified continuing broker education opportunities available to individual brokers. In addition, CBP modified the proposed language in § 111.103(b)(1) to allow instructors, discussion leaders, and speakers to claim half of one continuing education credit for each full 30 minutes spent on presenting or preparing for a presentation at a training or educational activity as described in § 111.103(a)(2)(i) and (ii).

Comment: Many commenters requested that CBP award one full credit for every fifty-five (55) minutes of continuing broker education to allow for breaks, technical issues, etc.

Response: CBP understands the sentiment and logic behind accounting for variance, but believes the issue is better addressed outside of regulation. For the sake of simplicity and clarity, one credit of qualifying continuing education must come from a training or educational activity that adds up to one continuous hour in length (the time could be one full continuous hour or two full continuous 30-minute segments). CBP recognizes that variances will always exist in how a presenter performs, how much the audience participates, how a participant clicks through an online module, etc. The existence of those variances is one of the many reasons CBP is requiring that qualifying continuing broker education be accredited. Accreditation allows standardization of how many continuing education credits are rewarded from any given activity and will allow for technical difficulties, breaks, etc., to be accounted for and measured consistently. The number of continuing education credits assigned to government-offered trainings and educational activities will follow the same standards as those for accreditation.

Comment: One commenter noted that eligibility on receiving education credits should be based on the amount of time designated for the material rather than the minutes of continuous participation.

Response: CBP disagrees as each qualified continuing education activity will provide continuing education credit based on the predetermined amount of continuous participation required to complete the training or educational activity. The actual amount of continuous participation that a specific individual broker takes is not relevant to the calculation. Basically, qualified continuing broker education will have a specific number of continuing education credits assigned based on a determination of the number of continuous 30-minute participation segments required to complete the activity. Activity extending over 30 minutes must have another 30 minutes of continuous participation (totaling one hour of continuous participation) to then count as one continuing education credit and the calculation continues for longer continuing broker education. However, a training or educational activity requiring 45 minutes of continuous participation will only count for half a continuing education credit. Time spent allowing for breaks, pauses, technical issues, excess time answering questions, etc., will not adjust the quantity of continuing

education credits that an activity will provide. CBP or CBP-selected accreditors will pre-approve the continuing education credit for all qualified continuing broker education. Individual brokers will know the number of continuing education credits before participating in an activity.

Comment: Multiple commenters highlighted the private sector Certified Customs Specialist (CCS) designation/certification and continuing education program. The commenters specifically asked whether the CCS certification and continued maintenance of the certification would qualify brokers as having met the 36 continuing education credits required in a triennial reporting period for the continuing broker education requirement.

Response: Until CBP selects accreditors, CBP cannot say for certain whether the education requirement for a CCS certification will meet the continuing broker education requirement of this final rule. CBP has not evaluated the specific training materials required or ''continuing education units'' (CEU) required to attain the CCS certification. In accordance with this final rule, only qualified trainings or educational activities will provide individual brokers with continuing education credit. As of now, there are no qualified trainings or educational activities because CBP has not identified nor have any CBP-selected accreditors accredited any trainings or educational activities. However, CBP envisions future accreditors will likely determine that trainings and educational activities designed for CCS certification and CEUs will qualify as continuing broker education under § 111.103, given the history of this certificate program and its reputation in the brokerage community. *See* the economic analysis presented below in Section V, Statutory and Regulatory Requirements.

Comment: One commenter noted that an individual broker should be allowed to choose which specific trainings to attend based on his or her specific needs and general business environment.

Response: CBP agrees that individual brokers should be allowed to choose trainings to attend based on their specific needs. The continuing broker education requirement was designed to provide individual brokers the maximum flexibility to complete the requirement from qualified sources. These regulations do not require individual brokers to fill the 36 continuing education credits with specific trainings or educational activities, such as ethics trainings. Individual brokers are encouraged to seek the trainings, educational activity, and topics that best suit their needs during each triennial period. Furthermore, the 36 continuing education credits can be completed at any time during the triennial period.

E. Recordkeeping

In the NPRM, to comply with the continuing broker education requirement, individual brokers must certify completion of 36 continuing education credits at the time of filing their triennial status report and must maintain certain records of the qualified continuing broker education completed for three years after certifying completion and make those records available to CBP upon request. In proposed § 111.02, CBP also proposed the minimum data elements required to appear in the maintained records concerning each qualified training or educational activity completed. CBP received multiple comments regarding recordkeeping requirements and procedures.

Comment: One commenter requested that CBP should consider alternatives to the proposed recordkeeping requirements and allow for an individual broker to be able to retain an extract of completed coursework from an employer's learning management system.

Response: CBP agrees with the commenter and the regulations will allow individual brokers such flexibility regarding the location where records may be stored. Individual brokers will be in compliance with the recordkeeping requirement so long as the broker's records meet the criteria of § 111.102(d)(1), and the individual broker is capable of producing the records in a timely manner if requested by CBP. The customs broker license is held by the individual and the responsibility to maintain the license requirements rests with the individual broker. The requirements in § 111.102(d) are designed to provide individual brokers with the flexibility to maintain their continuing broker education records in a manner best suited for them. If an individual broker chooses to maintain all or some of his or her records within an employer's learning management system that is his or her prerogative, but nonetheless the individual broker remains responsible for recordkeeping requirements.

Comment: Multiple commenters requested that CBP should recognize a transcript or similar electronic certification as encompassing all the essential information for recordkeeping requirements. Additionally, one commenter requested that records that are kept in the normal course of business should meet the standard for required documentation or that CBP should not require a specific form or format.

Response: CBP agrees with the commenters and intends for individual brokers to have such flexibility maintaining the records of the continuing broker education credits in whatever format is convenient for the individual broker. For that reason, proposed § 111.102(d) had been written to be very general and this final rule adopts the proposed language. If an individual broker's records are complete, contain 36 continuing education credits in a triennial period, and each credit can be connected to the six criteria (§ 111.102(d)(1)(i–vi)), the individual broker will be in compliance. The record may be either physical or electronic and evidentiary documentation of activity or training completion may be physical or electronic. A transcript or similar electronic certification will suffice and, CBP anticipates the identification and accreditation processes will ensure qualifying trainings and educational activities provide individual brokers with the necessary information and documentation of completion meeting the requirements of § 111.102(d). However, it will be incumbent on an individual broker to maintain his or her records in a form that allows the individual broker to easily and timely respond to CBP record requests.

Comment: One commenter sought greater clarity concerning how individual brokers will be able to prove completion of government-created continuing broker education trainings or educational activity.

Response: As explained elsewhere in this preamble, CBP is working with Partner Government Agencies (PGAs) to identify specific government-provided online modules and in-person activities that are relevant to customs business as qualifying continuing broker education. CBP will assign the appropriate continuing education credit to the qualified continuing broker education. CBP will work with PGAs to provide information or a record, upon training or activity completion, to individual brokers to satisfy the requirements of § 111.102(d)(1)(i–vi). However, the exact format of the provided record will be determined after CBP has selected accreditors and leveraged their expertise to create consistency for individual brokers between private and public offerings. CBP will provide additional information on its website, *CBP.gov*, in the future.

Comment: One commenter recommended that recordkeeping requirements should be extended to all accredited entities providing continuing education for individual brokers so that individual brokers can rely upon the continuing education organization to provide a record directly to CBP.

Response: CBP disagrees because records held by providers of accredited trainings and educational activities will not produce data that is easily usable by CBP nor is such a system helpful to individual brokers to ensure that the required number of credits has been completed. Simply put, records maintained by providers of accredited continuing broker education will only demonstrate which individuals attended the provider's specific trainings and educational activities. That data is only useful when reorganized and collated with data from other providers and individual brokers. Such a system is highly susceptible to failure, and the failure would generally fall outside the control of individual brokers even though the individual brokers have the duty to complete the requirement. The chosen recordkeeping requirements place the responsibility of recordkeeping on the individual broker, who is in the best position to maintain the records.

Comment: One commenter requested that CBP develop an online reporting portal. Similarly, another commenter asked CBP to develop a means of tracking verifiable continuing education credits through the Automated Commercial Environment (ACE) system.

Response: CBP disagrees as it cannot commit to the development of a tracking tool on *CBP.gov* or through ACE. CBP may pursue developing an online reporting/ACE tracking tool, but the development of this tool will be dependent on resources and CBP priorities. For that reason, CBP has made the requirements of § 111.102(d) very general and flexible for individual brokers to meet. CBP does anticipate individual brokers will only need to check a box certifying completion of 36 continuing education credits when filing their triennial status reports in the electronic Customs and Border Protection (eCBP) Portal.[9]

Comment: One commenter mentioned that a CCS certificate presented to the individual broker should satisfy the recordkeeping requirement. The commenter also asserted that the CCS certificate should suffice as proof of completing the continuing broker education requirement and obviate the need to keep individualized records of each activity completed.

Response: CBP understands the commenter's concerns, however, neither CBP nor a CBP-selected accreditor has formally evaluated whether documents demonstrating CCS certification meet the continuing education requirements. Without formal evaluation, the CCS certification cannot be used to meet the requirements. The recordkeeping requirement in § 111.102(d) requires the individual brokers to maintain a record that states the title, provider, date, credits, and location of accredited activity completed, along with documentary evidence of an individual ''broker's registration for, attendance at, completion of, or other activity bearing upon the individual broker's participation in and completion of the qualifying continuing broker education.''

Comment: Two commenters noted confusion concerning proposed § 111.102(d)(1)(v), regarding the requirement to maintain documentation pertaining to the location of the training or educational activity, and the paragraph's interaction with training done via webinars or other online courses.

Response: Proposed § 111.102(d)(1)(v) requires that records be maintained as to ''[t]he location of the training or educational activity, if the training or educational activity is offered in person.'' To clarify that CBP does not differentiate between in-person and online training or educational activity, CBP slightly revised the proposed provision to require that the record include the location of the qualifying continuing education. For trainings or educational activity offered electronically, such as via webinar or online course, the individual broker may simply record the location of the activity as ''online.''

Comment: Two commenters sought additional information concerning CBP requests for continuing education records under proposed § 111.102(d)(2), including the time brokers will have to provide the documentation, whether a set/standardized review will be conducted, and whether the record request would be conducted onsite or electronically. Additionally, many commenters requested that CBP should provide a reasonable timeframe (such as 30 days) for submission of records, particularly when requesting an in-person inspection, under proposed § 111.102(d)(2), in case the broker is away or unavailable.

Response: The focus of a record request is to ensure compliance with the continuing broker education requirement by reviewing records maintained in accordance with § 111.102(d)(1). Individual brokers must maintain those records in a manner that is capable of retrieval under § 111.102(d)(2). CBP recognizes the recordkeeping requirement is new and will work closely with individual brokers to accommodate the transition. CBP agrees that it is important for brokers to have a reasonable timeframe in place for the submission of records upon request, and thus, CBP added a 30-calendar day timeframe from the date of receipt of CBP's record request in the first sentence of § 111.102(d)(2), which is in accordance with general recordkeeping requirements in 19 CFR part 163. As with other broker matters, CBP will work with the individual broker to ensure production of the records requested in a manner and timeframe that is feasible for CBP and the individual broker.

F. CBP-Selected Accreditors

In the NPRM, CBP proposed that qualified continuing broker education must either be created by the government or accredited by a CBP-selected accreditor. CBP also outlined the process for selecting accreditors and the responsibilities of CBP-selected accreditors. CBP received comments regarding the selection criteria and process for selecting accreditors.

Comment: One commenter requested that CBP become an accreditor because it would give CBP the ability to monitor the training that individual brokers are receiving, provide for a cost-efficient accreditation process, and provide individual brokers with a secure accreditor to prevent disclosures of confidential business processes.

Response: CBP disagrees as CBP believes a public-private partnership is necessary to ensure the best qualified continuing broker education opportunities for individual brokers. CBP will select accreditors and the process will provide CBP with a sufficient window into the types of trainings and educational activities receiving accreditation. Additionally, CBP will institute a framework for the trade community to inform CBP of issues or make suggestions concerning continuing broker education. Furthermore, CBP does not have the capacity to vet all potential trainings and educational activity for accreditation, which would likely occur if CBP were to act as a ''cost-efficient'' accreditor alternative. Finally, the limitations and requirements placed on parties to maintain their accreditor status will prevent disclosure of

[9] The eCBP Portal and additional information may be accessed through *https://e.cbp.dhs.gov/ecbp/#/main.*

confidential business processes. As such, CBP needs to ensure there is room in the continuing broker education process for private parties to operate.

Comment: Multiple commenters expressed the belief that CBP's proposed selection of accreditors through SAM would be too cumbersome and time-consuming due to additional and more detailed technical requirements. The commenters also requested that CBP adopt a streamlined accreditation process akin to that used for commercial laboratories that are approved by CBP.

Response: CBP disagrees that the SAM process would be too cumbersome. SAM is familiar to the public and its use is appropriate in this circumstance. CBP has determined that selection of accreditors will require a contracting-type process. All potential accreditors must be afforded the same access and same opportunity to present their credentials. The system for accrediting commercial laboratories is very involved (including site visits), specific to the unique requirements placed on laboratories addressing concerns about human health and safety and is unnecessary in these circumstances. CBP will only be vetting parties for their capabilities to be accreditors and ensure those selected parties understand the standards for qualified continuing broker education. The accreditation process, discussed above in Section I, requires response to an RFI and RFP, which will produce a binding agreement between the selected party and CBP. The RFI and RFP process will ensure a more dynamic and responsive vetting process and produce a diverse pool of accreditors.

Comment: One commenter requested that if an applicant's proposal to be an accreditor is deficient for any reason, or if CBP intends to deny the proposal, that the applicant be advised in writing of any deficiency and provided with a reasonable opportunity to amend the proposal.

Response: In accordance with § 111.103(c), the application process to be an accreditor will be conducted via SAM following the announcement of an RFI and an RFP. The normal process for responding to RFIs and RFPs will apply. All parties desiring to participate as an accreditor should carefully review the RFIs and RFPs and carefully respond to the instructions of the RFIs and RFPs.

Comment: Multiple commenters requested that certain specific parties be automatically recognized as accrediting organizations without CBP selection, and that this designation should continue indefinitely unless complaints are filed, and a study shows that the party has not fulfilled its obligations as an accreditor.

Response: CBP disagrees with these comments. No private party will simply be designated as an accreditor without any review process. All parties wishing to be an accreditor will have the same opportunity to submit proposals and demonstrate their credentials.

Comment: One commenter noted the importance of having a transparent application process with multiple approved accreditors and agreed that CBP-selected accreditors should be required to renew their accreditor statuses on a periodic basis.

Response: CBP agrees and intends for the RFI and RFP process to be transparent and produce multiple qualified accreditors. CBP anticipates that the accreditation process will require adjustment over time to address standards, add new accreditors, address substandard accreditors, etc. As such, CBP will have accreditor status sunset and publish new RFIs and RFPs to select new accreditors as circumstances require. The first set of CBP-selected accreditors will be approved for three years.

Comment: One commenter requested that the term of third-party accreditors be extended to six years from the date of approval.

Response: CBP disagrees because the continuing broker education requirement is new, and the public-private partnership envisioned to designate accredited continuing broker education for individual brokers needs flexibility and a period of applied learning. The period of award must be the same for all parties selected, it must provide enough time for the selected accreditors to establish their systems, it must be short enough to allow new interested parties to enter without waiting too long, and it must be long enough to allow selected parties to accredit sufficient trainings and educational activities. CBP has determined three years is an appropriate period of time and allows CBP to ensure that the accreditor selection process does not interfere with the close of a triennial period. CBP may adjust the contracted period in future RFIs and RFPs as circumstances and hindsight dictate the best practice.

Comment: Two commenters requested that CBP include specific criteria in proposed § 111.103 that describes required criteria for accreditors.

Response: CBP disagrees with these commenters and will not add criteria to the regulations at this time. There will be criteria for vetting the proposals received in accordance with § 111.103(c). However, CBP anticipates the criteria will change as CBP makes the first selection of accreditors and then evaluates the outcomes. Therefore, including accreditor criteria in CBP's regulations would be too restrictive at this juncture. The accreditor criteria will be outlined in the RFP issued to solicit potential accreditors, and the RFP is a public document that any party can review.[10]

Comment: One commenter requested that the employment of a licensed broker be treated as a factor, but not a requirement, to becoming an accreditor.

Response: CBP disagrees with the commenter, as a licensed broker has passed the exam and has the requisite knowledge to vet trainings and educational activities. CBP believes that parties without a licensed customs broker on staff will have problems vetting trainings and educational activities and may accredit inferior continuing broker education. CBP is cognizant that individual brokers deserve qualified continuing broker education that is useful and accurate. The best way to ensure that accredited trainings and educational activities meet minimum standards is to have the continuing education vetted by licensed customs brokers. As such, and as stated in the NPRM, employment of a licensed customs broker will be a requirement for a party to be an accreditor. CBP may adjust this requirement in future RFIs and RFPs as circumstances dictate.

Comment: Multiple commenters expressed concern about non-governmental accreditors receiving access to confidential business procedures that a business would not want shared with its competitors.

Response: CBP appreciates this concern and notes that business procedures are not necessarily outside the scope of continuing broker education if they relate to transacting customs business. However, CBP believes protections related to confidentiality are not appropriate for this regulation and better addressed in the RFPs and in limitations and security expectations placed on accreditors selected by CBP as a requirement/condition to maintain their accreditor status.

G. Qualified Continuing Broker Education

In the NPRM, CBP proposed basic standards for trainings and educational activities to qualify as continuing broker education and provide individual brokers with continuing education credit. CBP also proposed specific

[10] RFPs may be viewed by the public online at *www.sam.gov.*

allowances for instructors, discussion leaders, and speakers to receive limited continuing education credit. CBP received multiple comments regarding the validity and type of trainings and educational activities available.

Comment: Multiple commenters specifically requested information on how an individual interested in continuing broker education will be able to identify appropriate courses or programs.

Response: Following publication of the **Federal Register** notice announcing the availability of qualified continuing broker education courses, CBP will publish the initial list of available qualified continuing broker education opportunities on *CBP.gov.* Furthermore, CBP will ensure there is a central location on *CBP.gov* that allows individual brokers to identify and link to all available qualified continuing broker education opportunities.

Comment: Two commenters requested additional information regarding how individual brokers will be able to confirm the validity of any accreditations that a continuing education provider claims to hold.

Response: CBP and the CBP-selected accreditor will not be accrediting education providers but specific trainings and educational activities. CBP anticipates individual brokers will have several ways to determine what trainings and educational activities are accredited and count for continuing education credit. First, CBP will announce every party that is a CBP-selected accreditor, and the accreditor will provide an open access list that tracks every training and educational activity accredited by that accreditor. Second, CBP will maintain a central location on *CBP.gov* that lists the accreditors, provides links to the accreditors' listings, and provides access to CBP and PGA continuing broker education opportunities. CBP is exploring additional avenues to inform brokers of available qualified continuing broker education.

Comment: One commenter requested that CBP develop a web page on *CBP.gov* listing all available qualifying training materials provided by CBP and PGAs.

Response: CBP agrees and intends to do so after CBP has identified a sufficient quantity of qualified trainings and educational activities to include on *CBP.gov.* The specific page will be announced at a later date.

Comment: One commenter requested that public meetings, webinars, and other activities, hosted by CBP, be clearly identified as qualifying or not qualifying for continuing education credit.

Response: CBP agrees that qualifying events hosted by CBP should be clearly identified. The NPRM had proposed that all CBP and other PGA trainings and educational activities relevant to customs business would be qualified continuing broker education. In this final rule, CBP is modifying proposed § 111.103(a)(1)(i) to explicitly state that CBP will identify when a government-offered training or educational activity is related to customs business and qualified continuing broker education. This modification will ensure that individual brokers will be directly informed of when they will receive continuing education credit from government offerings and avoid confusion concerning what qualifies or require individual brokers to parse the scope of ''relevant to customs business'' on their own. After consultation with the relevant PGA, CBP will identify and collect all existing CBP and PGA trainings and educational activities into one online location with specific details concerning the number of continuing education credits assigned to each. Furthermore, CBP will clearly identify what future events qualify as continuing broker education and the continuing education credits connected to the events.

Comment: Multiple commenters stated that continuing broker education should not be limited to customs business in the narrow sense and should involve the full range of PGAs with border clearance responsibilities.

Response: CBP agrees with the commenters in principle. CBP intends for the continuing broker education requirement to be flexible and relevant to individual brokers. CBP recognizes that transacting customs business can cross many issue areas and involve statutes, regulations, policies, and procedures of governing agencies besides CBP. As such, CBP has modified proposed § 111.103 such that, ''training or educational activity offered by another U.S. government agency'' will qualify as continuing broker education as long as ''the content is relevant to customs business as identified by CBP in coordination with the appropriate U.S. government agency when applicable.'' CBP believes ''relevant to customs business'' provides CBP the ability to ensure individual brokers will have access to a wide variety of education topics that cover the range of Trade issues involving other government agencies. As previously noted and in Section II, for the sake of clarity, CBP will clearly identify the government-offered trainings and educational activity, in coordination with PGAs when applicable, that qualify as continuing broker education.

Comment: One commenter requested additional guidance concerning the specific training and educational activities that CBP will accept from other government agencies and provide a list of pre-approved programs from other government agencies.

Response: CBP cannot at this point provide additional guidance concerning the specific PGA trainings or educational activities that will qualify as continuing broker education. CBP is working with PGAs to determine what trainings and educational activities exist, what should be identified as qualified continuing broker education, and the number of continuing education credits assignable to each. CBP will provide individual brokers with a list of qualified PGA and CBP offerings in an online format. CBP will update the list as new PGA and CBP trainings and educational activities are available and identified by CBP as relevant to customs business.

Comment: Multiple commenters sought clarification concerning the cost and credit hours of qualified continuing broker education offered by CBP or PGAs.

Response: Nearly all CBP and PGA-offered trainings and educational activities that will be eligible for continuing broker education credit will, as they are now, be offered at no cost to interested participants. The number of continuing education credits associated with any given training or educational activity will depend upon the same criteria dictating continuing education credit assigned by accreditors. Additionally, CBP believes, based on existing modules, planned modules, and regularly scheduled events, that CBP will provide individual brokers enough qualified continuing broker education that they will be able to fulfill the continuing broker education requirement from the CBP and PGA offerings alone.

Comment: Two commenters requested further information as to the meaning of qualifying education. The first commenter requested that CBP adopt a clear set of guidelines as to what constitutes education, potentially including practical case studies and a list of overarching trade topics and aspects of professional development, and second commenter requested that CBP adopt a more specific definition of training and educational activities.

Response: CBP disagrees with the comments requesting that CBP establish a more specific definition and guidelines as to what constitutes

education. CBP recognizes that flexibility is necessary in this field to ensure that an adequate quantity and the best quality of qualified continuing broker education is available for individual brokers. At this time, a more precise definition, definitive guidelines, or lists of what constitutes permissible trainings, educational activities, or topics, more detailed than what appears in § 111.103(a) is not practical. CBP, in conjunction with the CBP-selected accreditors, will establish standards and guidelines for continuing broker education. CBP will provide further updates in the future.

Comment: Many commenters requested that CBP edit the language of the requirements for recognized trainings or educational activities in proposed § 111.103(a)(2) because it does not allow for ''asynchronous delivery of on-line training'' or ''self-guided learning'' which can be completed by students on a self-paced, anytime-anywhere basis.

Response: CBP agrees with these comments and has always intended for self-guided online modules to be viable sources of continuing broker education credit because they represent a significant expansion of the types of education available to individual brokers. The language proposed in the NPRM does not explicitly prohibit self-guided online modules, but the consistent confusion in the comments received has demonstrated that an amendment and additional clarity is warranted. As such, CBP has added a new subparagraph, § 111.103(a)(2)(iii), to explicitly allow for online training and educational activity, whether live or self-guided, that culminates in a retention test. Accordingly, CBP has also renumbered the other four categories and edited proposed § 111.103(a)(2)(i) so that it is clearly delineated from § 111.103(a)(2)(iii), as trainings or educational activity that are led or guided by another individual. This change will allow individual brokers to engage in qualified self-guided learning that also guarantees a minimum level of engagement from the participant.

Comment: One commenter sought clarification regarding whether online training may be offered in a recorded format, *i.e.,* given by a speaker who records a script of accredited content.

Response: Online training may be offered in a recorded format if the recording of the script has been approved for continuing education credit by a CBP-selected accreditor. Simply recording an individual reciting content that appears in a different accredited activity will not suffice as continuing education on its own merits. The entire recording must be submitted to a CBP-selected accreditor and accredited. Further, proper documentation of the training must also be available to make clear that the broker received the training from an accredited source and that verifies proper completion of the course.

Comment: One commenter sought clarification regarding whether online training may be in the form of a slide presentation of accredited content.

Response: CBP agrees that online training may be in the form of slides if the entire slide deck has been approved for continuing education credit by a CBP-selected accreditor. Please note the changes discussed above, and in Section II, concerning online self-guided learning. Simply taking content or slides that appear in a different accredited activity and combining them into a new presentation will not suffice as continuing education on its own merits. The specific online training must be submitted to a CBP-selected accreditor and accredited.

Comment: One commenter requested that qualified continuing broker education should be permitted in either a classroom setting or online, as long as such training is taught or overseen by a licensed customs broker, a trade attorney, an experienced consultant, or a qualified representative of CBP or any PGA.

Response: CBP disagrees with the commenter to the extent this comment seeks an exemption from accreditation if the training is provided by such private individuals. To the extent the commenter seeks to restrict presentation of training to the listed persons, then CBP disagrees with the comment because the request is unnecessarily restrictive. If a training or educational activity qualifies as continuing broker education under § 111.103(a) then it will provide continuing education credit upon completion. The identity of the presenter, instructor, or other attendees is not relevant.

Comment: One commenter requested that CBP allow individual brokers to earn continuing broker education credit for time spent publishing subject matter for an accredited course even if the license holder preparing the material is not an instructor, discussion leader, or speaker.

Response: CBP disagrees with this comment because allowing credit for publication would be unworkable and controversial. CBP does not believe there is a consistent manner to determine how significant an individual's engagement with material is when involved in the publication of educational material. Furthermore, CBP believes that determining when to allocate credits for publishing material would be very controversial and difficult because trainings and educational activities must be accredited before they may count as continuing broker education credit. Certain individual brokers may rely upon publication and then accreditation to meet their continuing broker education requirements and fail to meet the 36 continuing education credits required because an activity is not accredited or does not provide enough credit. CBP believes clarity and consistency are essential to allow individual brokers to meet this new requirement and, therefore, no credit will be awarded for publishing education materials.

Comment: Two commenters suggested that CBP reconsider its proposal to prevent participation in various federal advisory committees from counting as continuing education.

Response: CBP disagrees because participation in federal advisory committee meetings is considered a privilege, and the meetings do not serve an educational purpose. As stated in proposed § 111.103(a)(2)(ii), meetings that are conducted in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (FACA), are expressly excluded as qualified continuing broker education. Individual brokers will not be permitted to claim continuing education credit for their participation in committees, subcommittees, workgroups, and any other group organized under the auspices of FACA, including participating in public meetings. Instead, FACA meetings serve to solicit advice from committee members and to receive input from the public that may later form the basis for government decisions. Not all activities relating to customs business qualify as education, and participation in FACA meetings does not qualify as a training or an educational activity.

Comment: One commenter requested that a company's in-house training should not be an eligible option for continuing education credit, whether approved by an accreditor or not.

Response: CBP disagrees with the commenter because declaring in-house training as being unqualified to be continuing broker education would not provide the flexibility to produce the best quality and quantity of continuing broker education opportunities for individual brokers. In-house training is also, presumably, intended to provide individuals within the company the most relevant information on that

company's processes and best practices, something that is vital to a business's viability and can be inextricably intertwined with legitimate topics concerning transacting customs business. Greater guidance, restrictions, or even liberalization of what constitutes qualified continuing broker education will come after CBP has selected accreditors and consulted with them on working guidelines for accrediting continuing broker education.

Comment: One commenter sought clarification regarding whether the presenter or speaker of accredited content is required to have certain qualifications.

Response: CBP will not require that the presenter of an accredited training or educational activity have any specific qualifications. CBP does not require presenters of education material for the customs broker exam to have specific qualifications and will not require such qualifications for the presentation of continuing broker education.

H. The Accreditation Process

In the NPRM, CBP proposed regulations detailing the responsibilities of CBP-selected accreditors. CBP also specified a limitation on a CBP-selected accreditor's ability to accredit the entity's own educational activity. CBP reviewed multiple comments regarding the accreditation process.

Comment: Multiple commenters requested that educational activity (membership meetings, seminars, etc.) offered by broker associations should not require third-party accreditation.

Response: CBP disagrees because the continuing broker education requirement is new, and no existing trainings or educational activities have been developed with the specific needs of this requirement in mind. Any training or educational activity, not offered by CBP or other U.S. government agency, seeking to provide continuing education credit must be accredited. If existing trainings or educational activities qualify, based on their content and quality, then the activities will receive accreditation.

Comment: Many commenters requested that a continuing broker education program provider should have the option to apply for and obtain accreditation after the training or educational activity is provided.

Response: CBP disagrees because post-event accreditation could produce unwelcome confusion. Individual brokers are entitled to consistency and predictability when meeting the continuing broker education requirement. When continuing broker education is completed, the individual broker will know exactly how many continuing education credits he or she earned. Allowing for trainings or educational activities to be accredited after the event has occurred does not serve that purpose and will create confusion. For example, if an individual broker participates in a non-accredited training, believing it will provide 1.5 credits just before the triennial status report is due, but an accreditor approves the activity for 1 credit, then the licensed customs broker has not completed the continuing broker education requirement, through no fault of his or her own. However, the licensed customs broker and CBP will be required to expend valuable time and resources determining the correct number of continuing education credits completed. Furthermore, CBP does not want to create a system that allows for undue pressure to be placed on CBP-selected accreditors to accredit trainings or educational activities because individual brokers believed they would receive credit or a specific amount of credit for attending or participating. As such, CBP will not allow continuing education credit to extend to participation in a continuing broker education program before the training or educational activity was accredited.

Comment: Many commenters requested that providers of trainings and educational activities should be permitted to request approval from an additional accreditor if initially denied accreditation. The commenters were concerned that an accreditor could deny an applicant's courses for accreditation for competitive reasons or due to lack of familiarity with a subject matter. One commenter asked that the applicant be advised in writing of the reason(s) for denial of accreditation and provided with a reasonable opportunity to amend the denied application for accreditation.

Response: CBP agrees and always intended to allow applicants of denied trainings and educational activities to either reapply for accreditation or amend an original application. Further, accreditors will provide the applicant seeking approval the reason(s) for the denial of an accreditation of a course. Greater flexibility in the accreditation process will produce better continuing broker education options for individual brokers. CBP believes the accreditation process will be dynamic and wants to ensure parties may re-submit trainings and educational activities for vetting following a denial. As such, CBP has made an amendment to the proposed regulations to guarantee clarity on this topic. Specifically, CBP has edited proposed § 111.103(d) to explicitly prohibit CBP-selected accreditors from denying review or approval of a training or educational activity for continuing education credit solely because it was previously denied by the CBP-selected accreditor or any other CBP-selected accreditor. CBP will address specific processes and timeframes in the RFPs, however, CBP will not be making definitive guidelines concerning accreditation standards at this time. After selecting qualified accreditors, standard guidelines for accreditation will be developed. CBP will provide additional information in the future.

Comment: Two commenters requested that CBP allow a single accreditation to apply to all programs/classes in a course or to allow blanket accreditation.

Response: CBP disagrees with these comments as CBP cannot commit to specific accreditation procedures at this time. CBP believes the accreditation process will be flexible to allow greater quantity and quality of continuing broker education opportunities. However, the exact way potential continuing broker education is evaluated, whether courses may be grouped or individually examined, how continuing education credits will be assigned in a symposium or convention, etc., will be determined after CBP has selected qualified accreditors and leveraged their expertise. CBP will provide additional information in the future.

Comment: Many commenters requested that CBP should enable CBP-selected accreditors to self-certify the party's own training and educational activities.

Response: CBP disagrees because self-certification of an accreditor's own trainings and educational activities is not viable. CBP is not prohibiting CBP-selected accreditors from also producing qualified continuing broker education. However, to limit the risk of conflicts of interest and self-dealing, CBP must prohibit accreditors from accrediting their own training and educational activities. CBP would be doing a disservice to individual brokers if it selected accreditors that devoted their time to accrediting their own trainings and educational activities instead of vetting the trainings and educational activities of other content providers. Individual brokers deserve to have diverse continuing broker education. If a CBP-selected accreditor's trainings and educational activities meet the standards for accreditation, then a separate accreditor is just as capable of reaching the same conclusion and accrediting. The guidelines and standards for accrediting trainings and educational activities will be

determined after CBP has selected qualified accreditors and leveraged their expertise. These standards will be followed by every CBP-selected accreditor, as monitored by CBP. CBP will provide additional information in the future.

Comment: One commenter specifically requested that brokerage firms, regardless of their form, and broker associations should be able to self-certify trainings or educational activities that they deliver in-house or to their members.

Response: CBP disagrees with this comment as CBP will not allow self-certification of trainings or educational activities, in any form, to limit the risk of conflicts of interest and self-dealings. Furthermore, a training or education activity will only provide continuing education credit to an individual broker if it is accredited by a CBP-selected accreditor or offered by CBP or another U.S. government agency. The guidelines and standards for accrediting trainings and educational activities can best be determined after CBP has selected qualified accreditors and leveraged their expertise. CBP will provide additional information in the future.

Comment: One commenter requested that the term of valid accreditation for a training or educational activity be extended from one year to two years under proposed § 111.103(d). Another commenter requested that the term of valid accreditation for a training or educational activity be extended to no longer than three years.

Response: CBP disagrees with the commenters because CBP intends for all qualified continuing broker education to stay current. One of the major goals of the continuing broker education requirement is to ensure individual brokers have the latest information to access and meet their continuing education credit requirements. To that end, outdated trainings or educational activities cannot be allowed to go unchanged for years at a time with the potential to circulate outdated information. CBP believes that requiring all accredited continuing broker education to be reaccredited every year as specified in § 111.103(d), is a small cost compared to the net benefit of ensuring that the trainings and educational activities are reexamined for inconsistencies or updated with new information. If details on a specific topic have not changed, then the training or educational activity will likely receive reapproval.

I. Enforcement

In the NPRM, CBP proposed specific consequences for an individual broker who fails to certify completion of his or her continuing broker education. CBP also outlined immediate steps that may be taken by the individual broker to return his or her license to good standing. CBP received several comments regarding enforcement of the requirements. For a more detailed discussion of record requests see Subsection E.

Comment: One commenter requested that CBP change the language in the NPRM of ''false, misleading, or omitting material fact'' to include the qualifier ''knowingly.''

Response: CBP disagrees because the regulations finalized in this document only address enforcement actions against individual brokers who fail to certify completion of the continuing education requirement when submitting their triennial status reports. This document does not change in any way 19 CFR 111.53(a), which authorizes CBP to initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of a customs broker, if the broker has, among other things, made in any report filed with CBP any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any report any material fact which was required. However, CBP notes that individual brokers may face suspension or revocation of their licenses if they violate 19 CFR 111.53(a) when certifying completion of the continuing broker education requirement or when submitting records to CBP under § 111.102(d).

Comment: Many commenters requested that CBP provide an automated warning or notification message to individual brokers who fail to include their continuing education credits with their status reports to ensure awareness and that appropriate action is taken. One commenter stated that there should be a way, preferably online, for a broker to verify, and if need be, update the broker's contact information to ensure that CBP has the correct information on file.

Response: CBP disagrees that it should provide for an automated warning or notification message. All individual brokers should be aware of the continuing education requirement and the requirement to certify completion of the requirement with the filing of the 2027 triennial status report or in any future reporting year. Individual brokers should note that they will only be required to certify completion of the requirement and will not be required to input or attach evidence of the 36 continuing education credits completed with their triennial status reports. Individual brokers will only need to produce their continuing broker education records if CBP requests them under § 111.102(d)(2). Further, CBP cannot say for certain that the eCBP Portal will have the capability to notify an individual broker of a ''missing field'' when an individual broker is filing the triennial status report. However, individual brokers may verify and/or update their contact information in the ACE Portal to ensure that CBP is sending the notification to the correct address.[11] CBP will send notifications to an individual broker's email address, if an email address is on file, otherwise to an individual broker's physical address.

Comment: Many commenters requested that CBP provide individual brokers 60 days to respond to a notification of failure to certify compliance with the continuing education requirements before suspension, instead of 30 days as specified in proposed § 111.104. Additionally, one commenter requested that the suspension period of 120 days before license revocation in proposed § 111.104(d) be extended to one year to allow sufficient time for a first-time offender to correct any deficiency and that repeat offenders should be restricted to a period of less than six months to correct deficiencies.

Response: CBP disagrees with the commenters requesting a longer timeframe to respond because 30 days is a standard window used when CBP is seeking a response or action from customs brokers. Furthermore, the 30-day timeframe in § 111.104 is only triggered in the specific and limited circumstance when an individual broker files an incomplete triennial status report by failing to certify compliance with the continuing broker education requirement. Certifying completion of continuing broker education is an essential requirement and necessary to maintain an active license in good standing. Failure to complete or certify completion of the continuing broker education requirement will have an immediate effect on individual brokers. More importantly, a license suspension under § 111.104(c) can be avoided with taking corrective action on or before 30 calendar days from the date of issuance

[11] The ACE Portal is a web-based entry point for ACE to connect CBP, trade representatives and government agencies who are involved in importing goods into the United States. The eCBP Portal is currently the access point for a new system for electronic payments of licensed customs broker fees. When fully implemented, the eCBP portal will allow for easy collection of many types of duties, taxes, and fees.

of the notification of the potential suspension. If the license is suspended, an individual broker under § 111.104(d) can still take corrective action on or before 120 calendar days from the date of issuance of the order of suspension. Corrective action can range from certifying completion of the requirement to completing 36 continuing education credits. CBP has determined that 120 calendar days is sufficient time in the most extreme situation for an individual broker to complete all 36 continuing education credits and return to good standing. Furthermore, CBP believes a universally applied timeframe avoids unnecessary and potentially harmful confusion around a substantial license status change. Individual brokers must be aware that CBP is serious about compliance with the continuing broker education requirement, but CBP also wants to ensure minor mistakes can be quickly corrected with limited effect on the license.

IV. Conclusion

Based on the analysis of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (86 FR 50794) on September 10, 2021, as modified by the changes noted in Section II, Summary of Changes from the Proposed Regulations, above and in Section III, Discussion of Comments.

V. Statutory and Regulatory Requirements

A. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

CBP published the proposed rule titled, ''Continuing Education for Licensed Customs Brokers,'' on September 10, 2021, and received 70 comments from the public.[12] CBP adopts the regulatory amendments specified in the proposed rule with a few changes. After careful consideration of the public comments, CBP has made the following modifications: the recognition of half credits for 30 minutes of continuing broker education; the clarification that CBP will identify, in coordination with other U.S. government agencies when applicable, the qualified continuing broker education offered by a government agency that is relevant to customs business; the clarification that self-guided online modules qualify towards continuing education requirements; and the clarification that content providers may apply to multiple accreditors. With the adoption of the proposed regulatory amendments, CBP applies the 2021 NPRM's economic analysis approach to this final rule, updating the data as necessary. The modifications adopted in this final rule are discussed in greater detail in Sections II and III above, and do not affect the assumptions underlying the economic analysis.

1. Purpose of Rule

The final rule requires active individual customs broker license holders (''individual brokers'') to complete 36 hours of continuing education every three years, in line with the triennial status reporting period. A continuing broker education requirement will increase the knowledge base from which brokers work, educate them on changing customs requirements, regulations, and laws, and reduce the number of errors in filings and resultant penalties. CBP believes that requiring continuing broker education will enhance the credibility and value of an individual customs broker license and improve an individual broker's skills, performance, and productivity. Furthermore, CBP believes that mandating continuing broker education will increase the quality of service for individual brokers' clients and importers' compliance with customs laws, which will protect the revenue of the United States and aid in maintaining a high standard of professionalism in the customs broker community.

2. Background

On October 28, 2020, CBP published an advance notice of proposed rulemaking (ANPRM), entitled ''Continuing Education for Licensed Customs Brokers,'' in the **Federal Register** (85 FR 68260). The ANPRM presented a basic outline for a continuing broker education requirement for individual brokers and posed questions pertaining to the potential costs and benefits of such a requirement. Some of the public comments that CBP received in response to the ANPRM addressed the questions pertaining to the potential costs and benefits of such a requirement, although very few responses contained specific information or data. Any information that was provided on these issues was taken into account in formulating the analysis in the Notice of Proposed Rulemaking (NPRM) of the same title, which CBP published in the **Federal Register** on September 10, 2021 (86 FR 50794). CBP did not receive comments about CBP's economic analysis of the proposed rule. CBP has adopted a few suggestions from the public comments, as outlined above. In this final rule, CBP describes the new requirement for continuing broker education for individual brokers.

i. Customs Brokers

A customs broker assists clients with the importation of goods into the United States, and also with the filing of drawback claims. Customs brokers can be individuals, partnerships, associations, or corporations and must be licensed by CBP. Brokers are responsible for helping clients meet all relevant requirements for importing and submitting drawback claims, submitting information and payments to CBP on their client's behalf, and exercising responsible supervision and control over their employees and customs business.[13] Only licensed customs brokers may perform customs business.[14] Brokers may have expertise in any number of trade-related areas, including entry, admissibility, classification, valuation, and duty rates for imported goods. Some brokers specialize in a specific area of customs business, like drawback or valuation, while others are more general practitioners. As of 2022, there are

[12] 86 FR 50794.

[13] 19 U.S.C. 1641(b)(4). For more details on responsible supervision and control, see 19 CFR 111.1 and 111.28.

[14] Customs business is defined as: those activities involving transactions with U.S. Customs and Border Protection concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by U.S. Customs and Border Protection upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with U.S. Customs and Border Protection in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP. *See* 19 U.S.C. 1641(a)(2).

13,952 active individual brokers in the United States.[15]

To become a licensed customs broker, an eligible individual[16] must pass the Customs Broker License Examination, submit a broker license application and appropriate fees to CBP, and be approved by CBP.[17] Once applicants have passed the broker exam, they may apply for an individual, corporate, partnership, or association license. To maintain the license, the individual broker or the licensed entity (for corporations, partnership, or associations) must submit a triennial status report and requisite fees. The triennial status report and fees must be submitted by February 1, every three years, since 1985.[18] Once an individual has been approved as a customs broker, the primary ongoing requirement for maintaining the license under current regulations is the submission of the triennial status report and appropriate fee in three-year periods. Given the established three-year cycle of triennial status reporting, CBP employs a seven-year period of analysis to calculate costs and benefits that result from this rule, accounting for one year of preparation by CBP and two triennial cycles.

A broker license may be suspended or revoked, or a monetary penalty assessed, for several violations, ranging from falsifying information on the license application to willfully and knowingly deceiving, misleading, or threatening a client.[19] CBP generally assesses monetary penalties for less serious infractions, such as the incorrect filing of entry forms or the misclassification of goods. However, the majority of civil monetary penalties assessed against brokers for violations of 19 U.S.C. 1641 involve egregious violations or the failure to take satisfactory corrective actions following written notice and a reasonable opportunity to remedy the deficiency, as the penalties process provides noncompliant brokers with several opportunities to avoid or mitigate penalty liability.[20] Monetary penalties may not exceed $30,000 per violation. From 2017–2021, the average penalty assessed was $26,670 and the average collected amount was $2,423 due to mitigations allowed by CBP.[21]

In the fiscal years from 2017 to 2021, CBP assessed an average of 67 penalties to brokers per year.[22] However, in FY 2017 and FY 2018, CBP assessed 20 and 21 penalties, respectively, while in FY 2019 and FY 2020, CBP assessed over 100 penalties each year, with an additional 71 penalties assessed in FY 2021 (see Table 1). The significant increase in penalties from 2018 to 2019 and into 2020, and the slight decline in 2021 is likely due to rapid changes in the international trade environment in those years, and the experience gained with those changes. During that time, CBP began enforcing several significant changes in the realm of international trade, including new antidumping and countervailing duties (AD/CVD) and the tariffs imposed by the Trump Administration under section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as amended, section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended, and sections 301 through 310 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*), as amended.[23] These changes affected a significant number of imported goods. CBP provided many opportunities for individual brokers to learn about the changes, including webinars, Question and Answer sessions, public forums, and **Federal Register** notices. External organizations, like regional broker associations, also provided information regarding these changes to the customs laws, which would have led to greater understanding for individual brokers.

Although CBP sought information in the ANPRM on the number of companies employing individual brokers who already complete continuing education, CBP did not receive enough specific information to estimate the proportion of companies already providing ongoing training. Comments in response to the NPRM did not yield any more information, though commenters did not take issue with the assumptions made below. Based on information gathered via self-reporting by individual brokers, CBP is aware of about 300 companies that employ at least one individual broker who holds an industry certification that requires annual continuing education.[24] In the fiscal years from 2017 to 2021, a group of about 120 of those companies were responsible for 54 percent of the entries but only nine percent of the penalties.[25] Overall, these 120 companies filed 94,808,248 of the total 174,132,601 entries between 2017 and 2021, but only account for 29 of 337 total penalties assessed in that period.[26] For companies outside of this group, CBP does not know how much continuing education is currently taken.

[15] A customs broker may voluntarily suspend his or her license for a number of reasons and may re-activate the license at a later time. A broker's license may also be suspended as part of a penalty. For more information, see 19 CFR 111.52 and 111.53.

[16] To be eligible, an individual must be a United States citizen at least 21 years of age, in possession of good moral character, and not be an employee of the U.S. government. For more information, see U.S. Customs and Border Protection, *Becoming a Customs Broker* (Dec. 12, 2018), *available at https://www.cbp.gov/trade/programs-administration/customs-brokers/becoming-customs-broker.*

[17] To be approved, a broker who has passed the broker exam must also pass an investigation of his or her relevant background. *See* 19 CFR 111.14.

[18] 19 CFR 111.30(d). For more information on the triennial status report, see U.S. Customs and Border Protection, *2021 Customs Broker Triennial Status Report FAQs* (Feb. 26, 2021), *available at https://help.cbp.gov/s/article/Article-1711?language=en_US.*

[19] *See,*19 U.S.C. 1641(d)(1) and (g)(2) and 19 CFR 111.53.

[20] In the case of non-egregious violations, CBP will first attempt to work with the broker through the informed compliance process of communication and education. *See* U.S. Customs and Border Protection, *Electronic Invoice Program (EIP) and Remote Location Filing (RLF) Handbook* (May 2013), p. 22, *available at https://www.cbp.gov/sites/default/files/assets/documents/2016-Dec/Revised_eip_rlf_handbook_12-15_16.pdf.* This is an attempt to improve the broker's performance, and precedes the issuance of a pre-penalty notice, which is a written notice that advises the broker of the allegations or complaints against the broker. *See id.;* 19 CFR 111.92(a). If this process fails to remedy the deficiencies, or in case of egregious violations, CBP will issue a pre-penalty notice to the broker, which, *inter alia,* explains that the broker has the right to respond to the allegations or complaints. *See* 19 CFR 111.92(a). If the broker files a timely response to the pre-penalty notice, CBP will either cancel the case, issue a penalty notice in an amount lower than that provided in the pre-penalty notice, or issue a penalty notice in the same amount as the pre-penalty notice. *See* 19 CFR 111.92(b). Upon the issuance of the penalty notice, the broker is afforded the opportunity to file a petition for relief in accordance with the provisions of 19 CFR part 171, which may result in the cancellation or mitigation of the penalty, and subsequently a supplemental petition for relief. *See* 19 CFR 111.93 and 111.95.

[21] 19 U.S.C. 1641(d)(2)(B). Penalty information comes from CBP's Seized Currency and Asset Tracking System (SEACATS). Although the average value of assessed penalty is $26,670, CBP allows brokers to mitigate penalties, such that the amount collected is often significantly less, averaging $2,423 from 2017–2021.

[22] SEACATS.

[23] Trade remedies implemented by CBP include Section 201 trade remedies on solar cells and panels and washing machines and parts; Section 232 trade remedies on aluminum and steel; Section 232 trade remedies on derivatives; and Section 301 trade remedies to be assessed on certain goods from China. *See* U.S. Customs and Border Protection, *Trade Remedies, available at https://www.cbp.gov/trade/programs-administration/trade-remedies* (last visited on March 16, 2023).

[24] Information was provided by the National Customs Broker and Forwarders Association of America (NCBFAA). Nine companies employ at least 48 brokers certified by programs provided by the NCBFAA's Education Institute (NEI), and often employ more. An additional 292 companies employing at least one individual broker with an NEI certification were identified via a survey of NEI's students.

[25] Significant at the 99 percent confidence level.

[26] Entry data was pulled from ACE, and penalty data from SEACATS.

TABLE 1—ANNUAL PENALTIES ASSESSED BY CBP

FY	Number of penalties
2017	20
2018	21
2019	119
2020	106
2021	71

ii. Continuing Education

Continuing education refers to the training and learning pursued by professionals outside of the formal education system, usually as part of career development. Many licensed professions have some sort of continuing education requirement for license-holders, including attorneys, accountants, medical professionals, and teachers.[27] Continuing education is particularly important for professions characterized by continuously changing rules, standards, and norms. Customs and international trade is one such profession. Since 2000, the United States has added two new preferential trade programs and several new free trade agreements, the most recent being the USMCA, which replaced the NAFTA.[28] Additionally, the logistical aspects of customs have changed significantly over time. For example, CBP introduced the single window, enabling most CBP forms to be submitted electronically through the Automated Commercial Environment (ACE), which was fully implemented in 2016, with added functionalities being deployed on an ongoing basis.

There have been several other significant changes to the customs environment, including the implementation of the Trade Facilitation and Trade Enforcement Act (TFTEA), changes in duty rates and tariffs, and the modernization of the drawback requirements. Individual brokers must maintain awareness of and adapt to these changes to provide quality service to clients. However, aside from the broker exam at the beginning of their careers, individual brokers do not currently have any requirements ensuring that they maintain up-to-date knowledge of customs rules, regulations, and practices. As stated above, CBP believes that the vigorous pace and expanding scope of international trade require a more stringent continuing education framework for individual brokers who provide guidance to importers and drawback claimants.

The effects of continuing education programs are not easily measured and not often the subject of research.[29] Some studies show that various licensed professions do see a mild increase in positive perception of their industry, performance, and professionalism after the implementation of continuing education requirements.[30] Studies have also demonstrated a positive link between continuing education for teachers and student outcomes as well as between continuing medical education and patient outcomes.[31] Additionally, one study found that continuing professional education was correlated to an improvement in financial outcomes for accounting firms, particularly large firms.[32] Finally, a study of Internal Revenue Service-certified tax preparers found that mandatory continuing education was potentially linked to reduced civil penalties, a decrease in non-compliance, and increased accuracy of tax returns.[33]

Under the terms of this rule, individual brokers will be required to complete 36 hours of qualifying continuing broker education over each three-year reporting period. Qualifying activities will include attending or presenting at accredited events, such as courses, seminars, symposia, and conventions.[34] Online activities, including qualified trainings provided in-house will also be education opportunities. Individual brokers will be required to self-attest to the completion of the required continuing broker education on each triennial status report and maintain records consisting of certain documentation received from the provider or host of the qualifying continuing broker education, if such documentation was made available to the individual broker, and containing information pertaining to the dates, titles, providers, credit hours earned, and location (if applicable) for each training. The records can be in any format (*i.e.,* electronically or on paper), and the regulations provide CBP with authority to conduct a record request for a period of three years following the submission of the status report.

iii. Accreditation

To ensure the quality and relevance of continuing education offerings, they are often accredited by a leading body within the field in question. For example, the American Medical Association (AMA) is accredited to provide training by the Accreditation Council for Continuing Medical Education.[35] An accreditor is responsible for reviewing course content and determining the number of credits or hours to be granted for each course.

Under the final rule, after an application process (using the RFP, as described above), CBP will designate entities outside of CBP to act as accreditors for qualifying continuing broker education. Currently, CBP anticipates releasing, every three years, an RFP soliciting applications to become an accreditor for the continuing broker education program. Every three years following the first cycle, existing accreditors will also apply for renewal. To apply, potential and existing accreditors may submit an application to CBP detailing their standards for accreditation, quality control practices, application process, and other information. A panel of CBP experts will convene to review and approve or deny applications. Once approved, accreditors can begin accepting submissions from program creators or companies seeking accreditation for

[27] The number of hours of continuing education required for many professions varies by state as the state is the licensing authority.

[28] In October 2000, the United States implemented the Caribbean Basin Trade Partnership Act, which will expire in 2030 (*https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/caribbean-basin-initiative/cbtpa*). The African Growth and Opportunity Act was also enacted in 2000 (*https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa*). *See https://www.state.gov/trade-agreements/outcomes-of-current-u-s-trade-agreements/* for a list of free trade agreements currently in force.

[29] ''Evaluation of Current Customs Broker Continuing Education Practices and Literature Review of Continuing Education in Other Professions.'' Report for CBP prepared by IEC on June 30, 2014. This document is included in the docket for this final rule, which is posted on *Regulations.gov*.

[30] *See* Bradley, S., Drapeau, M. and DeStefano, J. (2012), *The relationship between continuing education and perceived competence, professional support, and professional value among clinical psychologists.* J. Contin. Educ. Health Prof., 32: 31–38; O'Leary, P.F., Quinlan, T.J., & Richards, R.L. (2011). Insurance Professionals' Perceptions of Continuing Education Requirements. Journal of Insurance Regulation, 30, 101–117; and Wessels, S. (2007). Accountants' Perceptions of the Effectiveness of Mandatory Continuing Professional Education. Accounting Education, 16(4), 365–378.

[31] Darling-Hammond, L., Hyler, M.E., and Gardner, M. (2017). *Effective Teacher Professional Development.* Learning Policy Institute; Cervero, R. M., & Gaines, J.K. (2014). Effectiveness of continuing medical education: updated synthesis of systematic reviews. Accreditation Council for Continuing Medical Education.

[32] Chen, Y.-S., Chang, B.-G., & Lee, C.-C. (2008). The association between continuing professional education and financial performance of public accounting firms. International Journal of Human Resource Management, 19(9), 1720–1737.

[33] Diehl, K. A. (2015). Does Requiring Registration, Testing, and Continuing Professional Education for Paid Tax Preparers Improve the Compliance and Accuracy of Tax Returns?—US Results. Journal of Business & Accounting, 8(1), 138–147.

[34] *See* 19 CFR 111.103(a).

[35] *See* American Medical Association, *About the AMA's CME Accreditation,* available at *https://edhub.ama-assn.org/pages/ama-cme* (last accessed on May 11, 2021).

specific programs. However, training or educational activities offered by U.S. government agencies—so long as the content is relevant to customs business as identified by CBP in coordination with the offering agency—do not require accreditation.[36]

iv. Performance Improvement

Once brokers have passed the broker exam, thereby proving their basic knowledge and competency to perform the duties of a licensed customs broker at the time of the exam, they are free to practice in perpetuity unless the license is suspended or revoked. The statute dictates that while practicing under the auspices of his or her broker license, a customs broker must maintain responsible supervision and control.[37] CBP's regulations likewise place additional legal obligations upon customs brokers, including, but not limited to, the requirement for exercising due diligence in making financial settlements, answering correspondence, and preparing or assisting in the preparation and filing of information relating to customs business.[38] Staying current on developments in customs law is needed for individual brokers to comply with their legal obligations, but presently there are no standards for how much continuing broker education is needed.

Under baseline conditions, meaning the world as it is prior to this rule, CBP does not require brokers to complete any additional training or prove their ongoing knowledge. The broker exam only tests knowledge of customs and related laws that are in place at the time of the exam. While the exam ensures that brokers have a solid base level of knowledge when they begin practicing, there is no requirement that they keep up the knowledge, and evidence suggests that as more time passes since brokers took their exam, the more errors they make. Individual brokers who were assessed penalties by CBP between 2017 and 2020 have held their individual broker license for, on average, 37 years. In contrast, the average individual broker license has been held for 24 years. This suggests that as more time passes since the passing of the customs broker exam, more errors are made. Furthermore, the exam does not test for any of the requirements of the more than 40 PGAs involved in regulating imports. Depending on the individual brokers' needs, CBP believes that continuing broker education should also include courses relating to the PGAs' international trade requirements, although there is no minimum requirement for certain subject matters in this rule.

Given the often fast-paced and evolving nature of the international trade environment, CBP believes that a continuing broker education requirement will help to ensure that individual brokers remain current with their understanding of international trade laws and continue to expand their knowledge of customs regulations and practices. A more competent and educated customs broker community will also prevent costly errors, potentially saving brokers' clients time and money, as well as relieving CBP from expending valuable audit and penalty assessment and collection resources.

3. Overview of Assessment

The final rule will result in costs and benefits for individual brokers, accreditors, providers of continuing education, and CBP. Many of the costs for individual brokers come in the form of time spent researching, registering for, attending, and reporting trainings. Individual brokers will also experience some opportunity cost as they forgo time spent on other tasks in favor of fulfilling a continuing broker education requirement. Accreditors must apply to CBP. Though CBP will not charge a fee, the accreditors will need to spend time in creating their applications. Similarly, providers of continuing broker education must apply to accreditors to have their coursework certified. Finally, CBP must designate accreditors, and, following the full implementation of the rule's framework, CBP may request records from individual brokers to confirm compliance.

The benefits from the final rule will be largely qualitative. A continuing broker education requirement will help to professionalize and improve the reputation of the customs broker community, as well as to improve customer service and outcomes. Quantitatively, continuing education will likely lead to a reduction in errors in documentation and associated penalties assessed by CBP for some infractions and violations. Not only will individual brokers not need to pay the associated penalties, but CBP will save the time of identifying, assessing, and collecting such penalties. Similarly, CBP will likely see a reduction in regulatory audits of individual brokers.

4. Historical and Projected Populations Affected by the Rule

The final rule applies to any individual holding an active customs broker license.[39] Individual brokers who have voluntarily suspended their licenses are not required to complete continuing broker education until they elect to reactivate their licenses, at which point the requirements are pro-rated depending upon the timing within the triennial reporting period. Individual brokers who have not held their license for an entire triennial period at the time their first triennial status report is due are also exempted from completing training and reporting in their first triennial status report, though are bound by the terms of the rule in the following years. As of 2022, there are 13,952 active, individual broker licenses. All of those brokers, as well as any brokers who receive their licenses in 2023 will be required to begin complying with the terms of the rule with the 2024–2027 reporting period, with the first certification of compliance due at the time of filing the 2027 triennial status report.[40] Those brokers receiving their licenses in 2024, 2025, and 2026 will begin complying with continuing broker education requirements after completing their first triennial status reports in 2027 and will perform their first certifications in 2030.[41]

CBP approves approximately 600 new licenses per year, although the number of licenses added annually has been decreasing since at least 2016. *See* Table

[36] Per section 111.103(a)(1)(i), a training or educational activity offered by a U.S. government agency other than CBP must be relevant to customs business.

[37] *See* 19 U.S.C. 1641(b)(4).

[38] *See* 19 CFR 111.29(a), and 19 CFR part 111 generally for additional obligations.

[39] Entities holding corporate, association, or partnership licenses must employ at least one individual broker, who will be required to comply with the rule. *See* 19 CFR 111.11(a) and (b).

[40] Triennial status reports are due in February of the reporting year and cover the previous three years. For these brokers, compliance is expected to begin in 2024, with the 2027 triennial status report certifying completion of 36 hours of continuing broker education in 2024, 2025, and or 2026. As discussed above in Section I, D. Initial Certification Date, CBP has the ability to prorate the initial requirements if the rule is implemented part way through the triennial cycle. If needed, CBP will reduce the number of required continuing education credits for the triennial period beginning on February 1, 2024, as deemed necessary based on a revised implementation date. For the purposes of this analysis, CBP assumes a requirement of 36 hours of continuing education to be certified in 2027. To the extent that CBP must delay full implementation and prorate the number of required credits, actual costs for brokers in the triennial cycle from 2024–2027 will be proportionally lower.

[41] Although brokers may complete their required broker continuing education at any point in the three years of the triennial period, for ease of presentation, CBP assumes that brokers will complete 12 hours of training each year. Brokers receiving their licenses in 2024, 2025, and 2026 will certify to the completion of their requirements in 2030, covering training taken in 2027, 2028, and 2029.

2 for a summary of licensing history for the previous six years.

TABLE 2—LICENSING HISTORY FROM 2016–2021

Year	Total licenses [42]	Corporate licenses	Individual licenses
2016	653	21	632
2017	580	16	564
2018	558	27	531
2019	464	15	449
2020 [43]	187	7	180
2021	496	31	465
Total	3,708	133	3,575

Based on the compound annual growth rate from 2017–2021, which shows a decline of 4 percent in the number of individual licenses issued, CBP estimates it will issue 447 new individual licenses in 2022, the year preceding the period of analysis.[44] CBP estimates it will issue 2,692 new individual licenses over a seven-year period of analysis from 2023–2029, and 2,261 new individual licenses from 2024–2029, the part of the period of analysis during which brokers will need to fulfill the requirements of the rule (see Table 3). Not all those license holders will be required to complete continuing broker education during the seven-year period of analysis; those brokers receiving their licenses in 2027, 2028, and 2029 will not need to begin compliance until after their first triennial reporting period in 2030. All new individual license holders will need to comply with the terms of the rule once it is in effect and they have completed their first triennial status report. This includes the 13,952 individual brokers licensed and active as of January 2022 as well as the 447 individual brokers projected to receive their licenses in 2022 and the 430 individual brokers projected to receive their licenses in 2023. Individual brokers who receive licenses in 2024–2026 will not need to comply with the rule until after their first triennial reporting period, beginning in 2027. CBP estimates that 1,196 individual brokers will receive licenses from 2024–2026, with 1,065 receiving them from 2027–2029 and completing their first continuing education certification outside the period of analysis. In total, therefore, CBP estimates that 16,026 individual brokers will be required to abide by the rule in the six years from 2024 to 2029.[45] No brokers will be required to comply with the rule in 2023, though brokers licensed that year will need to comply in subsequent years.

TABLE 3—PROJECTED LICENSES ISSUED FROM 2023–2029

Year	Total licenses issued	Corporate licenses	Individual licenses	New licenses affected by the rule
2023	459	29	430	0
2024	442	28	414	[46] 1,343
2025	425	27	398	0
2026	409	26	383	0
2027	393	25	369	1,196
2028	379	24	355	0
2029	364	23	341	0
Total	2,871	179	2,692	2,539

* Totals may not sum due to rounding.

[42] CBP sometimes issues licenses that are later suspended or terminated (either voluntarily or as a penalty). This table includes all licenses issued in these years that remain active as of 2022, as only holders of an active license will need to abide by the terms of the rule.

[43] The number of licenses applied for and issued in 2020 was significantly lower than in previous years due to the effects of the COVID–19 pandemic and related closures and delays. CBP excluded this year from calculations of growth rates due to its anomalous nature. Data for 2021 indicates that broker license applications have mostly returned to their pre-2020 levels.

[44] The rate of decline in licenses can vary based on the years chosen for calculations. In the NPRM, CBP estimated a decline of 12 percent, but data from 2021 indicates that licensing recovered to and increased from levels seen before disruptions from the COVID–19 pandemic, resulting in a reduction in the rate of decline in licenses issued. CBP believes that this recovery is likely to continue for a few more years as the industry adjusts.

[45] 14,828 individual brokers will certify compliance in the 2027 triennial report (who will comply from 2024–2026) = 13,952 (2022 active) + 447 (2022 new) + 430 (2023 new)). 16,026 individual brokers will certify compliance in the 2030 triennial report (who will comply from 2027–2029) = 14,828 (2024 active) + 414 (2024 new) + 398 (2025 new) + 383 (2026 new).

[46] All active, licensed, individual customs brokers will begin complying with the rule in 2024, regardless of what year they received their license. The 1,343 licenses newly affected in 2024 include those brokers who received their licenses in 2021, 2022, and 2023 and will complete their first triennial status report in 2024.

Although the majority of active individual brokers will be required to complete continuing education under the rule, feedback from the broker community indicates that many brokers already complete the amount of continuing education that will satisfy this requirement.[47] Many companies that employ individual brokers provide and require in-house training and continuing education. Both independent brokers and brokers employed by brokerages often attend government-sponsored webinars, as well as trade conferences and symposia, which will qualify as continuing broker education under the terms of the rule. Many individual brokers also pursue professional certifications like the National Customs Brokers and Freight Forwarders Association of America's (NCBFAA) Certified Customs Specialist (CCS) and Certified Export Specialist (CES).[48] Under the baseline, or the world as it is now, these individual brokers likely will be in compliance with the final rule and, assuming similar activities when a continuing education requirement is imposed, will not incur new costs under the new requirements, except for new reporting costs.

Overall, CBP estimates that approximately 60 percent of individual brokers already pursue continuing education and will be in compliance with the rule.[49] CBP bases this estimation on several factors. First, the NCBFAA estimates that approximately 4,456 individual brokers hold a CCS or CES certification in 2020, representing 32 percent of total individual brokers.[50] In order to maintain these professional certifications, these individual brokers are required to earn 20 continuing education credits per year.[51] Additionally, public comments in response to the ANPRM, as well as discussions between CBP and various broker organizations, indicate that most large businesses employing individual brokers already provide, and often mandate, internal training and continuing education. Based on data from the U.S. Census Bureau, approximately 61 percent of those employed within the Freight Transportation Arrangement Industry (NAICS code 448510) are not employed by small businesses. A small business within the Freight Transportation Arrangement Industry is defined as one whose annual receipts are less than $20.0 million in 2022 dollars ($17,274,816 in 2017 dollars, using the CPI to account for inflation), regardless of the number of employees.[52] Table 4 shows the receipts per firm, in millions of dollars (2017), for firms employing each number of employees.[53] The average firm within Categories 7 and 9 has annual receipts of greater than $17.5 million in 2017 dollars and is considered a large business. These firms employ 161,463 people, or approximately 61 percent of the total employees in the industry.

TABLE 4—SMALL BUSINESSES IN THE FREIGHT TRANSPORTATION ARRANGEMENT INDUSTRY, 2017

Employment size[54]	Number of employees	Preliminary receipts (all firms, $1,000s)[55]	Receipts per firm ($)	Small business?
01: Total	265,192	$67,276,572	$4,454,222	
02: <5	15,939	6,315,166	708,614	Yes.
03: 5–9	18,025	5,392,992	1,974,732	Yes.
04: 10–19	20,288	5,870,163	3,851,813	Yes.
05: <20	54,252	17,578,321	1,335,029	Yes.
06: 20–99	49,477	13,973,780	10,397,158	Yes.
07: 100–499	44,715	10,886,028	30,493,076	No.
08: <500	148,444	42,438,129	2,854,327	Yes.
09: 500+	116,748	24,838,443	105,247,640	No.

Given the proportion of individual brokers working for larger businesses, the feedback on the ANPRM indicating high rates of compliance, the proportion of individual brokers pursing certifications, and input from CBP subject matter experts who frequently interact with the broker community, CBP estimates that approximately 60 percent of individual brokers are already in compliance with the requirements of the rule and will not face new costs, assuming a continuing level of similar activity, aside from recordkeeping and reporting, as a result of the rule's implementation. CBP did not receive any comments on this assumption in response to the NPRM.

[47] Feedback was provided in the form of public comments on the ANPRM and was not disputed in public comments on the NPRM. Additional feedback was provided in various meetings and discussions between CBP personnel and customs brokers, as well as at trade conferences and meetings of the Task Force for Continuing Education for Licensed Customs Brokers, a part of the Commercial Customs Operations Advisory Committee (COAC). COAC is jointly appointed by the Secretary of the Treasury and the Secretary of DHS and advises the Secretary of the Treasury and the Secretary of Homeland Security on all matters involving the commercial operations of CBP. Meetings of COAC are presided over jointly by the Deputy Assistant Secretary for Tax, Trade, and Tariff Policy of the Department of Treasury and Commissioner of CBP, as described in section 109 of TFTEA. *See* III. Discussion of Comments, above.

[48] We included both individual brokers qualifying as CCS and CES in our analysis as the coursework for both has significant overlap and is relevant to customs business.

[49] CBP requested information about the proportion of individual brokers already complying with the rule in the ANPRM. Although CBP did not receive specific information in the public comments, several commenters said they will be compliant and believed that significant numbers of other individual brokers will be as well. Many also noted that their companies require their broker employees to complete continuing education. Public comments in response to the NPRM did not dispute this assumption.

[50] Discussion with officials at the NCBFAA on April 5, 2021. This includes individual brokers renewing their certification in 2020, as well as those becoming certified for the first time. The CCS certification program requires enough hours of continuing education to comply with the terms of the rule and the NCBFAA has expressed interest in becoming an accredited provider.

[51] *See* National Customs Brokers & Forwarders Association of America, Inc., *Continuing Education* available at *https://www.ncbfaa.org/education/continuing-education.* Accessed March 16, 2023.

[52] Small business size standards are defined in 13 CFR part 121. To calculate the effects of inflation from January 2017 to January 2022, see *https://www.bls.gov/data/inflation_calculator.htm.*

[53] United States Census Bureau, ''2017 County Business Patterns and 2017 Economic Census,'' Released March 6, 2020, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* Accessed March 15, 2021.

[54] Note that some of the categories are sums of other categories. For example, Category 8, <500, is a sum of Categories 2, 3, 4, 6, and 7. Thus, Categories 7 and 9 are not consecutive, but represent all firms employing 100 or more people.

[55] The Survey of U.S. Businesses (SUSB) from which this data is taken is conducted in years ending in 2 and 7.

Based on the likely proportion of individual brokers already in compliance, CBP estimates that 6,410 affected individual brokers, or approximately 40 percent, will need to come into compliance with the rule over a seven-year period of analysis (see Table 5). Although we requested comment on our assumption that 60 percent of brokers already spend at least 36 hours per three-year period on continuing education and that the remaining 40 percent of brokers will need to increase their training by the full 36 hours triennially to meet the requirement, the public comments received in response to the NPRM did not address this question. We therefore maintain the same assumption for the final rule.

TABLE 5—PROJECTION OF BROKERS AFFECTED BY THE FINAL RULE

Year	Total licenses	Proportion in compliance (%)	Total licensed brokers affected
2023	13,952	60	0
2024	14,830	60	5,932
2025	14,830	60	5,932
2026	14,830	60	5,932
2027	16,026	60	6,410
2028	16,026	60	6,410
2029	16,026	60	6,410
Total	16,026	.....	6,410

Although individual brokers are the primary party affected by the terms of the rule, the rule will also have an impact on CBP, providers of continuing broker education, and the bodies who accredit continuing broker education. Each party will see both costs and benefits under the final rule.

5. Costs of the Rule

i. To Brokers

The primary cost to individual brokers upon implementation of the rule will be those costs associated with finding and attending 36 hours of continuing broker education over a three-year period. These costs include time spent researching reputable and relevant trainings, travel and incidental expenses to attend in-person events like conferences, and the tuition or fees for the courses themselves. Many individual brokers might satisfy the continuing broker education requirement with training supplied by their employers. Other individual brokers, particularly those self-employed or employed by small businesses, will need to seek external training. For external training, individual brokers may attend free webinars, seminars, and trade events sponsored by CBP, other government agencies, and various related organizations like local freight forwarder and broker associations.[56] Alternatively, individual brokers might choose paid trainings, conferences, or symposia, or seek certifications offered by trade organizations or educational institutions. Based on comments received in response to the NPRM, CBP is also clarifying that self-guided, online courses or content, whether free or paid, which culminate in a retention test are also acceptable if accredited.

CBP does not know exactly which option each individual broker is likely to choose. Many individual brokers already hold certifications, attend webinars, and fulfill internal training requirements, though they may need to increase the number of hours completed to comply with the final rule. Therefore, CBP has estimated a range of costs. Some individual brokers will fulfill their continuing broker education requirements with only free trainings. Others will follow a medium-cost path by opting for a mix of free, lower-cost, and internal trainings. CBP further assumes that individual brokers electing the medium-cost path will travel to attend one major conference or symposium in-person per year. Finally, some will meet requirements by completing only paid courses representing the highest-cost offerings. CBP assumes that individual brokers choosing the higher-cost option will travel to attend an average of two conferences per year.

There are several organizations that provide continuing education for customs brokers, ranging from regional broker associations to national entities, such as the American Association of Exporters and Importers (AAEI). Continuing broker education that qualifies under the terms of the rule includes webinars, seminars, and trade conferences. The hourly cost of such trainings (excluding free events provided by government agencies and other organizations) usually ranges from around $25 to $70. Fees are often tiered based on membership of the hosting organization. Members of an organization may pay $25 while non-members pay $45. CBP cannot predict which organizations will seek accreditation for their events, although free webinars and trainings hosted by Federal government agencies and identified by CBP will qualify and do not require approval by a CBP-selected accreditor. Therefore, we assume that the average hourly monetary cost will range from $0.00 (low) to $30 (medium) to $50 (high). This assumption is based on current fees charged for various continuing education certifications, webinars, and trade conferences, and CBP did not receive any comments on these assumptions in response to the NPRM.[57]

In addition to fees, individual brokers will need to spend some time in researching relevant and accredited trainings. CBP assumes that an individual broker will spend approximately three hours finding and registering for continuing broker education during every triennial period, an assumption that was not commented

[56] For example, the Florida Customs Broker and Forwarders Association offers both paid and free events. Information on CBP-hosted webinars can be found at *https://www.cbp.gov/trade/stakeholder-engagement/webinars.* Many other government agencies also provide webinars on trade-related topics. For example, in 2020, the Food and Drug Administration (FDA) hosted a series of webinars on the importation of medical devices in light of the COVID–19 pandemic. *See https://www.fda.gov/medical-devices/workshops-conferences-medical-devices/webinar-series-respirators-and-other-personal-protective-equipment-ppe-health-care-personnel-use.*

[57] CBP does not have information on the cost for an employer to provide training internally, although such information was requested in the ANPRM. CBP believes the cost for internal training will be closer to that of attending external trainings as a member, since member fees are likely much closer to base cost of provision than non-member fees.

upon in response to the NPRM. Many individual brokers are members of both local and national organizations that provide continuing education opportunities and will likely be notified of opportunities via newsletters or listservs. Other individual brokers will need to spend some time finding and verifying accreditation for qualifying events. All individual brokers will spend some time registering for events. Based on an average loaded wage rate of $34.81, the process of researching and registering for trainings will cost brokers approximately $2.90 per credit hour.[58]

Many individual brokers also travel to attend trade conferences each year. CBP assumes that those individual brokers electing the lower-cost options will forgo travel and either attend virtually (paying only the fee) or not attend at all. CBP assumes that individual brokers in the medium-cost tier will travel to attend one conference each year, while individual brokers in the high-cost tier will travel to attend two conferences.[59] Tuition and fees for conferences, broken down into an hourly rate, are already accounted for in the average costs of $30–$50 per hour. Traveling to attend a single 3-day conference costs approximately $332 in airfare, $288 for lodging, and $177 for meals and incidentals, for a total of $797 for one conference or $1,593 for two conferences (see Table 6).[60] Over the three years of the triennial cycle, attending a single conference per year costs $2,391 and attending two conferences per year costs $4,779. Spread across 36 hours of training, travel costs account for an additional $66 per hour (medium) or $133 per hour (high).

TABLE 6—TRAVEL AND INCIDENTAL COSTS TO ATTEND IN-PERSON EVENTS

[2022 U.S. dollars]

Cost	General cost	Low	Medium	High
Transportation	$332	$0	$332	$664
Hotel	288	0	288	576
Meals & Incidentals	177	0	177	354
Total (Per Year)	797	0	797	1,593

To determine the total costs of the rule to a single broker, CBP calculated the costs of tuition for qualifying continuing education, travel to conferences, and research and registration on a per-credit hour basis. As described above, CBP assumes the per-credit hour cost of trainings to range from $0 (low) to $30 (medium) to $50 (high). The cost of research and registration is constant across tiers, as described above, and totals $2.90 per credit hour. The per-credit hour cost of travel is calculated by multiplying the per year cost of attending conferences described in Table 6 by 3 years and then dividing by 36 credit hours per triennial period. This results in costs of $0 (low), $66 (medium), and $133 (high). The total, per-credit hour cost for a single broker therefore comes to $2.90 (low; $0 + $2.90 + $0), $99 (medium; $30 + $2.90 + $66), and $186 (high; $50 + $2.90 + $133).

Overall, as a result of the rule, an individual broker will likely incur monetary costs ranging from $34.81 (low) to $1,191 (medium) to $2,228 (high) per year to complete 36 hours of continuing education in a three-year period. Over a seven-year period of analysis, these costs sum to $209 (low), $7,148 (medium), or $13,367 (high). *See* Table 7 for a summary of these costs.

[58] The median wage rate for brokers is best represented by BLS's Occupational Employment and Wage Statistics estimate for the median hourly wage rate for Cargo and Freight Agents (Occupation Code #43–5011), which was $22.55 in 2021. To account for non-salary employee benefits, CBP multiplied the median hourly wage by the 2021 ratio of BLS's Employer Cost for Employee Compensation quarterly estimate of total compensation to wages and salaries for Office and Administrative Support occupations, the assumed occupational group for brokers. To adjust to 2022 dollars, CBP also assumes an annual growth rate of 4.15% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. Sources: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2021 National Occupational Employment and Wage Estimates United States.'' Updated March 31, 2022. Available at *https://www.bls.gov/oes/2021/may/oes_nat.htm,* Accessed May 25, 2022. The total compensation to wages and salaries ratio is equal to the calculated average of the 2021 quarterly estimates (shown under Mar, Jun, Sep, Dec) of the total compensation cost per hour worked for Office and Administrative Support occupations ($29.6125) divided by the calculated average of the 2021 quarterly estimates (shown under March, June, Sept., Dec.) of wages and salaries cost per hour worked for the same occupation category ($19.9825). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. ''ECEC Civilian Workers—2004 to Present.'' March 2022. Available at *https://www.bls.gov/web/ecec.supp.toc.htm.* Accessed May 25, 2022. Because median hourly wage information was not available for this respondent, CBP adjusted the annual median wage for this respondent to an hourly estimate using the standard 2,080 hours worked per year.

[59] Some individual brokers will pay for their travel out of pocket, while other will have their travel expenses covered by their employers.

[60] CBP bases these costs off the average, annual price of a domestic flight in 2021, and the General Services Administration's per diem cost for lodging and meals and incidental expenses. For the flight costs, CBP used the inflation-adjusted national average for 2021, annual. Source for flight costs: The Bureau of Transportation Statistics, ''Average Domestic Airline Itinerary Fares,'' *https://www.transtats.bts.gov/AverageFare/.* Accessed March 21, 2023 (select 'Annual' and '2021' from the drop-down menu). To calculate the lodging costs, CBP used the General Services Administration's FY22 standard lodging per diem rate for the Continental United States ($96) and assumed an average stay of 3 nights (3 nights * $96 per night = $288). To calculate the cost of meals and incidentals, CBP used the GSA's meals and incidental expenses reimbursement rate ($59 per day) and again assumed an average stay of 3 days ($59 per day * 3 days = $177). Source for per diem costs: U.S. General Services Administration, ''FY22 Per Diem Highlights,'' *https://www.gsa.gov/cdnstatic/FY_2022_Per_Diem_Rates_Highlights.docx.* Accessed March 21, 2023.

[61] Individual brokers may complete whatever number of hours they prefer during each year, so long as it totals 36 hours in three years. CBP designates 12 hours per year both for ease of presentation and to account for pro-rating for individual brokers who re-activate their licenses within the triennial period.

[62] Costs include tuition/fees, travel costs, and research time costs for each level.

TABLE 7—ANNUAL COSTS FOR ONE BROKER

[2022 U.S. dollars]

Year	Hours [61]	Low		Medium		High	
		Costs [62]	Total	Costs	Total	Costs	Total
2023	0	$0.00	$0.00	$0	$0	$0	$0
2024	12	2.90	34.81	99	1,191	186	2,228
2025	12	2.90	34.81	99	1,191	186	2,228
2026	12	2.90	34.81	99	1,191	186	2,228
2027	12	2.90	34.81	99	1,191	186	2,228
2028	12	2.90	34.81	99	1,191	186	2,228
2029	12	2.90	34.81	99	1,191	186	2,228
Total	72	17	209	596	7,148	1,114	13,367

* Totals may not sum due to rounding.

There were 13,952 licensed individual brokers at the beginning of 2022, with 447 and 430 additional brokers projected to receive their licenses in 2022 and 2023, respectively. Therefore, 14,830 brokers will be required to begin complying with the rule in 2024. Additionally, brokers newly licensed in 2024, 2025, or 2026 will be required to begin complying with the rule in 2027, for a total of 16,026 brokers reporting compliance in their 2030 triennial reports. CBP estimates that a total of 6,410 will be required to begin to complete continuing broker education under the terms of the rule in the seven-year period of analysis, based on a current estimated compliance rate of 60 percent (see Historical and Projected Populations Affected by the Rule, above). Therefore, CBP estimates that brokers will incur costs related to searching for training, fees, travel, and incidentals, totaling from $1,288,903 (low) to $44,111,892 (medium) to $82,491,664 (high) over the seven-year period of analysis. *See* Table 8.

TABLE 8—TOTAL ANNUAL TRAINING COSTS FOR INDIVIDUAL BROKER LICENSE HOLDERS

[2022 U.S. dollars]

Year	Brokers [63]	Low		Medium		High	
		Cost	Total	Cost	Total	Cost	Total
2023	0	$0.00	$0	$0	$0	$0	$0
2024	5,932	34.81	206,491	1,191	7,067,013	2,228	13,215,702
2025	5,932	34.81	206,491	1,191	7,067,013	2,228	13,215,702
2026	5,932	34.81	206,491	1,191	7,067,013	2,228	13,215,702
2027	6,410	34.81	223,144	1,191	7,636,952	2,228	14,281,519
2028	6,410	34.81	223,144	1,191	7,636,952	2,228	14,281,519
2029	6,410	34.81	223,144	1,191	7,636,952	2,228	14,281,519
Total	6,410	209	1,288,903	7,148	44,111,892	13,367	82,491,664

* Totals may not sum due to rounding.

To create a primary estimate, CBP assumes that approximately one third of individual brokers will elect the lowest cost path ($34.81 each year), one third will elect the medium-cost path ($1,191 each year), and one third will elect the highest cost path ($2,228 each year) once the rule is in place. CBP did not receive any comments on this assumption in response to the NPRM. Under these conditions, individual brokers who begin pursuing continuing education as a result of the rule will face $42,630,820 in costs related to searching for training, fees, travel, and incidentals over the seven-year period of analysis. *See* Table 9.

TABLE 9—PRIMARY ESTIMATE OF TRAINING & TRAVEL COSTS FOR BROKERS

[2022 U.S. dollars]

Year	Total brokers	Brokers choosing each path	Total cost
2023	0	0	$0
2024	5,932	1,977	6,829,735
2025	5,932	1,977	6,829,735
2026	5,932	1,977	6,829,735
2027	6,410	2,137	7,380,538

[63] Only the 40 percent of individual brokers who do not already complete continuing education will face these costs. The total number of individual brokers affected in the final year of analysis (2029) is the same as the number of individual brokers overall because each year represents the same population with a small amount of growth.

TABLE 9—PRIMARY ESTIMATE OF TRAINING & TRAVEL COSTS FOR BROKERS—Continued

[2022 U.S. dollars]

Year	Total brokers	Brokers choosing each path	Total cost
2028	6,410	2,137	7,380,538
2029	6,410	2,137	7,380,538
Total	6,410		42,630,820

* Totals may not sum due to rounding.

All individual brokers, including those who already complete continuing education and will not face new costs for research, tuition, and travel, will also be required to store records of their completed continuing broker education and report their compliance to CBP.[64] Record storage will require maintaining either paper or digital copies of any documentation received from the provider or host of the qualifying continuing broker education and a document of some kind listing the date, title, provider, number of credit hours, and location (if applicable) for each training. To report and certify compliance, individual brokers who file paper-based triennial status reports with CBP will include a written statement in the triennial status report, and individual brokers who file their triennial status reports electronically through the eCBP portal will check a box in the eCBP portal while filing their triennial status report electronically. Individual brokers will further be required to produce their records of compliance if requested by CBP, though CBP will only require individual brokers to maintain their records for the three years following the submission of the triennial status report.[65] CBP estimates that recordkeeping and reporting will take each individual broker 30 minutes (0.5 hours) per year. After the first triennial reporting period in which individual brokers self-attest to completing their training, 10 percent of individual brokers each year will incur the cost of producing records to submit to CBP following a record request, which CBP estimates will take 15 minutes (0.25 hours).[66] Therefore, individual brokers will see $1,652,969 in new reporting and recordkeeping costs over the seven-year period of analysis. *See* Table 10.

TABLE 10—REPORTING COSTS FOR ALL BROKERS

[2022 U.S. dollars]

Year	Brokers	Time for recordkeeping (hours) [67]	Time for producing records (10% of brokers)	Loaded wage	Total
2023	0	0.00	0.00	34.81	$0
2024	14,830	0.50	0.00	34.81	258,113
2025	14,830	0.50	0.00	34.81	258,113
2026	14,830	0.50	0.00	34.81	258,113
2027	16,026	0.50	0.25	34.81	292,876
2028	16,026	0.50	0.25	34.81	292,876
2029	16,026	0.50	0.25	34.81	292,876
Total	16,026	3	0.75		1,652,969

* Totals may not sum due to rounding.

To comply with the final rule, individual brokers who do not already do so will be required to spend 36 hours over three years completing continuing broker education in whatever form they choose. Additionally, CBP estimates they will spend three hours per three-year cycle researching and registering for trainings. Finally, individual brokers will need to spend about 30–45 minutes (0.5–0.75 hours) on recordkeeping per year. Overall, individual brokers will need to spend about 40.5 hours over a three-year period, or 81 hours over a seven-year period of analysis, to comply with the rule.

Some individual brokers will choose to complete their trainings outside of work hours, while others will complete training as part of their assigned duties. Individual brokers will also spend time in researching, registering for, and maintaining records of their continuing broker education, for a total of 12 hours per year of training plus 1.5 to 1.75 hours per year in research and recordkeeping. Based on the average loaded wage rate for brokers of $34.81, the opportunity cost of researching, registering for, attending, and reporting continuing broker education is approximately $17,432,417 over the seven-year period of analysis. *See* Table 11.

[64] Some individual brokers will likely face additional time-costs should they fail to complete and/or report their required continuing broker education and need to take corrective action or reapply for their licenses following revocation (see section 111.104(d) for details). However, CBP only reports the costs affected populations will face to maintain compliance with the rule.

[65] Note that many other records must be maintained for five years. The three-year standard applies only to records of continuing education.

[66] The exact percentage of record requests made will vary across each triennial reporting period. For the purposes of this analysis, we assume CBP will randomly select 10 percent of individual brokers to request records from each year.

[67] Note that only 10 percent of individual brokers will spend 45 minutes per year, while the remaining 90 percent will spend 30 minutes per year. Furthermore, CBP will only begin record requests after the first triennial period during which the rule is in effect.

TABLE 11—SUMMARY OF OPPORTUNITY COST FOR BROKERS

[2022 U.S. dollars]

Year	Brokers	Hours	Loaded wage rate	Cost
2023	0	0.0	$34.81	$0
2024	5,932	13.5	34.81	2,792,787
2025	5,932	13.5	34.81	2,792,787
2026	5,932	13.5	34.81	2,792,787
2027	6,410	13.5	34.81	3,018,019
2028	6,410	13.5	34.81	3,018,019
2029	6,410	13.5	34.81	3,018,019
Total	6,410	81	243.67	17,432,417

* Totals may not sum due to rounding.

Total costs for all individual brokers, including tuition and travel expenses for those who must begin continuing broker education regimens because of the rule (see Tables 8 and 9) as well as opportunity costs (see Table 11) and reporting costs (see Table 10) for all individual brokers, range from $20,374,289 to $101,577,050. The primary estimate, which accounts for one third of individual brokers choosing each cost tier, comes to $61,716,206 over the seven-year period of analysis. *See* Table 12.

TABLE 12—TOTAL COSTS FOR ALL BROKERS

[2022 U.S. dollars]

Year	Total cost: low estimate	Total cost: medium estimate	Total cost: high estimate	Total cost: primary estimate
2023	$0	$0	$0	$0
2024	3,257,391	10,117,913	16,266,602	9,880,635
2025	3,257,391	10,117,913	16,266,602	9,880,635
2026	3,257,391	10,117,913	16,266,602	9,880,635
2027	3,534,039	10,947,847	17,592,414	10,691,433
2028	3,534,039	10,947,847	17,592,414	10,691,433
2029	3,534,039	10,947,847	17,592,414	10,691,433
Total	20,374,289	63,197,278	101,577,050	61,716,206

* Totals may not sum due to rounding.

ii. To CBP

To implement the requirements of the rule, CBP will need to designate entities or companies as approved accreditors of continuing broker education. To do so, CBP will solicit applications from parties interested in becoming accreditors, or (following the first application cycle) accreditors seeking renewal of their status, by publishing an RFP.[68] A panel of CBP experts will evaluate the applications and select the entities approved or renewed as accreditors. CBP estimates that the process of developing and submitting the RFP will take two personnel 10 hours each. Application evaluation will take a further 40 hours per employee and will require four CBP personnel. The process of designating accreditors will occur before the continuing broker education requirements go into effect, to allow accreditors to be ready for the rule's implementation and ensure equal footing for all providers.[69] Accreditors and CBP will need to complete the process three times in a seven-year period. Overall, designation of accreditors will require six CBP personnel 180 hours total, three times in a seven-year period of analysis, for a cost to CBP of $59,260 (see Table 13).

TABLE 13—COSTS TO CBP TO DESIGNATE ACCREDITORS

[2022 U.S. dollars]

Year	Personnel for RFP	Personnel for evaluation	Fully-loaded wage rate [70]	Total hours	Total
2023	2	4	109.74	180	19,753
2024	0	0	109.74	0	0
2025	0	0	109.74	0	0
2026	2	4	109.74	180	19,753
2027	0	0	109.74	0	0
2028	0	0	109.74	0	0

[68] *See* 19 CFR 111.103(c).

[69] *See* Section I.E. of this final rule.

[70] CBP bases this rate on the FY 2022 salary, benefits, premium pay, non-salary costs, and awards of the national average of CBP Trade and Revenue positions, which is equal to a GS–12, Step 10. This represents the average, fully-loaded wage per hour, including salary, benefits, premium pay, and non-salary costs (assuming 2,080 work hours/year). Source: Email correspondence with CBP's Office of Finance on June 27, 2022.

TABLE 13—COSTS TO CBP TO DESIGNATE ACCREDITORS—Continued

[2022 U.S. dollars]

Year	Personnel for RFP	Personnel for evaluation	Fully-loaded wage rate [70]	Total hours	Total
2029	2	4	109.74	180	19,753
Total					59,260

* Totals may not sum due to rounding.

CBP's Broker Management Branch (BMB) will also face the costs of requesting records for compliance with the continuing broker education requirement. Although individual brokers will self-attest to their completion of the continuing broker education requirement with each triennial status report, CBP will occasionally conduct record requests by randomly selecting a certain subset of individual brokers to produce records. For the purposes of this analysis, CBP estimates it will select 10 percent of brokers per year, although the record requests will only cover the continuing broker education reported for the most recently completed triennial period. A continuing broker education record request will involve CBP personnel reviewing the reported coursework of the selected individual broker and potentially working with individual brokers to identify gaps or higher quality training opportunities. Such activity will take approximately one hour on average; therefore, CBP estimates that each record request will cost CBP approximately $109.74. For the first four years of the period of analysis, no record request will take place because individual brokers will not yet have reported their training at the end of the first triennial period. For the purposes of this analysis CBP assumes over the next three years, CBP will request records from 10 percent of active individual brokers each year.[71] With about 1,603 record requests performed per year, costs to CBP will amount to $527,603 over the seven-year period of analysis. *See* Table 14.

TABLE 14—RECORD REQUEST COSTS FOR CBP

[2022 U.S. dollars]

Year	Requests	Cost per request	Total
2023	0	$0	$0
2024	0	0	0
2025	0	0	0
2026	0	0	0
2027	1,603	110	175,868
2028	1,603	110	175,868
2029	1,603	110	175,868
Total	4,809	329	527,603

* Totals may not sum due to rounding.

iii. To Accreditors

Accrediting bodies interested in becoming designated accreditors for continuing broker education under the terms of the rule will need to apply to CBP during an open RFP period and then re-apply to confirm their status every three years. Costs to respond to the RFP include only the preparation of the application. Overall, CBP estimates that the preparation of an application to CBP to become an accreditor will take two employees 40 hours each, to be completed three times in a seven-year period. Accreditor-applicants will need to apply three times in a seven-year period. Therefore, CBP estimates that CBP-selected accreditors will incur approximately $17,182 in costs over a seven-year period of analysis. *See* Table 15.

TABLE 15—COSTS TO ACCREDITORS

[2022 U.S. dollars]

Year	Personnel	Loaded wage rate [72]	Hours per employee	Total
2023	2	$71.59	40	$5,727
2024	0	71.59	0	0
2025	0	71.59	0	0
2026	2	71.59	40	5,727
2027	0	71.59	0	0
2028	0	71.59	0	0
2029	2	71.59	40	5,727

[71] Those individual brokers who have not yet completed a triennial status report since taking their broker exam will be exempt from completing continuing broker education until after their first triennial status report and, therefore, will also be exempt from continuing broker education record requests during that time.

TABLE 15—COSTS TO ACCREDITORS—Continued

[2022 U.S. dollars]

Year	Personnel	Loaded wage rate [72]	Hours per employee	Total
Total			120	17,182

* Totals may not sum due to rounding.

iv. To Providers

Providers of continuing broker education will also face new costs under the terms of the rule. Specifically, providers will need to submit applications to accreditors to have their coursework or events accredited. Officials at the NCBFAA Education Institute estimate that they currently approve approximately 1,000 courses per year. With the rule in place, CBP believes the number of events submitted for accreditation will increase substantially because companies' internal trainings and external offerings will need to be accredited. Therefore, CBP estimated that about 2,000 courses will require accreditation each year. Providers will likely pay a fee and will need to renew their accreditation annually to ensure their coursework remains up to date. The fee for accreditation is likely to vary based on accreditor, but CBP estimates it will average $25.[73] Overall, CBP estimates that providers of continuing broker education for customs brokers will face $350,000 of new costs over a seven-year period of analysis. *See* Table 16.

TABLE 16—COSTS TO PROVIDERS

[2022 U.S. dollars]

Year	Courses	Fee	Total
2023	2,000	$25.00	$50,000
2024	2,000	25.00	50,000
2025	2,000	25.00	50,000
2026	2,000	25.00	50,000
2027	2,000	25.00	50,000
2028	2,000	25.00	50,000
2029	2,000	25.00	50,000
Total			350,000

* Totals may not sum due to rounding.

Based on the primary estimate, costs total $62,670,250 over the seven-year period of analysis. Using a three percent discount rate, the annualized total costs are $8,799,855. *See* Table 17 for an annual breakdown and Table 18 for discounting.

TABLE 17—TOTAL COSTS TO ALL PARTIES

[2022 U.S. dollars]

Year	Costs to brokers—primary estimate	Costs to accreditors	Costs to providers	Costs to CBP—accrediting and requesting [74]	Total costs
2023	$0	$5,727	$50,000	$19,753	$75,480
2024	9,880,635	0	50,000	0	9,930,635
2025	9,880,635	0	50,000	0	9,930,635
2026	9,880,635	5,727	50,000	19,753	9,956,116
2027	10,691,433	0	50,000	175,868	10,917,301
2028	10,691,433	0	50,000	175,868	10,917,301

[72] The median wage rate for accreditors is best represented by BLS's Occupational Employment and Wage Statistics estimate for the median hourly wage rate for General and Operations Managers (Occupation Code #11–1021), which was $47.10 in 2021. To account for non-salary employee benefits, CBP multiplied the median hourly wage by the 2021 ratio of BLS's Employer Cost for Employee Compensation quarterly estimate of total compensation to wages and salaries for Management, business, and financial occupations (1.4593), the assumed occupational group for accreditors. To adjust to 2022 dollars, CBP also assumes an annual growth rate of 4.15% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. Sources: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2021 National Occupational Employment and Wage Estimates United States.'' Updated March 31, 2022. Available at *https://www.bls.gov/oes/2021/may/oes_nat.htm,* Accessed May 25, 2022. The total compensation to wages and salaries ratio is equal to the calculated average of the 2021 quarterly estimates (shown under March, June, Sept., Dec.) of the total compensation cost per hour worked for Management, business, and financial occupations ($74.1275) divided by the calculated average of the 2021 quarterly estimates (shown under Mar, Jun, Sep, Dec) of wages and salaries cost per hour worked for the same occupation category ($50.7975). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. ''ECEC Civilian Workers—2004 to Present.'' March 2022. Available at *https://www.bls.gov/web/ecec.supp.toc.htm.* Accessed May 25, 2022.

[73] This fee is based on that charged by the NCBFAA. Although CBP sought information in the ANPRM on how much accreditors might charge, CBP did not receive specific information. Comments to the NPRM yielded no new information.

[74] *See* Tables 13 and 14.

TABLE 17—TOTAL COSTS TO ALL PARTIES—Continued

[2022 U.S. dollars]

Year	Costs to brokers—primary estimate	Costs to accreditors	Costs to providers	Costs to CBP—accrediting and requesting [74]	Total costs
2029	10,691,433	5,727	50,000	195,621	10,942,781
Total	61,716,206	17,182	350,000	586,862	62,670,250

* Totals may not sum due to rounding.

TABLE 18—DISCOUNTED TOTAL COSTS

[2022 U.S. dollars]

	3%		7%	
	PV	AV	PV	AV
. Costs	$54,825,586	$8,799,855	$46,319,331	$8,594,701

6. Costs Not Estimated in This Analysis

The parties affected by the rule will also face several, mostly minor costs that CBP is unable to quantify. To provide individual brokers who choose to file their triennial status report electronically through the eCBP portal the ability to self-attest to their continuing broker education completion, CBP will need to include a field within the triennial status report, which is submitted via the eCBP portal. The programming to include this field does not add significantly to the application development budget as CBP constantly makes small changes to many aspects of CBP's authorized electronic data interchanges.

Additionally, some potential accreditors may face costs related to protesting CBP's initial decisions regarding their proposals to become accreditors. Accreditor-applicants have the right to protest in accordance with procedures set out in the Federal Acquisition Regulations System (FAR). CBP expects these costs to be minor and protests to be rare. Individual brokers' clients may see slight price increases for broker services. As individual broker costs increase, they may pass some of these costs onto their clients in the form of increased prices. However, CBP believes that the per transaction increase in prices will be so small as to be insignificant.

7. Benefits of the Rule

This final rule will have many benefits to individual brokers, CBP, and the general public. CBP is able to estimate some of the benefits of the rule, but many others are qualitative in nature. Individual brokers will benefit from improved reputation and a professionalization of the customs broker community while their clients will benefit from better performance and improved compliance. The continuing broker education requirement will provide importers and drawback claimants with greater assurance that their agents are knowledgeable of customs laws and regulations, familiar with operational processes, and can properly exercise a broker's fiduciary duties. The requirements will also help maintain a measure of consistency across all customs brokers. Providers will benefit from increased prestige due to CBP-approved accreditation. Other benefits of the rule are quantitative.

CBP will benefit from a reduction in regulatory audits of broker compliance. Both CBP and brokers will benefit from fewer errors committed by brokers and fewer penalties assessed by CBP. CBP examined data on broker penalties, regulatory audits, and validation activities between a group of companies who employ one or more individual brokers known to voluntarily hold an industry certification that requires meeting a continuing education requirement and the broader population of brokers (which includes those who voluntarily complete continuing education and those who do not). This group of individual brokers with continuing education represents about 120 companies, which make up 54 percent of entries filed between 2017 and 2021 and 53 percent of entries filed between 2016 and 2021. CBP found that at the 99 percent confidence level, there is a statistically significant difference between these groups. Those who voluntarily hold this certification and complete continuing education have significantly lower rates of penalties, audits, and validation activities. *See* Table 19.[75] Individual brokers who are not known to have continuing education are assessed 13 times as many penalties per entry filing, are audited seven times as often, and have nine times as many validation activities performed by CBP to investigate discrepancies when compared to companies that are known to employ individual brokers who voluntarily take continuing education.

[75] Source of data of companies with at least one individual broker with continuing education: data received from NCBFAA on companies participating in its broker certification program on April 28, 2021. Data on enforcement actions and the number of entries per company was obtained from ACE on April 11, 2021.

TABLE 19—ENFORCEMENT ACTION RATE FOR DIFFERENT GROUPS

Enforcement action	Total	By all other companies (%)	By 120 companies with continuing education (%)	Ratio
Penalty	337	0.00039	0.000031	13 to 1
Regulatory Audit	90	0.00008	0.000011	7 to 1
Validation Activity	515	0.00047	0.000051	9 to 1

* Rates are defined as the number of enforcement actions divided by the number of entries filed.

Aside from penalties, CBP enforcement often takes the form of a regulatory audit. Regulatory audits usually occur because a CBP Officer or Import Specialist flags unusual or suspicious activity. CBP then performs a regulatory audit of the broker's activity, investigating the potential infraction, as well as the broker's overall compliance with regulations, rules, and CBP guidance. These audits may lead to a settlement agreement in which a penalty is assessed, but they more often lead to discussion between the broker and CBP as to how the broker can improve compliance and performance. With continuing education in place, CBP believes that fewer regulatory audits will be necessary. From 2016 to 2021, CBP performed 82 regulatory audits of broker compliance, for an average of 14 per year.[76] The number of audits holds approximately steady across the five-year period, so CBP does not believe it likely that the number of audits will grow in the period of analysis. Therefore, CBP projects 96 audits will be performed during the seven-year period of analysis under baseline conditions, or 14 each year. *See* Table 20.

TABLE 20—PROJECTION OF AUDITS AND BROKER SURVEYS UNDER THE BASELINE

Year	Audits
2023	14
2024	14
2025	14
2026	14
2027	14
2028	14
2029	14
Total	96

* Total does not sum due to rounding.

CBP estimates that a regulatory audit of broker compliance takes CBP approximately 593 hours, on average.[77] Based on the average fully-loaded wage rate for a CBP Trade and Revenue employee of $109.74 per hour, we estimate the average broker audit costs $65,049. Based on a review of outcomes from the audits completed from 2016–2021, CBP estimates that approximately 40 percent will likely have been avoided had a continuing education requirement been in place. CBP believes that, had customs brokers been required to complete continuing education on an individual level, and, therefore, stayed current on the rules and regulations governing customs business, they would have made fewer errors and avoided the audits. Over a seven-year period of analysis under the terms of the rule, CBP estimates it will avoid 33 audits, for a cost savings of $2,133,623. *See* Table 21.

TABLE 21—CBP COST SAVINGS FROM REDUCED REGULATORY AUDIT ACTIVITIES

[2022 U.S. dollars]

Year	Audits avoided	Cost savings per audit	Total savings
2023	0	$0	$0
2024	5	65,049	355,604
2025	5	65,049	355,604
2026	5	65,049	355,604
2027	5	65,049	355,604
2028	5	65,049	355,604
2029	5	65,049	355,604
Total	33	390,297	2,133,623

* Totals may not sum due to rounding.

The number of penalties assessed against brokers between 2017 and 2021 grew significantly. In 2017, CBP assessed 20 penalties, with another 21 penalties assessed in 2018. The number of penalties then jumped in 2019, to 119, with 106 penalties following in 2020 (see Table 1, above). CBP assessed fewer penalties in 2021 relative to 2020, although, with 71 penalties assessed, the number did not return to 2017/18 levels. Between 2017 and 2021, the number of penalties issued increased with a compound annual growth rate (CAGR) of 29 percent. The jump in penalties between 2019 and 2020 is likely attributable to changes in the environment surrounding antidumping and countervailing duty cases, and CBP does not believe that penalties per year will continue to grow at the same rate. This is confirmed by the decrease in penalties issued in 2021. Based on trends before and after the jump, we do not believe that the number of penalties assessed per year will consistently grow at any meaningful rate. The average number of penalties assessed per year of available data after the change in AD/CVD duties (2019–2021) was 99. Based

[76] Data provided by CBP's Regulatory Audit and Agency Advisory Services Directorate on April 11, 2021, and January 31, 2022.

[77] Audits conducted from 2015 to 2021 took, on average, 593 hours to conclude. Data provided by the Regulatory Audit and Agency Advisory Services Directorate on January 31, 2022, based on internal metrics.

on a 0 percent growth rate, CBP estimates that over the seven-year period of analysis from 2023 to 2029, CBP will assess 691 penalties, or an average of 99 penalties per year. *See* Table 22 for an annual count.

TABLE 22—PROJECTION OF PENALTIES ASSESSED FROM 2022–2027 UNDER THE BASELINE

Year	Penalties
2023	99
2024	99
2025	99
2026	99
2027	99
2028	99
2029	99
Total	691

When CBP assesses a penalty against a broker for a customs violation, CBP incurs the cost of detecting and investigating the violation, as well as determining the appropriate monetary fine and handling any appeals from the broker. The broker must pay the penalty, which is capped at $30,000 by statute. CBP also works with brokers against whom a fine has been assessed to mitigate the penalty, resulting in the collection of amounts that are usually significantly lower. From 2017–2021, monetary penalties collected from individual brokers averaged $2,423. CBP estimates that the entire process of assessing a penalty against a broker, from detection to working through mitigation, costs CBP approximately $6,584 per penalty.[78] With the rule implemented, CBP believes that individual brokers will commit approximately 20 percent fewer penalizable violations.[79] As a result, individual brokers will save approximately $286,883 in fines avoided, while CBP will save approximately $779,593 in processing costs.[80] *See* Tables 23 and 24.

TABLE 23—PENALTIES AVOIDED BY BROKERS

[2022 U.S. dollars]

Year	Penalties avoided	Fines avoided per penalty	Total
2023	0	$0	$0
2024	20	2,423	47,814
2025	20	2,423	47,814
2026	20	2,423	47,814
2027	20	2,423	47,814
2028	20	2,423	47,814
2029	20	2,423	47,814
Total	118	14,538	286,883

* Totals may not sum due to rounding.

TABLE 24—COSTS AVOIDED BY CBP

[2022 U.S. dollars]

Year	Penalties avoided	Cost savings per penalty	Total
2023	0	$0	$0
2024	20	6,584	129,932
2025	20	6,584	129,932
2026	20	6,584	129,932
2027	20	6,584	129,932
2028	20	6,584	129,932
2029	20	6,584	129,932
Total	118	39,506	779,593

* Totals may not sum due to rounding.

8. Net Impact of the Rule

The rule will lead to costs for individual brokers in the form of tuition, travel expenses, opportunity cost, and time spent researching, registering for, keeping records of, and reporting continuing broker education. CBP will face the costs of designating accreditors and requesting records from individual brokers. Accreditors will incur the costs of responding to a CBP-issued RFP, and education providers will incur the costs of drafting applications and fees charged by the accreditors for reviewing their accreditation requests. CBP will also see cost savings (benefits) from avoided penalty assessment and avoided

[78] CBP bases this estimate on an average of 60 hours worked per penalty at an average fully-loaded wage of $109.74 per hour for a CBP Trade and Revenue employee, as described above.

[79] Approximately 20 percent of the penalties assessed between 2017 and 2021 were for infractions that CBP believes would have been avoided had the individual broker been required to complete continuing education. CBP assumes the rule would eliminate all such violations. The majority of the remaining penalties were for late filing. Penalty data is taken from SEACATS.

[80] Penalties are a transfer payment from the broker to CBP that do not affect total resources available to society. Accordingly, CBP does not include penalties or penalties avoided in the final accounting of costs and benefits of this rule. In addition, penalties are an enforcement tool that are intended to bring a noncompliant party in line with existing requirements. Any costs and benefits that result from compliance with the underlying requirement are included in the analysis, but not the enforcement mechanism. In the same way, if a rule results in the seizure of illegal merchandise, CBP does not include the cost of the lost merchandise to the importers.

regulatory audits. CBP has found that companies employing one or more brokers who complete continuing education are statistically less likely to face enforcement actions. Over a seven-year period of analysis, the primary estimate of the net costs totals $59,757,034 (see Table 25). Using a discount rate of three percent, annualized costs total $8,389,981 (see Table 26).

TABLE 25—PRIMARY ESTIMATE OF NET COSTS

[2022 U.S. dollars]

Year	Benefits	Costs	Net costs [81]
2023	$0	$75,480	$75,480
2024	485,536	9,930,635	9,445,099
2025	485,536	9,930,635	9,445,099
2026	485,536	9,956,116	9,470,580
2027	485,536	10,917,301	10,431,765
2028	485,536	10,917,301	10,431,765
2029	485,536	10,942,781	10,457,245
Total	2,913,216	62,670,250	59,757,034

TABLE 26—PRIMARY ESTIMATE OF NET PRESENT AND ANNUALIZED COSTS

[2022 U.S. dollars]

	3%		7%	
	PV	AV	PV	AV
Savings	$2,553,632	$409,874	$2,162,922	$401,337
Costs	54,825,586	8,799,855	46,319,331	8,594,701
Net Costs	52,271,953	8,389,981	44,156,409	8,193,364

CBP presents four estimates of the net costs depending on the cost of training pursued by each individual broker. The low-cost path assumes all individual brokers will pursue only free trainings and forgo travel. In the medium-cost path, all individual brokers will pursue a mix of free and paid trainings and travel to a single conference or in-person event per year. In the high-cost path, all individual brokers will pursue all paid trainings and travel to two in-person events or conferences per year. The primary estimate assumes that one third of individual brokers will choose each path. Overall, the quantifiable effects of the rule result in a net, annualized cost ranging from $2,583,379 to $13,988,561, using a three percent discount rate over the seven-year period of analysis. A summary of net costs under all four estimates presented in the analysis can be found in Table 27.

TABLE 27—SUMMARY OF NET COSTS

[2022 U.S. dollars]

Estimate	Value	3%	7%
Primary	Net PV	$52,271,953	$44,156,409
	Net AV	8,389,981	8,193,364
Low	Net PV	16,095,183	13,582,366
	Net AV	2,583,379	2,520,252
Medium	Net PV	53,567,985	45,251,723
	Net AV	8,598,002	8,396,603
High	Net PV	87,152,692	73,635,138
	Net AV	13,988,561	13,663,237

As stated before, many benefits of the rule are qualitative. Individual brokers will benefit from improved reputation and a professionalization of the customs broker community while their clients will benefit from better performance, less non-compliance, and improved outcomes. Providers will benefit from increased prestige due to CBP-approved accreditation. CBP believes that the combination of quantified benefits and unquantified benefits exceed the costs of this rule. CBP requested comment on this conclusion in the NPRM and received no comments in response.

9. Analysis of Alternatives

Alternative 1: 72 hours every three years.

Alternative 1 is the same as the chosen alternative except that the continuing broker education requirement would be raised to 72 hours each triennial period instead of 36 hours. This alternative is modeled on the Internal Revenue Service's (IRS) Enrolled Agent program, which requires 72 hours of continuing education every

[81] Note that we only include costs of remaining compliant with the rule in the net costs. Similarly, we do not include penalties avoided in the final accounting of benefits.

three years.[82] An enrolled agent is an individual who may represent clients in matters before the IRS and, like a licensed customs broker, must pass a rigorous examination to prove his or her knowledge and competence, making it a reasonable analog to the CBP program. Once the agent has passed the exam, he or she has unlimited practice rights, providing he or she completes the requisite continuing education.

CBP has determined that 72 hours every three years would be inappropriate for individual brokers. Were CBP to mandate 72 hours of continuing broker education every three years, individual brokers who already voluntarily pursue continuing education would need to increase the amount of training they complete, often by 100 percent. Costs incurred by both individual brokers who do not already pursue continuing education and those who do would be much greater. Such a requirement would be too onerous, particularly for small businesses, which make up a significant proportion (approximately 39 percent) of the employers of individual brokers. CBP estimates that such a requirement would cost individual brokers up to $284,775,217 over a seven-year period of analysis, or about $17,770 per broker. *See* Table 28.

TABLE 28—BROKER COSTS UNDER A 72-HOUR CONTINUING EDUCATION REQUIREMENT

[2022 U.S. dollars]

Year	Brokers	Low		Medium		High	
		Cost	Total	Cost	Total	Cost	Total
2023	13,952	$69.62	$582,803	$2,383	$19,946,058	$4,456	$37,300,226
2024	14,830	69.62	619,472	2,383	21,201,038	4,456	39,647,106
2025	14,830	69.62	619,472	2,383	21,201,038	4,456	39,647,106
2026	14,830	69.62	619,472	2,383	21,201,038	4,456	39,647,106
2027	16,026	69.62	669,431	2,383	22,910,855	4,456	42,844,558
2028	16,026	69.62	669,431	2,383	22,910,855	4,456	42,844,558
2029	16,026	69.62	669,431	2,383	22,910,855	4,456	42,844,558
Total	*COM001*16,026	487.34	4,449,513	16,679	152,281,735	31,190	284,775,217

* Totals may not sum due to rounding.

Alternative 2: 36 hours every three years.

Alternative 2 is the chosen alternative.

Alternative 3: CBP list of individual brokers voluntarily meeting continuing education standards.

Under Alternative 3, instead of mandating any kind of continuing education program, CBP would release annually a list of brokerages or companies employing individual brokers who voluntarily provide continuing education to their broker employees. As with Alternative 1, qualifying events would include internal training, government-sponsored webinars, trade conferences and events, and other activities. CBP would draft this list each year by requesting that companies report whether they provide a continuing education program. CBP might request details from the company to ensure the training provided meets a certain threshold for quality and relevance.

Under baseline conditions, CBP estimates that about 60 percent of individual brokers already complete continuing education on a voluntary basis. CBP does not believe that publishing a list of brokerages that provide continuing education would induce the remaining 40 percent of individual brokers to pursue continuing education, though some individual brokers might do so. Under Alternative 3, those individual brokers who already complete ongoing training would continue to do so, while many of those brokers who do not, would not, absent a mandate, be likely to change. CBP estimates that an additional five percent of brokers might begin a continuing education program in order to be included on CBP's list, representing about 201 additional companies.[83] While fewer individual brokers would face the costs of tuition, travel, and record-keeping, approximately 801 would face these costs of continuing education over the seven-year period of analysis. Additionally, CBP would incur the costs of composing the list each year and companies employing individual brokers would face the costs of applying to be included on the list. Assuming two CBP personnel spend about 40 hours each, annually to compose the list, that one person from each company spends about 10 hours compiling and submitting information to CBP annually, and that one third of affected individual brokers choose each cost path, Alternative 3 results in costs of $10,654,089 over the seven-year period of analysis. *See* Table 29.

TABLE 29—TOTAL COSTS UNDER ALTERNATIVE 3

[2022 U.S. dollars]

Year	CBP cost	Brokerage costs	Broker costs	Total
2023	$17,558	$270,324	$1,131,008	$1,418,891
2024	17,558	270,324	1,202,815	1,490,697
2025	17,558	270,324	1,202,815	1,490,697
2026	17,558	270,324	1,202,815	1,490,697

[82] *See* Internal Revenue Service, Enrolled Agent Information (Apr. 6, 2021), *available at https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information.*

[83] CBP assumes that large companies employing more than 100 people already have a continuing education program. Therefore, those companies that would need to add continuing education in order to be included on CBP's list would likely be small to medium sized businesses, meaning there would be a significant number of them, employing a few brokers each.

TABLE 29—TOTAL COSTS UNDER ALTERNATIVE 3—Continued

[2022 U.S. dollars]

Year	CBP cost	Brokerage costs	Broker costs	Total
2027	17,558	270,324	1,299,820	1,587,702
2028	17,558	270,324	1,299,820	1,587,702
2029	17,558	270,324	1,299,820	1,587,702
Total	122,909	1,892,267	8,638,913	10,654,089

* Totals may not sum due to rounding.

If only five percent more individual brokers elect to begin continuing education under the terms of Alternative 3, fewer non-compliance actions would be avoided. CBP estimates that only an eighth as many penalties and audits would be avoided as compared to Alternative 2. Therefore, CBP and individual brokers would avoid two penalties and one audit annually, for a total cost savings of $60,692 per year. However, CBP does not typically include avoided penalties in the overall accounting of costs and benefits of a rule. Therefore, over a seven-year period of analysis, Alternative 3 leads to $364,152 in cost savings.

TABLE 30—TOTAL SAVINGS UNDER ALTERNATIVE 3

[2022 U.S. dollars]

Year	Savings for brokers	Savings for CBP	Total savings
2023	$0	$0	$0
2024	0	60,692	60,692
2025	0	60,692	60,692
2026	0	60,692	60,692
2027	0	60,692	60,692
2028	0	60,692	60,692
2029	0	60,692	60,692
Total	0	364,152	364,152

* Totals may not sum due to rounding.

One of the primary goals of the rule is to reduce compliance issues, penalties, and regulatory audits, and CBP does not believe that a system based on voluntary reporting would do enough to reach that goal. With only an additional five percent of brokers pursuing continuing education, Alternative 3 would not do enough to further professionalize the customs broker community, nor would their clients see an appreciable decline in compliance issues. Additionally, such a system would still result in a net cost of about $10.7 million over the seven-year period of analysis. Therefore, CBP believes that Alternative 3 is less preferable than the chosen alternative.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people). A small business within the Freight Transportation Arrangement Industry, the industry that employs individual brokers, is defined as one whose annual receipts are less than $20.0 million in 2022 dollars ($17,274,816 in 2017 dollars, using the CPI to account for inflation), regardless of the number of employees.[84] Data from the U.S. Census Bureau shows that approximately 96 percent of businesses in the Transportation Arrangement Industry (NAICS Code 448510) are small businesses (see Table 31). All businesses employing individual brokers under this NAICS Code are affected by this rule. Additionally, some small businesses may elect to become accreditors or training providers. Therefore, CBP concludes that this rule will affect a substantial number of small entities.

[84] Small business size standards are defined in 13 CFR 121.

TABLE 31—SMALL BUSINESSES IN THE FREIGHT TRANSPORTATION ARRANGEMENT INDUSTRY, 2017 [85]

Employment size [86]	Number of firms	Number of employees	Preliminary receipts (all firms, $1,000s) [87]	Receipts per firm ($)	Small business?
01: Total	15,104	265,192	$67,276,572	$4,454,222	
02: <5	8,912	15,939	6,315,166	708,614	Yes.
03: 5–9	2,731	18,025	5,392,992	1,974,732	Yes.
04: 10–19	1,524	20,288	5,870,163	3,851,813	Yes.
05: <20	13,167	54,252	17,578,321	1,335,029	Yes.
06: 20–99	1,344	49,477	13,973,780	10,397,158	Yes.
07: 100–499	357	44,715	10,886,028	30,493,076	No.
08: <500	14,868	148,444	42,438,129	2,854,327	Yes.
09: 500+	236	116,748	24,838,443	105,247,640	No.

Some small businesses may choose to apply to CBP to become accreditors. Those businesses will face the costs of applying to CBP, the potential costs of any protests they choose to file should they disagree with CBP's decision regarding their proposals, and the costs of being an accreditor. Small businesses may also choose to become training providers and to incur the costs of producing and providing trainings. However, CBP believes that those costs will be recouped by tuition and fees. CBP further expects any costs not directly covered by fees to be minor and included in general business expenses.

Individual brokers employed by these small businesses will be required to attain 36 hours of continuing broker education every three years under the terms of the rule. They will also face the opportunity cost of attending trainings as well as the costs of recordkeeping, reporting, and participating in any continuing broker education record request initiated by CBP. Accordingly, the impacts of the rule to individual brokers and affected businesses will depend on if the individual broker currently meets the training requirements. Based on public comments in response to the ANPRM and discussions between CBP and various broker organizations, CBP estimates most large businesses employing individual brokers already provide, and often mandate, internal training and continuing education. CBP estimates that these 60 percent of individual brokers already in compliance will not face new costs aside from recordkeeping and reporting. CBP estimates the remaining 40 percent of individual brokers, mostly at smaller businesses, will need to come into compliance with the rule. Using the primary estimate under which one third of individual brokers selects each cost tier, the total cost born by brokers in the first year in which they will face costs due to the rule (2024) is $9,880,635 (see Table 12, above). The rule will affect 5,932 individual brokers in that first year, for an average annualized cost of $1,666 per broker. The average annual receipts for small businesses in the Freight Transportation Arrangement Industry, according to the Census data in Table 31, is $2,174,357.[88] The number of individual brokers employed by each business will vary among the small businesses in question, but assuming an average of four brokers per company,[89] the cost of continuing education for each firm will be approximately $6,663 annually, or about 0.3 percent of annual receipts. CBP generally considers effects of 1 percent or less of annual receipts not to be a significant impact. Accordingly, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). The collections of information contained in these regulations are provided for by OMB control number 1651–0034 (CBP Regulations Pertaining to Customs Brokers).

The rule will require individual brokers to maintain records of completed continuing education (including, among others, the date, title, provider, location (if applicable), and credit hours) and certify the completion of the required number of continuing education credits on the triennial status report. Based on these changes, CBP estimates a small increase in the burden hours for information collection related to customs brokers regulations. CBP will submit to OMB for review the following adjustments to the previously approved Information Collection under OMB control number 1651–0034 to account for this rule's changes. The addition of the self-attestation and submission of records will add about 30–45 minutes (0.5–0.75 hours) per respondent.

CBP Regulations Pertaining to Customs Brokers

Estimated Number of Respondents: 13,952.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 0.333.

Estimated Time per Response: 31.5 minutes (0.525 hours).

Estimated Total Annual Burden Hours: 2,442 hours.

VI. Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of DHS authority to prescribe and approve regulations relating to customs revenue

[85] United States Census Bureau, ''2017 County Business Patterns and 2017 Economic Census,'' Released March 6, 2020, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* Accessed March 15, 2021.

[86] Note that some of the categories are sums of other categories. For example, Category 8, <500, is a sum of Categories 2, 3, 4, 6, and 7. Thus, Categories 7 and 9 are not consecutive, but represent all firms employing 100 or more people.

[87] The Survey of U.S. Businesses (SUSB) from which this data is taken is conducted in years ending in 2 and 7.

[88] To calculate this average, CBP totaled the annual receipts of firms qualifying as small businesses ($6,315,166, $5,392,992, $5,870,163, and $13,973,780 from Table 31 above), then multiplied by 1000 to account for units. Finally, CBP divided by the total number of firms in those categories (8,912, 2,731, 1,524, and 1,344 from Table 31 above).

[89] Many brokerages are sole proprietorships and many employ individual brokers who supervise other employees. The average number of employees per firm is seven. CBP assumes the average firm employs four individual brokers and three other employees, such as human resource managers. CBP did not receive any comments on this assumption in response to the NPRM.

functions on behalf of the Secretary of the Treasury for when the subject matter is not listed in paragraph 1(a)(i) of Treasury Department Order No. 100–16. Accordingly, this rule may be signed by the Secretary of DHS (or his or her delegate).

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Penalties, Reporting and recordkeeping requirements.

Amendments to Regulations

For the reasons set forth in the preamble, Part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is amended as set forth below:

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

■ 2. Revise the second sentence of § 111.0 to read as follows:

§ 111.0 Scope.

* * * This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, the revocation or suspension of licenses and permits, and the obligation for individual brokers to satisfy a continuing education requirement.

■ 3. In § 111.1, add the definitions ''*Continuing broker education requirement*'', ''*Continuing education credit*'', ''*Qualifying continuing broker education*'', and ''*Triennial period*'' in alphabetical order to read as follows:

§ 111.1 Definitions.

* * * * *

Continuing broker education requirement. ''Continuing broker education requirement'' means an individual broker's obligation to complete a certain number of continuing education credits of qualifying continuing broker education, as set forth in subpart F of this part, in order to maintain sufficient knowledge of customs and related laws, regulations, and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and drawback claimants.

* * * * *

Continuing education credit. ''Continuing education credit'' means the unit of measurement used for meeting the continuing broker education requirement. The smallest recognized unit is half of one continuing education credit, which requires 30 minutes of continuous participation in qualifying continuing broker education, as defined in § 111.103(a). For qualifying continuing broker education lasting more than 30 minutes, half of one continuing education credit may be claimed for every full 30 minutes of continuous participation thereafter. For example, for qualifying continuing broker education lasting more than 60 minutes but less than 90 minutes, only one continuing education credit may be claimed. In contrast, for qualifying continuing broker education lasting 90 minutes, 1.5 continuing broker education credits may be claimed.

* * * * *

Qualifying continuing broker education. ''Qualifying continuing broker education'' means any training or educational activity that is eligible or, if required, has been approved for continuing education credit, in accordance with § 111.103.

* * * * *

Triennial period. ''Triennial period'' means a period of three years commencing on February 1, 1985, or on February 1 in any third year thereafter.

* * * * *

■ 4. In § 111.19, revise the first sentence of paragraph (c) to read as follows:

§ 111.19 National permit.

* * * * *

(c) * * * A national permit issued under paragraph (a) of this section is subject to the permit application fee specified in § 111.96(b) and to the customs permit user fee specified in § 111.96(c). * * *

■ 5. Amend § 111.30 by revising the section heading and paragraph (d)(2) to read as follows:

§ 111.30 Notification of change in address, organization, name, or location of business records; status report; termination of brokerage business.

* * * * *

(d) * * *

(2) *Individual.* Each individual broker must state in the report required under paragraph (d)(1) of this section whether he or she is actively engaged in transacting business as a broker.

(i) If the individual broker is actively engaged in transacting business as a broker, the individual broker must also:

(A) State the name under which, and the address at which, the broker's business is conducted if he or she is a sole proprietor, and an email address;

(B) State the name and address of his or her employer if he or she is employed by another broker, unless his or her employer is a partnership, association or corporation broker for which he or she is a qualifying member or officer for purposes of § 111.11(b) or (c)(2);

(C) State whether or not he or she still meets the applicable requirements of §§ 111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53; and

(D) Report and certify the broker's compliance with the continuing broker education requirement as set forth in § 111.102.

(ii) If the individual broker is not actively engaged in transacting business as a broker, the individual broker must also:

(A) State the broker's current mailing address and email address;

(B) State whether or not he or she still meets the applicable requirements of §§ 111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53; and

(C) Report and certify the broker's compliance with the continuing broker education requirement as set forth in § 111.102.

* * * * *

§§ 111.97 through 111.100 [Reserved]

■ 6. Add and reserve §§ 111.97 through 111.100.

■ 7. Add subpart F, consisting of §§ 111.101 through 111.104, to read as follows:

Subpart F—Continuing Education Requirements for Individual Brokers

Sec.

111.101 Scope.
111.102 Obligations of individual brokers in conjunction with continuing broker education requirement.
111.103 Accreditation of qualifying continuing broker education.
111.104 Failure to report and certify compliance with continuing broker education requirement.

§ 111.101 Scope.

This subpart sets forth regulations providing for a continuing education requirement for individual brokers and the framework for administering this requirement. The continuing broker education requirement is for individual brokers, in order to maintain sufficient knowledge of customs and related laws, regulations, and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and drawback claimants. Individual brokers will be required to certify completion of the continuing broker education requirement with the filing of their 2027

status report, required under § 111.30(d), and every status report thereafter, in accordance with the provisions of this subpart.

§ 111.102 Obligations of individual brokers in conjunction with continuing broker education requirement.

(a) *Continuing broker education requirement.* All individual brokers must complete qualifying continuing broker education as defined in § 111.103(a), except:

(1) During a period of voluntary suspension as described in § 111.52; or

(2) When individual brokers have not held their license for an entire triennial period at the time of the submission of the status report as required under § 111.30(d).

(b) *Required minimum number of continuing education credits.* All individual brokers who are subject to the continuing broker education requirement must complete at least 36 continuing education credits of qualifying continuing broker education each triennial period, except upon the reinstatement of a license following a period of voluntary suspension as described in § 111.52. Upon the reinstatement of a license following a period of voluntary suspension as described in § 111.52, the number of continuing education credits that an individual broker must complete by the end of the triennial period during which the reinstatement of the license occurred will be calculated on a prorated basis of one continuing education credit for each complete remaining month until the end of the triennial period.

(c) *Reporting requirements.* Individual brokers who are subject to the continuing broker education requirement must report and certify their compliance upon submission of the status report required under § 111.30(d).

(d) *Recordkeeping requirements*—(1) *General.* Individual brokers who are subject to the continuing broker education requirement must retain the following information and documentation pertaining to the qualifying education completed during a triennial period for a period of three years following the submission of the status report required under § 111.30(d):

(i) The title of the qualifying continuing broker education attended;

(ii) The name of the provider or host of the qualifying continuing broker education;

(iii) The date(s) attended;

(iv) The number of continuing education credits accrued;

(v) The location of the qualifying continuing broker education; and

(vi) Any documentation received from the provider or host of the qualifying continuing broker education that evidences the individual broker's registration for, attendance at, completion of, or other activity bearing upon the individual broker's participation in and completion of the qualifying continuing broker education.

(2) *Availability of records.* In order to ensure that the individual broker has met the continuing broker education requirement, upon CBP's request, the individual broker must make available to CBP the information and documentation described in paragraph (d)(1) of this section on or before 30 calendar days from the date of receipt of CBP's request. CBP can request that the information and documentation be made available for in-person inspection or be delivered to CBP by either hard-copy or electronic means, or any combination thereof.

§ 111.103 Accreditation of qualifying continuing broker education.

(a) *Qualifying continuing broker education.* In order for a training or educational activity to be considered qualifying continuing broker education, it must meet the following two requirements:

(1) *Providers of qualifying continuing broker education.* The training or educational activity must be offered by one of the following providers:

(i) *Government agencies.* Qualifying continuing broker education constitutes any training or educational activity offered by CBP, whether online or in-person, and training or educational activity offered by another U.S. government agency, whether online or in-person, but only if the content is relevant to customs business as identified by CBP in coordination with the appropriate U.S. government agency when applicable. Accreditation is not required for trainings or educational activities offered by U.S. government agencies.

(ii) *Other providers requiring accreditation.* Any other training or educational activity not offered by a U.S. government agency, whether online or in-person, will not be considered a qualifying continuing broker education, unless the training or educational activity has been approved for continuing education credit by a CBP-selected accreditor before the training or educational activity is provided.

(2) *Recognized trainings or educational activities.* The training or educational activity must constitute one of the following:

(i) A seminar, webinar, or a workshop, whether online or in-person, whether experienced live or recorded, that is conducted by an instructor, discussion leader, or speaker;

(ii) A symposium or convention, with the exception of the attendance at a meeting conducted in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), whether online or in-person;

(iii) Online coursework, a workshop, or a module, conducted as self-guided education, culminating in a retention test;

(iv) The preparation of a subject matter for presentation as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (a)(2)(ii) of this section, subject to the requirements set forth in paragraph (b) of this section; and

(v) The presentation of a subject matter as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (a)(2)(ii) of this section, subject to the requirements set forth in paragraph (b) of this section.

(b) *Special allowance for instructors, discussion leaders, and speakers.* (1) Contingent upon the approval by a CBP-selected accreditor, an individual broker may claim half of one continuing education credit for each full 30 minutes spent:

(i) Presenting subject matter as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (ii) of this section; or

(ii) Preparing subject matter for presentation as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (ii) of this section.

(2) The special allowance for instructors, discussion leaders, and speakers is subject to the following limitations:

(i) For any session of presentation given at one time, regardless of the duration of that session, an individual broker may claim, at a maximum, one continuing education credit for the time spent preparing subject matter for that presentation pursuant to paragraph (b)(1)(ii) of this section.

(ii) Per triennial period, an individual broker may claim, at a maximum, a combined total of 12 continuing education credits earned in accordance with paragraphs (b)(1)(i) and (ii) of this section.

(3) Regardless of whether the training or educational activity is offered by a U.S. government agency or another provider, any instructor, discussion leader, or speaker seeking to claim continuing education credit in

accordance with paragraph (b)(1) of this section must obtain the approval of a CBP-selected accreditor.

(c) *Selection of accreditors.* The Office of Trade will select accreditors based on a Request for Information (RFI) and a Request for Proposal (RFP) announced through the System for Award Management (SAM) or any other electronic system for award management approved by the U.S. General Services Administration, in accordance with the Federal Acquisition Regulation (48 CFR 1.000 *et seq.*), for a specific period of award, subject to renewal. The Executive Assistant Commissioner, Office of Trade, will periodically publish notices in the **Federal Register** announcing the criteria that CBP will use to select an accreditor, the period during which CBP will accept applications by potential accreditors, and the period of award for a CBP-selected accreditor.

(d) *Responsibilities of CBP-selected accreditors.* CBP-selected accreditors administer the accreditation of trainings or educational activities other than those described in paragraph (a)(1) of this section for the purpose of the continuing broker education requirement by reviewing and approving or denying such educational content for continuing education credit. A CBP-selected accreditor's approval of a training or educational activity for continuing education credit is valid for one year, and the accreditation may be renewed through any CBP-selected accreditor. CBP-selected accreditors will not deny review or approval of a training or educational activity for continuing education credit solely because it was previously denied by the CBP-selected accreditor or any other CBP-selected accreditor.

(e) *Prohibition of self-certification by an accreditor.* CBP-selected accreditors may not approve their own trainings or educational activities for continuing education credit.

§ 111.104 Failure to report and certify compliance with continuing broker education requirement.

(a) *Notification by CBP.* If an individual broker is subject to the continuing broker education requirement pursuant to § 111.102 and submits a status report as required under § 111.30(d)(2) but fails to report and certify compliance with the continuing broker education requirement as part of the submission of the status report, then CBP will notify the individual broker of the broker's failure to report and certify compliance in accordance with § 111.30(d). The notification will be sent to the address reflected in CBP's records or transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

(b) *Required response to notice.* Upon the issuance of such notification, the individual broker must on or before 30 calendar days:

(1) Submit a corrected status report that, in accordance with § 111.30(d), reflects the individual broker's compliance with the continuing broker education requirement, if the individual broker completed the required number of continuing education credits but failed to report and certify compliance with the requirement as part of the submission of the status report; or

(2) Complete the required number of continuing education credits of qualifying continuing broker education and submit a corrected status report that, in accordance with § 111.30(d), reflects the individual broker's compliance with the continuing broker education requirement, if the individual broker had not completed the required number of continuing education credits at the time the status report was due.

(c) *Suspension of license.* Unless the individual broker takes the corrective actions described in paragraph (b)(1) or (b)(2) of this section on or before 30 calendar days from the issuance date of the notification described in paragraph (a) of this section, CBP will take actions to suspend the individual broker's license in accordance with subpart D of this part.

(d) *Revocation of license.* If the individual broker's license has been suspended pursuant to paragraph (c) of this section and the individual broker fails to take the corrective actions described in paragraph (b)(1) or (b)(2) of this section on or before 120 calendar days from the issuance date of the order of suspension, CBP will take actions to revoke the individual broker's license without prejudice to the filing of an application for a new license in accordance with subpart D of this part.

Alejandro N. Mayorkas,

Secretary, Department of Homeland Security.

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Transmission System Planning Performance Requirements for Extreme Weather; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM22–10–000; Order No. 896]

Transmission System Planning Performance Requirements for Extreme Weather

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission directs the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization, to develop a new or modified Reliability Standard no later than 18 months of the date of publication of this final rule in the **Federal Register** to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the Reliable Operation of the Bulk-Power System. Specifically, we direct the North American Electric Reliability Corporation to develop a new or modified Reliability Standard that requires the following: development of benchmark planning cases based on prior extreme heat and cold weather events and/or future meteorological projections; planning for extreme heat and cold events using steady state and transient stability analyses that cover a range of extreme weather scenarios, including the expected resource mix's availability during extreme weather conditions and the broad area impacts of extreme weather; and corrective action plans that include mitigation activities for specified instances where performance requirements during extreme heat and cold events are not met.

DATES: This rule is effective September 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Mahmood Mirheydar (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8034, *mahmood.mirheydar@ferc.gov*

Gonzalo E. Rodriguez (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8568, *gonzalo.rodriguez@ferc.gov*

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Appendix A: Commenter Names.

I. Introduction

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Commission directs the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), to submit a new Reliability Standard or modifications to Reliability Standard TPL–001–5.1 that addresses concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the Reliable Operation [2] of the Bulk-Power System.[3]

2. We take this action to address challenges associated with planning for extreme heat and cold weather events, particularly those that occur during periods when the Bulk-Power System must meet unexpectedly high demand.[4] Extreme heat and cold weather events have occurred with greater frequency in recent years, and are projected to occur with even greater frequency in the future.[5] These events have shown that load shed during extreme temperature result in unacceptable risk to life and have extreme economic impact.[6] As such, the impact of concurrent failures of Bulk-Power System generation and transmission equipment and the potential for cascading outages [7] that may be caused by extreme heat and cold weather events should be studied and corrective actions should be identified and implemented.

3. At the Commission's June 1–2, 2021 technical conference on Climate Change, Extreme Weather, and Electric System Reliability, there was consensus among panelists that planners cannot simply project historical weather patterns forward to effectively forecast the future, since climate change has made the use of historical weather observations no longer representative of future conditions.[8] For example, extreme summer heat in regions like the Pacific Northwest and extreme winter cold in regions like Texas have increased demand for electricity at times when historically demand has been low.[9] As events such as these will likely continue to present challenges in the future, transmission planners and planning coordinators must account for this new reality in their planning processes.[10]

4. Since 2011, the country has experienced at least seven major extreme heat and cold weather events,[11] each of which put stress on the Bulk-Power System and resulted in some degree of load shed. In some cases, these events nearly caused system collapse

[1] 16 U.S.C. 824o(d)(5).

[2] The FPA defines ''Reliable Operation'' as ''operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.'' 16 U.S.C. 824o(a)(4).

[3] The Bulk-Power System is defined in the FPA as ''facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.'' *Id.* 824o(a)(1).

[4] Technical Conference June 1–2, 2021, *Climate Change, Extreme Weather, and Electric System Reliability,* Docket No. AD21–13–000 (June 1–2, 2021), June 1, 2021 Tr. 26: 3–7 (Derek Stenclik, Founding Partner, Telos Energy, Inc.), 31:7–8 (Judy Chang, Undersecretary of Energy, Massachusetts).

[5] *See e.g.,* Environmental Protection Agency, *Climate Change Indicators: Weather and Climate* (May 12, 2021) (EPA Climate Change Indicators), *https://www.epa.gov/climate-indicators/weather-climate* (showing an upward trend in extreme heat and cold weather events). NOAA, Adam Smith, *2022 U.S. Billion-dollar Weather and Climate Disasters in Historical Context* (Jan. 10, 2023), *https://www.climate.gov/news-features/blogs/2022-us-billion-dollar-weather-and-climate-disasters-historical-context.*

[6] FERC, NERC, and Regional Entity Staff, *The February 2021 Cold Weather Outages in Texas and the South Central United States,* at 9, 192 (Nov. 16, 2021), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and* (2021 Cold Weather Event Report).

[7] NERC Glossary of Terms Used in Reliability Standards (Updated Mar. 8, 2023) (NERC Glossary). NERC defines ''cascading'' as, the ''uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.''

[8] June 1, 2021 Tr. 30:2–3 (Chang), 31:12–18 (Lisa Barton, Executive Vice President/Chief Operating Officer, American Electric Power).

[9] June 1, 2021 Tr. 31:1–6 (Chang); June 2, 2021 Tr. 72:8–10 (Amanda Frazier, Senior Vice President of Regulatory Policy, Vista Corp.); 9:1–5 (Wesley Yeomans, Vice President of Operations, New York Independent System Operator, Inc. (NYISO)) (noting that in New York the majority of the extreme conditions were cold weather related but that there can be heat waves in New York City, and more heat waves are expected).

[10] June 1, 2021 Tr. 35:1–6 (Chang). *See also* US News, *Blackouts in US Northwest Due to Heat Wave, Deaths Reported* (June 29, 2021), *https://www.usnews.com/news/business/articles/2021-06-29/rolling-blackouts-for-parts-of-us-northwest-amid-heat-wave;* Judah Cohen et al., *Linking Arctic Variability and Change With Extreme Winter Weather in the United States,* 373 Sci. 1116, 1120 (2021), (a study connecting the 2021 extreme cold weather event in Texas and the South-central United States to global warming-induced weather anomalies that are likely to continue to produce severe winter storm events).

[11] *See Transmission System Planning Performance Requirements for Extreme Weather,* Notice of Proposed Rulemaking, 87 FR 38,020 (June 27, 2023), 179 FERC ¶ 61,195 at PP 24–36 (2022) (NOPR) (discussing these prior events in detail).

and uncontrolled blackouts, which were avoided due to system operator actions.

5. Given the reliability risks associated with extreme heat and cold weather events, including the potential for widespread blackouts, maintaining the reliability of the Bulk-Power System requires transmission system planning to account for the potential impact of extreme heat and cold weather over wide geographical areas, and to consider the changing resource mix. Reliability Standard TPL–001–4 [12] was developed to establish transmission system planning performance requirements that ensure that the Bulk-Power System operates reliably over a broad spectrum of system conditions and following a wide range of probable contingencies.[13] Both it and its successor, TPL–001–5.1, include provisions for transmission planners and planning coordinators to study system performance under extreme events based on their experience; [14] however, neither standard specifically requires entities to conduct performance analysis for extreme heat and cold weather, despite the fact that such conditions have clearly demonstrated a risk to the Reliable Operation of the Bulk-Power System, thus leaving a reliability gap in system planning.

6. To address this reliability gap, we direct NERC to develop a new or modified Reliability Standard that requires the following: (1) the development of benchmark planning cases based on information such as major prior extreme heat and cold weather events and/or future meteorological projections; (2) planning for extreme heat and cold weather events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios, including expected availability of the resource mix during extreme heat and cold weather conditions, and including the broad area impacts of extreme heat and cold weather; and (3) the development of corrective action plans that mitigate specified instances where performance requirements during extreme heat and cold weather events are not met. In directing NERC to develop a new or modified Reliability Standard, we are not proposing specific requirements. Instead, we identify concerns that should be addressed by the proposed Reliability Standard. NERC may propose to develop a new or modified Reliability Standard that address our concerns in an equally efficient and effective manner; however, NERC's proposal should explain how it addresses the Commission's concerns.[15]

7. We direct NERC to submit the proposed new or modified Reliability Standard no later than 18 months from the publication of this final rule in the **Federal Register**. We believe that an 18-month deadline provides sufficient time for NERC to develop a responsive Standard in consideration of the issues involved and the steps in NERC's standards development process. Further, we direct NERC to ensure that the proposed new or modified Reliability Standard becomes mandatory and enforceable beginning no later than 12 months from the effective date of Commission approval of the new or modified Reliability Standard.

II. Background

A. Legal Authority

8. Section 215 of the FPA provides that the Commission may certify an ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[16] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[17] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[18] and subsequently certified NERC.[19]

9. Pursuant to section 215(d)(5) of the FPA, the Commission has the authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the FPA.[20] Further, pursuant to § 39.5(g) of the Commission's regulations, the Commission may order a deadline by which the ERO must submit a proposed or modified Reliability Standard, or when ordering the ERO to submit to the Commission a proposed Reliability Standard that addresses a specific matter.[21]

B. Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements)

10. Transmission system planning refers to the evaluation of future transmission system performance and creation of corrective action plans that include mitigation to remedy identified deficiencies.[22] The planning horizon associated with transmission system planning covers near term (one to five years), long-term (six to ten years), and beyond.[23]

11. Reliability Standard TPL–001–5.1 establishes minimum transmission system planning performance requirements to plan a Bulk-Power System that will operate reliably over a broad spectrum of system conditions and following a wide range of probable contingencies.[24] Under Requirement R2 of Reliability Standard TPL–001–5.1, each transmission planner and planning coordinator must prepare an annual planning assessment for its portion of the Bulk-Power System.[25] This planning assessment is required for both near-term and long-term transmission planning horizons.[26]

12. Requirements R3 and R4 of Reliability Standard TPL–001–5.1

[12] Effective July 1, 2023, Reliability Standard TPL–001–4 will be replaced by Reliability Standard TPL–001–5.1. Unless otherwise specified, the use of Reliability Standard TPL–001–5.1 in this final rule also refers to its predecessor, Reliability Standard TPL–001–4.

[13] Reliability Standard TPL–001–5, at 1.

[14] *Id.* at tbl. 1.

[15] *See e.g., Mandatory Reliability Standards for the Bulk-Power Sys.,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 186, 297, *order on reh'g,* Order No. 693–A, 72 FR 40717 (July 25, 2007), 120 FERC ¶ 61,053 (2007) (''where the Final Rule identifies a concern and offers a specific approach to address the concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal'').

[16] 16 U.S.C. 824o(c).

[17] *Id.* 824o(e).

[18] *Rules Concerning Certification of the Elec. Reliability Org. & Procedures for the Establishment, Approval, & Enf't. of Elec. Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), 114 FERC ¶ 61,328 (2006).

[19] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[20] 16 U.S.C. 824o(d)(5).

[21] 18 CFR 39.5(g) (2022).

[22] NERC Glossary (defining ''Planning Assessment'' as ''documented evaluation of future Transmission System performance and Corrective Action Plans to remedy identified deficiencies'').

[23] *Id.* (defining ''Near-Term Transmission Planning Horizon'' and ''Long-Term Transmission Planning Horizon'').

[24] Reliability Standard TPL–001–5.1, Purpose.

[25] *Id.,* at Requirement 2. Further, steady-state analyses are a snapshot in time where load and system conditions (*e.g.,* generators, lines, facilities) are modeled as constant (not as changing over time). The analysis will either solve (converge numerically) or not solve (diverge numerically). *See* IEEE, *Transactions on Power Systems,* Vol. 19, No. 2, (May 2004) (power system stability is the ability of an electric power system, for a given initial operating condition, to regain a state of operating equilibrium after being subjected to a physical disturbance, with most system variables bounded so that practically the entire system remains intact); *see also,* Kundur, Prabha, *Power System Stability and Control,* McGraw Hill, at 26 (1994).

[26] *See* Reliability Standard TPL–001–5.1, at Requirement 2.1 (Near-Term Transmission Planning Horizon) and Requirement R.2.2 (Long-Term Transmission Planning Horizon).

require in part that planning coordinators and transmission planners conduct steady state and stability studies of pre-specified extreme events and evaluate possible actions designed to reduce the likelihood or mitigate the consequences and adverse impacts of the event(s), if the analysis concludes that the pre-selected extreme events cause cascading outages.

13. Table 1 of Reliability Standard TPL–001–5.1 includes a list of examples of planning events (*i.e.,* Category P1 through P7) [27] for which specific studies may be required based on the entity's own evaluation that such an event could occur within its operating area. Section 3.a of Table-1 (Steady State & Stability Performance Extreme Events) states that steady state analysis should be conducted for wide-area events affecting the transmission system based on system configuration and how it can be affected by events such as wildfires and severe weather (*e.g.,* hurricanes and tornadoes). In addition, section 3.b serves as a catch-all provision, stating that steady state analysis should be performed for ''other events based upon operating experience that may result in wide-area disturbances.''

C. Prior Commission Actions To Address the Reliability Impacts of Extreme Weather

14. On June 1 and 2, 2021, the Commission convened a staff-led technical conference on Climate Change, Extreme Weather, and Electric System Reliability.[28] The Commission sought to understand, among other things, whether further action from the Commission is needed to help achieve an electric system that can withstand, respond to, and recover from extreme weather events.[29]

15. In the pre- and post-conference comments, industry experts agreed that extreme weather events are likely to become more severe and frequent in the future.[30] They also acknowledged the challenges associated with planning for extreme events, including shifting scheduled maintenance and canceling or recalling transmission and generation assets from scheduled maintenance to meet demand under unexpected circumstances.[31] Further, commenters discussed potential changes to the Reliability Standards to address planning and operational preparedness for energy adequacy risks,[32] contingencies related to extreme weather events, and wide-area transmission planning and development challenges, among others.[33] Comments also addressed more directly the potential reliability gaps in the existing set of Reliability Standards, including Reliability Standard TPL–001–4, and identified potential solutions.[34]

16. On August 24, 2021, and February 16, 2023, the Commission approved revised Reliability Standards to address some of the reliability risks posed by extreme cold weather.[35] These Reliability Standards, among other things, require generators to implement plans for cold weather preparedness and implement freeze protection measures to mitigate the reliability impacts of extreme cold weather on their generating units. The new and revised standards also require the balancing authority, transmission operator, and reliability coordinator to plan and operate the grid reliably during cold weather conditions by requiring the exchange of certain information related to the generator's capability to operate under such conditions.[36]

D. Notice of Proposed Rulemaking

17. On June 26, 2022, the Commission issued the Notice of Proposed Rulemaking (NOPR) proposing to direct NERC to develop a new or modified Reliability Standard to address a lack of a long term planning requirement for extreme heat and cold weather events.[37] Specifically, the Commission proposed to direct NERC to develop either modifications to Reliability Standard TPL–001–5.1 or a new Reliability Standard, to require the following: (1) development of benchmark planning cases based on major prior extreme heat and cold weather events and/or meteorological projections; (2) planning for extreme heat and cold weather events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios including the expected resource mix's availability during extreme heat and cold weather conditions, and including the wide-area impacts of extreme heat and cold weather; and (3) development of corrective action plans that mitigate any instances where performance requirements for extreme heat and cold weather events are not met.[38]

18. The NOPR preliminarily found that, based on the wide geographic impacts on the Bulk-Power System of previous extreme heat and cold weather events, the study criteria for extreme heat and cold events should include a consideration of wide-area conditions affecting neighboring regions and their impact on one planning area's ability to rely on the resources of another region during the weather event.[39]

19. The NOPR sought comments on all aspects of the proposed directives, including among others: (1) the development of benchmark planning cases; (2) requiring transmission planning studies of wide-area extreme heat and cold events; (3) the study of concurrent generator and transmission outages; (4) the analysis of sensitivities; (5) modifications to current deterministic planning approaches; (6) coordination among registered entities and sharing of study results; (7) requiring entities to implement corrective action plans if performance standards are not met; and (8) whether the final rule should address other extreme weather events beyond heat and cold events. The comment period for the NOPR ended on August 26, 2022, and the Commission received 33 sets of comments.[40]

III. The Need for Reform

20. Extreme weather-related events that spread across large portions of the country over the past decade demonstrate the challenges to transmission planning from extreme heat and cold weather patterns. The NOPR discussed seven major extreme heat and cold weather events that had

[27] Categories P1 through P7 are defined in TPL–001–5.1 in Table 1—Steady State & Stability Performance Planning Events.

[28] *Climate Change, Extreme Weather, and Electric System Reliability,* Notice of Technical Conference, Docket No. AD21–13–000, at 1 (Mar. 5, 2021).

[29] *Id.* at 2.

[30] CAISO Pre-Conference Comments at 1–3; California Public Utilities Commission Pre-Conference Comments at 4; Oregon Public Utilities Commission Pre-Conference Comments at 2–3; NYISO Pre-Conference Comments at 4; AEP Pre-Conference Comments at 5.

[31] June 2, 2021, Tr. at 21–23 (Wesley Yeomans, Vice President of Operations, NYISO).

[32] ISO-New England Inc. Pre-Conference Comments at 10.

[33] Midcontinent Independent System Operator (MISO) Pre-Conference Comments at 4–5, 14–17.

[34] *See e.g.,* NERC Pre-Conference Comments at 6; MISO Post-Conference Comments at 20; Pacific Gas & Electric Company Pre-Conference Comments at 19–20; PJM Post-Conference Comments at 21; CAISO Post-Conference Comments at 10.

[35] *N. Am. Elec. Reliability Corp.,* 176 FERC ¶ 61,119 (2021). The Commission approved proposed Reliability Standards EOP–011–2 (Emergency Preparedness and Operations); IRO–010–4 (Reliability Coordinator Data Specification and Collection); and TOP–003–5 (Operational Reliability Data) (collectively, the Cold Weather Reliability Standards) and *Order Approving Extreme Cold Weather Reliability Standards EOP–011–3 and EOP–012–1 and Directing Modification of Reliability Standard EOP–012–1,* 182 FERC ¶ 61,094 (2023).

[36] *Id.* P 3.

[37] NOPR, 179 FERC ¶ 61,195 at P 47.

[38] *Id.* P 51.

[39] *Id.* P 67.

[40] A list of commenters to the NOPR and the abbreviated names used in this final rule appear in Appendix A.

occurred since 2011.[41] Of these, four (2011, 2013, 2018, and 2021) were extreme cold weather events that nearly caused system collapse if the operators had not acted to shed load.[42] The remaining three events (2014, 2020, and 2021) were extreme heat weather events that resulted in generation losses and varying degrees of load shedding.[43] Since the issuance of the NOPR, another extreme cold weather event indicated reliability challenges faced by the Bulk-Power System. In December 2022, Winter Storm Elliott caused extreme cold conditions that significantly stressed the Bulk-Power System, forcing some utilities to deploy rolling blackouts to preserve Bulk-Power System reliability.[44] These extreme heat and cold events demonstrate a risk to Reliable Operation of the Bulk-Power System.

21. While wide-area extreme heat and cold weather events may not occur every year, their frequency and magnitude are expected to increase. The National Oceanic and Atmospheric Administration's (NOAA) data and analyses show an increasing trend in extreme heat and cold weather events,[45] and the U.S. Environmental Protection Agency climate change indicators also show upward trends in heatwave frequency, duration, and intensity.[46] NOAA states that climate change is also driving more compound events, *i.e.,* multiple extreme events occurring simultaneously or successively, such as concurrent heat waves and droughts, and more extreme heat conditions in cities.[47]

22. These conditions have created an urgency to address the negative impact of extreme weather on the reliability of the Bulk-Power System. To that end, the directives to NERC in this final rule aim to improve system planning specifically for extreme heat and cold weather events. The potential impact of widespread extreme heat and cold events on the reliability of the Bulk-Power System can be modeled and studied in advance as part of near-term and long-term transmission system planning. Responsible entities could then use the studies to develop transmission system operational strategies or corrective action plans with mitigations that could be deployed in preparation for extreme heat and cold events.

23. The current transmission planning Reliability Standards, however, do not obligate transmission planners and planning coordinators to consider extreme hot and cold weather in their transmission assessments. In particular, Reliability Standard TPL–001–5.1 requires steady state and stability analyses to be performed for certain extreme events but does not require steady state and stability analyses for extreme heat and cold conditions.[48] Likewise, while Reliability Standard TPL–001–5.1 Table 1, provisions 2.f (stability) and 3.b (steady state), requires responsible entities to study events based on operating experience that may result in a wide-area disturbance,[49] the Standard does not specify the study of extreme heat or cold conditions.

24. System planning measures alone will not eliminate the reliability risk associated with extreme heat and cold events. The directives to improve transmission planning discussed in this final rule will prepare the Bulk-Power System for extreme weather events in the long term and will work together with the requirements in the Cold Weather Reliability Standards to mitigate the near-term reliability impact of extreme weather events. Improved system planning will limit the impact of such events and reduce the risk to the reliability of the Bulk-Power System, which prior events demonstrate is significant.

IV. Discussion

A. Directive to NERC To Develop New or Modified Reliability Standard

25. Pursuant to FPA section 215(d)(5), we adopt the NOPR proposal and direct NERC to submit a new Reliability Standard or modifications to Reliability Standard TPL–001–5.1 requiring transmission system planning for extreme heat and cold weather events that impact the Reliable Operation of the Bulk-Power System. For the reasons discussed in section III above, we conclude that it is necessary to update the transmission planning Reliability Standard to reflect the impact of extreme heat and cold weather events on the reliability of the Bulk-Power System. Most commenters support the NOPR proposal to develop mandatory transmission system planning requirements for extreme heat and cold weather events.[50] Commenters also agree that Commission action is necessary to address the reliability gaps pertaining to the consideration of extreme heat and cold weather events that exist in current transmission planning processes.[51]

26. Although supportive of the need to consider extreme weather in the transmission planning process, PJM Interconnection, L.L.C. (PJM) is critical of the Commission's proposed ''piecemeal'' approach and suggests that the Commission harmonize this rulemaking with other Commission actions on transmission planning.[52] While we agree that it is important for NERC and applicable planning entities to consider how requirements implemented pursuant to this rulemaking may interact with processes carried out pursuant to other Commission actions on transmission planning, we disagree with PJM's suggestion that this proceeding is not an appropriate forum for directing changes to the NERC Reliability Standards. While there is undoubtedly a nexus between the long-term planning for expected changes in resources and demand as contemplated in Docket No. RM21–17–000 and Reliability Standards for extreme weather, each set of reforms is subject to differing statutory schemes and other considerations, and each aims at related but distinct challenges. The Commission's transmission planning reform efforts require individual consideration, as they each concern different transmission planning objectives, time horizons, and areas of Commission jurisdiction. This proceeding is conducted pursuant to the Commission's jurisdiction under section 215 of the FPA and contemplates transmission planning entity actions that may be needed in the planning timeframe of six to ten years and beyond to mitigate the impacts of extreme weather, whereas the proceeding in Docket No. RM21–17–000 was initiated

[41] For a full discussion of these extreme weather events, *see* NOPR, 179 FERC ¶ 61,195 at PP 24–33.

[42] *See e.g.,* FERC and NERC Staff Report, *Outages and Curtailments During the Southwest Cold Weather Event of February 1–5, 2011,* at 7 (Aug. 2011), *https://www.ferc.gov/sites/default/files/2020-05/ReportontheSouthwestColdWeatherEventfromFebruary2011Report.pdf* (impacting nearly 4.4 million electric customers in ERCOT); 2013 PJM Heat Wave Analysis at 5 (impacting approximately 45,000 customers in PJM).

[43] *See, e.g.,* 2021 Cold Weather Event Report at 133.

[44] FERC, *FERC, NERC to Open Joint Inquiry into Winter Storm Elliott* (Dec. 2022), *https://www.ferc.gov/news-events/news/ferc-nerc-open-joint-inquiry-winter-storm-elliott.*

[45] *See* NOAA., Nat'l Centers for Envtl. Info., *U.S. Billion-Dollar Weather and Climate Disasters* (2023), *https://www.ncei.noaa.gov/access/billions/.*

[46] U.S. EPA, *Climate Change Indicators in the United States* (last updated May 2, 2023), *https://www.epa.gov/climate-indicators.*

[47] NOAA, *2022 U.S. Billion Dollar Weather and Climate Disasters in Historical Context* (2023), *https://www.climate.gov/news-features/blogs/2022-us-billion-dollar-weather-and-climate-disasters-historical-context.*

[48] *See* Reliability Standard TPL–001–5.1, at Requirements R3 and R4 and Table 1.

[49] *Id.* at Table 1, provisions 2.f and 3.b.

[50] *See, e.g.,* MISO Transmission Owners Comments at 1–2; Indicated Trade Associations Comments at 1–2; NYISO Comments at 1–2; AEP Comments at 1; ACP Comments at 1; PIOs Comments at 1.

[51] *See, e.g.,* EPRI Comments at P 4.

[52] PJM Comments at 3–4, 7.

pursuant to the Commission's jurisdiction under section 206 of the FPA, considers a more fulsome range of practices that may be required to render rates just and reasonable, and contemplates a planning horizon of 20 years.[53] While addressing these related efforts in a single proceeding may have benefits, it also would risk complicating the development of solutions and making the process more unwieldy. The Commission has thus determined to take this step to facilitate solutions to one aspect of the extreme weather challenge, as part of a series of actions that build on each other by seeking to address the many areas that affect extreme weather reliability.

27. Accordingly, we adopt the NOPR proposal and direct NERC to develop a new or modified Reliability Standard to require the following: (1) development of benchmark planning cases based on major prior extreme heat and cold weather events and/or meteorological projections; (2) planning for extreme heat and cold weather events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios including the expected resource mix's availability during extreme heat and cold weather conditions, and including the wide-area impacts of extreme heat and cold weather; and (3) development of corrective action plans that mitigate specified instances where performance requirements for extreme heat and cold weather events are not met.[54] We also direct NERC to identify the responsible entities for developing benchmark planning cases and conducting wide-area studies under the new or modified Reliability Standard.

28. Given the importance of timely addressing the identified reliability gap, we direct NERC to submit the responsive new or modified Reliability Standard within 18 months of the date of publication of this final rule in the **Federal Register**. We further direct NERC to develop a phased-in implementation timeline for the different requirements of the new or modified Reliability Standard (*i.e.,* developing benchmark planning cases, conducting studies, developing corrective action plans) that shall begin within 12 months of the effective date of a Commission order approving the proposed Reliability Standard.

29. We address below in further detail issues raised in the NOPR and in comments regarding: (1) development of benchmark events and planning cases; (2) definition of ''wide-area;'' (3) entities responsible for developing benchmark events and conducting transmission planning studies of wide-area events; (4) coordination among registered entities and sharing of data and study results; (5) concurrent/correlated generator and transmission outages; (6) conducting transmission system planning studies for extreme heat and cold weather events; (7) corrective action plans; (8) other extreme weather events; and (9) Reliability Standard development and implementation timeline.

B. Develop Benchmark Events and Planning Cases Based on Major Prior Extreme Heat and Cold Weather Events and/or Meteorological Projections

30. In the NOPR, the Commission proposed to direct NERC to include in the new or modified Reliability Standard benchmark events that responsible entities must study.[55] The NOPR proposed basing such benchmark events on prior events (*e.g.,* the February 2011 Southwest Cold Weather Event and the January 2014 Polar Vortex Cold Weather Event) and/or meteorological projections. Recognizing that extreme weather risks may vary from region to region and change over time, the NOPR proposed to direct NERC to consider approaches that would provide a uniform framework for developing benchmark events while still recognizing regional differences; for example, NERC could define benchmark events around a projected frequency (*e.g.,* 1-in-50-year event) or probability distribution (95th percentile event).[56] Although the NOPR did not specify how these benchmark events should be developed, the NOPR provided two examples: (1) NERC could develop the benchmark event or events during the standard development process; or (2) NERC could include in the new or modified Reliability Standard a framework establishing a common design basis for the development of benchmark events. The NOPR also suggested including in the modified standard the primary features of the benchmark event(s) while designating NERC or another entity to periodically update benchmark events.[57]

31. The NOPR also proposed that establishing one or more benchmark planning cases, based on benchmark events, should form the basis for sensitivity analysis. In addition to providing valuable case study information to be applied to preparing for possible comparable future events, these events would also serve as a basis for effectively using assets and resources. Specifically, once developed, responsible entities would use the benchmark events to develop benchmark planning cases to conduct studies to assess the limitations of the transmission system locally and over a wide-area, and to understand resource availability and potential firm load shedding requirements under stressed conditions.[58] The NOPR sought comments on all aspects of the proposed directive.

1. Comments

32. Commenters generally agree with the NOPR proposal to direct NERC to develop requirements that address the types of extreme heat and cold weather scenarios that responsible entities are required to study.[59] Indicated Trade Associations caution, however, that universal benchmark events would be hard to implement given regional differences.[60] As such, and consistent with the NOPR proposal, Indicated Trade Associations, APS, Bonneville Power Administration (BPA), and Idaho Power, among others, agree that regional differences (*e.g.,* climate, topology, electrical characteristics) should be considered in developing benchmark events.[61]

33. Regarding how benchmark events should be developed, NERC notes that significant work will be necessary to develop a uniform planning approach that properly accounts for regional differences in climate and weather patterns, among other considerations. Accordingly, NERC asks for flexibility in developing benchmark events, including considering options beyond those identified in the NOPR.[62] Indicated Trade Associations recommend that NERC consider all the examples of benchmark events identified in the NOPR.[63] PJM indicates that developing benchmark events will require scientific and meteorological expertise to ensure that NERC guidelines and criteria reflect statistically valid scenarios for the meteorological projections and their possible impacts on transmission planning. As such, PJM recommends that the Commission engage the national

[53] *See Building for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection,* Notice of Proposed Rulemaking, 87 FR 26504, (May 4, 2022), 179 FERC ¶ 61,028 (2022).

[54] NOPR, 179 FERC ¶ 61,195 at P 51.

[55] *Id.*

[56] *Id.* P 52.

[57] *Id.* P 53.

[58] *Id.*

[59] *See, e.g.,* NERC Comments at 7–8; AEP Comments at 7; Indicated Trade Associations Comments at 8; NARUC Comments at 5.

[60] Indicated Trade Associations Comments at 8.

[61] *See id.;* APS Comments at 3; BPA Comments at 3; Idaho Comments at 2.

[62] NERC Comments at 8–9.

[63] Indicated Trade Associations Comments at 8.

labs, Regional Transmission Organizations (RTO), NOAA, and other agencies to develop extreme weather ''design threshold'' metrics, as well as investigate targeted planning thresholds (e.*g.,* 1-in-50-year events).[64] Other commenters highlight the necessity of ensuring that benchmark events are not only developed using historical extreme heat and cold event data, but more importantly use future meteorological projections in order to prepare for plausible extremes in future years.[65]

34. All those who submitted comments regarding the NOPR proposal to require periodic updates to benchmark events agree with the need to do so. For example, Union for Concerned Scientists (UCS) points to the scientific consensus that climate change is altering the intensity and frequency of extreme weather conditions as a reason to require the periodic update of benchmark events.[66] American Electric Power Service Corporation (AEP) recommends updating the benchmark events every three years, consistent with the Commission's proposed planning cycle for regional transmission planning, based on the most up-to-date data.[67] In contrast, Midcontinent Independent System Operator, Inc. (MISO) suggests that, consistent with similar requirements in Reliability Standard TPL–007–4 (Transmission System Planned Performance for Geomagnetic Disturbance Events) and Reliability Standard PRC–006–5 (Automatic Underfrequency Load Shedding) extreme heat and cold weather benchmark events should be updated every five years.[68] Other commenters recommend that the key aspects of the benchmark be updated periodically, without opining on the periodicity of updates.[69]

2. Commission Determination

35. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to: (1) develop extreme heat and cold weather benchmark events, and (2) require the development of benchmark planning cases based on identified benchmark events. Without specific requirements describing the types of heat and cold scenarios that responsible entities must study, the new or modified Reliability Standard may not provide a significant improvement upon the *status quo.* Benchmark events will provide a defined event that will form the basis for assessing system performance during extreme heat and cold weather events. Benchmark events will also form the basis for a planner's benchmark planning case—*i.e.,* the base case representing system conditions under the relevant benchmark event—that will be used to study the potential wide-area impacts of anticipated extreme heat and cold weather events.

36. Although the NOPR outlined some of the Commission's expectations for the development of benchmark events, including that benchmark events be based on prior extreme heat and cold events and/or meteorological projections,[70] there is currently no established guidance or set of tools in place to facilitate the development of extreme heat and cold benchmark events for the purpose of informing transmission system planning. As recommended by commenters, NERC should consider the examples of approaches for defining benchmark events identified in the NOPR (*e.g.,* the use of projected frequency or probability distribution).[71] NERC may also consider other approaches that achieve the objectives outlined in this final rule. Further, as recommended by PJM, we believe there is value in engaging with national labs, RTOs, NOAA, and other agencies and organizations in developing benchmark events. Considering NERC's key role, technical expertise, and experience assessing the reliability impacts of various events and conditions, we encourage NERC to engage with national labs, RTOs, NOAA, and other agencies and organizations as needed. To that end, as discussed in section IV.J below, we have modified the NOPR proposal to allow more time for NERC to consider these complex issues and engage additional expertise where necessary.

37. Because the impact of most extreme heat and cold events spans beyond the footprints of individual planning entities, it is important that all responsible entities likely to be impacted by the same extreme weather events use consistent benchmark events. Doing so is important to ensuring that neighboring planning regions are assuming similar weather conditions and are able to coordinate their assumptions accordingly. As a result, defining the benchmark event in a manner that provides responsible entities significant discretion to determine the applicable meteorological conditions would not meet the objectives of this final rule.

38. At the same time, because different regions experience weather conditions and their impacts differently, a single benchmark event for the entire Nation is unlikely to meet the objectives of this final rule. Accordingly, in developing extreme heat and cold benchmark events, NERC shall ensure that benchmark events reflect regional differences in climate and weather patterns.

39. We also direct NERC to include in the Reliability Standard the framework and criteria that responsible entities shall use to develop from the relevant benchmark event planning cases to represent potential weather-related contingencies (*e.g.,* concurrent/correlated generation and transmission outages, derates) and expected future conditions of the system such as changes in load, transfers, and generation resource mix, and impacts on generators sensitive to extreme heat or cold, due to the weather conditions indicated in the benchmark events. Developing such a framework would provide a common design basis for responsible entities to follow when creating benchmark planning cases. This would not only help establish a clear set of expectations for responsible entities to follow when developing benchmark planning events, but also facilitate auditing and enforcement of the Standard.

40. We also direct NERC to ensure the reliability standard contains appropriate mechanisms for ensuring the benchmark event reflects up-to-date meteorological data. The increasing intensity, frequency, and unpredictability of extreme weather conditions requires that key aspects of the benchmark events be reviewed, and if necessary, updated periodically to ensure the corresponding benchmark planning cases reflect updated meteorological data. For example, a requirement that defines a fixed benchmark event with no provision for future updates (*e.g.,* defining the benchmark event for a responsible entity as the most severe heat wave in the last twenty years measured from the effective date of the standard) may not provide an accurate indicator of future risks. To the extent NERC determines that the benchmark event should be fixed or only updated

[64] PJM Comments at 9.

[65] *See, e.g.,* EPRI Comments at P 5; Entergy Comments at 3.

[66] UCS Comments at 7.

[67] AEP Comments at 3–4 (citing Docket No. RM21–17–000).

[68] MISO Comments at 3.

[69] *See, e.g.,* APS Comments at 3; Entergy Comments at 4; Indicated Trade Associations Comments at 8.

[70] For instance, a benchmark event could be constructed based on data from a major prior extreme heat or cold event, with adjustments if necessary to account for the fact that future meteorological projections may estimate that similar events in the future are likely to be more extreme.

[71] *See supra* P 33.

periodically,[72] we agree with MISO that including a mechanism to update the benchmark event at least every five years would strike a reasonable balance between the benefits of using the most up-to-date meteorological data and administrative the burdens of collecting and analyzing such data.

C. Definition of ''Wide-Area''

41. In the NOPR, the Commission proposed to direct NERC to require in a new or modified Reliability Standard that transmission planning studies consider the wide-area impacts of extreme heat and cold weather.[73] The NOPR explained that the impacts of extreme weather events on the Reliable Operation of the Bulk-Power System can be widespread, potentially causing simultaneous loss of generation and increased transmission constraints within and across regions.[74] The NOPR also pointed out that failure to study the wide-area impact of extreme heat or cold weather conditions in transmission planning could result in reliability issues affecting multiple regions or multiple planning coordinator areas remaining undetected in the long-term planning horizon. This, in turn, could lead to otherwise avoidable system conditions that would be only one contingency away from voltage collapse and uncontrolled blackouts.[75]

42. The NOPR proposed that, based on prior events, the study criteria for extreme heat and cold weather events should consider wide-area conditions affecting neighboring regions and their impact on one planning area's ability to rely on the resources of another region during the weather event.

43. To identify opportunities for improved wide-area planning studies and coordination, the NOPR sought comments on whether wide-area planning studies should be defined geographically or electrically.[76]

1. Comments

44. AEP, MISO Transmission Owners, and Tri-State Generation and Transmission Association, Inc. (Tri-State) favor defining wide-area geographically.[77] MISO Transmission Owners assert that wide-area must be defined by geography to address issues in each region as best suited for that region, given that extreme heat and cold weather risks, and the appropriate responses thereto, vary by geography.[78] Tri-State explains that ''wide-area'' should be defined geographically, because for a transmission planner to evaluate a large area weather event, it would need to be modeled within the transmission planner's area, as well as neighboring entities.[79]

45. Although MISO Transmission Owners support a geographic definition, they also caution that RTO regions, Order No. 1000 planning regions, and NERC Regional Entities do not have identical footprints. Therefore, MISO Transmission Owners recommend that the final rule direct NERC to propose modifications to Reliability Standards to provide appropriately flexible provisions to address scenarios where those inconsistent footprints may introduce conflicts.[80]

46. Idaho Power, on the other hand, comments that ''wide-area'' should be defined electrically to better capture the interdependency of systems.[81]

47. LCRA Transmission Services Corporation (LCRA), Electric Power Research Institute (EPRI), and PJM prefer that ''wide-area'' be defined both geographically and electrically. LCRA explains that this is necessary to represent the geographic correlation of extreme weather events and the electrical connectivity of the transmission system.[82] EPRI cautions that ''geographic definitions of wide area events will need to be developed for inclusion in resource adequacy or production cost models'' for purposes of identifying the snapshot conditions that should serve as the primary inputs to the transmission planning assessments.[83] Further, EPRI explains that ''wide area events defined electrically can be used to represent acute switching events that occur over much shorter timescales and can be used to capture discrete impacts defined as contingency events, which occur concurrent with the extreme temperature condition.'' [84]

48. Other commenters, while not indicating a preference between electrical or geographical definition, highlight that extreme heat and cold weather events are not bound by the footprint of utilities or authorities that separate planning and balancing areas.[85] Indicated Trade Associations recommend that the Commission invest the NERC standard drafting team with substantial discretion in addressing whether and how wide-area planning studies should be defined geographically or electrically.[86]

49. Although also not stating a preference as to whether to define ''wide-area'' electrically or geographically, Entergy Services, LLC (Entergy) cautions against expecting transmission planners and coordinators ''to overlap benchmark events between regions'' because ''[s]uch overlapping could result in modeling of extreme heat and cold events over regions that are much larger than the areas in which such events are likely to occur.'' [87]

2. Commission Determination

50. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to require that transmission planning studies under the new or revised Reliability Standard consider the wide-area impacts of extreme heat and cold weather. We direct NERC to clearly describe the process that an entity must use to define the wide-area boundaries. While commenters provide various views in favor of both a geographical approach and electrical approach to defining wide-area boundaries, we do not adopt any one approach in this final rule. Rather, we believe that this technical matter deserves a more fulsome vetting in the Reliability Standards development process. NERC should consider the comments in this proceeding when developing a new or modified reliability standard that considers the broad area impacts of extreme heat and cold weather.[88]

D. Entities Responsible for Developing Benchmark Events and Planning Cases, and for Conducting Transmission Planning Studies of Wide-Area Events

51. The NOPR proposed to direct NERC to develop requirements that address the types of extreme heat and

[72] *See, e.g.,* Reliability Standard EOP–012–1 (Extreme Cold Weather Preparedness and Operations), at Requirement 4 (requiring generator owners to calculate the generator extreme cold weather temperature every five years).

[73] NOPR, 179 FERC ¶ 61,195 at P 64.

[74] *Id.*

[75] *Id.* P 66.

[76] *Id.* P 67. The NOPR also solicited comment on which entities should oversee and coordinate the wide-area planning models and studies, as well as addressing the results of the studies, and how they should communicate those results among transmission planners. *Id.* These comments are addressed below in the sections D and E.

[77] AEP Comments at 16; MISO Transmission Owners Comments at 4.

[78] *Id.* at 4.

[79] Tri-State Comments at 5–6.

[80] MISO Transmission Owners Comments at 4.

[81] Idaho Power Comments at 4.

[82] LCRA Comments at 3; EPRI Comments at P 18; PJM Comments at 10.

[83] EPRI Comments at P 18.

[84] *Id.* at 12.

[85] UCS Comments at 8; Entergy Comments at 5; EDF at Comments 23; MISO Transmission Owners Comments at 4.

[86] Indicated Trade Associations at 10.

[87] Entergy Comments at 5–6.

[88] *Cf.,* Order No. 693, 118 FERC ¶ 61,218 at P 188 (directing NERC to address NOPR comments suggesting specific new improvements to the Reliability Standards in the standards development process, noting that it ''does not direct any outcome other than that the comments receive consideration.'').

cold scenarios responsible entities are required to study, including the development of benchmark events and benchmark planning cases.[89] The NOPR solicited feedback on which entities should be responsible for updating benchmark events and whether, and to what extent, it may be appropriate to allow designated entities to periodically update key aspects of the benchmark events.[90]

52. As a separate matter, the NOPR proposed to require that transmission planning studies that consider the wide-area impacts of extreme heat and cold weather.[91] To inform this directive, the NOPR solicited comment on which entities should oversee and coordinate the wide-area planning models and studies, as well as which entities should have responsibility to address the results of the studies.[92]

1. Comments

a. Entity Responsible for Development of Benchmark Events

53. There is no consensus among the commenters regarding which entities should be tasked with developing the benchmark events. Indicated Trade Associations suggest that the subject matter experts on the NERC standard drafting team should develop the benchmark events.[93] Entergy also suggests that the NERC develop the benchmark events, as NERC will be able to tailor the benchmark events to reflect regional variations in extreme weather risk.[94] All other commenters on this issue proposed that other entities be responsible for benchmark event development.[95] For example, New York Independent System Operator, Inc. (NYISO) and MISO Transmission Owners posit that entities registered with NERC as planning coordinators or transmission planners should be given the latitude to develop the benchmark events.[96] AEP recommends that each planning coordinator should develop individualized benchmark events for its planning area, except in regions that lack the necessary resources or expertise, in which case the Regional Entities should coordinate and review the benchmark event process in collaboration with these smaller planning coordinators in that region.[97] American Clean Power Association (ACP) suggests that the Regional Entities should develop the benchmark events that will be evaluated by all transmission planners and planning coordinators in a given region.[98]

b. Entity Responsible for Development of Planning Cases and Conducting Transmission Planning Studies of Wide-Area Events

54. Regarding development of benchmark planning cases, beyond existing registered entities, Arizona Public Service Company (APS) recommends ''that a regional planning entity would be the appropriate entity to determine the benchmark planning cases and develop the scenarios that constitute an extreme event in their region.'' [99]

55. Further, commenters suggest a variety of entities to *perform* the wide area studies. NERC suggests that a registered entity subject to the Reliability Standard, such as a planning coordinator or transmission planner, should be responsible for performing the wide-area studies.[100] AEP asserts that the planning coordinators should oversee and coordinate the wide-area planning models and studies, communicate the results, and work to mitigate issues that require corrective action.[101]

56. APS and MISO Transmission Owners express concern that an individual transmission planner or planning coordinator would not be positioned to perform a wide-area assessment of extreme weather conditions because of its limited geographical visibility.[102] Similarly, Entergy also questions whether a single transmission planner would be able to model a wide-area event on its own. Entergy believes that the responsibility for performing the analysis should lie with the RTOs or Regional Entities, with input provided by member transmission owners and transmission planners.[103] Alternatively, APS suggested a regional planning entity, such as those created under Order No. 1000, would be appropriate to oversee and coordinate wide-area planning models and studies.[104] Idaho Power Company (Idaho Power) asserts that regional planning groups such as Western Power Pool are the ones best positioned to coordinate and perform the wide-area planning studies.[105]

57. Environmental Defense Fund (EDF), Tri-State, and Eversource Energy Service Company (Eversource) propose that reliability coordinators should have the responsibility to perform wide-area planning and coordination in collaboration with other impacted reliability coordinators.[106]

2. Commission Determination

a. Entity Responsible for Establishing Benchmark Events

58. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop benchmark events for extreme heat and cold weather events through the Reliability Standards development process. We agree with Indicated Trade Associations that the development of adequate benchmark events is critical and should be committed to the subject matter experts on the standards drafting team. We also agree with Entergy that NERC will be able to tailor benchmark events to capture regional differences and the different risks that each region faces during extreme heat and cold weather events. While Regional Entities and reliability coordinators are encouraged to participate in the NERC Reliability Standards development process to develop the benchmark events, we disagree with AEP and other commenters who recommend that entities other than NERC take the lead in the development of benchmark events.

59. Further, requiring NERC to develop the new or modified Reliability Standard's benchmark events is consistent with the approach the Commission took in Order No. 779, when the Commission directed NERC to develop benchmark events for geomagnetic disturbance analyses.[107] For the same reasons, we also conclude that NERC is best positioned to define mechanisms to periodically update extreme heat and cold weather benchmark events, as discussed above.[108]

b. Entities Responsible for Development of Planning Cases and Conducting Transmission Planning Studies of Wide-Area Events

60. We also direct NERC to designate the type(s) of entities responsible for

[89] NOPR, 179 FERC ¶ 61,195 at PP 50–51.

[90] *Id.* P 53.

[91] *Id.* P 64.

[92] *Id.* P 67.

[93] Indicated Trade Associations Comments at 8.

[94] Entergy Comments at 4.

[95] *See. e.g.,* EDF Comments at 8.

[96] NYISO Comments at 13; MISO Transmission Owners Comments at 5.

[97] AEP Comments at 9.

[98] ACP Comments at 3.

[99] APS Comments at 3.

[100] AEP Comments at 20; NERC Comments at 9–10.

[101] AEP Comments at 16.

[102] APS Comments at 4; MISO Transmission Owners Comments at 4.

[103] Entergy Comments at 6.

[104] APS Comments at 4.

[105] Idaho Power Comments at 4.

[106] EDF Comments at 23; Tri-State Comments at 6; Eversource Comments at 5.

[107] *Reliability Standards for Geomagnetic Disturbances,* Order No. 779, 143 FERC ¶ 61,147, at P 2 (2013).

[108] *See supra* P 40.

developing benchmark planning cases and conducting wide-area studies under the new or modified Reliability Standard. The scope of extreme weather event studies will likely cover large geographical areas far exceeding the smaller individual transmission planner or planning coordinator planning areas. Accordingly, we agree with APS that the benchmark planning cases should be developed by registered entities such as large planning coordinators, or groups of planning coordinators, with the capability of planning on a regional scope.[109]

61. We also disagree with assertions that reliability coordinators should be responsible for developing benchmark planning cases or conducting wide-area studies. We believe the designated responsible entities should have certain characteristics, including having a wide-area view of the Bulk-Power System and the ability to conduct long-term planning studies across a wide geographic area. The responsible entities should also have the planning tools, expertise, processes, and procedures to develop benchmark planning cases and analyze extreme weather events in the long-term planning horizon. Under the NERC functional model, however, reliability coordinators have responsibility for the real-time operation of the bulk-power system. Accordingly, we conclude that reliability coordinators are not well suited for developing benchmark planning cases or conducting wide-area studies.

62. To comply with this directive, NERC may designate the tasks of developing benchmark planning cases and conducting wide-area studies to an existing functional entity or a group of functional entities (*e.g.,* a group of planning coordinators). NERC may also establish a new functional entity registration to undertake these tasks. In the petition accompanying the proposed Reliability Standard NERC should explain how the applicable registered entity or entities meet the objectives outlined above.

[109] According to the NERC Registration Matrix, there are currently 211 transmission planners and 66 planning coordinators in the United States. While some of these entities operate over large geographic areas—for example, PJM and MISO are the only planning coordinators in the Reliability First footprint—the majority operate on a much smaller scale—WECC and SERC have 59 planning coordinators, some of which are small cities and counties. NERC, *NCR Active Entities List,* (last visited Apr. 7, 2023) *https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Excel.xlsx.*

E. Coordination Among Registered Entities and Sharing of Data and Study Results

63. The NOPR explained that Reliability Standard TPL–001–5.1 cross-references Reliability Standard MOD–032–1 (Data for Power System Modeling Analysis), which establishes consistent modeling data requirements and reporting procedures for the development of planning horizon cases necessary to support analysis of the reliability of the interconnected system.[110] Reliability Standard MOD–032–1 ensures an adequate means of data collection for transmission planning. It requires applicable registered entities to provide steady-state, dynamic, and short circuit modeling data to their transmission planner(s) and planning coordinator(s). The modeling data is then shared pursuant to the data requirements and reporting procedures developed by the transmission planner and planning coordinator as set forth in Reliability Standard TPL–001–5.1, Requirement R1.

64. The NOPR stated that, while balancing authorities and other entities must share system information and study results with their transmission planner and planning coordinator pursuant to Reliability Standards MOD–032–1 and TPL–001–5.1, there is no required sharing of such information related to extreme heat or cold weather events—or required coordination—among planning coordinators and transmission planners with transmission operators, transmission owners, and generator owners.[111] Sharing system information and study results and enhancing coordination among these entities for extreme heat and cold weather events could result in more representative planning models by better integrating and including operations concerns (*e.g.,* lessons learned from past issues including corrective actions and projected outcomes from these actions, evolving issues concerning extreme heat/cold) in planning models; and conveying reliability concerns from planning studies (*e.g.,* potential widespread cascading, islanding, significant loss of load, blackout, etc.) as they pertain to extreme heat or cold.[112]

65. The NOPR proposed to direct NERC to require system information and study results sharing and coordination among planning coordinators and transmission planners with transmission operators, transmission owners, and generator owners for extreme heat and cold weather events.[113] The NOPR solicited comments on whether existing Reliability Standards are sufficient to ensure that responsible entities performing studies of extreme heat and cold weather events have the necessary data, and/or whether the Commission should direct additional changes pursuant to FPA section 215(d)(5) to address the issue.[114] The NOPR also sought comments on the following: (1) the parameters and timing of coordination and sharing; (2) specific protocols that may need to be established for efficient coordination practices; and (3) potential impediments to the proposed coordination efforts.

1. Comments

66. There is no consensus among commenters on whether Reliability Standards TPL–001.5.1 and MOD–032–1 are adequate means of data collection for transmission planning, with some commenters raising concerns about the types of data that will be needed to conduct extreme heat and cold weather studies under the new or modified Reliability Standard and whether such data can be obtained through existing processes.

67. For example, NERC and Idaho Power believes that the existing standards are sufficient.[115] According to NERC, the Commission does not need to direct revisions to Reliability Standard MOD–032–1 to account for new data required for extreme heat and cold weather studies because the standard requires functional entities to provide ''other information requested by the Planning Coordinator or Transmission Planner necessary for modeling purposes'' for each of the three types of data required (steady-state, dynamics, and short circuit).[116] Thus, NERC asserts that planning coordinators and transmission planners are empowered to request any specific data needed for studies of extreme heat and cold conditions. According to Idaho Power, because (1) utilities currently share contingencies to be studied with neighboring entities to get feedback and make updates as needed and (2) utilities share TPL–001 reports with other utilities subject to the execution of a non-disclosure agreement, the Commission proposal would be redundant of current practice.[117]

[110] NOPR, 179 FERC ¶ 61,195 at P 80.

[111] *Id.* P 81.

[112] *Id.*

[113] *Id.* P 82.

[114] *Id.* P 63.

[115] NERC Comments at 13; Idaho Power Comments at 5.

[116] NERC Comments at 13.

[117] Idaho Power Comments at 5.

68. In contrast, Tri-State indicates that there is no requirement for transmission customers to provide data for extreme heat and cold weather conditions such as load forecast data.[118] AEP asserts that planning coordinators and transmission planners have limited insight into a generator's likelihood of availability during extreme weather events, particularly limited for inverter-based resources.[119] EPRI states that there is limited modeling of protection systems in dynamic assessments currently, and any dynamic simulation of extreme events would require significant modeling of protection systems to provide for convergence of the numerical simulation.[120] NYISO notes that Reliability Standard TPL–001 currently limits transmission planners or planning coordinators to requesting data pertaining to their own planning area.[121]

69. Other commenters suggest that it will be necessary to define the data needed by responsible entities to perform studies under the new or modified Reliability Standard. AEP proposes that the Commission hold a technical conference to help define the data needed to perform the extreme weather assessments and the avenue through which information will be shared.[122] Indicated Trade Associations recommend that, although Reliability Standard MOD–032–1 might be adequate as a data source, the Commission should recognize in any final rule that the standard drafting team should be tasked with identifying what data is already collected and specifying what new data is needed to perform the assessments for extreme heat and cold.[123]

70. Regarding the sharing of study results and coordination among entities, Tri-State suggests that the balancing authority should address the results of the studies and how they should communicate those results among the transmission planners. Tri-State also asserts that the balancing authority is responsible for resource adequacy and should communicate resource needs for the area with the responsible transmission planners who can evaluate system needs and ''provide access to remove'' resource needs.[124] EPRI does not opine on who should do the wide-area coordination, but states that some level of coordination will be required to ensure accurate assessments of wide area events that impact geographic footprints across multiple planning entities.[125] UCS suggests that the final rule should direct the sharing of modeling information between planning areas regarding extreme weather benchmark events, because ensuring reliability will depend on the extent to which neighboring regions cooperate.[126]

71. NERC asserts that while wide-area studies should be coordinated as appropriate for the area, the specific procedural details for coordination on wide-area studies do not need to be mandated in a Reliability Standard. NERC adds that other coordination requirements, such as those related to sharing of study results and coordination for corrective actions across multiple transmission planner areas, can be addressed through the standard development process with consideration of any factors identified by the commenters in this proceeding.[127] Similarly, Indicated Trade Associations recommend that the Commission empower the standards drafting team to consider whether coordination between a variety of functional entities, and across regions, would be the most effective means of addressing certain identified extreme heat and cold weather events.[128]

2. Commission Determination

72. Pursuant to section 215(d)(5) of the FPA, we adopt and modify the NOPR proposal and direct NERC to require functional entities to share with the entities responsible for developing benchmark planning cases and conducting wide-area studies the system information necessary to develop benchmark planning cases and conduct wide-area studies. Further, responsible entities must share the study results with affected transmission operators, transmission owners, generator owners, and other functional entities with a reliability need for the studies.[129]

73. We agree with commenters that Reliability Standard MOD–032–1 allows for data collection for extreme heat and cold weather events. However, only planning coordinators and transmission planners can request data from other entities through Reliability Standard MOD–032–1 processes. Because in this final rule we direct NERC to determine the responsible entities that will be developing benchmark planning cases and conducting wide-area studies, it is possible that the selected responsible entities under the new or modified Reliability Standard will not be able to request and receive needed data pursuant to MOD–032–1, absent modification to that Standard.

74. Regarding EPRI's statement of insufficiency of dynamic modeling of protection systems, we consider the insufficiency of protection system modeling to be an ongoing deficiency in the modeling process. The dynamics databases used for transient stability simulations by various interconnections typically do not include comprehensive dynamic models of relays installed in the interconnection. Thus, in addressing our directive above, NERC should evaluate this deficiency during the standard development process.

75. We disagree with UCS's recommendation that the final rule should direct the sharing of modeling information between planning areas regarding extreme weather benchmark events. We expect that the existing practice (*e.g.,* MOD–032–1) of responsible entities sharing modeling information between planning areas will continue, without the need for us to specifically direct that in this final rule.

76. Rather than predetermine each aspect of the coordination process, we believe the decision of which entities are best positioned for wide-area coordination should be left to NERC. We therefore direct NERC to address the requirement for wide-area coordination through the standard development process, giving due consideration to relevant factors identified by commenters in this proceeding.

77. We agree with NERC and Indicated Trade Associations that coordination requirements, such as those related to the sharing of study results and corrective actions across multiple transmission planner areas, are best addressed through the standard development process, which we expect will consider relevant factors identified by the commenters in this proceeding. Although this final rule does not specify how study results must be shared, we believe that the new or modified Reliability Standard must require responsible entities to share these studies with affected functional entities. The sharing of study results will alert entities of reliability concerns identified

[118] Tri-State Comments at 4–5.

[119] AEP Comments at 15.

[120] EPRI Comments at P 11.

[121] NYISO Comments at 14.

[122] AEP Comments at 4.

[123] Indicated Trade Associations Comments at 9–10.

[124] Tri-State Comments at 6.

[125] EPRI Comments at P 19.

[126] UCS Comments at 8.

[127] NERC Comments at 10.

[128] Indicated Trade Associations Comments at 5.

[129] The NOPR proposed to direct NERC to ensure that functional entities share necessary system information with planning coordinators and transmission planners, as these entities conduct current transmission planning studies under TPL–001–5.1. Because this final rule directs NERC to determine the entities that will be responsible for conducting studies under the new or modified Reliability Standard, we modify the NOPR accordingly to ensure the selected responsible entity has the means to request and receive necessary system information.

in wide-area studies.[130] Further, requiring responsible entities to share study results with functional entities with a reliability related need for the study is consistent with existing planning assessment sharing requirements under Reliability Standard TPL–001–5.1.[131] Therefore, we direct NERC to require in the new or modified Reliability Standard that responsible entities share the results of their wide-area studies with other registered entities such as transmission operators, transmission owners, and generator owners that have a reliability related need for the studies.

F. Concurrent/Correlated Generator and Transmission Outages

78. The NOPR stated that generation resources that are sensitive to severe weather conditions may cease operation during extreme heat and cold events, thus contributing to wide-area concurrent outages. In addition, the NOPR indicated that extreme heat could lead to significant derating, reduced lifetime, or failure of power transformers, while extreme cold could lead to at least temporary transmission facility outages.[132]

79. As such, the NOPR posited that modeling the loss of these generators and transmission equipment during extreme heat and cold weather events would allow planners to assess the effects of potential concurrent transmission and generator outages and study the feasibility (*i.e.,* availability and deliverability) of external generation resources that could possibly be imported to serve load during such events, thereby minimizing the potential impact of extreme heat and cold events on customers.[133] In addition, the NOPR indicated that modeling concurrent generator and transmission outages would also allow planners to better identify appropriate solutions to be incorporated into corrective action plans.[134]

80. The NOPR also proposed that accounting for concurrent outages including modeling the derating and possible loss of wind and solar generators, as well as natural gas generators sensitive to extreme heat and cold conditions in planning studies would provide a more realistic assessment of system conditions (*i.e.,* updated conditions based on historic benchmarked performance) during potential extreme heat and cold events and will help better assess the probability of potential occurrences of cascading outages, uncontrolled separation, or instability. Thus, the NOPR suggested that requiring transmission planners and planning coordinators to study concurrent generator and transmission failures under extreme heat and cold events to account for the expected resource mix's availability during these extreme conditions is one way to address the reliability gap in Reliability Standard TPL–001–5.1.[135]

81. To identify the scope of these planning studies, the NOPR sought comments on the following: (1) the assumptions (*e.g.,* weather forecast, load forecast, transmission voltage levels, generator types, multi-day low wind, and solar events) used in modeling of concurrent outages due to extreme heat and cold weather events; (2) what assumptions should be included when performing modeling and planning for generators sensitive to extreme heat and cold; (3) how the impact of loss of generators sensitive to extreme heat and cold should be factored into long-term planning; (4) the extent of neighboring systems' or planning areas' outages that should be modeled in transmission planning studies; and (5) whether a certain threshold penetration of wind, solar, and natural gas generation should trigger additional analyses.[136]

1. Comments

82. Commenters mostly agree with the NOPR that responsible entities should evaluate the risk of correlated or concurrent outages and derates of all types of generation resources (*i.e.,* conventional and renewables) as well as transmission facilities related to extreme weather events.[137] For example, the Federal Energy Advocate for the Public Utilities Commission of Ohio (Ohio FEA) recommends that the Standard incorporate asset correlations and interdependencies, and consider the extent to which they can be obviated or mitigated because asset performance or failure is highly correlated with their dependency on weather conditions and on the performance of nearby or related infrastructure.[138] Idaho Power notes that while Reliability Standard TPL–001–5.1 already addresses the loss of multiple generating stations resulting from conditions such as the loss of a large gas pipeline into a region or multiple regions that have significant gas-fired generation, the standard could be modified to include the impact of renewable energy resource response due to extreme weather as well.[139] While agreeing with the NOPR proposal, Public Interest Organizations (PIOs) and ACP argue that any requirement to study concurrent or correlated generation outages should be extended to conventional generators to account for the reliability risk and to eliminate undue discrimination caused by overstating the reliability contributions of conventional generators relative to renewable and storage resources.[140]

83. Some commenters assert that the NOPR proposal on modeling the effects of potential concurrent transmission and generator outages might be unnecessary. ISO New England Inc. (ISO–NE) takes issue with including the expected resource mix's availability during extreme weather conditions as part of extreme weather scenarios. ISO–NE asserts that resource mix availability should not be addressed in a transmission planning standard because it is addressed as part of resource adequacy assessment and other Reliability Standards, such as the Cold Weather Reliability Standards. Further, ISO–NE argues that transmission planning Reliability Standards need to consider resource availability in planning cases, because generators will be required to be ready to perform in extreme weather events under those other standards.[141] EPRI asks if the Commission intends for the concurrent outages of generation and transmission assets to be modeled as an acute event, and if so, requests clarification as to how it differs from the P3 category of contingency events from TPL–001–5.1.[142]

84. NYISO recommends that, as the extreme events in Reliability Standard TPL–001–5.1 are analogous to extreme contingencies rather than extreme system conditions such as heatwaves, cold snaps, droughts, etc., NERC planning events should be expanded to include the weather-related loss of generation across areas of the system in the design-basis contingencies rather than as an extreme contingency.[143]

[130] NOPR, 179 FERC ¶ 61,195 at P 81.

[131] *See* Reliability Standard TPL–001–5.1, Requirement R8.

[132] NOPR, 179 FERC ¶ 61,195 at P 68.

[133] *Id.* P 69.

[134] *Id.*

[135] *Id.* P 72.

[136] *Id.*

[137] EDF Comments at 22; ACP Comments at 5; PIOs Comments at 9; AEP Comments at 4; UCS Comments at 12; and Americans for Clean Energy Grid Comments at 6 (ACEG Comments).

[138] Ohio FEA Comments at 5.

[139] Idaho Power Comments at 4.

[140] PIOs Comments at 23–24.

[141] ISO–NE Comments at 2–4.

[142] EPRI Comments at PP 20–21. Category P3 requires the study of the loss of a generator unit followed by system adjustments, followed by a loss of one of the following: generator or transmission circuit or transformer or shunt device or single pole of a DC line as stated in Reliability Standard TPL–001.5.1, Table 1.

[143] NYISO Comments at 13.

85. Regarding modeling assumptions, LCRA asserts that the Standard should not be prescriptive regarding the modeling assumptions, particularly concerning generation availability, beyond developing the study base case when available generation is insufficient to meet the load with respect to extreme weather events.[144] LCRA also cautions that modeling too many outages will result in an unsolvable case that cannot be analyzed.[145]

86. While no comments recommended any specific threshold of penetration of renewable resources that would trigger additional analysis, PJM notes that special studies may be needed as greater numbers of renewable, inverter-based resources (IBR), connect to the Bulk-Power System. With a much higher IBR penetration level, a more material change to dynamic and steady state assessment will likely be needed to capture the impacts of higher penetration levels of IBRs and much reduced conventional generation support.[146] APS, however, suggests that the Commission should not set a penetration threshold, arguing that the entity performing the study should determine the threshold, which likely would differ depending on the characteristics of the particular system.[147]

87. Electric Power Supply Association (EPSA) suggests that the Commission direct NERC to examine how it defines and measures its resource adequacy benchmarks, including the impacts of non-dispatchable resources with increasing penetration in the system and the availability of dispatchable, flexible resources which are increasingly being replaced by new, less flexible resources or technologies.[148]

2. Commission Determination

88. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to require under the new or revised Reliability Standard the study of concurrent/correlated generator and transmission outages due to extreme heat and cold events in benchmark events as described in more detail below.

89. We disagree with comments suggesting that the modeling of concurrent/correlated generator and transmission outages is unnecessary.[149] As discussed in the NOPR, and reinforced by commenters, the failures of individual generators during extreme weather events are not independent.[150] Previous extreme weather events have demonstrated that there is a high correlation between generator outages and cold temperatures, indicating that as temperatures decrease, unplanned generator outages and derates increase.[151] Because of this correlation, it is necessary that responsible entities evaluate the risk of correlated or concurrent outages and derates of all types of generation resources and transmission facilities as a result of extreme heat and cold events, as commenters suggest.[152]

90. Further, we disagree with ISO–NE that resource mix availability should not be considered here because it is considered in resource adequacy planning and in other Reliability Standards. Although resource outages are an important input into the resource adequacy studies, they are also an important determinant in assessing the adequacy of the transmission system.[153] Therefore, it will be necessary to consider the impact of extreme weather events on generators anticipated to be connected to the subject transmission system during the study period. Similarly, although the Cold Weather Reliability Standards require generators to be prepared to be available and perform at or above their extreme cold weather temperature during extreme weather events, generator availability is not guaranteed by any Reliability Standard, and outages occur for many reasons. Accordingly, some generators may still be unavailable under extreme heat or cold conditions and thus their potential outages must be considered in extreme heat and cold weather planning scenarios.

91. Although several commenters ask for flexibility as to modeling assumptions, we believe that it is necessary for the Reliability Standard to strike a balance between allowing responsible entities discretion to ensure the study incorporates their operating experience and the need to create a robust framework that ensures extreme heat and cold events are adequately studied. Thus, while generation and transmission availability and concurrent outages must be included in the benchmark planning case, we defer to NERC to develop the framework and criteria that responsible entities shall use to represent potential weather-related contingencies (*e.g.,* concurrent/correlated generation and transmission outages, derates) in the relevant benchmark event planning cases.[154]

92. Regarding the comments of NYISO and EPRI on the difference between extreme events and contingencies covered under Reliability Standard TPL–001–5.1, we clarify that all contingencies included in benchmark planning cases under the new or modified Reliability Standard will represent initial conditions for extreme weather event planning and analysis. These contingencies (*i.e.,* correlated/concurrent, temperature sensitive outages, and derates) shall be identified based on similar contingencies that occurred in recent extreme weather events or expected to occur in future forecasted events.

93. Regarding PJM's comment regarding the likely need for additional studies to capture the impacts of higher penetration levels of renewables and much reduced conventional generation support, we note that the benchmark planning case will include this information pursuant to our directive above regarding benchmarking planning cases. Accordingly, we do not foresee the need for the additional studies suggested by PJM.

94. Lastly, regarding EPSA's comment requesting that we direct NERC to examine how it defines and measures its resource adequacy benchmarks, we note that resource adequacy benchmarks are outside the scope of this proceeding.

G. Conduct Transmission System Planning Studies for Extreme Heat and Cold Weather Events

1. Steady State and Transient Stability Analyses

95. The Commission proposed in the NOPR to require both steady state and transient stability analyses be conducted for extreme heat and cold weather events as part of transmission planning studies.[155] Consistent with Reliability Standard TPL–001–5.1, the NOPR stated that steady state and stability analyses of study cases modeled to reflect past and forecasted extreme heat and cold conditions would better prepare transmission operators for such

[144] LCRA Comments at 3.

[145] *Id.*

[146] PJM Comments at 11.

[147] APS Comments at 5.

[148] EPSA Comments at 3.

[149] *See, e.g.,* ISO–NE Comments at 2–4.

[150] NOPR, 179 FERC ¶ 61,195 at P 70.

[151] *Id.* PP 70–71.

[152] *See supra* P 82.

[153] This understanding is consistent with section 215(a)(1) of the FPA, 16 U.S.C. 824o(a)(1), which defines Bulk-Power System to include ''electric energy from generation facilities needed to maintain transmission system reliability.''

[154] *See supra* P 39. Reliability Standard TPL–001–5.1 Requirement 1.1.5 requires responsible entities to maintain system models that represent projected system conditions, including resources required for load. Because drought conditions may impact the availability of certain supply resources, we expect that the new or revised Reliability Standard will include a similar requirement that accounts for the impact of drought conditions on generation where appropriate.

[155] NOPR, 179 FERC ¶ 61,195 at P 69.

conditions.[156] The NOPR explained that a steady-state analysis is based on a snapshot in time where the bulk electric system facilities such as generators, transmission lines, transformers etc. are modeled as fixed and load is modeled as a constant.[157] On the other hand, transient stability or dynamic analyses simulate the time-varying characteristics of the system during a disturbance that occurs during an extreme heat or cold event.[158] The NOPR further stated that performing these studies in the long-term planning horizon period (*i.e.,* six to ten years and beyond) will provide an adequate lead time for entities to develop and implement corrective action plans to reduce the likelihood or mitigate the consequences and adverse impacts of such events.[159]

96. The NOPR noted that the use of dynamic studies is particularly important given the changing resource mix and the need to understand the dynamic behavior of both traditional generators and variable energy resources (VERs) (*i.e.,* wind and solar photovoltaic).[160]

97. The NOPR sought comments on all aspects of the proposal, and specifically, on whether responsible entities should include contingencies based on their planning area and perform both steady state and transient stability (dynamic) analyses using extreme heat and cold cases. In addition, the NOPR invited comments on the following topics: (1) the set of contingencies responsible entities must consider; (2) required analyses to assess voltage stability, frequency excursions and angular deviations caused as a result of near simultaneous outages or common mode failures of VERs; and (3) the role of demand response under such scenarios.[161]

a. Comments

98. All those who commented on the NOPR proposal to require both steady state and transient stability analyses agree with the NOPR that both steady state and transient stability analyses should be performed in order to understand the potential impacts of extreme heat and cold weather events.[162] Below, we discuss comments received on the following topics: (i) required contingencies; (ii) analyses of common mode failures; and (iii) demand response.

i. Required Set of Contingencies

99. Idaho Power supports the inclusion of contingencies listed in Table 1 of Reliability Standard TPL–001–4 such as the loss of two generating stations resulting from, among other events, severe weather, as it currently applies these contingencies in its severe weather studies.[163]

100. AEP recommends that the Commission direct NERC to revise and reclassify the contingency lists in Reliability Standard TPL–001–5.1 to ''reflect the unique challenges posed by extreme weather events'' and to ensure that the bulk electric system is operated to withstand N–1–1 contingencies ''without interruption of firm transmission service or non-consequential load loss.'' [164] NYISO recommends expanding NERC planning events to include the weather-related loss of generation across areas of the system in the design-basis contingencies rather than as an extreme contingency.[165] Southern California Edison Company (SCE) suggests that NERC determine whether additional contingencies should be developed to evaluate potential reliability risks from events occurring at the same or sequential times in the same region that have the potential to pose an aggregate impact on electricity assets, operations, and services, *e.g.,* an extreme heat event that reduces grid capacity while increasing demand for cooling.[166] LCRA suggests that performing contingency analyses similar to what is required under Reliability Standard CIP–014–3 (Physical Security) may be useful.[167] LCRA states, for example, that the analysis could study the outage of medium impact facilities (*e.g.,* single circuit, common tower). If the result of the analysis identifies instability, cascading, uncontrolled islanding, or excessive load shed, these facilities could be identified as ''weather critical'' and targeted for hardening as part of a corrective action plan.[168]

101. Other commenters state that responsible entities should be able to consider contingencies beyond those in Table 1 of Reliability Standard TPL–001.5.1 that will affect their study area.[169] For example, PJM emphasizes the need for regional variance for unique contingencies to be studied.[170] Eversource recommends that the Commission avoid prescription and allow details such as the types of required contingencies to be determined during the standard development process.[171]

102. EPRI asserts that clarification is needed to differentiate between events that impact the initial conditions of the benchmark scenario for which the contingency events will be analyzed, and the actual contingencies meant to be captured as acute impacts to the system that occur over a wide area and can be studied through the steady state and transient stability processes.[172]

ii. Analyses for Common Mode Failures

103. NERC and ACP agree that Reliability Standard TPL–001–5.1 should better address the risk posed by extreme heat and cold weather events and the associated common mode failure impacting resource availability and the transmission system.[173]

104. EPRI states that the benchmark planning cases, which serve as the basis for steady state and transient stability assessments, historically have not been developed to include the correlated impacts of common mode events based on the impact of extreme temperature on load and the availability of derated generation and transmission capacity. EPRI asserts that capturing extreme temperature conditions for both heat and cold would require a new approach that directly accounts for the correlated temperature-related impacts to supply and demand.[174] EPRI agrees with the Commission's proposal that dynamic models of VERs need to be included in the studies but states they would need to be sufficiently robust to accurately capture system performance under extreme weather conditions.[175]

[156] *Id.* P 70.

[157] *Id.* P 59.

[158] *Id.* P 60.

[159] *Id.* P 58.

[160] *Id.* P 61.

[161] *Id.* P 62. The NOPR also sought comment on whether existing Reliability Standards are sufficient to ensure that responsible entities performing studies of extreme heat and cold weather conditions have the necessary data, and/or whether the Commission should direct additional modifications pursuant to FPA section 215(d)(5) to address this issue. *Id.* P 63. This question is discussed in section IV.E of this final rule.

[162] *See, e.g.,* NERC Comments at 9; PJM Comments at 10; Tri-State Comments at 4; Eversource Comments at 5; WE ACT for Environmental Justice Comments at 4; LCRA Comments at 3; UCS Comments at 7.

[163] Idaho Power Comments at 3.

[164] AEP Comments at 4.

[165] NYISO Comments at 14.

[166] SCE Comments at 4.

[167] Reliability Standard CIP–014–3 requires entities to assess their transmission facilities to determine whether, if rendered inoperable or damaged, they could result in widespread instability, uncontrolled separation, or cascading. Reliability Standard CIP–014–3 (Physical Security), at 1.

[168] LCRA Comments at 2.

[169] AEP Comments at 4; Idaho Power Comments at 3; Tri-State Comments at 4, PJM Comments at 11.

[170] AEP Comments at 4; Idaho Power Comments at 3; Tri-State Comments at 4, PJM comments at 11.

[171] Eversource Comments at 4.

[172] EPRI Comments at P 21.

[173] NERC Comments at 6; ACP Comments at 9 n.23.

[174] EPRI Comments at PP 3–4.

[175] *Id.* P 11.

105. Indicated Trade Associations state that in any case modeling these scenarios will likely require additional resources in time, expertise, and enhanced software capabilities.[176] Indicated Trade Associations ask that the standard drafting team recognize the range and quantity of complexities layered into the modeling process, *e.g.,* whether concurrent generators must be in a single or multiple balancing authority area, how many generators are needed for a given study, and if there is a particular combination of generators needed for modeling.[177]

iii. Demand Response

106. EDF and UCS suggest that when evaluating relevant distribution system impacts, responsible entities should focus on the impacts of the extreme weather event on both electric demand and on the capability of the distribution system assets, including demand response, distributed storage and generation, and utility-scale storage, to mitigate reliability risks.[178]

107. APS comments that demand response should be used as a tool to resolve issues and only studied when it is relied on as a mitigation action.[179]

108. Eversource states that the Commission should encourage regional flexibility in any consideration of demand response. Eversource further comments that the Commission should not impose a ''one size fits all'' approach for resources that may significantly differ based on location. It is also concerned that during extreme weather events, demand response with heating or cooling-based load reduction may not be achievable due to safety concerns.[180]

109. EPRI asserts that steady state simulation cannot sufficiently capture demand response, and that there is limited capability to capture the aggregated dynamic response of demand in the load models used in positive sequence platforms. EPRI adds that ''the impacts of demand response are better represented through appropriate temporal and diurnal patterns that would inform the load and demand profile under a given extreme temperature condition. This information is best represented in operational assessments such as resource adequacy or production cost modeling.'' [181]

110. LCRA notes that while the role of demand response in its portion of the Bulk-Power System is negligible today, this could change in the future as additional large loads (*e.g.,* cryptocurrency mining and data centers) are energized. LCRA states that this trend should be observed for further consideration in the future.[182]

b. Commission Determination

111. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to require in the proposed new or modified Reliability Standard that responsible entities perform both steady state and transient stability (dynamic) analyses in the extreme heat and cold weather planning studies. In a steady state analysis, the system components are modeled as either in-service or out-of-service and the result is a single point-in-time snapshot of the system in a state of operating equilibrium. A transient stability (dynamic) analysis examines the system from the start to the end of a disturbance to determine if the system regains a state of operating equilibrium.[183] Performing both analyses ensures that the system has been thoroughly assessed for instability, uncontrolled separation, and cascading failures in both the steady state and the transient stability realms.

112. We also adopt the NOPR proposal and direct NERC to define a set of contingencies that responsible entities will be required to consider when conducting wide-area studies of extreme heat and cold weather events under the new or modified Reliability Standard. We believe that it is necessary to establish a set of common contingencies for all responsible entities to analyze. Required contingencies, such as those listed in Table 1 of Reliability Standard TPL–001–5.1 (*i.e.,* category P1 through P7), establish common planning events that set the starting point for transmission system planning assessments. Requiring the study of predefined contingencies will ensure a level of uniformity across planning regions—a feature that will be necessary in the new or revised Reliability Standard considering that extreme heat and cold weather events often exceed the geographic boundaries of most existing planning footprints.

113. Additionally, establishing a set of required contingencies will aide in the auditing and enforcement of the new or revised Reliability Standard. While we do not require in this final rule the inclusion of any particular contingency, we agree with commenters that the contingencies required in the new or revised Reliability Standard should reflect the complexities of transmission system planning studies for extreme heat and cold weather events. As such, NERC may determine whether contingencies P1 through P7 should also apply to the new or modified Reliability Standard, or whether a new set of contingencies should be developed.

114. Regarding the request for clarification from EPRI as to what outages should be included in the benchmark planning case versus modeled as contingencies, we believe the standard drafting team is best positioned to consider that specific question. By definition, the benchmark planning case will already include certain weather-related contingencies that therefore will not be studied as additional contingencies when conducting extreme weather studies.[184] For example, baseline drought conditions will be present in the benchmark planning case as part of the system models representing projected system conditions,[185] whereas the impacts of more severe droughts could be studied during sensitivity analysis as a variation to the benchmark planning case's generation assumptions.[186] As discussed in section IV.F above, we direct NERC to develop specific criteria for determining which outages should be considered in the benchmark planning case.

115. Regarding the study of common mode failures, we reiterate our above directives concerning the study of concurrent/correlated generator and transmission outages. We believe that, as suggested by Indicated Trade Associations, the standard development process will provide an adequate platform to address the concerns raised by commenters regarding common mode failures.

116. We also direct NERC to require in the new or modified Reliability Standard that responsible entities model demand load response in their extreme weather event planning area. As indicated by several commenters, because demand load response is generally a mitigating action that involves reducing distribution load during periods of stress to stabilize the Bulk-Power System, its effect during an extreme weather event should be modeled.

117. Regarding EPRI's comment that steady state simulation cannot

[176] Indicated Trade Associations at 9.

[177] *Id.*

[178] EDF Comments at 22–23; UCS Comments at 7–8.

[179] APS Comments at 4.

[180] Eversource Comments at 6.

[181] EPRI Comments at P 12.

[182] LCRA Comments at 2–3.

[183] Plots are created during the dynamic simulation from pre to post disturbance and are then examined for voltage, frequency, and rotor angle stability, which cannot be assessed using only a steady state analysis.

[184] *See supra* P 39.

[185] *See supra* note 155.

[186] *See infra* P 124.

sufficiently capture demand load response, we believe EPRI's comments are accurate for modeling in the operational timeframe for temporal and diurnal studies. However, we recognize that it is possible that the loads used to represent extreme heat and cold events will include the effects of demand load response because entities' load data obtained from historical data during these past extreme events will reflect the effects of demand load response. If that is the case, demand load response will be automatically factored into the benchmark planning case. Thus, in addressing this directive, we expect NERC to determine whether responsible entities will need to take additional steps to ensure that the impacts of demand load response are accurately modeled in extreme weather studies, such as by analyzing demand load response as a sensitivity, as is currently the case under Reliability Standard TPL–001–5.1.[187]

2. Sensitivity Analysis

118. In the NOPR, the Commission proposed directing NERC to establish a requirement for responsible entities to consider system models and sensitivity cases when assessing extreme heat and extreme cold weather.[188] The NOPR explained that, while Reliability Standard TPL–001–5.1 requires the use of sensitivity power flow cases, the Standard does not require responsible entities to model the simultaneous variation of load, generation, and transfers necessary to account for the impacts of extreme heat and cold weather events. This, in turn, could result in failure to detect in the planning horizon potential reliability issues such as widespread outages and cascading failures.[189]

119. The NOPR further stated that to accurately model the impacts of extreme heat and cold weather events it would be necessary to define and model in sensitivity analyses demand probability scenario cases, generators that are affected by these events (*i.e.,* wind tripping off, solar dropping off, gas plants not being operational due to gas restrictions/freeze-offs, etc.) and transfer levels.[190]

120. The NOPR requested comment on: (1) whether to require transmission planners and planning coordinators to assess reliability in the planning horizon for sensitivity cases in which multiple inputs (*e.g.,* load and generator failures) change simultaneously during extreme heat and cold events; and (2) the range of factors and the number of sensitivity cases that should be considered to ensure reliable planning.[191]

a. Comments

121. Some commenters support requiring the consideration of certain sensitivities. For example, AEP recommends that a baseline set of sensitivities should be defined by the NERC standard drafting team and there should be flexibility for planning coordinators to introduce further sensitivities if deemed necessary.[192] EPRI suggests that multiple hours may need to be studied over the course of the extreme temperature window to capture sensitivities related to generation and demand that can lead to differing steady state and dynamic stability impacts. EPRI also recommends that in addition to the sensitivities driven by the operational performance of the system, the standard should include other external drivers that may compound system conditions during the extreme temperature events, such as a concurrent lull in wind speeds that would limit wind generation outputs.[193]

122. Other commenters suggest reasons why it may not be necessary for the Commission to direct the study of additional sensitivities. NYISO and LCRA explain that extreme heat and cold weather impacts and unavailability of natural gas fuel are already studied as sensitivities under Reliability Standard TPL–001–5.1.[194] Similarly, Indicated Trade Associations assert that the extreme weather base case should already represent system conditions at or near possible seasonal extreme weather limits and that, as such, many additional sensitivities may not be necessary.[195] LCRA adds that the effect of changing inputs (*e.g.,* load and generation, including generation retirements and forced generation outages) should be captured in the contingency definitions, performance requirements, and analysis for the given region and extreme weather case.[196]

123. Idaho Power, APS, and Indicated Trade Associations indicate that given the diversity among utilities with respect to load profiles, geographic footprint, resource mix, particular utility, its resource mix, and geographic footprint, and available resources and needs, the Commission should allow entities to select the sensitivities they will study.[197]

b. Commission Determination

124. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to require the use of sensitivity cases to demonstrate the impact of changes to the assumptions used in the benchmark planning case. Sensitivity analyses help a transmission planner to determine if the results of the base case are sensitive to changes in the inputs. The use of sensitivity analyses is particularly necessary when studying extreme heat and cold events because some of the assumptions made when developing a base case may change if temperatures change—for example, during extreme cold events, load may increase as temperatures decrease, while a decrease in temperature may result in a decrease in generation. We agree with AEP, and we direct NERC to define during the Reliability Standard development process a baseline set of sensitivities for the new or modified Reliability Standard. While we do not require the inclusion of any specific sensitivity in this final rule, NERC should consider including conditions that vary with temperature such as load, generation, and system transfers.[198]

125. We do not agree with Idaho Power, APS, and Indicated Trade Associations that responsible entities alone should determine the sensitivity cases that must be considered in the responsible entity's study. Failure to consider variations in conditions necessary to reflect extreme heat or cold weather events could result in major reliability risks being overlooked and undetected in the planning horizon.[199] We do, however, believe that responsible entities should be free to study additional sensitivities relevant to their planning areas. Because wide-area studies conducted under the new or modified Reliability Standard will be likely based on footprints significantly larger than those typically concerned under Reliability Standard TPL–001.5.1, cooperation will be necessary between responsible entities conducting extreme heat and cold weather studies and other registered entities within their extreme weather study footprints to ensure the selection of appropriate sensitivities. EPRI's comment further highlights the need for coordination between

[187] Reliability Standard TPL–001–5.1, at Requirement 2.1.3.

[188] NOPR, 179 FERC ¶ 61,195 at P 73. Sensitivity analyses consider the impact on a base case by altering discrete variables.

[189] *Id.*

[190] *Id.*

[191] *Id.* P 74.

[192] AEP Comments at 12.

[193] EPRI Comments at P 22.

[194] NYISO Comments at 13; LCRA Comments at 3.

[195] Indicated Trade Associations Comments at 10.

[196] LCRA Comments at 3.

[197] Indicated Trade Associations Comments at 11; Idaho Power Comments at 4–5; APS Comments at 7.

[198] NOPR, 179 FERC ¶ 61,195 at P 73.

[199] *See id.*

registered entities to capture sensitivities related to variable energy resources and demand.

126. We disagree with NYISO and LCRA that extreme heat and cold weather impacts are already studied as sensitivities under Reliability Standard TPL–001–5.1. Although TPL–001–5.1 mandates sensitivity analysis by varying one or more conditions specified in the standard such as load, generation, and transfers, this analysis alone cannot capture the complexities of extreme heat and cold weather conditions. Sensitivity analyses consider the impact on a base case of the variability of discrete variables. Extreme heat and cold weather impacts, on the other hand, may include numerous concurrent outages and derates which cannot be studied as part of a single-variable sensitivity analysis. Under the new or modified Reliability Standard, however, these outages will be captured in the benchmark planning case upon which sensitivity analyses will be performed.

3. Modifications to the Traditional Planning Approach

127. In the NOPR, the Commission proposed to direct NERC to consider alternative planning methods and techniques that diverge from past Reliability Standard requirements to better capture the challenges posed by extreme heat and cold events.[200]

128. The NOPR stated that Reliability Standard TPL–001–5.1 is based on a deterministic approach, which uses planned contingencies and specific performance criteria to study system response to various conditions. This approach yields accurate planning when the power supply is highly dispatchable, weather is predictable, and near-record peak demand is reached only a few days a year.[201] However, as noted in the NOPR, the current planning approach applied in Reliability Standard TPL–001–5.1 likely is not sufficient to accurately characterize the reliability risk from extreme heat and cold weather given the high degree of uncertainty inherent in predicting severe weather and its impact on generation resources, transmission, and load.[202]

129. The NOPR explained the value of establishing a new or modified planning approach to better capture the impacts of, and ensure reliable planning and operation in response to, extreme heat and cold events.[203] Specifically, the NOPR mentioned as an option expanding current deterministic studies to include probabilistically developed scenarios as an option to better account for uncertainties during extreme heat and cold weather conditions, since probabilistic tools can capture ''random uncertainties in power system planning, including those in load forecasting, generator performance, and failures of system equipment.'' [204]

130. Finally, the NOPR sought comments on combining or layering probabilistic and deterministic approaches when planning for extreme heat and cold weather conditions in the context of Reliability Standard TPL–001–5.1. Specifically, the NOPR sought comments on the use of a hybrid deterministic/probabilistic planning approach and the following: (1) the assumptions from the deterministic and probabilistic approaches that should be applied to study extreme heat and cold weather events; (2) the potential planning challenges from combining the two planning approaches; (3) the costs associated with adjustments to the currently applied deterministic approach; (4) the implementation period necessary for proposed changes; and (5) the reliability benefits that could result.[205]

a. Comments

131. Many commenters support the use of probabilistic methods in transmission planning to account for uncertainty in availability of transmission and generation in extreme weather conditions.[206] For example, PJM states that the use of probabilistic modeling ''would help establish the baseline and sensitivity system conditions upon which deterministic approaches for go/no-go corrective action transmission build decisions would be made.'' [207] EPRI discusses potential deficiencies in traditional deterministic approaches in planning studies in cases where uncertainty and variability will increase on both the generation and demand side across a variety of temperature extremes. EPRI raises concerns that scenarios or system conditions that result in consequential stability implications may not be adequately captured in the planning models using the traditional deterministic approach.[208] ACP states that there is precedent for using probabilistic tools in assessing electric reliability, as these methods are widely used by utilities and RTOs to assess resource adequacy and loss of load risk.[209]

132. Other commenters do not support a requirement to use probabilistic methods. For example, while AEP recognizes the value of probabilistic methods, it warns that the industry is not yet ready because the necessary methods, frameworks, and tools are not yet available to transmission planners.[210] Several other commenters warn that it would be premature to require the use of probabilistic methods.[211] Trade Associations express concern that probabilistic planning based on extremely low probability events is highly speculative and dependent on the judgment of planners, which increases the complexity and risk associated with the development of transmission projects, hampering the construction of needed transmission.[212] Idaho Power also does not think converting to a probabilistic approach is necessary as sensitivities with appropriate inputs will capture the impacts of extreme weather using deterministic techniques.[213] LCRA comments that probabilistic analysis requires large samples (*i.e.,* number of events), but given the infrequent occurrence of extreme weather events, it would be challenging to layer probabilistic assumptions into transmission planning analyses.[214]

133. Supporters of the use of probabilistic methods acknowledge that implementation poses challenges. For example, EPRI comments that implementation of probabilistic methods would require new processes to link and communicate data across models, such as linking generation and transmission expansion assessments, resource adequacy, production cost models, and transmission planning assessments.[215] Further, new statistical methods and processes will be needed to inform the selection of powerflow cases for planning assessments.[216] PJM states that the benefits of applying probabilistic methods would require knowing in advance pre-established bounded parameter ranges, so

[200] *Id.* P 75.

[201] *Id.*

[202] *Id.*

[203] *Id.* P 78.

[204] *Id.* P 79.

[205] *Id.*

[206] *See, e.g.,* NESCOE Comments at 9; EPRI Comments at P 24; PJM Comments at 11; EDF Comments at 20; PIOs Comments at 7; ACEG Comments at 7; NARUC Comments at 5–6; ACP Comments at 15; Entergy Comments at 6.

[207] PJM Comments at 11.

[208] EPRI Comments at P 24.

[209] ACP Comments at 16.

[210] AEP Comments at 22.

[211] APS Comments at 7 (requesting that the Commission hold ''robust industry-wide discussions to discuss probabilistic approaches''); Tri-State Comments at 8.

[212] Trade Associations Comments at 11.

[213] Idaho Power Comments at 5.

[214] LCRA Comments at 3–4.

[215] EPRI Comments at P 25.

[216] *Id.*

reasonable selection of probabilistic method assumptions lead to benchmark planning cases that reflect statistically credible scenarios.[217] PJM further states that this should be the result of coordinated analysis among RTOs, NOAA, DOE Labs, and NERC.[218] Entergy asserts that the probabilistic approach is significantly more complicated than deterministic planning and cautions that any requirement for probabilistic planning must have requirements that reasonably can be performed, are assessable, and are auditable for compliance.[219] Because of the potential challenges associated with implementing probabilistic planning requirements, Tri-State recommends the further study of and development of best practices for probabilistic planning.[220]

b. Commission Determination

134. Pursuant to section 215(d)(5) of the FPA, the Commission adopts and modifies the NOPR proposal and directs NERC to require in the new or modified Reliability Standard the use of planning methods that ensure adequate consideration of the broad characteristics of extreme heat and cold weather conditions. We further direct NERC to determine during the standard development process whether probabilistic elements can be incorporated into the new or modified Reliability Standard and implemented presently by responsible entities. If NERC identifies probabilistic elements which responsible entities can feasibly implement and that would improve upon existing planning practices, we expect the inclusion of those methods in the proposed Reliability Standard.

135. Including probabilistic scenarios in the planning process could result in a planning approach that better captures the uncertainties of extreme weather events, thus better preparing responsible entities to ensure Reliable Operation under stressed conditions.[221] Further, we agree with commenters that the use of probabilistic methods by responsible entities would help ensure Reliable Operation of the Bulk-Power System as probabilistic methods better characterize multi-day wide-area events such as extreme heat and cold events.[222]

136. However, we recognize, as certain commenters point out, that a prescriptive requirement to add probabilistic planning methods to better understand reliability implications could be met by significant challenges. Some of the challenges identified by commenters include lack of commercially available tools required for probabilistic modeling and lack of planning staff trained in the use of these tools and in carrying out probabilistic studies. Further, there may be a need to develop and maintain probabilistic databases that include, for example, outage data from extreme weather-dependent grid components and generation resources.

137. Because of these implementation concerns, we believe that the best course of action is to allow NERC to use its expertise and the standard development process to address the concerns identified by commenters and develop proposed modifications to existing planning methods that address the Commission's directive to use transmission planning methods that adequately characterize the effects of extreme heat and cold weather conditions on the transmission system, including incorporating probabilistic elements where possible. The standard development process will also provide an adequate forum in which to evaluate the many recommendations that commenters have presented in response to the NOPR.

138. We also direct NERC to identify during the standard development process any probabilistic planning methods that would improve upon existing planning practices, but that NERC deems infeasible to include in the proposed Reliability Standard at this time. If any such methods are identified, NERC shall describe in its petition for approval of the proposed Reliability Standard the barriers preventing the implementation of those probabilistic elements. We intend to use this information to determine whether and what next steps may be warranted to facilitate the use of probabilistic methods in transmission system planning practices.

H. Implement a Corrective Action Plan if Performance Standards Are Not Met

139. The NOPR noted that under the currently effective Reliability Standard TPL–001–5.1, planning coordinators and transmission planners are required to evaluate possible actions to reduce the likelihood or mitigate the consequences of extreme weather events, but are not obligated to develop corrective action plans, even if such events are found to cause cascading outages.[223] Because of the potential severity of extreme heat and cold weather events and their likelihood to cause system instability, uncontrolled separation, or cascading failures as a result of a sudden disturbance or unanticipated failure of system elements, the NOPR proposed to direct NERC to require corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met.[224]

140. Consistent with the existing requirements of Reliability Standard TPL–001–5.1, the NOPR proposed to provide responsible entities with the flexibility to determine the actions to include in their corrective action plans to remedy identified deficiencies in performance. The NOPR included several examples of actions that could be included in a corrective action plan: planning for additional contingency reserves or implementing new energy efficiency programs to decrease load, increasing intra- and inter-regional transfer capabilities, transmission switching, or adjusting transmission and generation maintenance outages based on longer-lead forecasts. The NOPR observed that well-planned mitigation and corrective actions that account for some of these contingencies will minimize loss of load and improve resilience during extreme heat and cold weather events.[225]

141. The NOPR explained that increases in interregional transfer capability could be considered as one option to address potential reliability issues during extreme weather events.[226] The NOPR noted that such transfer capability would allow an entity in one region with available energy to assist one or more entities in another region that is experiencing an energy shortfall due to the extreme weather event.[227] Increasing interregional transfer capability may be a particularly robust option for planning entities attempting to mitigate the risks associated with concurrent generator outages over a wide area.[228]

[217] PJM Comments at 11.

[218] *Id.*

[219] Entergy Comments at 9.

[220] Tri-State Comments at 8.

[221] NOPR, 179 FERC ¶ 61,195 at P 76.

[222] EPRI Comments at 4.

[223] NOPR, 179 FERC ¶ 61,195 at P 83. Reliability Standard TPL–001–5.1, Requirements R3.3.5 and R4.4.5 require computer simulation analyses of extreme events listed in Table 1 of the standard (some listed are examples and are not definitive), and if the analysis concludes there is cascading caused by the occurrence of extreme events, an evaluation of possible actions designed to reduce the likelihood or mitigate the consequences and adverse impacts of the event(s) shall be conducted.

[224] *Id.*

[225] *Id.* P 84.

[226] *Id.* P 85.

[227] *Id.*

[228] *Id.* In this proceeding, we refer to interregional transfer capability strictly in the context of improving the reliability of the Bulk-Power System through improved transmission system planning

Continued

142. To ensure the timely development and implementation of corrective action plans, the NOPR sought comments on the timeframe for developing such corrective action plans and sharing of the corrective actions with other interconnected planning entities.[229] In addition, to identify opportunities for improved wide-area planning studies and coordination, the NOPR requested comment on how to develop corrective action plans that mitigate issues that require corrective action by, and coordination among, multiple transmission owners.[230]

1. Comments

a. Jurisdictional Issues

143. Several commenters raise jurisdictional concerns regarding corrective action plans.[231] While Indicated Trade Associations support the NOPR proposal to require corrective action plans addressing vulnerabilities identified in the study process, they also urge that the Commission ''remain mindful'' of the statutory limitation set forth in FPA section 215(i) that NERC and the Commission do not have authority ''to order the construction of additional generation or transmission capacity or to set or enforce compliance with standards for adequacy or safety of electric facilities or services.'' [232] In particular, Indicated Trade Associations express concern that certain examples of potential corrective action plans mentioned in the NOPR, including ''planning for additional contingency reserves . . . or increasing intra- and inter-regional transfer capabilities,'' exceed the Commission's authority under section 215 of the FPA.[233] Similarly, Electric Reliability Council of Texas, Inc. (ERCOT) opines that ''[r]equiring transmission planners to address what is fundamentally a resource adequacy concern through the transmission planning process would usurp the authority of the states, which are responsible for ensuring the adequacy of the generation supply.'' [234]

b. Corrective Action Plans

144. Most commenters agree that corrective action plans should be required to address system performance issues identified in studies under extreme heat and cold weather conditions.[235] NERC agrees that any revised Reliability Standard directed under a final rule issued in this proceeding should require that entities develop corrective action plans for instances where performance requirements for selected extreme weather and environmental conditions are not met for at least some of the planning scenarios.

145. BPA asserts that several of the corrective action plan examples listed in the NOPR, such as transmission switching/reconfiguration, or adjusting transmission and generation maintenance outages, would likely be covered by Reliability Standard EOP–011–2, requiring transmission operators and balancing authorities to have operating plans to mitigate operating emergencies including determining the reliability impacts of extreme weather conditions. Therefore, BPA cautioned, any modifications to Reliability Standard TPL–001–5.1 should be careful not to encroach upon the authority and discretion of transmission operators and balancing authorities.[236]

146. Some commenters do not support the NOPR proposal to require the development and implementation of corrective action plans for all instances where performance requirements for extreme heat and cold events are not met. APS asserts that ''corrective action plans should be focused on the most likely and impactful events, which may not include extreme weather scenarios,'' and that as such, it disagrees that corrective action plans ''should be required for results that come out of sensitivity analysis, which includes extreme weather scenarios.''

147. With regard to costs, National Association of Regulatory Utility Commissioners (NARUC) asserts that mitigation and corrective actions to minimize loss of load and improve resilience should be subjected to a cost/benefit analysis.[237] Entergy suggests that the Commission ''provide additional guidance regarding the level of performance it expects during extreme heat and cold events,'' including consideration of ''the cost effects on customers relative to the potential risks and the time-frame in which those risks are likely to arise.'' [238]

c. Generation and Transmission Capacity Increase and Resource Adequacy Issues

148. Most commenters agree that the responsible entities developing corrective action plans should evaluate a range of solutions, including transmission upgrades to increase interregional transfer capability and/or building generation to address generation deficiency under extreme weather events.[239] Some commenters, however, question the efficacy of corrective action plans and suggest that alternative approaches are preferable.

149. With regards to transmission capacity, and specifically interregional transfer capabilities, many commenters agree that adequate interregional transfer capability would help address reliability challenges posed by extreme heat and cold weather conditions.[240] Some commenters urge the Commission to set a minimum interregional transfer capability requirement.[241] However, most commenters addressing this topic opine that interregional transfer requirements, including setting necessary or minimum transfer levels and direction, should be addressed outside of the Reliability Standard TPL–001–5.1 planning process.[242] For example, MISO Transmission Owners suggest that interregional transfers could be better dealt with under Order No. 1000 Regional Transmission Planning processes.[243] MISO recommends that corrective action plans require meaningful mitigation, such as investment in transmission solutions, to address issues identified in an extreme weather event study.[244] Conversely, Idaho Power states that if regional transmission facilities are to be considered as corrective actions, Idaho Power would have concerns with the efficacy of those corrective actions given the amount of time necessary to build new transmission.[245]

150. Most commenters who disagree with the NOPR proposal to allow entities to consider additional generation capacity as a corrective action plan measure disagree on the

and associated modifications to NERC's Reliability Standards.

[229] *Id.*

[230] *Id.* P 67.

[231] Indicated Trade Associations Comments at 11–12; ERCOT Comments at 5.

[232] Indicated Trade Association Comments at 12 (citing 16 U.S.C. 824o(i)).

[233] *Id.* at 11–12; ERCOT Comments at 5.

[234] ERCOT Comments at 5.

[235] *See, e.g.,* NERC Comments at 10; NARUC Comments at 6; NESCOE Comments at 3; MISO Comments at 4.; PJM Comments at 12.

[236] BPA Comments at 4.

[237] NARUC Comments at 6.

[238] Entergy Comments at 2.

[239] *See, e.g.,* NARUC Comments at 6; UCS Comments at 9; PIOs Comments at 15; AEP Comments at 5; ACEG Comments at 8; ACP Comments at 11; Entergy Comments at 8.

[240] AEP Comments at 2; ACP Comments at 19; ACEG Comments at 9; PJM Comments at 12; *see* MISO Transmission Owners Comments at 5–6.

[241] EDF Comments at 27; AEP Comments at 2; ACP Comments at 19; ACEG Comments at 9; PJM Comments at 12.

[242] MISO Transmission Owners Comments at 5–6; ACP Comments at 19; ACEG Comments at 9; AEP Comments at 2.

[243] MISO Transmission Owners Comments at 5.

[244] MISO Comments at 4.

[245] Idaho Power Comments at 4, 6.

basis that resource adequacy is not a matter that should be dealt with within the transmission planning process.[246] For example, ISO–NE asserts that the purpose of Reliability Standard TPL–001–5.1 is not to ensure resource adequacy, but to ensure that load can be served.[247] ACP and PIOs question the efficacy of building new generation as part of a corrective action plan because such new generation may be subject to the same issues as existing generation—for example, if an extreme cold event leads to the outage of weather-sensitive generators, adding more weather-sensitive generators will not resolve the resource deficiency.[248]

d. Notification to Applicable Regulatory Authorities or Governing Bodies Responsible for Retail Electric Service Issues

151. ACP, New England States Committee on Electricity (NESCOE), and Entergy comment that entities must coordinate with state and local authorities in the development of corrective action plans involving generation and transmission capacity.[249] For example, NESCOE suggests that corrective action plans be informed by state officials' perspectives, consider a variety of mitigation options, and include a detailed explanation of how the entity weighed the various options.[250] Additionally, NESCOE points out that given the likelihood that corrective action plans will include load shed, state officials should be involved in the corrective action plan process.[251] NESCOE proposes that responsible entities seek input from state regulators during their planning process. Alternatively, NESCOE recommends the adoption of the Joint Federal-State Task Force on Electric Transmission model to create a similar task force focusing on extreme weather and grid reliability.[252]

2. Commission Determination

152. Pursuant to section 215(d)(5) of the FPA, the Commission adopts and modifies the NOPR proposal and directs NERC to require in the new or modified Reliability Standard the development of extreme weather corrective action plans for specified instances when performance standards are not met. In addition, as explained below, we direct NERC to develop certain processes to facilitate interaction and coordination with applicable regulatory authorities or governing bodies responsible for retail electric service as appropriate in implementing a corrective action plan.

153. We adopt our rationale set forth in the NOPR and conclude that the directive to require the development of corrective action plans is needed for Reliable Operation of the Bulk-Power System. Under the currently effective Reliability Standard TPL–001–5.1, planning coordinators and transmission planners are required to evaluate possible actions to reduce the likelihood or mitigate the consequences of extreme weather events, but are not obligated to develop corrective action plans, even if such events are found to cause cascading outages. Experience over the past decade has demonstrated that the potential severity of extreme heat and cold weather events exacerbates the likelihood to cause system instability, uncontrolled separation, or cascading failures as a result of a sudden disturbance or unanticipated failure of system elements. Thus, we conclude that entities should proactively address known system vulnerabilities by developing corrective action plans that include mitigation for specified instances where performance requirements for extreme heat and cold events are not met.

a. Jurisdictional Issues

154. We reject the arguments that our directive to require responsible entities to develop corrective action plans may exceed the Commission's jurisdiction. Section 215(i)(2) of the FPA states that the Commission and ERO are not authorized to order the construction of additional generation or transmission capacity as part of a Reliability Standard.[253] Consistent with this limitation, the final rule does not require any responsible entity to engage in the construction of additional generation or transmission capacity. Moreover, while the final rule directs NERC to include in a new or modified Reliability Standard a requirement for entities to develop a corrective action plan to address extreme heat and cold weather events during the transmission planning process, the final rule does not mandate the use of any specific mitigation measure.[254]

155. As noted by commenters, the NOPR provided examples of various activities that may be appropriate under a corrective action plan, some of which may require state or local authorizations (*e.g.,* generation or transmission development).[255] Other examples mentioned in the NOPR include ''implementing new energy efficiency programs to decrease load, . . . transmission switching, or adjusting transmission and generation maintenance outages based on longer-lead forecasts,'' [256] none of which involve the construction of generation or transmission capacity. In addition, responsible entities have the option to use controlled load shed as a mitigation measure. In sum, while responsible entities would have the obligation to develop and implement a corrective action plan, the Commission is not directing any specific result or content of the corrective action plan. In such circumstances, the Commission's directive does not exceed the jurisdictional limits set forth in section 215(i) of the FPA.[257]

156. In response to ERCOT and other commenters, the Commission's action does not usurp state authority with regard to resource adequacy. As explained above, the directive that responsible entities develop corrective action plans in certain circumstances does not require the construction of additional generation or transmission capacity. Further, as discussed below, responsible entities that *elect* mitigation activities that involve increased transmission or generation capacity will of course be subject to the authority of such state agencies or others with legal jurisdiction over the construction of transmission or generation facilities.

b. Circumstances That Require Corrective Action Plans

157. As stated above, we adopt and modify the NOPR proposal and direct NERC to require in the new or modified Reliability Standard the development of corrective action plans that include mitigation for specified instances where performance requirements for extreme heat and cold events are not met—*i.e.,* when certain studies conducted under the Standard show that an extreme heat or cold event would result in cascading outages, uncontrolled separation, or instability.[258] We agree with APS that

[246] *See, e.g.,* PJM Comments at 12; ERCOT Comments at 5; ISO–NE Comments at 4.

[247] ISO–NE Comments at 4.

[248] ACP Comments at 6; PIOs Comments at 16.

[249] *See* ACP Comments at 18; NESCOE Comments at 3; *see also* Entergy Comments at 9 (stating in the context of the development of corrective action plans that ''[t]he Commission also should ensure that the relevant retail regulators have input into the level of risks versus costs a transmission owner should accept.'').

[250] NESCOE Comments at 3.

[251] *Id.* at 5.

[252] *Id.* at 6.

[253] 16 U.S.C. 824o(i)(2).

[254] NOPR, 179 FERC ¶ 61,195 at P 84 (''we believe it is appropriate to provide responsible entities with the flexibility to determine the best actions to include in their corrective action plan to remedy any identified deficiencies in performance'').

[255] *Id.*

[256] *Id.*

[257] *S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41, 80 (D.C. Cir. 2014).

[258] NOPR, 179 FERC ¶ 61,195 at P 83.

neither version 4 nor 5.1 of Reliability Standard TPL–001–5.1 require corrective action plans for extreme heat and cold weather events. Extreme heat and cold weather events, which pose a serious risk to the Reliable Operation of the Bulk-Power System, are increasing in frequency and intensity. We believe that in taking steps to avoid occurrences of cascading outages, uncontrolled separation, or instability under extreme heat and cold, corrective action plans would also minimize the extent and duration of loss of load and improve Bulk-Power System resilience during extreme heat and cold weather events.[259]

158. Although the NOPR proposed requiring the development of corrective action plans for *any* instance where performance requirements for extreme heat and cold events are not met, we give NERC in this final rule the flexibility to specify the circumstances that require the development of a corrective action plan. For example, NERC should determine whether corrective action plans should be required for single or multiple sensitivity cases, and whether corrective action plans should be developed if a contingency event that is not already included in benchmark planning case would result in cascading outages, uncontrolled separation, or instability.[260] Because we also direct NERC to establish required study contingencies and baseline sensitivities,[261] we believe it is necessary for NERC to develop those aspects of the Standard prior to determining the instances under which corrective action plans must be developed.

159. With regard to BPA's suggestion that Reliability Standard EOP–011–2 already addresses certain mitigation measures listed in the NOPR as examples, we clarify that nothing in the final rule affects the responsibilities or obligations of registered entities under that Reliability Standard and note that there are important differences in the scope and intent of EOP–011–2 and the Reliability Standard we are directing be developed here. Specifically, while Reliability Standard EOP–011–2 includes provisions to determine reliability impacts of extreme cold conditions and extreme weather conditions,[262] it does not require the transmission operator to mitigate the condition. In addition, Reliability Standard EOP–011–2 addresses the issues within the operating time frame. Corrective action plans, as proposed in the NOPR, would be developed in the planning horizon to address the issues in the long-term planning time frame. Simultaneously, such issues would be addressed by Reliability Standard EOP–011–2 in the operating time frame should the studied extreme weather condition occur. As such, there would not be any encroachment or conflict between the two standards.

160. With respect to arguments from NARUC and Entergy that the Commission should require cost-benefit analysis for corrective action plans or otherwise provide additional guidance as to the cost impacts on customers, we decline to do so. FPA section 215 does not require the use of cost-benefit analysis and, given the flexibility allowed to responsible entities in crafting a corrective action plan, we are not persuaded such a requirement would be warranted in this instance. Regarding the cost impact on customers more generally, we believe that NERC should have an opportunity in the first instance to balance such impacts and present a new or modified Reliability Standard for Commission approval. As articulated in Order No. 672, the cost of compliance is but one factor in determining whether to approve a proposed Reliability Standard and we will consider the potential cost impacts in the context of the larger record.[263]

c. Generation and Transmission Capacity Increase and Resource Adequacy Issues

161. As discussed above, corrective action plans are not required to use any specific mitigation measure and responsible entities are not required to build transmission or generation. Nevertheless, some entities may choose to include additional transmission or generation capacity as a mitigation measure in their corrective action plan, subject to the approval of relevant regulatory authorities.

162. With respect to the use of transmission as a mitigation measure, as stated in the NOPR and echoed by commenters, interregional transfer capability can be a solution to some extreme weather-related reliability concerns. We recognize that a proposal by a planning entity to increase its interregional transfer capability to address the impact of extreme heat and cold conditions on its portion of the Bulk-Power System may be acceptable in a corrective action plan, and we expect that the benchmark planning cases developed, and wide-area studies conducted under this Standard could be beneficial for purposes of determining interregional transfer needs. However, we decline to set a minimum interregional transfer capability requirement in this proceeding and note the Commission's ongoing pending proceeding addressing such a requirement in Docket No. AD23–3.

163. Regarding Idaho Power's concern given the amount of time necessary to build new transmission,[264] we note that corrective action plans address deficiencies identified in a long-term transmission planning timeframe (*i.e.,* six to ten years and beyond). The period associated with a transmission project will inform whether and when that project may be included in an extreme weather corrective action plan. For example, a transmission project that is not expected to be operational in the six-to-ten-year long-term horizon may not be relied upon in an extreme weather corrective action plan to mitigate identified system deficiencies within that time horizon. In that circumstance, the responsible entity will have to develop an extreme weather corrective action plan that includes other measures that can be implemented to ensure Reliable Operation of its portion of the Bulk-Power System.

164. With respect to concerns that generation capacity is not appropriately included in corrective because it should be addressed through resource adequacy processes, we reiterate our findings above in section IV.F that the purpose of the new or modified Standard is to address transmission system deliverability and not to supplant or duplicate resource adequacy processes. With respect to concerns from PIOs and ACP that generation may be ineffective as a mitigation measure, we note that responsible entities have the flexibility to determine the appropriate mitigation measure for their circumstances.

d. Notification to Applicable Regulatory Authorities or Governing Bodies Responsible for Retail Electric Service Issues

165. We direct NERC to require in the new or modified Reliability Standard that responsible entities share their corrective action plans with, and solicit feedback from, applicable regulatory authorities or governing bodies responsible for retail electric service issues. We agree with commenters that relevant state entities should have the opportunity to provide input during the

[259] *Id.* P 84.

[260] Under Reliability Standard TPL–001–5.1, corrective action plans are not required for single sensitivity cases.

[261] *See supra* PP 111, 124.

[262] Reliability Standard EOP–011–2, Requirement 1.2.6.

[263] *See* Order No. 672, 114 FERC ¶ 61,104 at P 330.

[264] Idaho Power Comments at 4, 6.

development of corrective action plans. Just as this final rule seeks to ensure Reliable Operation of the Bulk-Power System during extreme heat and cold weather events, regulatory authorities and governing bodies responsible for retail electric service are taking actions to ensure reliability for local stakeholders. As such, we believe that requiring responsible entities to seek input from applicable regulatory authorities or governing bodies responsible for retail electric service issues when developing corrective action plans could help ensure that shared opportunities to increase system reliability are not missed. Further, as NESCOE points out, such consultation may allow these entities to better understand ''the cost implications of various approaches'' and, therefore, provide ''better insight into the considerations and tradeoffs inherent in the options available.'' [265]

166. We also agree with NESCOE that sharing corrective action plans with applicable regulatory authorities or governing bodies responsible for retail electric service is necessary given the possibility that corrective action plans could include load shedding.[266] As the Commission has stated in the past, we believe that the public should have notice and understanding of a responsible entity's plans to shed non-consequential load.[267] Therefore, just as Reliability Standard TPL–001–5.1 requires planning coordinators and transmission planners to notify stakeholders, including applicable regulatory authorities or governing bodies responsible for retail electric service, of their intent to include non-consequential load loss in corrective action plans for certain single-contingency events,[268] the new or modified Reliability Standard must also require responsible entities to similarly communicate their intent to use non-consequential load shed in their extreme weather corrective action plans.

167. Further, because an important goal of transmission planning is to avoid load shed,[269] any responsible entity that includes non-consequential load loss in its corrective action plan should also identify and share with applicable regulatory authorities or governing bodies responsible for retail electric service alternative corrective actions that would, if approved and implemented, avoid the use of load shedding. Examples could include building additional generation and/or transmission capacity, energy efficiency programs, and demand load response programs.[270]

168. While we direct NERC to require registered entities to communicate the results of their studies and share their extreme weather corrective action plans with applicable regulatory authorities or governing bodies responsible for retail electric service, NERC should not attempt to mandate that entities which are not under the Commission's jurisdiction participate in the development of corrective action plans.

I. Other Extreme Weather-Related Events and Issues

169. While the NOPR focused on extreme heat and cold weather events, the NOPR recognized that long-term drought, particularly when occurring in conjunction with high temperatures, could also pose a serious risk to Bulk-Power System reliability over a wide geographical area. In the NOPR, the Commission raised a concern that drought may cause or contribute to conditions that affect reliable operation of the Bulk-Power System such as transmission outages, reduced plant efficiency, and reduced generation capacity. The Commission sought comment on whether drought should be included along with extreme heat and cold weather events within the scope of the Reliability Standard.[271] Additionally, the Commission invited comment on whether other extreme events with significant impact on the reliability of the Bulk-Power System could also be considered and modeled in the future.[272]

1. Comments

170. Indicated Trade Associations, EDF, and ACP support including the consideration of drought with extreme heat and cold weather events within the scope of the new or modified Reliability Standard.[273] NERC agrees, suggesting that drought conditions be studied in drought-prone areas of the country.[274] EDF notes that drought events can significantly impact the capacity and operation of water-cooled fossil and nuclear generators and other water-cooled assets, as well as hydroelectric generators. EDF also asserts that drought events are also highly correlated with high temperature and wildfires. Therefore, according to EDF, a failure to consider drought impacts could result in an overestimation of generation availability during an extreme heat weather event and understate the risks of that event.[275]

171. Similarly, Indicated Trade Associations note that they support the study of long-term drought impacts on relevant generation (*e.g.,* hydro-electric, geothermal, and nuclear generation) in regions where drought has been, or may plausibly become, an issue. They add that droughts are sustained long-term conditions that may be fundamentally studied and addressed differently—for example, as a fuel supply sensitivity—than a short-term extreme heat or cold weather event.[276] However, Indicated Trade Associations believe that the Commission should not attempt to address all types of extreme weather events at once in the Reliability Standard, but rather take a phased approach.[277]

172. ACP states ''[b]ecause drought events are already widespread across all regions, and climate change will make them even more frequent and widespread, it would be prudent for the Commission and NERC to require all regions to include drought in their analysis of severe weather benchmark events under TPL–001.'' [278]

173. Tri-State notes that drought is already sufficiently included in the resource forecasts developed by Resource Planners.[279]

174. Certain commenters support the inclusion of extreme weather events beyond heat, cold and drought. For example, NERC identifies extreme weather conditions for inclusion in required studies, such as high winds, diminished winds, dust, smoke, fog, and increased cloud cover.[280] According to NERC, such long-term, widespread weather and environmental conditions can impact resource availability and the transmission system. Other commenters suggest the inclusion of other extreme weather events such as wildfires, hurricanes, and tornadoes; [281] rain and wind (including derechos), and ice storms; [282] debris flow (landslide risk following wildfire scars and heavy

[265] NESCOE Comments at 4.

[266] *Id.* at 5.

[267] *Transmission Planning Reliability Standards,* Order No. 762, 77 FR 26686 (May 7, 2012), 139 FERC ¶ 61,060, at P 65 (2012).

[268] Reliability Standard TPL–001–5.1, at attach. 1.

[269] Order No. 693, 118 FERC ¶ 61,218 at P 1,795.

[270] To be clear, responsible entities may also pursue such mitigating actions in the first instance, subject to the approval of relevant regulatory authorities. *See supra* P 161.

[271] NOPR, 179 FERC ¶ 61,195 at P 92.

[272] *Id.* P 93.

[273] Indicated Trade Associations Comments at 13; EDF Comments at 19; ACP Comments at 18–19.

[274] NERC Comments at 12.

[275] EDF Comments at 24.

[276] Indicated Trade Associations Comments at 13.

[277] *Id.*

[278] ACP Comments at 10.

[279] Tri-State Comments at 8.

[280] NERC Comments at 12.

[281] EDF Comments at 25.

[282] AEP Comments at 5.

precipitation) and rain-on-snow events that may lead to dam overtopping.[283]

175. EPRI points out that certain extreme weather events such as hurricanes or flooding can and do often occur independent of extreme heat and cold events. As such, EPRI states that the standard should identify climate and weather-related threats that occur concurrently or independently based on the planning area's local footprint and develop scenarios accordingly.[284]

176. In contrast, MISO and LCRA comment that the Reliability Standard should be limited to extreme heat and cold events. MISO also comments that there is a fundamental difference between extreme heat and cold events and other extreme weather events: extreme temperature events would likely result in the load increasing and continuing to stay online, while other extreme weather events such as hurricanes or tornados create the possibility of load loss. MISO also points out that the operation horizon will continue to prepare for situations like hurricanes, tornados, or ice storms.[285] Likewise, LCRA adds that drought and other extreme weather events beyond extreme temperature are already modeled by existing extreme event contingencies.[286]

2. Commission Determination

177. We decline to direct NERC to create or modify a Reliability Standard to specifically require the assessment of the impacts of drought conditions as part of extreme heat and cold transmission system planning. As explained above, the type of long-term meteorological study involved in extreme heat and cold event transmission planning necessarily includes examining the extreme weather impact on base climate conditions over the study period, conditions that would have to include anticipated drought conditions in relevant planning areas.[287]

178. We agree with various commenters that drought conditions may impact reliability,[288] and drought impacts on generation are already studied in the resource forecasts developed by resource planners and mitigated by operating procedures. Additionally, droughts that may occur concurrently with extreme heat and cold events will be included in the benchmark planning case, as drought conditions would be present in the meteorological data that feeds the benchmark planning case,[289] and the possibility of more severe drought could be reflected as part of a sensitivity analysis.[290]

179. Regarding other extreme weather events such as NERC's concern with high winds, diminished winds, dust, smoke, smog fog, extreme snowstorms, flooding and increased cloud cover, and extreme snowstorms, or other commenters recommendations to include hurricanes, tornados, heavy rain and wind, and ice storms; and adjacent events such as wildfires, debris flow, and flooding, we agree that these conditions may affect the Bulk-Power System. However, we are not persuaded that a directive to address these events in the new or modified Reliability Standard is warranted at this time.

180. As MISO indicates, there are fundamental differences between extreme heat and cold events and other extreme weather events that cast doubt as to whether this Reliability Standard is the correct vehicle for addressing their impacts.[291] For instance, extreme heat and cold events generally affect large geographic areas, while other extreme weather and adjacent events such as tornadoes, hurricanes, storms, floods, and wildfires tend to have more localized impacts. Moreover, as MISO points out, extreme heat and cold weather events are typically characterized by potential sustained load increases, while other extreme weather events typically result in load losses.

J. Reliability Standard Development and Implementation Timeline

181. The Commission proposed to direct NERC to develop a new or modified Reliability Standard within one year of the effective date of a final rule in this proceeding, with compliance obligations beginning no later than 12 months from Commission approval of the proposed Reliability Standard.[292]

1. Comments

182. NERC raises no concerns with the proposed 12-month proposal to create a new or modified Reliability Standard; however, NERC requests that the Commission consider coordinating the timing of this final rule to allow NERC to benefit from the informational filings in Docket Nos. RM22–16–000 and AD21–13–000, as information obtained from these reports ''may prove useful to the NERC standard development process.'' [293]

183. PJM and MISO Transmission Owners state that one year will not be enough time to develop the proposed Reliability Standard.[294] PJM states that such a short timeframe will hamper stakeholder input.[295] PJM further comments that the NOPR's proposed timeline for standard development is not ''sequenced with any of the other activities associated with ensuring enhanced reliability planning'' and will thus ''divert resources from the more comprehensive work that is needed in this area.'' [296] MISO Transmission Owners agree that ''one year's time is not long enough'' to modify or create a new Reliability Standard, and the Commission should give NERC ''more time.'' [297]

184. Regarding the effective date of any resulting Reliability Standard, NERC requests that the Commission clarify the proposed implementation schedule, *i.e.,* ''whether entities must begin to comply with all new study requirements within one year of Commission approval (*i.e.,* completed studies with Corrective Action Plans developed), or whether a phased-in approach beginning no later than one year is permitted for entities to coordinate on the development of new models, collect new data, and perform the necessary coordination to study wide area impacts before completing studies and developing any associated Corrective Action Plans.'' [298]

185. PJM also states that one year is not enough time for responsible entities to implement the new or revised Reliability Standard, because after Commission approval ''Transmission Providers like PJM will have responsibility to translate it into workable planning process methodologies and related stakeholder-approved manual language.'' [299]

186. PJM further calls for flexibility on setting start dates for the implementation period for different

[283] SCE Comments at 6–7.

[284] EPRI Comments at P 29.

[285] MISO Comments at 2.

[286] LCRA Comments at 4.

[287] *See supra* P 114

[288] *See e.g.,* EDF Comments at 24.

[289] *See supra* note 155.

[290] *See supra* P 114 and note 155.

[291] MISO Comments at 2.

[292] NOPR, 179 FERC ¶ 61,195 at P 48.

[293] NERC Comments at 14. In Docket Nos. RM22–16–000 and AD21–13–000, the Commission proposes directing transmission providers to submit one-time informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments. *One-Time Informational Reports on Extreme Weather Vulnerability Assessments; Climate Change, Extreme Weather, & Elec. Sys. Reliability,* Notice of Proposed Rulemaking, 87 FR 39414 (July 1, 2022), 179 FERC ¶ 61,196 (2022) (Informational Reports NOPR).

[294] PJM Comments at 14; MISO Transmission Owners Comments at 7.

[295] PJM Comments at 14.

[296] *Id.*

[297] MISO Transmission Owners Comments at 7.

[298] NERC Comments at 14–15.

[299] PJM Comments at 14–15.

entities given variances in regional planning cycles.[300] APS echoes the call for flexibility as to the timeframe for developing a corrective action plan as the potential mitigation strategies may vary or include neighboring entities.[301]

187. AEP proposes that the Commission provide responsible entities ''at least two years to implement stability analysis'' after the proposed Reliability Standard takes effect, and that corrective action plans be developed ''within one year of the assessment of reliability deficiency.'' [302]

2. Commission Determination

188. We direct NERC to submit a new or modified Reliability Standard within 18 months of the date of publication of this final rule in the **Federal Register**. Further, we direct NERC to propose an implementation timeline for the new or modified Reliability Standard, with implementation beginning no later than 12 months after the effective date of a Commission order approving the proposed Reliability Standard.

189. We agree with NERC that it is important to coordinate the timeline for the development of a Reliability Standard under this proceeding with that of the extreme weather one-time informational reports required under Docket Nos. RM22–16–000 and AD21–13–000.[303] The Informational Reports Final Rule, which is being issued concurrently with this final rule, directs responsible entities to develop and file with the Commission within 120 days of that order's publication in the **Federal Register** a one-time informational report ''describing their current or planned policies and processes for conducting extreme weather vulnerability assessments.'' [304] The Informational Reports Final Rule further states that public comments will be due 60 days after the reports are filed.[305] These informational reports may assist the standard drafting team's efforts in developing the proposed Reliability Standard, as they will be helpful for determining whether and to what extent transmission providers are already considering the impacts of extreme weather events. We believe that extending the NOPR's proposed standard development timeline is appropriate to ensure that NERC can benefit from the information obtained from these reports, as well as from public comments on the reports.

190. With regards to PJM and MISO Transmission Owners' comments, we recognize that the NOPR proposed an ambitious development timeline for the proposed Reliability Standard. As we indicated in the NOPR, the negative impact of extreme weather on the reliability of the Bulk-Power System demands an urgent response. Further, we note that NERC, the entity responsible for the development of the Reliability Standard, did not raise concerns about the NOPR's proposed development timeline. As such, we are not persuaded that there is a present need to extend the deadline to submit a proposed Reliability Standard further than what is necessary to ensure that NERC can benefit from the data obtained as a result of the one-time informational reports.

191. Accordingly, we direct NERC to submit a proposed Reliability Standard within 18 months of the date of publication of this final rule in the **Federal Register**. We believe that extending the development timeline by six months should be sufficient to ensure that the standard drafting team will be able to take advantage of the one-time reports required by the Commission under Docket Nos. RM22–16–000 and AD21–13–000.

192. We decline to direct NERC to ensure that entities fully comply with all new requirements within one year of Commission approval (*i.e.,* completed studies with corrective action plans developed). As AEP and PJM note in their comments, the new or modified Reliability Standard will require significant implementation efforts. Given the complexities and multiple stages of activity that would be involved in compliance with the directives in this final rule, we believe that a more flexible implementation approach is appropriate.

193. We therefore direct NERC to establish an implementation timeline for the proposed Reliability Standard. In complying with this directive, NERC will have discretion to develop a phased-in implementation timeline for the different requirements of the proposed Reliability Standard (*i.e.,* developing benchmark cases, conducting studies, developing corrective action plans). However, this phased-in implementation must begin within 12 months of the effective date of a Commission order approving the proposed Reliability Standard and must include a clear deadline for implementation of all requirements.

V. Information Collection Statement

194. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[306] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[307] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

195. The directives to NERC to develop a new Reliability Standard or modify existing Reliability Standard TPL–001 (Transmission System Planning Performance Requirements), are covered by, and already included in, the existing OMB-approved information collection FERC–725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards; OMB Control No. 1902–0225), under Reliability Standards Development.[308] The reporting requirements in FERC–725 include the ERO's overall responsibility for developing Reliability Standards, such as the TPL–001 Reliability Standard, which is designed to ensure the Bulk-Power System will operate reliably over a broad spectrum of system conditions and following a wide range of probable contingencies.[309] The Commission will submit to OMB a request for a non-substantive revision of FERC–725 in connection with this final rule.

VI. Environmental Analysis

196. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

[300] *Id.*

[301] APS Comments at 8.

[302] AEP Comments at 13, 24.

[303] Final Rule, Order No. 897, 183 FERC ¶ 61,192 (2023) (''Informational Reports Final Rule'').

[304] *Id.* PP 1, 3.

[305] *Id.* P 104.

[306] 44 U.S.C. 3507(d).

[307] 5 CFR 1320.11.

[308] Reliability Standards Development as described in FERC–725 covers standards development initiated by NERC, the Regional Entities, and industry, as well as standards the Commission may direct NERC to develop or modify. The information collection associated with this final rule ordinarily would be a non-material addition to FERC–725. However, an information collection request unrelated to this final rule is pending review under FERC–725 at the Office of Management and Budget. To submit this final rule timely to OMB, we will submit this to OMB as a temporary placeholder under FERC–725(1A), OMB Control No. 1902–0289.

[309] Reliability Standard TPL–001–4, Purpose.

environment.[310] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[311] The actions directed here fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

197. The Regulatory Flexibility Act of 1980 (RFA) [312] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

198. This final rule directs NERC, the Commission-certified ERO, to develop a new or modified Reliability Standard that requires long-term transmission system planning designed to prepare for extreme heat and cold weather events. Therefore, this final rule will not have a significant or substantial impact on entities other than NERC. Consequently, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

199. Any Reliability Standards proposed by NERC in compliance with this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the Regulatory Flexibility Act based on the content of the Reliability Standards proposed by NERC.

VIII. Document Availability

200. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

201. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

202. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

IX. Effective Date and Congressional Notification

203. This rule will become effective September 21, 2023. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission. Commissioner Danly is concurring in part.

Issued: June 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

The following appendix will not appear in the Code of Federal Regulations.

Appendix A: Commenter Names

Acronyms	Commenter name
ACP	American Clean Power Association.
ACEG	Americans for a Clean Energy Grid.
AEP	American Electric Power Service Corporation.
Ampjack	Ampjack Industries Ltd.
APS	Arizona Public Service Company.
BPA	Bonneville Power Administration.
EDF	Environmental Defense Fund.
Indicated Trade Associations	The Edison Electric Institute (EEI), the American Public Power Association (APPA), the Large Public Power Council (LPPC), the National Rural Electric Cooperative Association (NRECA), and the Transmission Access Policy Study Group (TAPS).
Entergy	Entergy Services, LLC.
EPRI	Electric Power Research Institute.
EPSA	Electric Power Supply Association.
ERCOT	Electric Reliability Council of Texas, Inc.
Eversource	Eversource Energy Service Company.
Idaho Power	Idaho Power Company.
ISO–NE	ISO New England Inc.
LCRA	LCRA Transmission Services Corporation.
Louisiana PSC	Louisiana Public Service Commission.
MISO	Midcontinent Independent System Operator, Inc.

[310] *Regul. Implementing the Nat'l Env't Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[311] 18 CFR 380.4(a)(2)(ii) (2022).

[312] 5 U.S.C. 601–612.

Acronyms	Commenter name
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; GridLiance Heartland LLC; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Republic Transmission, LLC; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
NARUC	National Association of Regulatory Utility Commissioners.
NERC	North American Electric Reliability Corporation.
NESCOE	New England States Committee on Electricity.
NMA	National Mining Association.
NYISO	New York Independent System Operator, Inc.
NYSRC	New York State Reliability Council.
Ohio FEA	Federal Energy Advocate for the Public Utilities Commission of Ohio.
PG&E	Pacific Gas and Electric Company.
PIOs	Public Interest Organizations (Sustainable FERC Project, Natural Resources Defense Council, American Council on Renewable Energy, Sierra Club, Southern Environmental Law Center, Western Resource Advocates).
PJM	PJM Interconnection, L.L.C.
SCE	Southern California Edison Company.
Sunflower	Sunflower Electric Power Corporation.
Tri-State	Tri-State Generation and Transmission Association, Inc.
UCS	Union of Concerned Scientists.
WATT	Working for Advanced Transmission Technologies.
WE ACT	WE ACT for Environmental Justice.

[FR Doc. 2023–13286 Filed 6–22–23; 8:45 am]

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