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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1506; Project Identifier MCAI-2023-00784-R; Amendment 39-22512; AD 2023-13-51]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022-19-08 which applied to all Airbus Helicopters Model SA341G and SA342J helicopters. AD 2022-19-08 was prompted by a report of manufacturing defects on multiple tail rotor blades (TRBs) and required visually inspecting certain part-numbered TRBs for the presence of a linear indication, and, depending on the inspection results, fluorescent penetrant inspecting the TRB and further corrective actions if necessary. AD 2022-19-08 also prohibited installing an affected TRB unless certain requirements had been met. This AD was prompted by the determination that parts that have accumulated more than 500 flight hours (FH) since new are also affected by the unsafe condition. In addition, the defined compliance time for the visual inspection of the root area of each affected part was determined to be too strict. This AD retains certain requirements of AD 2022-19-08, includes all TRBs in the inspection requirements, and increases a compliance time as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA previously sent this AD as an emergency AD to all known U.S. owners and operators of these helicopters. The FAA is issuing this AD

to address the unsafe condition on these products.

DATES: This AD is effective August 8, 2023. Emergency AD 2023-13-51, issued on June 27, 2023, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 8, 2023.

The FAA must receive comments on this AD by September 7, 2023.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

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

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

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. Service information that is incorporated by reference is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1506.

Other Related Service Information:

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

Examining the AD Docket

You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1506; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (404) 474-5548; email william.mccully@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-1506; Project Identifier MCAI-2023-00784-R" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, 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 AD. Submissions containing CBI should be sent to Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (404) 474-5548; email william.mccully@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022-19-08, Amendment 39-22177 (87 FR 56865, September 16, 2022) (AD 2022-19-08), for Airbus Helicopters Model SA341G and SA342J helicopters. AD 2022-19-08 was prompted by a report of manufacturing defects on TRBs. AD 2022-19-08 required visually inspecting certain part-numbered TRBs for the presence of a linear indication; and depending on the inspection results, fluorescent penetrant inspecting the TRB and further corrective actions if necessary. AD 2022-19-08 also prohibited installing an affected TRB unless certain requirements had been met, as specified in EASA Emergency AD 2022-0169-E, dated August 12, 2022 (EASA AD 2022-0169-E). The FAA issued AD 2022-19-08 to detect linear indications on a TRB which could result in an in-flight TRB loss, unbalance or damage to the tail or other parts of the helicopter, and subsequent loss of control of the helicopter.

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD 2022-0169-E to correct an unsafe condition for Airbus Helicopters Model SA 341 G and SA 342 J (Gazelle) helicopters, all serial numbers. EASA advised that an additional sample of TRBs from different manufacturing batches were visually inspected and further analysis revealed visual linear indications on approximately 75% of the TRBs inspected. EASA further advised that the visual linear indications were positioned at the aerofoil connection radius and perpendicular to the grain flow direction. EASA advised that follow-up dye penetrant inspections confirmed up to 20% of the TRBs were found to be affected and have a high risk for crack propagation. Additionally, EASA advised that the investigation of the root cause of the unsafe condition was still on-going; therefore EASA considered EASA AD 2022-0169-E an

immediate protective measure and stated that further action may follow.

Actions Since AD 2022-19-08 Was Issued

Since the FAA issued AD 2022-19-08, EASA superseded EASA AD 2022-0169-E with EASA Emergency AD 2023-0128-E, dated June 26, 2023 (EASA AD 2023-0128-E). EASA advises that after EASA AD 2022-0169-E was issued, it was determined that affected parts that have accumulated more than 500 FH since new are also affected. In addition, the defined compliance time for the visual inspection of the root area of each affected part was determined to be too strict. Consequently, Airbus Helicopters revised its service information accordingly. Superseding EASA AD 2023-0128-E retains most of the requirements of EASA AD 2022-0169-E, adds an inspection of affected parts that accumulated more than 500 FH since new, and amends the compliance time for the visual inspection of affected parts. Additionally, EASA advises that EASA AD 2023-0128-E is (still) considered an interim measure and that further AD action may follow. See EASA AD 2023-0128-E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2023-0128-E requires, before any cleaning of the TRB, using a lamp (1000 lux) to visually inspect the root area of each affected TRB for the presence of any linear indication; and cleaning certain areas of each TRB and repeating the visual inspection of the TRB for a linear indication. Depending on the inspection results, EASA AD 2023-0128-E requires performing a dye penetrant inspection of the root area of a TRB, and if a linear indication is detected, replacing the affected TRB with a serviceable part. Finally, EASA AD 2023-0128-E prohibits installing an affected TRB on any helicopter after its effective date.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. SA341-65.71 for Model SA341G helicopters and non FAA-type certificated military Model SA341B, C, D, E, F, and H helicopters; and EASB No. SA342-65.71 for Model SA342J helicopters and non FAA-type certified military Model SA342K, L, L1, M, M1,

and MA helicopters, each Revision 2 and dated June 19, 2023 (co-published as one document). This service information specifies procedures for visually checking the TRB for presence of a linear indication; cleaning the TRB with a lint free rag and solvent and repeating the visual check; performing a fluorescent penetrant inspection if a linear indication is detected; removing and replacing any affected TRB if necessary; and recording compliance with the service information.

FAA's Determination

These helicopters been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA, its technical representative, has notified the FAA of the unsafe condition described in its emergency AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2023-0128-E, described previously, which is incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under "Differences Between this AD and EASA AD 2023-0128-E."

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023-0128-E is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2023-0128-E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023-0128-E does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance

Time(s)” in EASA AD EASA AD 2023–0128–E. Service information referenced in EASA AD 2023–0128–E for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1506.

Differences Between This AD and EASA AD 2023–0128–E

Although EASA AD 2023–0128–E does not define the phrase “a linear indication,” service information referenced in EASA AD 2023–0128–E defines this phrase as an indication for which the longest dimension is at least three times longer than the smallest one. This AD defines a linear indication as any linear indication perpendicular to the grain direction of the blade that is detected regardless of size. Where EASA AD 2023–0128–E requires performing a dye penetrant inspection, this AD requires a fluorescent penetrant inspection performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Interim Action

The FAA considers this AD to be interim action.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that required the immediate adoption of Emergency AD 2023–13–51, issued on June 27, 2023, to all known U.S. owners and operators of these helicopters. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because the affected part is critical to the control of a helicopter. In addition, failure of an affected part can cause the part to depart from the helicopter, thereby causing damage to the helicopter and subsequent loss of control of the helicopter. Also, the FAA has no information pertaining to how quickly the condition may propagate to failure. Investigation is still on-going to determine the root cause of the defect

and the number of parts affected by the same condition. In light of this, the initial visual inspection must be accomplished within 10 hours time-in-service. These conditions still exist, therefore, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 22 helicopters of U.S. Registry. There may be up to 13 affected TRBs per helicopter. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting one TRB for presence of a linear indication takes about 1 work-hour for an estimated cost of \$85 per inspection. Visually inspecting each additional TRB takes about 0.1 work-hour for an estimated cost of \$9 per inspection. The cost for inspecting each helicopter may be up to \$193 and the cost for the U.S. fleet may be up to \$4,246.

If required, fluorescent penetrant inspecting a TRB for the presence of a linear indication takes about 2 work-hours for an estimated cost of \$170 per inspection.

If required, removing an affected TRB and replacing it with a serviceable TRB takes about 2 work-hours and parts cost about \$3,630 for an estimated cost of \$3,800 per replacement. Removing each additional affected TRB and replacing it with a serviceable TRB takes about an additional 0.5 work-hour and parts cost about \$3,630 for an estimated cost of \$3,673 for each additional replacement.

Authority for This Rulemaking

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

detail the scope of the Agency’s authority.

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2022–19–08, Amendment 39–22177 (87 FR 56865, September 16, 2022); and
 - b. Adding the following new airworthiness directive:

2023–13–51 Airbus Helicopters:

Amendment 39–22512; Docket No. FAA–2023–1506; Project Identifier MCAI–2023–00784–R.

(a) Effective Date

The FAA issued emergency Airworthiness Directive (AD) 2023–13–51 on June 27, 2023 directly to affected owners and operators. As

a result of such actual notice, the emergency AD was effective for those owners and operators on the date it was provided. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on August 8, 2023.

(b) Affected ADs

This AD replaces AD 2022–19–08, Amendment 39–22177 (87 FR 56865, September 16, 2022) (AD 2022–19–08).

(c) Applicability

This AD applies to all Airbus Helicopters Model SA341G and SA342J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by a report of manufacturing defects on multiple tail rotor blades (TRBs) and a subsequent determination that TRBs that have accumulated 500 or more hours time-in-service (TIS), and which were not included in AD 2022–19–08, are also affected by the unsafe condition and must perform the required corrective actions. The FAA is issuing this AD to detect linear indications on a TRB. The unsafe condition, if not addressed, could result in an in-flight TRB loss, unbalance or damage to the tail or other parts of the helicopter, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency Emergency AD 2023–0128–E, dated June 26, 2023 (EASA AD 2023–0128–E).

(h) Exceptions to EASA AD 2023–0128–E

(1) Where EASA AD 2023–0128–E requires compliance in terms of flight hours, this AD requires using hours TIS.

(2) Where EASA AD 2023–0128–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2023–0128–E refers to the effective date of EASA AD 2022–0169–E (dated August 12, 2022), this AD requires using October 3, 2022 (the effective date of AD 2022–19–08).

(4) Where paragraph (2) of EASA AD 2023–0128–E states, “linear indication,” for the purposes of this AD, a linear indication is any linear indication perpendicular to the grain direction of the blade that is detected regardless of size.

(5) Where paragraph (2) of EASA AD 2023–0128–E states to “accomplish a dye penetrant inspection of the root area of that discrepant part in accordance with the instructions of the ASB,” for this AD replace that text with “perform a fluorescent penetrant inspection

(FPI) of the root area of each affected part that has any linear indication (perpendicular to the grain direction of the blade and regardless of size), in accordance with the Accomplishment Instructions, paragraph 3.B.3. of the ASB. This FPI must be accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.”

Note 1 to paragraph (h)(5): Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(6) Where paragraph (3) of EASA AD 2023–0128–E specifies to replace any affected part having a confirmed linear indication with a serviceable part; instead, for this AD, if as a result of the action required by paragraph (2) of EASA AD 2023–0128–E, there is any linear indication (perpendicular to the grain direction of the blade and regardless of size), before further flight, remove the affected TRB from service and replace it with a serviceable part as defined in EASA AD 2023–0128–E.

(7) Where the service information referenced in EASA AD 2023–0128–E specifies to discard the TRB if a linear indication is detected, this AD requires, before further flight, removing that part from service.

(8) Where the service information referenced in EASA AD 2023–0128–E specifies to use tooling, this AD allows the use of equivalent tooling.

(9) This AD does not adopt the “Remarks” section of EASA AD 2023–0128–E.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0128–E specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using AD 2022–19–08.

(k) Special Flight Permits

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the visual inspection or FPI can be performed, provided no passengers are onboard. Special flight permits are prohibited if a linear indication has been detected by an FPI or a visible crack has been detected on a TRB.

(l) Alternative Methods of Compliance (AMOCs)

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

Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(m) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email william.mccully@faa.gov.

(n) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency Emergency AD 2023–0128–E, dated June 26, 2023 (EASA AD 2023–0128–E).

(ii) [Reserved]

(3) For EASA AD 2023–0128–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1506.

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

Issued on July 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023–15714 Filed 7–20–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–0931; Project Identifier MCAI–2022–00653–R; Amendment 39–22493; AD 2023–13–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–05–03 for certain Airbus Helicopters Model EC225LP helicopters. AD 2021–05–03 required various inspections of a certain part-numbered left-hand (LH) engine fuel supply (fuel supply) hose and depending on the inspection results, reinstalling or removing the fuel supply hose from service. AD 2021–05–03 also required installing an improved part and prohibited installing an affected fuel supply hose on any helicopter unless it was installed by following certain procedures. Since the FAA issued AD 2021–05–03, there were reports of difficulties using an adjusting tool to install the improved fuel supply hose. This AD continues to require the actions of AD 2021–05–03, expands the applicability, expands the parts installation limitations, and requires using an improved adjusting tool and updated procedures. This AD also updates certain compliance times and clarifies certain requirements. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 28, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 28, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 27, 2022 (86 FR 72824, December 23, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0931; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at airbus.com/helicopters/services/technical-support.html.

- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0931.

Other Related Service Information: Other Airbus Helicopters service information identified in this final rule is available at the Airbus Helicopters contact information under *Material Incorporated by Reference* above. You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aviation Safety Engineer, FAA, 26805 E 68th Ave., Mail Stop: Room 214, Denver, CO 80249; telephone (303) 342–1080; email: hal.jensen@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–05–03, Amendment 39–21864 (86 FR 72824, December 23, 2021) (AD 2021–05–03). AD 2021–05–03 applied to Airbus Helicopters Model EC225LP helicopters with an LH fuel supply hose part number (P/N) 704A34416087 installed. AD 2021–05–03 required visually inspecting the LH fuel supply hose for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting. Depending on the inspection results, AD 2021–05–03 required reinstalling or removing the fuel supply hose from service. Additionally, AD 2021–05–03 prohibited installing that part-numbered LH fuel supply hose on any helicopter unless that LH fuel supply hose was installed by following certain procedures described in the manufacturer's service bulletin. Finally, AD 2021–05–03 required modifying your helicopter by removing LH fuel supply hose P/N 704A34416087 from service and installing the improved LH fuel supply hose P/N 704A34416101.

The FAA issued AD 2021–05–03 to prevent restricted fuel flow to the LH engine, which if not addressed, could result in a decrease of the LH engine power when accelerating to a power setting corresponding to One Engine Inoperative power and subsequent reduced control of the helicopter.

The NPRM published in the **Federal Register** on April 18, 2023 (88 FR 23586). The NPRM was prompted by European Union Aviation Safety Agency (EASA) AD 2022–0087, dated May 16, 2022 (EASA AD 2022–0087) which superseded EASA AD 2021–0156, dated July 2, 2021 (EASA AD 2021–0156), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for all Airbus Helicopters Model EC 225 LP helicopters. EASA advises of difficulties that were reported during installation of the improved LH fuel supply hose due to using an inappropriately shaped adjusting tool. Accordingly, EASA AD 2022–0087 retains the requirements of EASA AD 2021–0156 and requires replacing the affected part with the improved part by following updated modification instructions and using an improved adjusting tool. The updated modification instructions also specify updated torque values for the junction nuts and re-tightening instructions for helicopters modified with previous instructions. EASA AD 2022–0087 requires a repetitive inspection for fuel leakage for those helicopters modified with previous instructions and considers the re-tightening of the junction nuts of the improved part as terminating action for the repetitive inspection requirements. You may examine EASA AD 2022–0087 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0931.

In the NPRM, for helicopters with LH fuel supply hose P/N 704A34416087 installed, the FAA proposed to require visually inspecting the LH fuel supply hose for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting. Depending on the inspection results, the NPRM proposed to require reinstalling or removing the fuel supply hose from service. The NPRM also proposed to require modifying the helicopter by removing LH fuel supply hose P/N 704A34416087 from service and installing improved LH fuel supply hose P/N 704A34416101 using updated procedures. Additionally, for helicopters modified with the improved LH fuel supply hose P/N 704A34416101 using previous procedures or if the installation procedures cannot be determined, the NPRM proposed to

require repetitive inspections for fuel leakage and, depending on the results, tightening the junction nuts of this improved fuel supply hose with the LH side engine removed. Tightening the junction nuts would provide terminating action for the repetitive fuel leakage inspections. Lastly, the NPRM proposed to require installation limitations for LH fuel supply hose P/N 704A34416087 and LH fuel supply hose P/N 704A34416101.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

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

Related Service Information Under 14 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. EC225-28A026, Revision 1, dated May 6, 2022 (ASB EC225-28A026 Rev 1), which specifies procedures for modifying the adjusting tool and replacing the LH fuel supply hose by using the modified adjusting tool. ASB EC225-28A026 Rev 1 also specifies updated allowable torque limits for the junction nuts and, for helicopters that have previously accomplished Airbus Helicopters ASB No. EC225-28A026, Revision 0, dated May 21, 2021, ASB EC225-28A026 Rev 1 specifies procedures to repetitively inspect the junction nuts for fuel leakage until the LH engine is removed and the updated allowable torque limit is applied to the junction nuts.

This AD also requires Airbus Helicopters ASB No. EC225-71A019, Revision 2, dated May 21, 2021, which the Director of the Federal Register approved for incorporation by reference as of January 27, 2022 (86 FR 72824, December 23, 2021).

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

Other Related Service Information

The FAA also reviewed Airbus Helicopters ASB No. EC225-71A019, Revision 1, dated February 28, 2019. This service information specifies procedures for removing the fuel supply hose from the LH power plant, visually inspecting the fuel supply hose for twisting, and depending on inspection results, performing an endoscope inspection on the inside of the hose.

Differences Between This AD and EASA AD 2022-0087

EASA AD 2022-0087 is applicable to all serial-numbered Model EC225LP helicopters, whereas this AD applies to Model EC225LP helicopters with certain part-numbered LH fuel supply hoses installed.

For helicopters modified with LH fuel supply hose P/N 704A34416101 in accordance with previous instructions or by installation of AH modification 0728745 prior to initial delivery of the helicopter from the manufacturer, EASA AD 2022-0087 requires re-tightening the junction nuts to the new torque values during the next (re)installation of the LH engine or of the improved fuel supply hose, whereas this AD requires that action within 110 hours time-in-service with the LH side engine removed for helicopters with LH fuel supply hose P/N 704A34416101 installed with previous instructions, by installation of AH modification 0728745 prior to initial delivery of the helicopter from the manufacturer, or if the previously accomplished installation procedures cannot be determined. Also, for those helicopters, depending on the interim fuel leakage inspection results, EASA AD 2022-0087 requires corrective action in accordance with approved maintenance instructions, whereas this AD requires tightening the junction nuts to the new torque values with the LH engine removed.

Costs of Compliance

The FAA estimates that this AD affects up to 28 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting the LH fuel supply hose for twisting takes about 1 work-hour for an estimated cost of \$85 per helicopter and \$2,380 for the U.S. fleet. Borescope inspecting the LH fuel supply hose takes about 8 work-hours for an estimated cost of \$680 per helicopter.

Replacing an LH fuel supply hose takes up to 11 work-hours and parts cost about \$2,363 for an estimated

replacement cost of up to \$3,298 per replacement.

Inspecting for fuel leakage takes about 1 work-hour for an estimated cost of \$85 per helicopter, per inspection cycle. Removing the LH engine and tightening the LH fuel supply hose fittings takes 8 work-hours for an estimated cost of \$680 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
 ■ a. Removing Airworthiness Directive 2021–05–03, Amendment 39–21864 (86 FR 72824, December 23, 2021); and
 ■ b. Adding the following new airworthiness directive:

2023–13–08 Airbus Helicopters:

Amendment 39–22493; Docket No. FAA–2023–0931; Project Identifier MCAI–2022–00653–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 28, 2023.

(b) Affected ADs

This AD replaces AD 2021–05–03, Amendment 39–21864 (86 FR 72824, December 23, 2021).

(c) Applicability

This AD applies to Airbus Helicopters Model EC225LP helicopters, certificated in any category, with a left-hand side (LH) engine fuel supply (fuel supply) hose part number (P/N) 704A34416087 or P/N 704A34416101 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2820, Aircraft Fuel Distribution System.

(e) Unsafe Condition

This AD was prompted by a report of an incorrect installation of the LH fuel supply hose P/N 704A34416087. The FAA is issuing this AD to prevent restricted fuel flow to the LH engine. The unsafe condition, if not addressed, could result in a decrease of the LH engine power when accelerating to a power setting corresponding to One Engine Inoperative power and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with LH fuel supply hose P/N 704A34416087 installed, within 110 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first, visually inspect the LH fuel supply hose for twisting as shown in Figures 1 and 2 of Airbus Helicopters Alert Service Bulletin (ASB) No. EC225–71A019, Revision 2, dated May 21, 2021 (ASB EC225–71A019 Rev 2). If the LH fuel supply hose has any twisting or if it cannot be determined if the LH fuel supply hose has any twisting, before further flight, borescope inspect the entire length of the inside of the fuel supply hose for twisting as shown in Figures 3 through 5 of ASB EC225–71A019 Rev 2.

(i) If the inside of the LH fuel supply hose has any twisting, before further flight, remove the LH fuel supply hose from service and install an airworthy LH fuel supply hose in accordance with the actions required by paragraphs (g)(2) or (4) of this AD.

(ii) If the inside of the LH fuel supply hose does not have any twisting, reinstall the LH fuel supply hose by following the Accomplishment Instructions, paragraph 3.B.3.b., of ASB EC225–71A019 Rev 2.

(2) For helicopters with LH fuel supply hose P/N 704A34416087 installed, within 1,200 hours TIS or 36 months after the effective date of this AD, whichever occurs first, modify your helicopter by removing from service LH fuel supply hose P/N 704A34416087 and installing LH fuel supply hose P/N 704A34416101 in accordance with the Accomplishment Instructions, paragraph 3.B.2.b., of Airbus Helicopters ASB No. EC225–28A026, Revision 1, dated May 6, 2022 (ASB EC225–28A026 Rev 1).

(3) For helicopters with LH fuel supply hose P/N 704A34416101 previously installed by accomplishing Airbus Helicopters ASB No. EC225–28A026, Revision 0, dated May 21, 2021, by installation of AH modification 0728745 prior to initial delivery of the helicopter from the manufacturer, or if the previously accomplished installation procedures cannot be determined, accomplish the actions required by paragraph (g)(3)(i) of this AD.

(i) Within 15 hours TIS or 7 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 15 hours TIS or 7 days, whichever occurs first, inspect the LH fuel supply hose for fuel leakage in the area of each junction nut (items 1a and 1b) as depicted in Figure 1 of ASB EC225–28A026 Rev 1.

(A) If there is any fuel leakage, before further flight, remove the LH side engine and tighten each junction nut (items 1a and 1b) of the LH fuel supply hose by applying the torque depicted in Figure 1 of ASB EC225–28A026 Rev 1.

(B) If there is no fuel leakage, within 110 hours TIS after the effective date of this AD, remove the LH side engine and tighten each junction nut (items 1a and 1b) of the LH fuel supply hose by applying the torque depicted in Figure 1 of ASB EC225–28A026 Rev 1.

(ii) Tightening the junction nuts as required by paragraphs (g)(3)(i)(A) and (B) of this AD constitutes terminating action for the repetitive inspection required by paragraph (g)(3)(i) of this AD.

(4) For helicopters with LH fuel supply hose P/N 704A34416087 installed, as of the effective date of this AD, you may replace an LH fuel supply hose P/N 704A34416087 or reinstall an LH fuel supply hose P/N 704A34416087 on any helicopter by following the Accomplishment Instructions, paragraph 3.B.3.b., of ASB EC225–71A019 Rev 2, until required to install LH fuel supply hose P/N 704A34416101 by paragraph (g)(2) of this AD, provided one of the conditions in paragraphs (g)(4)(i) through (iii) of this AD is met.

(i) If installing, the LH fuel supply hose P/N 704A34416087 is new (zero total hours TIS).

(ii) If reinstalling, before reinstallation, the LH fuel supply hose P/N 704A34416087 is inspected by accomplishing the actions required by the introductory text of paragraph (g)(1) of this AD and the inside of the LH fuel supply hose does not have any twisting.

(iii) If reinstalling, the initial delivery of the helicopter from the manufacturer was on or after November 30, 2018, and the LH fuel supply hose P/N 704A34416087 has never been previously reinstalled.

(5) For helicopters with an LH fuel supply hose P/N 704A34416101 installed, as of the effective date of this AD, do not remove LH fuel supply hose P/N 704A34416101 and replace it with LH fuel supply hose P/N 704A34416087 and do not install an LH engine with an LH fuel supply hose P/N 704A34416087 installed.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters ASB No. EC225–71A019, Revision 1, dated February 28, 2019.

(i) Special Flight Permits

Special flight permits may be permitted provided that there are no passengers on board and that helicopters identified in paragraph (g)(3) of this AD have no fuel leakage.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(k) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0087, dated May 16, 2022, for related information. This EASA AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0931.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, FAA, 26805 E 68th Ave., Mail Stop: Room 214, Denver, CO 80249; telephone (303) 342–1080; email hal.jensen@faa.gov.

(3) Service information identified in this AD that is not incorporated by reference is available at the contact information specified in paragraphs (l)(5) and (6) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) The following service information was approved for IBR on August 28, 2023

(i) Airbus Helicopters Alert Service Bulletin No. EC225–28A026, Revision 1, dated May 6, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 27, 2022 (86 FR 72824, December 23, 2021).

(i) Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 2, dated May 21, 2021.

(ii) [Reserved]

(5) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at airbus.com/helicopters/services/technical-support.html.

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

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

Issued on July 3, 2023.

Michael Linegang,

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

[FR Doc. 2023–15596 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0440; **Airspace**
Docket No. 19–AAL–45]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–376 in the Vicinity of Iliamna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–376, in the vicinity of Iliamna, AK. This action is in support of a large and comprehensive RNAV T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–0440 in the **Federal Register** 87 FR 24479; April, 26 2022, proposing the establishment of RNAV route T–376. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

The NPRM published in the **Federal Register** 87 FR 24479 on April 26, 2022, contained a typographical error in the proposed legal description. In the proposed legal description, the fix FAGIN was incorrectly listed as a waypoint. The final rule accurately shows FAGIN as a fix.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–376 in the vicinity of Iliamna, AK, in support of a large and comprehensive T-Route modernization project in the state of Alaska. The new RNAV T-route is described below.

T–376: T–376 extends between the FAGIN, AK, fix and the Homer, AK, VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME).

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing RNAV route T–

376, in the vicinity of Iliamna, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5.i., which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to

currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-376 FAGIN, AK to Homer, AK (HOM) [New]

FAGIN, AK	FIX	(Lat. 59°51'56.15" N, long. 155°32'43.30" W)
VAYUT, AK	WP	(Lat. 59°43'08.58" N, long. 154°55'24.16" W)
WOLCI, AK	WP	(Lat. 59°38'36.38" N, long. 154°37'31.77" W)
JETIG, AK	WP	(Lat. 59°30'38.31" N, long. 154°28'33.12" W)
WUKSU, AK	WP	(Lat. 59°29'31.36" N, long. 153°54'56.76" W)
Homer, AK (HOM)	VOR/DME	(Lat. 59°42'33.95" N, long. 151°27'23.76" W)

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15586 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0435; Airspace Docket No. 19–AAL–73]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–270; in the Vicinity of Shishmaref, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–270, in the vicinity of Shishmaref, AK. The RNAV route amendments are necessary due to the planned decommissioning of the Shishmaref, AK

(SHH), Non-Directional Beacons (NDB) and the Norton Bay, AK (OAY), NDB. Both NDBs will be decommissioned as part of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT:

Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–0435 in the **Federal Register** (87 FR 24483; April 26, 2022), amending RNAV route T–270. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

In the proposal section of the NPRM, the Shishmaref, AK, Navigational Aid (NAVAID) was inadvertently identified as a very high frequency (VHF) omnidirectional range (VOR)/distance measuring equipment (VOR/DME). The Shishmaref, AK, NAVAID is an NDB.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, *Airspace Designations and Reporting Points*, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–270 in the vicinity of Shishmaref, AK, in support of a large and comprehensive T-Route modernization project in the state of Alaska. The route amendment replaces the Norton Bay, AK, and Shishmaref, AK, NDBs with the HALUS, AK and HIPIV, AK waypoints (WP), respectively due to the NDBs decommissioning. This route amendment also removes the HEXOG, AK, WP from the T–270 route description due to it having less than a 1 degree turn and is not required. Finally, the order of the T-route will be reversed in the published legal

description to comply with current guidance in FAA Order JO 7400.2. The RNAV T-route amendment action is described below. T–270: T–270 extends between the HIPIV, AK, WP and the HALUS, AK, WP. T–270 no longer includes HEXOG, AK, waypoint on its route description.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending RNAV route T–270 due to the planned decommissioning of the Shishmaref, AK (SHH), NDB and the Norton Bay, AK (OAY), NDB qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, *Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points*); and paragraph 5–6.5.i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at

3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:
Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

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

Paragraph 6011 *United States Area Navigation Routes.*

* * * * *

T–270 HIPIV, AK to HALUS, AK [Amended]		
HIPIV, AK	WP	(Lat. 66°15′29.11″ N, long. 166°03′23.59″ W)
HALUS, AK	WP	(Lat. 64°41′43.78″ N, long. 162°04′03.53″ W)

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,
Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15588 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1186; Airspace
Docket No. 23–ASO–22]

RIN 2120–AA66

Amendment of Class E Airspace; Cedartown, GA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Polk County Airport/Cornelius Moore Field, Cedartown, Georgia, as a new instrument approach procedure has been designed for this airport. This action would also update this airport's name and geographic coordinates to coincide with the FAA's database.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–1186 in the **Federal Register** (88 FR 31658; May 18, 2023), amending Class E airspace for Cedartown, Georgia. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update.

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

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Polk County Airport/Cornelius Moore Field, Cedartown, Georgia, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This amendment supports a new instrument approach at this airport. The existing radius remains, and an extension is created north of the airport. This action also updates the airport's

name (formerly Cornelius-Moore Field Airport) and geographic coordinates to coincide with FAA's database. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting

Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASO FL E5 Cedartown, GA [Amended]

Polk County Airport/Cornelius Moore Field, GA

(Lat. 34°01'07" N, long. 85°08'41" W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Polk County Airport/Cornelius Moore Field and within 1.1 miles on each side of the 008° bearing of the airport, extending from the 7.7-mile radius to 8.7 miles north of the airport.

* * * * *

Issued in College Park, Georgia, on July 18, 2023.

Andree C. Davis,

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

[FR Doc. 2023–15612 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0995; Airspace Docket No. 23–ASO–17]

RIN 2120–AA66

Amendment of Class E Airspace; Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace designated as an extension to a Class C surface area and Class E airspace extending upward from 700 feet above the surface in Nashville, TN, as the result of a Class C Airspace modification and a biennial evaluation. This action reduces the Class E airspace designated as an extension to the Nashville International Airport Class C airspace. This action also extends the Class E airspace extending upward from 700 feet above the surface surrounding Music City Executive Airport and reduces the Class E airspace extending upward from 700 feet above the surface surrounding Lebanon Municipal Airport, Murfreesboro Municipal Airport, and John C. Tune Airport.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51,

subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Office of Policy, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0995 in the **Federal Register** (88 FR 29565; May 8, 2023), proposing to amend Class E designated as an extension to the Nashville International Airport Class C airspace. This action extends the Class E airspace extending upward from 700 feet above the surface surrounding Music City Executive Airport in Gallatin, TN; and reduces the Class E airspace extending upward from 700 feet above the surface surrounding Lebanon Municipal Airport in Lebanon,

TN, Murfreesboro Municipal Airport in Murfreesboro TN, and John C. Tune Airport in Nashville, TN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6003 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Class E airspace designated as an extension to the Class C surface area of Nashville International Airport by extending it from the 7-mile radius of the airport instead of the 5-mile radius, as a result of the new Class C structure. The FAA also amends the Class E airspace extending upward from 700 feet above the surface surrounding Music City Executive Airport by extending it from within a 7-mile radius to within a 7.5-mile radius of the airport, and by reducing the Class E airspace extending upward from 700 feet above the surface surrounding Lebanon Municipal Airport from within a 10-mile radius to within an 8-mile radius of the airport. The FAA is reducing the Class E airspace extending upward from 700 feet above the surface surrounding Murfreesboro Municipal Airport from within a 9-mile radius to within a 7.3-mile radius of the airport and 2.6 miles each side of the 182° bearing from the airport, extending from the 7.3-mile radius to 12 miles south of the airport. Additionally, the FAA is reducing the airspace extending upward from 700 feet above the surface surrounding John C. Tune Airport from within an 8.6-mile radius to within an 8.1-mile radius of the airport.

The FAA is making these changes to support IFR procedures as a result of a Class C Airspace modification and a biennial evaluation.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6003 Class E Airspace Area Designated as an Extension to a Class C Surface Area.

* * * * *

ASO TN E3 Nashville, TN [Amended]

Nashville International Airport, TN
(Lat. 36°07′31″ N, long. 86°40′35″ W)

Nashville VORTAC
(Lat. 36°07′62″ N, long. 86°40′95″ W)

That airspace extending upward from the surface extending from the 7-mile radius of Nashville International Airport to an 11.7-mile radius southeast of the airport, from the Nashville VORTAC 161° radial clockwise to the 195° radial, and to an 8.9-mile radius southwest of the airport from the 195° radial of the VORTAC clockwise to the 231° radial of the VORTAC.

* * * * *

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

* * * * *

ASO TN E5 Nashville, TN [Amended]

Nashville International Airport, TN
(Lat. 36°07′28″ N, long. 86°40′41″ W)

Smyrna Airport
(Lat. 36°00′32″ N, long. 86°31′12″ W)

Music City Executive Airport
(Lat. 36°22′30″ N, long. 86°24′30″ W)

Lebanon Municipal Airport
(Lat. 36°11′25″ N, long. 86°18′56″ W)

Murfreesboro Municipal Airport
(Lat. 35°52′43″ N, long. 86°22′39″ W)

John C. Tune Airport
(Lat. 36°10′59″ N, long. 86°53′11″ W)

Vanderbilt University Medical Center
Hospital Point In Space Coordinates
(Lat. 36°08′30″ N, long. 86°48′6″ W)

That airspace extending upward from 700 feet above the surface within a 15-mile radius of Nashville International Airport, and within an 11.5-mile radius of Smyrna Airport, and within a 7.5-mile radius of Music City Executive Airport, and within an 8-mile radius of Lebanon Municipal Airport, and within a 7.3-mile radius of Murfreesboro Municipal Airport, and within 2.6 miles each side of the 182° bearing from the airport extending from the 7.3-mile radius to 12 miles south of the airport, and within an 8.1-mile radius of John C. Tune Airport, and that airspace within a 6-mile radius of the Point In Space serving Vanderbilt University Medical Center Hospital.

* * * * *

Issued in College Park, GA, on July 17, 2023.

Andreese Davis,

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

[FR Doc. 2023–15580 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2022–0244; Airspace Docket No. 19–AAL–48]

RIN 2120–AA66

Establishment of United States Area Navigation Route (RNAV) T–379 in the Vicinity of Discovery, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) T-route T–379, in the vicinity of Discovery, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground-based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0244 in the **Federal Register** (87 FR 16670; March 24, 2022), establishing RNAV T-route T–379, in the vicinity of Discovery, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–379 in the vicinity of Discovery, AK, in support of a large and comprehensive T-route modernization project in the state of Alaska. The new route is described below.

T–379: T–379 extends from a new waypoint (WP), MAYHW, located southeast of Bethel, AK, to the UTICE, AK, WP, located southwest of McGrath, AK.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–379 in the vicinity of Discovery, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below

3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:
Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.
- § 71.1 [Amended]
- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes
* * * * *

T–379 MAYHW, AK to UTICE, AK [New]		
MAYHW, AK	WP	(Lat. 59°48′11.94″ N, long. 159°16′08.97″ W)
MUPVE, AK	WP	(Lat. 60°05′25.37″ N, long. 159°08′14.30″ W)
HIBNA, AK	WP	(Lat. 60°24′56.24″ N, long. 159°17′15.44″ W)
JEKBO, AK	WP	(Lat. 60°40′19.55″ N, long. 159°01′38.87″ W)
JEBDA, AK	WP	(Lat. 61°20′23.35″ N, long. 158°40′34.12″ W)
AMEDE, AK	WP	(Lat. 61°34′17.31″ N, long. 158°25′46.86″ W)
ZARUM, AK	WP	(Lat. 61°41′59.81″ N, long. 158°20′27.59″ W)
TIRIE, AK	WP	(Lat. 61°54′19.63″ N, long. 158°14′19.53″ W)
UTICE, AK	WP	(Lat. 62°18′35.36″ N, long. 157°37′56.78″ W)

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,

Manager, Airspace Rules and Regulations Group.

[FR Doc. 2023–15585 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0985; Airspace Docket No. 23–ASO–16]

RIN 2120–AA66

Amendment of Class E Airspace; Cross City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Cross City Airport, Cross City, FL, as a new instrument approach procedure has been designed for this airport. This action also updates this airport's geographic coordinates.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval helps, and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0985 in the **Federal Register** (88 FR 24937; April 25, 2023), proposing to amend Class E airspace for Cross City Airport, Cross City, FL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting this action yet questioning why the FAA proposed to remove the existing extension to the south. The extension is no longer required, as the VOR approach into runway 31 has not been authorized for several years, and Cross City VORTAC is scheduled for decommissioning next year.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Cross City Airport, Cross City, FL, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach

procedures (SIAPs) serving this airport. The existing radius is increased to 7 miles (previously 6.8 miles), and the southern extension is removed. The Cross City VORTAC is removed from the airspace description, as it will soon be decommissioned. This action also updates the airport's geographic coordinates to coincide with FAA's database. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO FL E5 Cross City, FL [Amended]

Cross City Airport, FL
(Lat 29°38'08" N, long. 83°06'17" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Cross City Airport.

* * * * *

Issued in College Park, Georgia, on July 18, 2023.

Andree C. Davis,

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

[FR Doc. 2023–15595 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0215; Airspace
Docket No. 19–AAL–61]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–228 in the Vicinity of Cape Newenham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–228 in the vicinity of Cape Newenham, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed

online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground-based navigation.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2022–0215 in the **Federal Register** (87 FR 15905; March 21, 2022), amending RNAV route T–228 in the vicinity of Cape Newenham, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

Differences From the NPRM

In the background, proposal, and proposed amendment sections in the NPRM, the new ZIKNI, AK, waypoint (WP) was misidentified as the ZINKI, AK, WP, in error. This action corrects that error by changing all references of the ZINKI, AK, WP to the ZIKNI, AK,

WP. These corrections are editorial only and do not change the alignment of T–228.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–228 in the vicinity of Cape Newenham, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The amendment is described below.

T–228: T–228 extends between the Cape Newenham, AK, Nondirectional Radio Beacon/Distance Measuring Equipment (NDB/DME) navigational aid and the ROCES, AK, WP. The Cape Newenham, AK, NDB is replaced with the new ZIKNI, AK, WP and the Shishmaref, AK, NDB which is in the route description is replaced with the new HIPIV, AK, WP due to the pending decommissioning of both NDBs. Additionally, the HIKAX, AK, WP is removed from the route description since it is not required to retain the route's structure; however, it will remain in the National Airspace System Resource database and continue to be depicted on the IFR En Route charts. The unaffected portions of the route remain as charted.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route T-228 in the vicinity of Cape Newenham, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5-6.5i, which categorically excludes from further environmental review the establishment of new or revised air

traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

T-228 ZIKNI, AK to ROCES, AK [Amended]

ZIKNI, AK	WP	(Lat. 58°39'21.68" N, long. 62°04'13.87" W)
RUFVY, AK	WP	(Lat. 59°56'34.16" N, long. 64°02'03.72" W)
Hooper Bay, AK (HPB)	VOR/DME	(Lat. 61°30'51.65" N, long. 166°08'04.13" W)
Nome, AK (OME)	VOR/DME	(Lat. 64°29'06.39" N, long. 165°15'11.43" W)
HIPIV, AK	WP	(Lat. 66°15'29.11" N, long. 166°03'23.59" W)
ECIPI, AK	WP	(Lat. 67°55'48.11" N, long. 165°29'58.07" W)
Barrow, AK (BRW)	VOR/DME	(Lat. 71°16'24.33" N, long. 156°47'17.22" W)
Deadhorse, AK (SCC)	VOR/DME	(Lat. 70°11'57.11" N, long. 148°24'58.17" W)
ROCES, AK	WP	(Lat. 70°08'34.29" N, long. 144°08'15.59" W)

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,

Acting Manager, Airspace Rules and Regulations Group.

[FR Doc. 2023-15584 Filed 7-21-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2022-0428; Airspace Docket No. 21-AAL-20]

RIN 2120-AA66

Amendment of United States Area Navigation (RNAV) Route T-271 in the Vicinity of Iliamna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T-271, in the vicinity of Iliamna, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

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

FOR FURTHER INFORMATION CONTACT:

Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–0428 in the **Federal Register** (87 FR 24485; April 26, 2022), proposing to amend RNAV route T–271. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

In the NPRM, the fix AMOTT, AK, was inadvertently listed as a waypoint (WP).

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the ADDRESSES section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–271 in the vicinity of Iliamna, AK, in support of a large and comprehensive T-Route modernization project in the state of Alaska. The route amendment updates the Global Positioning System (GPS) coordinates for the Cold Bay, AK (CDB), Very High Frequency Omnidirectional Radar (VOR) and Tactical Air Navigational System (VORTAC), the King Salmon, AK (AKN), VORTAC and the AMOTT, AK, Fix. This action also

removes the BINAL, AK, Fix from the legal description due to it not being required. Although, the BINAL Fix would be removed from the legal description, it will remain as a Fix within the NAS and available for navigational use. Finally, the FAA will insert the existing waypoint, ZINAM on the route structure of T–271. The RNAV T-route amendment action is described below.

T–271: T–271 extends between the Cold Bay, AK, VORTAC and the AMOTT, AK, Fix. T–271 no longer includes BINAL, AK, WP on its route description. The ZINAM, AK, WP has been added to the route description of T–271.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending RNAV route T–271, in the vicinity of Iliamna, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–

6.5.i., which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–271 COLD BAY, AK (CDB) to AMOTT, AK [Amended]

COLD BAY, AK (CDB)	VORTAC	(Lat. 55°16′02.26″ N, long. 162°46′26.39″ W)
King Salmon, AK (AKN)	VORTAC	(Lat. 58°43′28.97″ N, long. 156°45′08.45″ W)
ZINAM, AK	WP	(Lat. 60°37′07.20″ N, long. 152°07′54.44″ W)
AMOTT, AK	Fix	(Lat. 60°52′26.59″ N, long. 151°22′23.60″ W)

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15590 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0434; Airspace
Docket No. 19–AAL–69]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–260 in the Vicinity of Nome, AK

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–260, in the vicinity of Nome, AK. The RNAV route amendments are necessary due to the planned decommissioning of the Non-Directional Beacon (NDB) portion of the Tin City, AK (TNC), NDB/Distance Measuring Equipment (NDB/DME) and the Point Hope, AK, (PHO) NDB. Although the Tin City, AK, (TNC) NDB will decommission, the co-located Distance Measuring Equipment (DME) will remain for use within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT:

Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2022–0434 in the **Federal Register** (87 FR 24903; April 27, 2022), proposing to amend RNAV route T–260. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

The route description proposed in the NPRM was inadvertently listed in the incorrect order. In accordance with FAA Order JO 7400.11, points in route descriptions must be listed from west to east for even numbered routes and south to north for odd numbered routes. The final rule includes the route description in the correct order. This is an administrative change that does not make any substantive changes to the route description.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this

document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–260 in the vicinity of Nome, AK, in support of a large and comprehensive T-Route modernization project in the state of Alaska. The route amendment replaces the Tin City, AK, and Point Hope, AK, NDBs with the FEDEV and VANTY waypoints (WP), respectively due to the decommissioning of the NDBs and removes the COGNO WP due to it not being required.

The RNAV T-route amendment action is described below.

T–260: T–260 extends between the Nome, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Vanty, AK, waypoint. T–260 no longer includes COGNO, AK, waypoint on its route description.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending RNAV route T–260, near Nome, AK due to the planned decommissioning of the NDB portion of the Tin City, AK (TNC), NDB/DME and the Point Hope, AK, (PHO) NDB, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review

rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5.i., which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially

significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

T-260 VANTY, AK to NOME, AK (OME) [Amended]			
VANTY, AK	WP	(Lat. 68°20'40.64" N, long. 166°48'09.96" W)	
FEDEV, AK	WP	(Lat. 65°33'37.84" N, long. 167°55'18.90" W)	
Nome, AK (OME)	VOR/DME	(Lat. 64°29'06.39" N, long. 165°15'11.43" W)	

* * * * *

Issued in Washington, DC, on July 18, 2023.

Karen L. Chiodini,
Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–15587 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2021–OS–0107]

Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education’s Federal Student Loan Programs and Federal Student Loan Servicers

AGENCY: Office of the Secretary, Department of Education.
ACTION: Final interpretation.

SUMMARY: The U.S. Department of Education (Department) issues this final interpretation, which revises and supersedes its interpretation published on August 12, 2021 (the 2021 interpretation). This interpretation revises and clarifies the Department’s position on the legality of State laws and regulations that govern various aspects of the servicing of Federal student loans, such as preventing unfair or deceptive practices, correcting misapplied payments, or addressing refusals to communicate with

borrowers. The Department concludes that these State laws are preempted by the Higher Education Act of 1965, as amended (HEA) and other applicable Federal laws only in limited and discrete respects, as further discussed in this interpretation. This interpretation will help facilitate close coordination between the Department and its State partners to further enhance both servicer accountability and borrower protections.

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

FOR FURTHER INFORMATION CONTACT: Beth Grebeldinger, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Room 113F4, Washington, DC 20202. Telephone: 202–377–4018. Email: Beth.Grebeldinger@ed.gov. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2021, the Department published the 2021 interpretation in the **Federal Register**. We invited comment on this interpretation because we value the public’s input and perspective on these critical issues. We considered all the comments we received, and we decided to revise the 2021 interpretation in certain respects, as discussed below. This interpretation revises and supersedes the 2021 interpretation with

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:
- Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.
- § 71.1 [Amended]**
- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

respect to State regulation of the servicing of loans under both the William D. Ford Federal Direct Loan Program (Direct Loans) and the Federal Family Education Loan Program (FFEL Loans).

Public Comment: In response to our invitation to comment on the 2021 interpretation, 14 parties submitted substantive comments, and we received 1 comment that was unrelated to the interpretation.

Analysis of Comments and Changes: An analysis of the comments and any changes in the interpretation since publication of the 2021 interpretation follows. We do not address comments that raised concerns not directly related to the 2021 interpretation. Various technical and typographical edits have also been made as needed.

Comments: Several commenters suggested that we should specify that the revised interpretation supersedes not only the 2018 interpretation but also any statements by the Department either before or since that are inconsistent with this interpretation.

Discussion: We note that after publication of the 2018 interpretation there were statements by Department officials which were consistent with that interpretation. While those statements do not have any current legal import, we agree with the commenters that it is important to make clear that this interpretation supersedes any of those statements that are not consistent with this interpretation to ensure an accurate and consistent presentation of

the Department's interpretation on preemption.

Changes: We have modified the interpretation to specifically note that it supersedes prior statements by the Department that are not consistent with this final interpretation.

Comments: Several commenters suggested that the 2021 interpretation was focused too narrowly on State laws affecting "affirmative misrepresentations" as not being subject to preemption and should also specifically address other types of State laws relating to loan servicers' conduct, such as State laws governing dispute resolution procedures for loan servicers or state laws governing licensure.

Discussion: Both the 2021 interpretation and this final interpretation address state laws governing licensure of student loan servicers. Otherwise, we have retained the broad discussion of state laws governing servicer conduct rather than specifically address specific types of those laws. An interpretation that focuses on preemption of specific types of state laws could be read as more narrow than intended and result in further litigation between states and servicers.

Changes: None.

Comments: One commenter noted that the revised interpretation did not address every court decision on the preemption of State laws relating to student loan servicing.

Discussion: The 2021 interpretation discussed the court decisions which the Department determined are most pertinent to and most persuasive on the issues addressed in the interpretation. The revised interpretation is in accord with those decisions.

Changes: None.

Comments: Several commenters suggested that the 2021 interpretation did not appropriately describe the standard for conflict preemption.

Discussion: We believe that the discussion of conflict preemption in the 2021 interpretation appropriately described the legal standard. However, we acknowledge that the discussion could be made clearer and have done so in this final interpretation.

Changes: We have modified the discussion of conflict preemption to more clearly describe the applicable legal standard.

The Department's interpretation is presented here in its final form.

Final Interpretation

A. General Preemption Principles

The Supreme Court has established fundamental principles of Federal

preemption doctrine over more than two centuries. Throughout the history of our country, the Court has repeatedly emphasized that claims of preemption of State law are construed to reflect "the clear and manifest purpose of Congress." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). And where, as here, Congress legislates in a field traditionally occupied by the States, the Court at times has held that the presumption against preemption "applies with particular force." *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008); see, e.g., *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev't Comm'n*, 461 U.S. 190 (1983) (Federal licensing of safety designs for nuclear power plants did not preempt State action suspending construction of such plants on economic grounds).

In 2015, Connecticut became the first State to enact a law requiring licensure and oversight of student loan servicers operating in the State. In its wake, a growing number of States have followed suit by enacting their own laws or adopting their own regulations. These laws or regulations provide for licensure and oversight of student loan servicers. They also typically confer or confirm protections for citizens against prohibited acts such as engaging in unfair, deceptive, or fraudulent acts or practices; misapplying payments; reporting inaccurate information to credit bureaus; or refusing to communicate with an authorized representative of the student loan borrower.

The States that have created these regulatory regimes assert that they are acting under their general police powers for the purpose of protecting their citizens. That is a zone in which preemption is at its weakest. Particularly "in a field which the States have traditionally occupied," *Wyeth*, 555 U.S. at 565, the Supreme Court has emphasized the need to begin "with the assumption that the historic police powers of the States are not to be superseded by Federal Act unless that is the clear and manifest purpose of Congress." *Cipollone*, 505 U.S. at 516. One area that states have traditionally occupied is consumer protection, which has traditionally been regulated by the States, with more limited and occasional Federal involvement. See, e.g., *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963).

B. Field Preemption

The 2018 interpretation opined that "the statutory and regulatory provisions and contracts governing the Direct Loan Program preclude State regulation, either of borrowers or servicers." 83 FR at 10621. It further stated that "the HEA and Department regulations governing the FFEL Program preempt State servicing laws that conflict with, or impede the uniform administration of, the program." *Id.*

This broad assertion of power—that Federal law preempts the entire field of law relating to Federal student loan servicing—has largely been rejected by the courts. That is particularly the case where Congress has considered the matter and expressly preempted specific but limited areas of State law, as discussed below. Indeed, "no circuit court that has considered the issue has found field preemption" to apply in the context of the HEA. *Lawson-Ross v. Great Lakes Higher Educ. Corp.*, 955 F.3d 908, 923 (11th Cir. 2020); see also *Nelson v. Great Lakes Educ. Loan Services, Inc.*, 928 F.3d 639, 652 (7th Cir. 2019) ("Courts have consistently held that field preemption does not apply to the HEA, and we do as well."); *Chae v. SLM Corp.*, 593 F.3d 936, 941–42 (9th Cir. 2010) (same); *Cliff v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1125–26 (11th Cir. 2004) (same); *Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc.*, 168 F.3d 1362, 1369 (D.C. Cir. 1999) (same).

At no time prior to the issuance of the 2018 interpretation did the Department take the view that field preemption applied to the servicing and collection of Federal student loans, and the courts have held that the Department did not provide persuasive reasons for its new position. After reexamining the issue, the Department rejects the analysis included in the 2018 interpretation. The Department concludes, in line with its position prior to the 2018 interpretation, that field preemption does not apply to the servicing and collection of Federal student loans.

C. Express Preemption

The 2018 interpretation further asserted broad preclusion of State student loan servicing laws on the ground that any State efforts to require Federal student loan servicers to reveal facts or information not required by Federal law are expressly preempted under the HEA. See 83 FR at 10,621. By painting with such a broad brush, the 2018 interpretation failed to consider more carefully the specific terms of applicable Federal laws and how they apply to State regulatory efforts.

In fact, the HEA does contain some specific provisions that explicitly preempt certain areas of State law, but those provisions are limited and selective. They include restrictions on such matters as the application of State usury laws, *see* 20 U.S.C. 1078(d), of State statutes of limitation, *see* 20 U.S.C. 1091a(a)(2), of the State-law defense of infancy, *see* 20 U.S.C. 1091a(b)(2), of State wage garnishment laws, *see* 20 U.S.C. 1095a(a), of State laws on certain costs and charges, *see* 20 U.S.C. 1091a(b), and of State disclosure requirements that conflict with 20 U.S.C. 1083, *see* 20 U.S.C. 1098g. These provisions, granular as they are, reinforce the point that Congress consciously opted to displace State authority only in these limited particulars and did not intend or provide for broad field preemption of State laws governing student loan servicing. *See, e.g., Nelson*, 928 F.3d at 650 (“The number of those provisions and their specificity show that Congress considered preemption issues and made its decisions. Courts should enforce those provisions, but we should not add to them on the theory that more sweeping preemption seems like a better policy.”). They also undermine any broad finding of express preemption, which requires courts to “identify the domain expressly preempted by that language.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996). In the HEA, Congress identified a series of pinpoints rather than casting a wide blanket over the entire area, and its actions must be respected in determining the scope of preemption of State law. *See id.* at 485 (intent of Congress is the “ultimate touchstone” of preemption analysis).

The 2018 interpretation put special emphasis on the HEA provision addressing State “disclosure requirements.” *See* 83 *FR* at 10,621. It observed that this provision specified “what information must be provided in the context of the Federal loan programs,” and expanded upon the provision by stating that it also nullified any State “prohibitions on misrepresentation or the omission of material information.” *Id.* But the courts have generally rejected this approach. First, this provision of the HEA covers information conveyed to the borrower before the disbursement of loan proceeds, before repayment of the loans begins, and during repayment of the loans. The information disclosed is “intended to ensure that consumer-borrowers have accurate, relevant information and can make their own informed choices about their financial affairs.” *Nelson*, 928 F.3d at 647.

Notably, the HEA provision on disclosure requirements does *not* cover explicit or implicit misrepresentations, which are not about conveying either *more* or *less* information, but instead are simply about conveying *accurate* information so as not to mislead or defraud the borrower. The courts found this distinction between misrepresentations and failure to disclose to be deeply grounded in basic principles of the common law of torts, which sharply distinguish failure-to-disclose claims from claims for affirmative misrepresentation. *See, e.g., Lawson-Ross*, 955 F.3d at 917–19; *Nelson*, 928 F.3d at 647–49.

Second, the 2018 interpretation purported to rely on the Ninth Circuit’s decision in the *Chae* case, which concerned the failure to disclose information in the specific ways required in Federal law, such as in billing statements. But the findings in *Chae* do not preclude State regulation of affirmative misrepresentations or deceptive acts or practices about information that the servicer was not required to disclose or other types of misconduct. *See Chae*, 593 F.3d at 943. Nor can such actions plausibly be reframed as a mere “failure to disclose” correct information. *Pennsylvania v. Navient Corp.*, 967 F.3d 273, 289–90 (3d Cir. 2020). The *Chae* court drew this same distinction, holding that the “use of fraudulent and deceptive practices apart from the billing statements” are not preempted by Federal law. *See Chae*, 593 F.3d at 943; *see also Lawson-Ross*, 955 F.3d at 919 (discussing *Chae*); *Nelson*, 928 F.3d at 649–50 (same).

For these reasons, the Department finds that, except in the limited and specific instances set forth in the HEA itself, State measures to engage in oversight, require actions of, or otherwise regulate the conduct of Federal student loan servicers are not expressly preempted by the HEA. Accordingly, in reconsidering the issue of express preemption the Department does not find the conclusions reached in the 2018 interpretation to be persuasive. Likewise, the courts generally have not been persuaded when these issues have been presented to them. *See, e.g., Student Loan Servicing Alliance*, 351 F. Supp. 3d at 51–55; *Lawson-Ross*, 955 F.3d at 916–20; *Nelson*, 928 F.3d at 647–50.

D. Conflict Preemption

When, as here, both the Federal government and the States have legitimate interests in the same areas of governance, courts frequently implement constitutional principles of federalism by seeking to balance and

respect those mutual interests. Where the two exercises of authority collide in irreconcilable conflict, then State law must yield to the superior force of the Supremacy Clause. But courts often have sought to harmonize Federal and State power where they find that they can do so. Therefore, implied conflict preemption has been regarded as only nullifying State action if “it is impossible for a private party to comply with both state and federal law” or if State law “‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Although the 2018 interpretation laid out some generalized grounds on which Federal and State regulations of student loan servicers could be found to clash, the courts have rejected these arguments. They have noted the Supreme Court’s overarching point that where the enacted legislation explicitly addressed the issue of preemption, as is true of the HEA, “there is no need to infer congressional intent to preempt State laws from the substantive provisions of the legislation.” *Cipollone*, 505 U.S. at 517; *see also Navient*, 967 F.3d at 292–93; *Lawson-Ross*, 955 F.3d at 920; *Nelson*, 928 F.3d at 648.

When the court in *Student Loan Servicing Alliance* considered the District of Columbia’s procedures for protecting privacy, resolving complaints, and mandating compliance with timelines, it concluded that “[u]pon closer inspection of the state and federal provisions, it is apparent that there is no actual conflict on the grounds of impossibility.” 351 F. Supp. 3d at 60. The court determined that each objection raised by the plaintiff about the supposed inability to harmonize Federal and State procedures posited “a false conflict” and could be accommodated by officials who are willing to work together in taking reasonable steps to do so. *Id.* at 60–61.

The most recent courts to consider these issues under the rubric of conflict preemption have consistently determined that the HEA places no emphasis on maintaining uniformity in Federal student loan servicing and thus they have upheld State authority to root out fraud and affirmative misrepresentations in the Federal student aid program. *See, e.g., Navient*, 967 F.3d at 292–94 (explicitly rejecting *Chae* on this point); *Lawson-Ross*, 955 F.3d at 920–23 (same); *Nelson*, 928 F.3d at 650–51 (same).

Courts have generally found conflict preemption to apply to State laws

requiring licensing of the Department's student loan servicers in the limited circumstances where the licensing scheme purported to disqualify a Federal contractor from working within the State's boundaries. It is well-established that States cannot impede the Federal Government's selection of contractors through the imposition of a licensing requirement. In *Leslie Miller Inc. v. Arkansas*, 352 U.S. 187 (1956) (per curiam), the Supreme Court held that Federal bidding statutes and regulations requiring the selection of "responsible bidder[s]" for Federal contracts would be frustrated by "giv[ing] the State's licensing board a virtual power of review over the federal determination" about selecting its own contractors. *Id.* at 190.

Two recent Federal court decisions have concluded that this well-established precedent applies to a State's refusal to license Federal student loan servicers. In *Student Loan Servicing Alliance*, the Court concluded that the District of Columbia's licensing scheme was preempted because it would bar Federal student loan contractors from working within the District. See 351 F. Supp. 3d at 61–72, 75–76. Similarly, in *Pennsylvania Higher Education Assistance Agency v. Perez*, 457 F. Supp. 3d 112, 122–25 (D. Conn. 2020), the Court concluded that the State's authority to grant or withhold a license to a Federal student loan servicer was preempted because it could disqualify Federal student loan contractors from operating within the State. Notably, neither of these decisions relied on the 2018 interpretation in concluding that State laws relating to licensing were preempted; and in fact, in *Student Loan Servicing Alliance*, the court explicitly rejected the preemption analysis in the 2018 interpretation.

E. Direct Loan Program and Preemption

The Direct Loan program, which was created as part of the Student Loan Reform Act of 1993 (Pub. L. 103–66), poses some specific statutory and regulatory issues of preemption. In this program, the Federal government makes loans directly to the borrower and is responsible for all aspects of the loan from origination through repayment, including servicing and collection. Congress also provided that the Department could use contractors to service the loans and for any other purposes deemed "necessary to ensure the successful operation of the program." 20 U.S.C. 1087f(b)(4). When procuring such services, the Department must comply with all applicable Federal laws and regulations and design its

program so that the loan servicing is "provided at competitive prices." 20 U.S.C. 1087f(a)(1). And the Department specifies in some detail "the responsibilities and obligations of the servicers for Direct Loans." 2018 interpretation, 83 *FR* at 10,620.

The 2018 interpretation observed that in some instances, these provisions would operate to preempt State requirements that directly conflicted with requirements imposed under Federal law. For example, as discussed above, an attempt by a State to revoke a license granted to a Federal contractor by the Federal government for purposes established under Federal law would be invalid. *Leslie Miller*, 352 U.S. at 190. Yet this does not imply that a State cannot act to impose reasonable, generally applicable conditions on entities (including Federally licensed contractors) operating within the bounds of the State, as authorized under its police powers exercised on behalf of its citizens. As courts addressing this issue have correctly concluded: "Properly understood, state law and federal law can exist in harmony here" under the HEA. *Nelson*, 928 F.3d at 651; see also *Navient*, 967 F.3d at 293–94 (quoting *Nelson*). Cf. *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987) ("Rather than evidencing an intent to preempt such state regulation, the Forest Service regulations appear to assume compliance with state laws.").

Where the States impose conduct requirements that prohibit misrepresentations and other types of misconduct by student loan servicers, many of those measures are not preempted by general disclosure requirements in Federal law. See, e.g., *Cipollone*, 505 U.S. at 529 ("State-law prohibitions on false statements of material fact do not create 'diverse, nonuniform, and confusing' standards."). Notably, the courts have repudiated the expansive approach taken in the 2018 interpretation, which was premised on the claim that the purpose of the Direct Loan program was to "establish a uniform, streamlined, and simplified lending program managed at the Federal level." 83 *FR* at 10,621. See, e.g., *Navient*, 967 F.3d at 293 (finding no legislative support for uniformity here); *Lawson-Ross*, 955 F.3d at 921–22 (same); *Nelson*, 928 F.3d at 651 (same); *College Loan Corp. v. SLM Corp.*, 396 F.3d 588, 597 (4th Cir. 2005) (same). Indeed, it is telling that Congress's own stated purposes in the HEA itself make no mention of uniformity, see *Lawson-Ross*, 955 F.3d at 921, and the Supreme Court has held that courts are not to infer preemption merely from the comprehensive nature

of Federal regulation. See *New York State Dep't of Social Servs. v. Dublino*, 413 U.S. 405, 415 (1973).

The cases rejecting the claims made in the 2018 interpretation about the need for uniformity also point out that "[e]ven if we assume that uniformity is a purpose of the HEA, [claims about affirmative misrepresentations by loan servicers] would not conflict with that purpose." *Lawson-Ross*, 955 F.3d at 922–23. Even such uniformity as does exist in the program "is not harmed by prohibiting unfair or deceptive conduct in the operation of the program that is not explicitly permitted by the HEA." *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d 529, 553 (M.D. Pa. 2018), *aff'd*, 967 F.3d 273 (3d Cir. 2020).

For similar reasons, the arguments in the 2018 interpretation that accompany the arguments for uniformity, which relate to reducing costs and treating borrowers equitably while not confusing them, see 83 *FR* at 10,620–21, are likewise unavailing. Reducing costs by making fraudulent or false statements to student loan borrowers or engaging in other misconduct is indefensible as a tactic; and allowing such misconduct to be perpetrated on a mass scale would neither foster equitable treatment for borrowers nor spare them any confusion. In addition, relieving Federal contractors of any exposure to liability for fraud, false statements, or other actions that harm borrowers would save them money, to be sure, but it would be a breathtakingly broad assertion of preemption, given that such contractors are routinely subject to liability for violating State tort laws.

F. FFEL Program Loans and Preemption

As with the Direct Loan program, the FFEL program poses some specific statutory and regulatory issues of preemption. The general treatment of these issues runs parallel to the discussion for Direct Loans, in that some specific Federal laws and regulations preempt State laws that conflict squarely on matters such as timelines and other particulars of debt collection and loan servicing. But here, too, the grounds for preemption of State laws are narrow and liability under State law for many other matters such as dispute resolution processes, affirmative misrepresentations, or other types of misconduct that harm loan borrowers would not be preempted.

In the past, the Department had identified specific types of State laws that are preempted because they would frustrate the operation and purposes of the Federal student loan programs. On October 1, 1990, for instance, the Department issued a notice interpreting

its regulations governing the FFEL program (then known as the Guaranteed Student Loan program), which require guaranty agencies and lenders to take certain actions to collect FFEL program loans. The Department's position in that interpretive notice was that the regulations requiring those activities preempt State laws regarding those very same activities. See 55 *FR* 40,120. More specifically, the Department explained that its regulations establish minimum collection actions required on all FFEL obligations, which preempt contrary or inconsistent State laws that would prevent compliance with the Federal regulations. See *id.* at 40,121. These regulations for the FFEL Program are now codified at 34 CFR 682.410(b)(8) and (o).

The 2018 interpretation identified additional categories of State laws that it viewed as inconsistent with specific Federal measures. These included laws creating deadlines for servicers to respond to borrower inquiries or disputes; deadlines for notifying borrowers of loan transfers between servicers; and a few other miscellaneous items. See 83 *FR* at 10,621–22. According to the 2018 interpretation, if those specific State laws directly contradicted an equally specific Federal law, they were preempted.

However, and as discussed above, preemption issues are necessarily contextual and fact-specific and cannot be determined without analysis of specific State requirements and the equally specific Federal measures with which they purport to conflict. Moreover, mere inconsistency is not the test for preemption; instead, these specific State laws are only preempted where “it is impossible . . . to comply with both state and federal law” or if State law poses “an obstacle” to accomplishing the full purposes of Congress. *Crosby*, 530 U.S. at 373. Simply because some provisions of Federal and State law may not be precisely the same in every respect does not mean they cannot be applied in a coordinated manner as a cooperative regulatory regime.

As with Direct Loans, moreover, the limits of preemption are reached when the discussion moves beyond simply setting specific details of such “administrative mechanisms.” *Nelson*, 928 F.3d at 651. At the heart of State laws and regulations in this area are measures designed to protect consumers. There may be many such measures that are not preempted by the general disclosure requirements in Federal law, such as State measures that prohibit affirmative misrepresentations by loan servicers. See, e.g., *Lawson-*

Ross, 955 F.3d at 922–23. But this interpretation should not be read to suggest that *only* State laws and regulations relating to affirmative misrepresentation are not preempted. States may consider and adopt additional measures which protect borrowers and can be harmonized with Federal law. These measures can be enforced by the States, and the Department can and will work with State officials to root out all forms of fraud, falsehood, improper conduct, and other harms to borrowers that may occur in the Federal student aid programs.

G. Enhanced Borrower Protections Through Federal-State Cooperation

The final section of the 2018 interpretation cautioned that broad preemption of State student loan servicer laws would not leave borrowers unprotected, and it elaborated ways that the Department “continues to oversee loan servicers to ensure that borrowers receive exemplary customer service and are protected from substandard practices.” 83 *FR* at 10,622. In this interpretation, the Department reaffirms these important objectives and its determination to hold servicers accountable for failing to meet these standards and expectations. Indeed, this approach is embodied in the newest contracts that the Department has executed with its loan servicers, which include provisions to improve performance, accountability, and transparency. The contracts also include requirements that the loan servicers must comply with applicable State laws, which embodies the Department's recognition that State laws are generally not preempted.

Yet the Department also finds that broad preemption of State student loan servicer laws would disserve these objectives for two reasons. First, State officials serve as an essential complement to the Federal government in protecting their citizens from substandard or improper practices. Second, as explained below, the Department has concluded that close coordination with its State partners will further enhance both servicer accountability and borrower protections.

Accordingly, the Department has considered the matter further and finds that the approach taken in the 2018 interpretation is seriously flawed. For all the reasons stated in this interpretation, the Department is affirmatively changing its approach to preemption of State student loan servicing laws that was laid out in the 2018 interpretation. To the extent that the final section of the 2018

interpretation purported to provide additional factual material intended to justify its position, those underpinnings are examined more carefully below, and the Department concludes that they do not support the 2018 interpretation either as a historical matter or, as a factual matter, in the likelihood that such an exclusionary approach will succeed in attaining its stated objectives. See, e.g., *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (agency may change prior policy without being subject to any more searching judicial review where the agency acknowledges the change of position and accounts for any claimed factual underpinnings of the prior policy).

As a historical matter, the Federal government and the States have sought to work closely and cooperatively in certain areas of shared responsibility, such as law enforcement and consumer protection. All parties recognize that the country is vast, its population has grown to immense proportions, and public resources are limited. Administration of Federal student loans involves managing customer relationships for tens of millions of borrowers in a variety of circumstances and for distinct loan programs with different requirements that have grown up over the past several decades. The complexity and scope of the task is shown by the Department's longstanding practice of engaging large private contractors operating nationwide to service millions of borrowers with cumulative debts that in the aggregate now exceed \$1.5 trillion. Managing these outside contractors to assure that the student loan program operates effectively and in line with its intended objectives is a substantial undertaking, and the oversight challenges are evident and significant.

The Department recognizes that collaboration with the States can supply the means to ensure better oversight of these contractors and provide more protection for student loan borrowers. Not all States have invested resources in overseeing loan servicers, but to the extent that they have, some State attorneys general and State student loan servicing regulators, with their own capacities and personnel, are able to maintain a closer watch over how these loan servicers operate in their States, including how borrowers are being treated and how their needs are being met. Although the 2018 interpretation strove to justify how the Department could perform this oversight task adequately on its own, the Department now finds that a different approach is more likely to succeed: a coordinated

partnership of interested Federal and State officials will produce a more robust system of supervision and enforcement to monitor and improve performance under this far-flung system.

In the 2018 interpretation, the Department explained as a factual matter how it would seek to monitor servicer compliance with contractual requirements related to customer service, including call monitoring, process monitoring, and servicer auditing. *See* 83 *FR* at 10,622. It also described how it uses contracting requirements to incentivize improved customer service and maintain mechanisms for reviewing and responding to complaints about customer service. But the Department's limited resources for compliance monitoring must also encompass various other issues unrelated to customer service, such as compliance with billing practices and other related operational issues. And many of the recently enacted State laws are designed to focus squarely on customer service issues: servicers engaging in unfair, deceptive, or fraudulent acts or practices; servicers misapplying payments; servicers reporting inaccurate information on borrower performance to credit bureaus; and servicers refusing to communicate with borrowers' authorized representatives. *See, e.g.,* Conn. Gen. Stat. § 36a–850 (2016); 110 Ill. Comp. Stat. 992/20–20(i) (2018); Colo. Rev. Stat. § 5–20–109 (2019). Notably, a growing number of States are enacting these laws because of the documented need for more attention to problems adversely affecting their citizens. Rather than viewing this activity by the States as inconvenient or detrimental to its objectives, the Department now recognizes that State regulators can be additive in helping to achieve the same objectives championed in the 2018 interpretation. Rather than expending time and effort contesting the authority of the States in unproductive litigation, the Department intends to work with the States to share the burdens and costs of oversight to ensure that loan servicers are accountable for their performance in better serving borrowers.

Indeed, a collaborative approach where Federal and State officials work together to achieve shared objectives will likely produce a sum that is greater than its individual parts. The Department's budget is not unlimited and maintaining effective oversight of student loan servicers that deal with tens of millions of borrower accounts is a mammoth task. Further examples discussed in the 2018 interpretation

only underscore this point. For instance, the Department has built incentives into the servicer contracts to favor better-performing servicers at the expense of poorer-performing ones, to attain higher levels of customer satisfaction. *See id.* But by the same token, regulatory oversight by the States is likewise intended and designed to secure higher levels of servicer performance and to limit instances of poor customer service and other abuses through different mechanisms and channels. The same is true of the other example highlighted in the 2018 interpretation, which explains how the Department's formal complaint process can help borrowers elevate customer service issues for heightened attention and prompt resolution. *See id.* But as with the Department itself, State regulators and State attorneys general have staff members who are typically available to field and respond to complaints. Here again, the cumulative force of combining these joint efforts augments, rather than detracts from, the goal of improving customer service.

The concept of “cooperative federalism” laid out here can and should also lead to mutual efforts to make improvements in other areas of student loan servicing that support greater access to higher education. The core purpose of State laws and regulations overseeing student loan servicers is to protect their citizens who are borrowers of student loans and their families. The reason they took out those loans in the first place was to secure the benefits of higher education and to cope with the financial costs involved. Consideration of these broader objectives reveals many opportunities for productive cooperation that can be fruitfully pursued between Federal and State officials who share these objectives and are interested in pursuing them jointly. In short, an approach that is marked by Federal-State cooperation is likely to secure better implementation of student aid programs as well as better service to borrowers and their families. Out of this cooperation may come a broader understanding of how these mutual efforts can advance the central goal of facilitating affordable access to higher education for students in every part of the country. For these reasons, the Department issued the 2021 interpretation with the explicit purpose of revoking and superseding the 2018 interpretation. Now, the Department confirms that this interpretation supersedes prior statements by the Department that are not consistent with this final interpretation.

Accessible Format: On request to the 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.

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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.

Miguel A. Cardona,
Secretary of Education.

[FR Doc. 2023–15436 Filed 7–21–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0529; EPA–R05–OAR–2022–0685; FRL–10638–02–R5]

Air Plan Approval; Wisconsin; Emissions Reporting and Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Wisconsin state implementation plan (SIP) revising air emissions reporting requirements codified in Chapter 438 of the Wisconsin Administrative Code (Wis. Admin. Code). Additionally, EPA is approving a related infrastructure requirement under section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) and 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each

state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA proposed to approve this action on March 23, 2023, and received no adverse comments.

DATES: This final rule is effective on August 23, 2023.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2015–0529 and EPA–R05–OAR–2022–0685. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Olivia Davidson, Environmental Scientist, at (312) 886–0266 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, davidson.olivia@epa.gov.

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

I. Background Information

On March 23, 2023 (88 FR 17486), EPA proposed to approve revisions to the Wisconsin Department of Natural Resources' (WDNR) air emissions reporting rules contained in Chapter 438 of the Wis. Admin. Code satisfying CAA section 110(a)(2)(F) otherwise known as “element F” for the 2012 PM_{2.5} and 2015 ozone NAAQS. WDNR submitted Board Order AM–31–19 (Rule AM–31–19) to EPA on August 3, 2022. The submission addresses the identified reporting requirement deficiencies in NR 438 Wis. Admin. Code and updates administrative language in NR 400.03 and NR 484.06(4) Wis. Admin. Code. EPA is incorporating these revisions by reference into the Wisconsin SIP. An

explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on April 24, 2023.

During the comment period, EPA received five comments. We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, none of the comments address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving WDNR's request to incorporate by reference the revisions to NR 400.03, NR 438, and NR 484.06(4) contained in Rule AM–31–19 into Wisconsin's SIP in order to update the emission reporting requirements. Specifically, EPA is approving NR 400.03(4)(jp), NR 438 except for 438.03(am)2., and NR 484.06(4) Table 4D Row (a), as published in the Wisconsin Register July 2022 No. 799, effective August 1, 2022. Further, EPA is approving CAA section 110(a)(2)(F) of Wisconsin's infrastructure SIP submission for the 2012 PM_{2.5} and 2015 ozone NAAQS, based on the updated rule submission. Approving this element will lead to full approval of Wisconsin's 2012 PM_{2.5} infrastructure SIP.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin regulations described in sections I and II of this preamble and set forth in the amendments to 40 CFR part 52, below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines

environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The WDNR 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 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, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 13, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. Section 52.2570 is amended by adding paragraph (c)(149) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(149) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on August 3, 2022, revising Wisconsin’s air emission reporting requirements of NR 438 Wisconsin Administrative Code to include reporting requirements for PM_{2.5}, and updates to administrative language in NR 400.03 and NR 484.06(4) Wisconsin Administrative Code.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 400.03(4)(jp), as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(B) NR 438, except for 438.03(am)2., as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(C) NR 484.06(4) Table 4D Row (a), as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(ii) [Reserved]

- 3. Section 52.2591 is amended by revising paragraph (h) and adding paragraph (i) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(h) *Approval.* In a July 13, 2015, submission, supplemented August 8, 2016, and August 3, 2022, WDNR certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2012 PM_{2.5} NAAQS.

(i) *Approval.* In an August 3, 2022, submission, WDNR certified that the State has satisfied the infrastructure SIP

requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

* * * * *

[FR Doc. 2023–15291 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0031; FRL–10954–02–R5]

Air Plan Approval; Michigan; DTE River Rouge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on January 12, 2023, and supplemented on April 19, 2023, to revise the Michigan state implementation plan (SIP) for particulate matter (PM). The revision updates the fugitive dust plan for the Detroit Edison—River Rouge Power Plant (DTE Energy) located in River Rouge, Michigan. The facility is no longer in operation and therefore, the plan eliminates requirements to reflect plant shut down.

DATES: This direct final rule will be effective September 22, 2023, unless EPA receives adverse comments by August 23, 2023. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2023–0031 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

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

I. General Information

On January 12, 2023, EGLE submitted a revision to the fugitive dust plan (FDP) for DTE Energy River Rouge facility. The original FDP was approved into the SIP on January 17, 1995 (60 FR 3346), pursuant to Consent Order No. 9-1993. The purpose of the FDP was to reduce the PM emissions of fugitive dust from coal handling activities, exposed areas and storage piles, and vehicle traffic while the facility was in operation. In 2021, DTE Energy retired their coal-fired boilers, and thus, no longer functioned as a base-load power plant. In 2022, DTE Energy no longer served as a coal handling and processing plant for the steel mill operations at Cleveland-Cliffs in Dearborn and U.S. Steel in River Rouge.

In accordance with the stipulation 13.B.(1) of the Consent Order, DTE Energy may revise the Control Program provided that: (a) DTE Energy demonstrates, in writing, that the proposed revision does not result in an increase in the level of fugitive dust or particulate emissions and submits the demonstration to the EGLE for approval; (b) The revision is approved.

The changes to the FDP, as determined by EGLE, will not increase in the level of fugitive dust emissions at DTE Energy. The facility is adjusting its FDP to reflect that it has shut down and no longer necessary to implement the measures needed to address air quality issues associated with coal handling activities, vehicle traffic, and retirement

of equipment with coal processing. Therefore, no increased PM emissions will result. Since the plant has ceased operations EGLE approved the revised FDP for the DTE Energy facility.

II. What action is EPA taking?

EPA is approving a revision to the FDP for DTE Energy into the Michigan SIP. The revision to the FDP will not result in an increase in fugitive dust emissions at the DTE Energy facility.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 22, 2023 without further notice unless we receive relevant adverse written comments by August 23, 2023. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 22, 2023.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Consent Order described in section I. of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under

sections 110 and 113 of the Clean Air Act (CAA) as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

¹ 62 FR 27968 (May 22, 1997).

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, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

EGLE 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section

of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 13, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (d) is amended by revising the entry for “Detroit Edison Company, River Rouge Power Plant, Wayne County” to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS

Name of source	Order No.	State effective date	EPA approval date	Comments
* * * * *				
Detroit Edison Company, River Rouge Power Plant, Wayne County.	9–1993	10/12/1994	7/24/2023, [INSERT FEDERAL REGISTER CITATION].	Includes revised Fugitive Dust Control Plan.
* * * * *				

* * * * *

[FR Doc. 2023–15404 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81****[EPA–R08–OAR–2021–0003; FRL–10454–02–R8]****Air Approval and Promulgation of Implementation Plans; Montana; Libby 1997 Annual PM_{2.5} Limited Maintenance Plan and Redesignation Request****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: In this document, the Environmental Protection Agency (EPA or Agency) is taking three separate but related actions. First, EPA is finalizing its determination that the Libby fine particulate matter (PM_{2.5}) nonattainment area (Libby Area) is attaining the 1997 Annual PM_{2.5} national ambient air quality standards (NAAQS or standard) based on 2014–2021 data. Secondly, EPA is finalizing approval of Montana's plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan). Lastly, the EPA is finalizing approval of the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS, submitted by the State of Montana on June 24, 2020. The EPA is taking this action pursuant to the Clean Air Act (CAA).

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

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R08–OAR–2021–0003. All documents in the docket are listed on the www.regulations.gov website. Although listed in the docket, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6103, email address: singh.amrita@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means EPA.

I. Background

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for PM_{2.5}. The Agency established the primary and secondary Annual and 24-hour standards for PM_{2.5}. The annual standard was set at 15.0 micrograms per meter cubed (µg/m³) based on a 3-year average of Annual mean PM_{2.5} concentrations, and the 24-hour (daily) standard was set to 65 µg/m³ based on the 3-year average of the annual 98th percentile values of 24-hour PM_{2.5} concentrations at each population-orientated monitor within an area.

On December 14, 2012, EPA promulgated the 2012 PM_{2.5} NAAQS, including a revision of the Annual standard to 12.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations. The Agency maintained the 24-hour standard of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (see 78 FR 3086; January 15, 2013).

Subsequent to promulgation of the NAAQS, EPA issued the “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” (“PM_{2.5} SIP Requirements Rule”) (see 81 FR 58010; August 24, 2016). This rule interprets the Act's nonattainment area requirements as they pertain to implementation of any of the PM_{2.5} NAAQS. The PM_{2.5} SIP Requirements Rule also addressed the revocation of the 1997 PM_{2.5} NAAQS for all areas. For the Libby Area, revocation of the 1997 PM_{2.5} NAAQS will occur upon the effective date of this action, i.e., after EPA has approved a maintenance plan and issued a redesignation for the 1997 PM_{2.5} NAAQS (see 81 FR 58010; August 24, 2016).

On March 17, 2011 (76 FR 14854), EPA approved Montana's attainment plan which included an attainment demonstration, an analysis of reasonable available control technology/reasonable available control measure (RACT/RACM), base-year, and projection year inventories, and contingency measures for the 1997 PM_{2.5} NAAQS for the Libby Area. On July 14, 2015 (80 FR 40911), EPA finalized its determination that the Libby Area attained the 1997 Annual PM_{2.5} NAAQS by the Area's statutory attainment date of December 31, 2011. The determination was based upon quality-assured and certified ambient monitoring data for the 2007–2009 monitoring period that demonstrated that the Libby area attained the 1997 Annual PM_{2.5} NAAQS by the attainment date. In the same rulemaking, EPA also issued a clean data determination under

the Agency's Clean Data Policy based upon quality-assured and certified ambient air monitoring data that demonstrated that the Libby area continued to attain the 1997 Annual PM_{2.5} NAAQS based on the 2011–2014 monitoring data.

On June 24, 2020, the State of Montana requested that EPA redesignate the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS and submitted an associated SIP revision containing a limited maintenance plan (LMP) for the EPA to review. On December 5, 2022, the EPA issued a notice of proposed rulemaking to approve Montana's request to approve Montana's request to redesignate the Libby PM_{2.5} nonattainment area to attainment for the 1997 Annual PM_{2.5} standard, as well as proposing to approve Montana's plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan).¹ The proposed rulemaking set forth the basis for determining that Montana's redesignation request meets the CAA requirements for redesignation for the 1997 Annual PM_{2.5} standard. Our proposed rulemaking also described how Montana had provided for continued maintenance of the 1997 Annual PM_{2.5} NAAQS in accordance with EPA's guidance for LMPs, and contained analysis of the complete, quality-assured, and certified air quality monitoring data for the Libby nonattainment area for 2014–2021.

The EPA's proposed action provided a 30-day public comment period. During this period, we received two comments. The first comment was in support of the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS. The second comment was adverse. Our response to the adverse comment is below. The comments have been added to the docket (EPA–R08–OAR–2021–0003) for this action and are accessible at www.regulations.gov.

II. Response to Comments

Comment: The commenter alleged that if EPA did not include a requirement to phase out or ban wood burning as part of the “SIP/FIP” that the redesignation of the area to attainment would prove “worthless.” The commenter cited a review by Northeast States for Coordinated Air Use Management (NESCAUM) which the commenter claims shows that “wood stoves pollute more than EPA says.” As a result, the commenter argued that the continued presence of wood stoves would be a liability to the Libby Area's attainment of the NAAQS. Finally, commenter noted that “there is no safe

¹ See 87 FR 74577.

level of air pollution, which the NAAQS do not reflect.”

Response: We recognize that wood stoves have been a major contributor of PM_{2.5} pollution for the Libby Area, but we disagree that a phase out or ban of wood burning is a prerequisite before EPA may redesignate the Libby Area.

The CAA establishes that EPA may not redesignate an area to attainment unless (1) the area has attained the NAAQS in question, (2) EPA has fully approved the applicable implementation plan for the area, (3) the improvement in air quality is due to permanent and enforceable reductions in emissions, (4) EPA has fully approved a maintenance plan for the area meeting CAA section 175A, and (5) the state containing such area has met all CAA section 110 and Part D applicable requirements. As EPA explained in the proposal, Montana has met all these requirements. To the extent that commenter is arguing that these requirements are not met absent a ban or phaseout of wood burning in the Libby Area, we do not agree.

In its submission,² Montana acknowledged that wood combustion accounts for the majority of PM_{2.5} concentrations in the Libby nonattainment area based on the state's 2005 baseline inventory analysis. In the proposed rulemaking, we explained how Montana's approved Moderate nonattainment plan included permanent and enforceable rules from the Lincoln County Air Pollution Control Program that went into effect February 27th, 2006³ and that addressed emissions from solid fuel burning devices which means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes which has a rated capacity of less than 1,000,000 BTU's per hour. We also explained in our proposal that the State has demonstrated that the area's improved air quality is largely attributed to the emission reductions required by the Lincoln County residential wood combustion rules. Subchapter 2: Solid Fuel Burning Device Regulations which went into effect January 1, 2007, discusses the operating and emission limits restrictions for the Libby Area. Section 75.1.204 states that no person may install or operate any type of solid fuel burning device without a valid

Operating Permit issued by the Department. Section 75.1.205 states prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for the permit and provide certain criteria of information. Section 75.1.206 discusses Air Pollution Alerts and states the Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four-hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above those levels over the next 24 hours.

Additionally, in the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert, may cause or allow the discharge of visible emissions greater than 10 percent opacity. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

There are conditions for burning that are enforceable in Subchapter 4: Outdoor Burning Regulations. Furthermore, the Lincoln County Air Pollution Control Program rules state that unless prohibited by section 75.1.104(2)(d), and within 60 days of notification from the Department or EPA, the Department shall implement the following contingency measures to reduce emissions from a source(s) identified as a contributor:

(a) If residential wood burning is determined to be a contributing source, the Department shall implement section 75.1.208.

(b) If re-entrained dust is determined to be a contributing source, the Department shall implement section 75.1.307.

(c) If industrial facility emissions are determined to be a contributing source, the Department shall initiate contingency measures to reduce emissions.

(d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.

(e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.

Based on our proposed rulemaking, we analyzed the PM_{2.5} One-year Annual Mean Concentrations for the Libby Area from 2014–2021 which are all below the 1997 PM_{2.5} Annual NAAQS of 15.0 ug/m³. In addition, none of the annual design values from 2016–2021 from the Libby Area monitoring site exceeded the 1997 annual PM_{2.5} NAAQS of 15.0 ug/m³, and as such, EPA proposes to determine that the Libby Area has attained the 1997 annual PM_{2.5} NAAQS.

The NESCAUM report cited [<https://www.nescaum.org/documents/nescaum-review-of-epa-rwh-nsps-certification-program-rev-3-30-21.pdf>] does raise significant concerns with EPA's certification program relevant to Cord Wood appliances, and EPA is taking steps to revise Cord Wood appliance test methods to rectify the concerns that NESCAUM has raised. However, these issues do not directly impact the Libby, MT 1997 PM_{2.5} NAAQS redesignation request and LMP approval, because we do not rely on any way the Cord Wood appliances test methods or results as a basis for the redesignation or as a part of the LMP. We therefore do not agree that the NESCAUM review has any relevance to this action.

The commenter's statements regarding safe levels of pollution and whether the NAAQS are reflective of such safe levels are beyond the scope of this action, which revises one area's designation for a promulgated NAAQS based on EPA's assessment of the state's submission.

III. Final Action

Based on our review of the Libby PM_{2.5} Plan submitted by State of Montana, air quality monitoring data, and other relevant materials, the comment letters we received, and for the reasons described in our proposed rule, the EPA is finalizing approval of Montana's plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan) and is redesignating the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS.

² See Libby Area SIP submission, available in this docket for this rulemaking.

³ See Resolution No. 1660 Lincoln County Air Pollution Control Program, Health and Environment Regulations.

By finalizing the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS and finalizing the approval of the LMP for the 1997 Annual PM_{2.5} NAAQS, the 1997 primary Annual PM_{2.5} NAAQS will be revoked in the Libby Area on the effective date of this redesignation, August 23, 2023. Beginning on that date, the Area will no longer be subject to transportation or general conformity requirements for the 1997 Annual PM_{2.5} NAAQS due to the revocation of the primary NAAQS (see 81 FR 58125; August 24, 2016). The Area is required to implement its approved LMP for the 1997 Annual PM_{2.5} NAAQS that is being approved in this action. The approved LMP can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

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

affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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 State of Montana 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.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Dated: July 15, 2023.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR parts 52 and 81 are amended 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 BB—Montana

■ 2. In § 52.1370, the table in paragraph (e) is amended by adding the entry

“Libby 1997 PM_{2.5} Limited Maintenance Plan” under the heading entitled “(5) Lincoln County” at the end of the section to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/subject			State effective date	Notice of final rule date	NFR citation	
*	*	*	*	*	*	*
(5) Lincoln County						
*	*	*	*	*	*	*
Libby 1997 PM _{2.5} Limited Maintenance Plan				7/24/2023	[insert Federal Register citation].	
*	*	*	*	*	*	*

■ 3. In § 52.1374, add paragraph (i) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(i) On June 24, 2020, the State of Montana submitted limited maintenance plans for the Libby PM_{2.5} nonattainment areas and requested that this area be redesignated to attainment for the PM_{2.5} National Ambient Air

Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

MONTANA—1997 ANNUAL PM_{2.5} NAAQS
[Primary and secondary]**Subpart C—Section 107 Attainment Status Designations**

■ 5. In § 81.327, the table entitled “Montana—1997 Annual PM_{2.5} NAAQS” is amended by revising the entry “Lincoln County (part)” to read as follows:

§ 81.327 Montana.

* * * * *

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
*	*	*	*	*
Lincoln County (part)	August 23, 2023	Attainment.		
The area bounded by lines from Universal Transverse Mercator Zone 11 (North American Datum 1983) coordinates beginning at 600,000mE, 5,370,000mN east to 620,000mE, 5370,000mN south to 620,000mE, 5340,000mN west to 600,000mE, 5,340,000mN north to 600,000mE, 5,370,000mN.				
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2023–15435 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 21–363; FCC 23–35; FR ID 153948]

FCC Empowers Short-Range Radars in the 60 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises its rules to provide new opportunities for unlicensed field disturbance sensor (FDS) devices (e.g., radars) to operate in the 57–71 GHz band (60 GHz band) while still ensuring coexistence with other unlicensed technologies in the band. The Commission's decision is a significant step in the continuing expansion and evolution of its rules and will supercharge the development and deployment of new and innovative radar operations—including valuable safety applications that detect unattended children in vehicles and which previously could only be permitted through a waiver of the rules.

DATES: Effective August 23, 2023.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577 or Anh.Wride@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 21–264; FCC 23–35, adopted on May 18, 2023 and released on May 19, 2023. The full text of this document is available for public inspection and can be downloaded at: <https://docs.fcc.gov/public/attachments/FCC-23-35A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to FCC504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Procedural Matters

Final Regulatory Flexibility Analyses. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility

Analysis (FRFA) concerning the possible impact of the rule changes and/or policy contained in the *Report and Order* on small entities. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) (86 FR 46661, August 19, 2021). The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA.

Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the document on small entities. The present FRFA conforms to the RFA and can be viewed under Appendix C of the *Report and Order*.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report & Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction Act Analysis. This *Report and Order* does not contain new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). In addition, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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Synopsis

As discussed in greater detail below, the rules the Commission adopts set forth distinct technical and operational provisions for unlicensed use in different segments of the band. They will permit new fixed and mobile FDS devices to implement pulse or frequency-modulated continuous-wave (FMCW) techniques to facilitate new use cases including installation on low-flying unmanned aircraft. Importantly, novel use cases that support safety, such as vehicle occupant detection, chest

movement detection to determine breathing patterns, and eye lid movement detection to determine driver alertness are also expected to see widespread deployment. This approach recognizes evolution in the proceeding as different unlicensed interests provided information on the wide array of potential uses for FDS devices and developed a consensus approach for accommodating these innovative applications. The Commission's decision is especially well suited to stimulate the rapid development of new products and services in such important areas as healthcare monitoring, personal safety, autonomous vehicles, home and industrial automation, and environmental control.

Background

In 2021, the Commission issued a Notice of Proposed Rulemaking (*NPRM*) that proposed to change the rules in § 15.255 to permit FDS devices to operate at higher power limits and provide a more expansive range of applications than the rules currently allow. The proposals, recognizing the burgeoning interest in allowing the use of mobile radars in the band for innovative and life-saving functions, represented the latest evolution in a band in which unlicensed operations have been permitted for more than 20 years. The Commission attributed this newfound interest to the availability of affordable, mass-produced chipsets that are capable of operating in the band, as well as the prospect of marketing and operating these mobile radar devices on a broad international scale. The *NPRM* noted, for example, that interested parties had formed a 60 GHz Coexistence Study Group that was “looking into ways to accommodate both unlicensed communications device and FDS operations in the band,” and whose members had “encouraged [the Commission] to initiate a rulemaking proceeding to review . . . the rules with a goal of putting in place a new framework to promote further innovation in the 60 GHz band by both unlicensed communications and FDS operations.” It also recognized that the FCC's 2020 Technological Advisory Council (TAC) panel recommended that the Commission initiate a rulemaking proceeding to examine the unlicensed rules governing 60 GHz operations.

Radars operate by transmitting radiofrequency (RF) signals at targets and analyzing the subsequent reflections to determine the targets' speed, range, and direction. Based on the record before us and prevalent technologies, the two common types of radars the Commission anticipates will

operate in the 60 GHz band are FMCW radars and pulse radars. An FMCW radar transmits a continuous sinusoid signal (chirp) whose frequency changes linearly in time to sweep over a defined frequency band. A collection of evenly spaced chirps constitutes an FMCW radar frame. On the other hand, pulse radars typically transmit nanosecond-long pulses in the time domain that instantaneously spread frequencies across a wide bandwidth. As discussed in greater detail below, the rules adopted herein by the Commission are broad enough to account for use of these radar types.

In the 60 GHz band, radars are regulated under § 15.255 of part 15 of the Commission's rules. The part 15 rules permit low-power intentional radiators (popularly known as "unlicensed devices") to operate without an individual license where such use is not anticipated to cause harmful interference to authorized users of the radio spectrum. Unlicensed devices in the 60 GHz band generally include indoor/outdoor communication devices such as WiGig, wireless local area networks (WLANs), outdoor fixed point-to-point communication links, and FDS—which includes radar operations. Unlicensed device users protect the operations of authorized Federal and non-Federal users in the band. These users operate under a variety of allocations, including the Mobile, Fixed, Inter-Satellite, Earth-Exploration Satellite Service (EESS), Space Research, Mobile-Satellite, Radiolocation, Radionavigation, and Radionavigation-Satellite services.

When it first adopted § 15.255 in 1995, the Commission stated its intent to develop the 60 GHz band's potential to achieve communications capabilities similar to fiber and coaxial cable; thus, it originally prohibited FDS operation in the band. When it finalized the rules by adopting a spectrum etiquette three years later, it also included a provision that permitted only fixed FDS operation in the band. In 2016, the Commission expanded unlicensed device use in the band to permit limited mobile radar operations and to extend the use of fixed field disturbance sensors to the 64–71 GHz band. Specifically, the Commission's decision permitted the "narrow application of mobile radars for short-range interactive motion sensing" (SRIMS) at reduced power levels to ensure that they would successfully co-exist with co-channel communications devices already permitted to operate in the band. While the Commission did not adopt a specific definition for SRIMS, in permitting narrow use of short-range mobile radars it discussed the work of

Google LLC (Google) in developing its "Soli" sensor technology, which envisioned that smartphones and other personal devices would be able to sense hand gestures when a user is located at a very short distance from the device to perform functions such as controlling web pages or answering phone calls.

Since 2016, the Commission's Office of Engineering and Technology (OET) has granted focused rule waivers to support discrete radar applications, all based on an increased interest in FDS operation in the 60 GHz band. First, in 2018, OET granted Google a waiver of the emission limits to allow Soli radar devices to operate at a higher output power level than what had been authorized in the rulemaking. The waiver permitted Google to deploy its Soli sensor technology at 10 dBm peak transmitter conducted output power, 13 dBm peak EIRP level, and 13 dBm/MHz power spectral density, with a maximum 10% duty cycle in any 33 ms interval. More recently, in 2021, OET granted waivers to several parties to permit vehicle cabin-mounted radars as well as health-care related and other applications in the 57–64 GHz range at the same power levels as those granted to Google in 2018. These narrowly tailored waivers support an especially compelling public interest—using radar technology to monitor for children left in dangerously hot cars, and to trigger alerts that could save lives. In addition, OET granted a waiver to Leica Geosystems AG in July 2020 that allows a limited number of radars to operate in the 60–64 GHz band on specialized unmanned aircraft for the specific purpose of avoiding collisions with structures, supporting wires, or other fixed objects during structure visual inspection operations.

Under the current rules, FDS operations are limited to fixed operation or when used for SRIMS. While FDS devices are limited to a maximum transmitter conducted output power not to exceed –10 dBm and a maximum EIRP level not to exceed 10 dBm, a fixed FDS device with an occupied bandwidth fully contained within the 61.0–61.5 GHz Industrial, Scientific, and Medical Equipment (ISM) band may operate with average output power levels up to 40 dBm and peak output power levels up to 43 dBm. Finally, operations are prohibited on-board aircraft, except on aircraft that are equipped with a high RF attenuation body (e.g., commercial airliners) while forming a "closed exclusive on-board communication networks within the aircraft."

At the time the *NPRM* was issued, there was no uniform consensus for how

best to accommodate new FDS radar applications in the 60 GHz band while ensuring coexistence with incumbent unlicensed uses. Nevertheless, the Commission found that the extensive analysis associated with the waiver requests, the widespread consumer use of Google's Soli-equipped devices without reported cases of harmful interference, and the ongoing industry interest in promoting coexistence gave it confidence "that there is now sufficient information for us to build a record to expand unlicensed mobile radar use beyond the threshold the Commission first provided in 2016 and the narrow waivers that have been issued to date."

As such, the *NPRM* offered a high level proposal that would have provided for all FDS devices, mobile or fixed, to operate in the 57–64 GHz portion of the band at a maximum of 20 dBm average EIRP, 13 dBm/MHz average EIRP power spectral density, and 10 dBm transmitter conducted output power, along with a maximum 10% duty cycle restriction within any 33 ms interval; allowed fixed and mobile FDS devices to operate across the 57–71 GHz band at the existing 10 dBm EIRP and –10 dBm conducted output power limits specified in the rules, without any duty cycle limitations; and asked about other methods to potentially enhance coexistence in the band. The Commission did not propose any rule revisions that would apply to existing unlicensed communication devices such as WiGig, WLAN, or fixed point-to-point wireless links that currently operate in the 57–71 GHz band. The *NPRM* further recognized that operation at higher power than specified in the Commission's existing rules has been allowed in Europe under general rules for short-range devices, and considered how the Commission might be able to harmonize any revisions with applicable European Telecommunications Standards Institute (ETSI) standards to the extent appropriate. Throughout the *NPRM*, the Commission asked questions about its specific proposals, and also specifically "s[ought] input on the work results of any other coexistence standards activities (international and domestic) and/or cooperative works between communications and FDS study groups that may have taken place, and how such work may inform its proposals to expand unlicensed use of the band."

In the time since the *NPRM* was released on July 14, 2021, the record has reflected evolving views on how the Commission can accomplish the goals of the rulemaking. The comment cycle initially showed prevalent disagreements between the radar and

communication proponents, with parties from each group opposing different aspects of the proposals. The large number of *ex parte* filings following the close of the comment period reflect how both sides, individually and jointly, have been engaged in ongoing attempts to resolve their differences with various proposals for power levels and duty cycles/radar transmission off-times based on different segmentations of the 57–64 GHz band. Two recent submissions document the fruit of these labors, and are significant milestones in the history of this proceeding: the Industry Consensus Agreement submitted February 27, 2023 that addresses the interests of both FMCW radars and communications devices, and a separate Pulse Radar Joint Agreement submitted November 10, 2022 that describes technical parameters suitable for pulse radar operations.

Discussion

The targeted changes to the part 15 rules the Commission is adopting are optimized to encourage the development of important innovative FDS applications while promoting the growth of equally important innovative immersive communication applications. Taking into account the record as a whole, including the Industry Consensus Agreement and the Pulse Radar Joint Agreement, as well as the filings in response thereto, the Commission finds that these two types of unlicensed technologies (*i.e.*, radar and communications) can successfully co-exist and expand the applications available in the 60 GHz band under the Commission's revised rules.

First, the Commission clarifies the relationship between radars and FDS applications. The Commission also modifies its rules to expand mobile FDS operations within the 60 GHz band, including within the 61.0–61.5 GHz sub band, where higher powered operations are permitted but only for fixed use; with these modifications, the Commission retires the specific provisions that had been established for SRIMS.

Second, for FDS devices that limit their operating frequencies to the 57–64 GHz portion of the 57–71 GHz band, the Commission permits various EIRP levels along with specific duty cycle restrictions related to specific segmentations of the band. The Commission finds that these distinctions, described in greater detail below, offer the best opportunity for new and existing unlicensed devices to successfully co-exist in the 60 GHz band. In conjunction with these rules,

the Commission addresses the applicability of additional technologies and technical approaches that were discussed in the *NPRM*.

Third, the Commission permits FDS operation on-board unmanned aircraft (UA) flying at altitudes less than 121.92 meters (400 feet) above ground level, limited to the 60–64 GHz band, at up to 20 dBm peak EIRP subject to a 50% duty cycle, and discusses how the Commission's new rules for FDS devices relate to existing provisions for limited in-cabin aeronautical use. The Commission also addresses matters related to compliance testing and use of equipment that currently operates under waivers of its existing rules.

Definitional Clarification and Mobile Use Expansion

Definition of FDS/Radar. In the *NPRM*, the Commission stated that, although § 15.3(l) of its rules provides a definition for “field disturbance sensor,” one must look to the general part 2 rules to find a definition for “radar.” It asked whether the rules related to “field disturbance sensors” in § 15.255 are sufficiently broad and flexible to accommodate the classes of devices that parties anticipate will be developed to operate in the 57–71 GHz band and whether the definition contained in part 15 of the rules should be modified to provide greater clarity regarding the relationship between FDS and radars.

The Commission clarifies that radars are a sub-category of FDS as defined in both §§ 15.3(l) and 2.1 of its rules. The Commission further finds that the radar definition in § 2.1 of its rules is sufficiently broad when used in conjunction with the FDS definition of § 15.3(l) to accommodate the types of FDS applications envisioned for the 60 GHz band. The Commission agrees with both Texas Instruments (TI) and IEE Sensing that its rules must allow for the detection of static persons or objects and cover all cases of motion/presence detection, regardless of the particular radar topologies employed, and the Commission finds that modifying the definition in § 15.3(l) of the rules to include radars will achieve this objective. The final rules are set forth, *infra*.

Mobile Use of FDS Devices. The Commission's history of expanding unlicensed use of the 60 GHz band has focused on fixed FDS use, with limited and relatively recently adopted provisions for mobile use. In the *NPRM*, the Commission sought comment on how it should interpret “fixed” and whether it should incorporate a specific definition for that term into the part 15

rules. The Commission further observed that a review of the 1998 *Report and Order* that first permitted fixed FDS use in the band suggests the Commission was anticipating a narrow set of applications for industrial settings where the equipment would rarely if ever be moved. In the *NPRM* of this proceeding and with respect to the 61.0–61.5 GHz band in particular, the Commission tentatively concluded that fixed FDS operations should be interpreted as those instances where an FDS device is stationary and is operating at a discrete location for an indefinite—*i.e.*, more than mere transitory—period. It also sought comment on whether there is a bright line rule to differentiate fixed and mobile FDS operations.

Many commenters express support for eliminating the distinction between fixed and mobile FDS use or ask the Commission to take an agnostic use case approach. Among the commenters that suggest specific definitions, Vayyar says the Commission should interpret “fixed” in an expansive manner, such as “remaining at same geographical location while operating,” allowing moving the sensor within the premises or to other premises (*e.g.*, within an apartment, hospital, ship, etc.). Google suggests keeping the high power allowed in the 61.0–61.5 GHz band and recommends interpreting “fixed” FDS operations as those instances where an FDS device is stationary and is operating at a discrete location for an indefinite period, and Bosch suggests distinguishing between fixed and mobile based on whether the device is mounted on a structure (*e.g.*, building, streetlight, or tower) or connected to permanent infrastructure.

The Commission finds that the record illustrates radar use cases that can be ubiquitous and sufficiently fluid in space (such as on a vehicle, or a hospital equipment cart), such that to fully realize the potential benefits of the band, many radar applications will have mobile characteristics even if they are affixed to equipment that can remain stationary in a particular location while the radar is in operation. Thus, the Commission concludes that the best course is to broadly expand mobile use throughout the band so that fixed and mobile distinctions are generally not relevant for operating under the revised rules. For this reason, the Commission is not adding a specific “fixed” definition in its rules for unlicensed FDS devices.

For purposes of the 61.0–61.5 GHz ISM band segment, existing § 15.255(c)(2) of the rules permits a fixed FDS device to operate at up to 40

dBm average EIRP and at up to 43 dBm peak EIRP. Under this rule, a fixed FDS device's occupied bandwidth must be fully contained within the 500-megahertz bandwidth of the 61.0–61.5 GHz band; and it must attenuate its signals outside the 61.0–61.5 GHz band, but still within the 57–71 GHz band, to less than 10 dBm average EIRP and 13 dBm peak EIRP. Google has observed that the high power allowed in this 500-megahertz band would be useful to FDS using narrow bandwidth applications, and the Industry Consensus Agreement recommends retaining the existing power levels permitted in the 61.0–61.5 GHz band while opening the band to mobile applications. Applying the Commission's decision to this band, it removes the "fixed" restriction applicable to FDS operation in § 15.255(c)(2). This is consistent with the Commission's intentions to permit both fixed and mobile applications to be deployed within the entirety of the 60 GHz band.

Removal of the SRIMS Designation. Consistent with the Commission's decision to permit fixed and mobile radars to operate throughout the 60 GHz band, the Commission adopts the proposal to remove the term "short-range interactive motion sensing" (SRIMS) from the rules. The Commission acknowledges that there has been much confusion on which 60 GHz mobile and fixed radar applications qualify under the SRIMS designation, and notes that commenters unanimously supported the removal of the SRIMS terminology from the rules. Because the FDS rules the Commission is adopting herein will apply to all manners of fixed and mobile technologies operating under § 15.255, and because the SRIMS designation was crafted for a limited type of mobile radar (*i.e.*, short-range motion sensing radar), it is no longer necessary. Accordingly, the Commission removes this designation and associated relevant requirements from the rules.

Expanded Use of FDS Devices Operating in the 57–64 GHz Band

In response to notice that the Commission was considering rules that would promote co-existence between communication devices—especially new immersive technologies—and FDS/radars in the 60 GHz spectrum, the record reflects the disagreements, debates, and ultimate consensus opinions that arose between communications and radar proponents. The rules the Commission is adopting balance the abilities of radar and communication devices to access the same spectrum. The Commission adopts

a band plan and associated technical rules that arise from the Commission's original proposals and accounts for the results of a multi-month negotiated agreement between major parties within both the communications and the radar industries, and that no party has opposed.

Under the Commission's revised § 15.255 rules, which are set forth below, the Commission permits the following for FDS devices: (1) up to 20 dBm peak EIRP for indoor operation, and up to 30 dBm peak EIRP for outdoor operation, including all vehicular applications, within the 57.0–59.4 GHz band; (2) up to 3 dBm peak EIRP for all operations within the 57.0–61.56 GHz band; (3) up to 20 dBm peak EIRP for all operations within the 57.0–61.56 GHz band subject to a 50% duty cycle; (4) up to 14 dBm peak EIRP for all operations within the 57–64 GHz band subject to a 22.7% duty cycle; and (5) up to 20 dBm peak EIRP for fixed outdoor operations or vehicular applications (except in-cabin vehicular use cases) within the 57–64 GHz band subject to a 50% duty cycle. In addition, for FDS devices that have a maximum pulse duration of 6 ns, the Commission permits the following: (a) the average EIRP shall not exceed 13 dBm and the transmit duty cycle shall not exceed 10% during any 0.3 μ s time window; (b) the average integrated EIRP within the frequency band 61.5–64.0 GHz shall not exceed 5 dBm in any 0.3 μ s time window; and (c) peak emissions shall not exceed 20 dB above the maximum permitted average emission limit applicable to the equipment under test. The Commission addresses unlicensed device use while airborne in the portion of this summary titled "Operation On-board Aircraft," *infra*. The adoption of the above technical rules is supported by two industry joint agreements, the Industry Consensus Agreement and the Pulse Radar Joint Agreement which are discussed in greater detail, below. The Commission finds that these different EIRP limits and the respective associated band segmentations along with the different duty cycle limits would provide expanded opportunities for various use cases based on radars' bandwidth usage while ensuring successful co-existence with other users of the band. This approach, proposed by the industry agreements, effectively improves on the Commission's simpler approach of having a single EIRP limit across the entire band as proposed in the *NPRM*. The Commission notes that these EIRP limits are lower than the limits permitted to general communication devices in the band.

Consensus Agreements

Industry Consensus Agreement. The February 27, 2023 Industry Consensus Agreement represents a significant breakthrough, as it resolves longstanding disagreements among various industry segments regarding equitable spectrum access. The Industry Consensus Agreement represented by radar proponents (Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated and Vayyar Imaging Ltd.) and unlicensed communications proponents (Intel Corporation, Meta Platforms Inc. and Qualcomm Incorporated), all of whom have been active participants throughout the course of the rulemaking proceeding, represents a viable compromise that has support from both interest groups.

The Industry Consensus Agreement proposes "soft segmentations" of the 57–64 GHz band that follows the WiGig channelization scheme to promote communications devices' access to an alternative channel if a radar device is transmitting on the remaining channel(s). The Industry Consensus Agreement also proposes long periods of radar transmission off-times (at least 2 ms in duration) under certain parameters to permit communications devices' necessary access to the same spectrum, thus resolving one of the more highly contested issues within the proceeding—whether and for how long the rules should require FDS devices to adhere to specific time periods of non-transmission. Finally, the Industry Consensus Agreement proposes different EIRP limits in different sub-bands to further ensure successful co-existence between FDS and communications devices while allowing varying EIRP levels necessary to successfully provide different radar applications in each sub-band.

The Industry Consensus Agreement responds to the *NPRM* by proposing more expansive radar operations in portions of the 57–64 GHz band than the Commission proposed, while explaining how the Commission can still meet its goal of ensuring fair sharing with communications operations. For example, the proposal allows radars with 2-gigahertz bandwidth (operating in the 57.0–59.4 GHz band) to transmit at 20 dBm peak EIRP without any transmitter off-time limitations. In place of the prior 2 ms minimum radar transmitter off-time requirement imposed in multiple waivers approved in July 2021, the Industry Consensus Agreement allows FDS/radar devices

with 4.5-gigahertz bandwidth (operating in the band 57.0–61.56 GHz) and 7-gigahertz bandwidth (operating across the entire 57–64 GHz band) to operate with transmission bursts that occupy 50% and 22.7% of the airtime, respectively, but requires the FDS devices to implement continuous silent intervals to prevent non-stop radar transmissions bursts that could severely impact communications devices' latency, as described in the record of the proceeding, *supra*.

Pulse Radar Joint Agreement.

Acconeer, the primary proponent for 60 GHz pulse radar technologies in the Commission's record, engaged in lengthy discussions with major communications device proponents represented by Intel, Meta Platforms and Qualcomm to develop technical parameters particular to pulse radars to enable successful co-existence in the 57–64 GHz band. On November 10, 2022, these parties responded to the Commission's *NPRM* by submitting the Pulse Radar Joint Agreement that sets forth specific technical parameters applicable to pulse-style radars that are distinct from those submitted by the Industry Consensus Agreement, and requests that the Commission adopts these parameters into the rules.

As described *supra*, pulse radars typically transmit nanosecond-long pulses that instantaneously spread across the wide intended band. Pulses are emitted in sweeps and multiple sweeps constitute a frame. Acconeer describes that its “pulse radar transmits in short nanosecond-long pulses that can co-exist with [IEEE] 802.11ad/ay [compliant devices] with low impact on throughput, as the error correction coding of the communication systems are able to cope with the pulse radar in the channel, even under extreme signal-to-interference ratio (SIR)” conditions unlike other types of radar devices using different coding schemes, such as FMCW radars, “which perform sweeps continuously during tens of microseconds to tens of milliseconds, making it difficult for [IEEE] 802.11ad/ay [compliant] systems to rely on error correction coding to maintain a high data rate during the slot occupied by the FMCW radar.” Acconeer further explains that the peak power spectral density for its pulse radar, as measured over an IEEE 802.11ad/ay device's communication channel, is significantly lower than FMCW radars, which decreases potential harmful interference decreasing the likelihood that the listen-before-talk (LBT) mechanism of the IEEE 802.11ad/ay compliant system less will be triggered. Acconeer thus believes that its pulse radar technology, which uses

spread spectrum techniques over a wide bandwidth, necessitates different provisions from what may be appropriate for other types of radar technologies.

Discussion. The Commission finds that the technical proposals included in the Industry Consensus Agreement in response to those on which the Commission sought comment provides a reasonable compromise that is well suited to foster its fundamental goal of opening the 60 GHz spectrum to innovative applications while promoting successful sharing between communications and FDS technologies. The Industry Consensus Agreement offers a path for realizing the band's potential to host a wider range of unlicensed users without increasing the risk for harmful interference to authorized users of the band. The Commission notes that parties outside of the signatories to the Agreement, including the Auto Innovators and Robert Bosch LLC have expressed support for the Industry Consensus Agreement. Moreover, because the Industry Consensus Agreement was the product of negotiations between leading stakeholders with interests in both radar and unlicensed communications devices, on balance, the economic benefits experienced by band users will outweigh economic costs. Accordingly, the Commission's final rules draw favorably from this filing.

While the *NPRM* made a specific proposal for expanding the use of the band for FDS use, it also sought comment more broadly on rules that would enable the successful sharing between FDS and communications uses. For example, the *NPRM* proposed to expand FDS operations in the 57–64 GHz band, but alternatively sought comment on allowing the FDS operations across the entire band or some other segment. The *NPRM* proposed that FDS devices be limited to 20 dBm average EIRP while also seeking comment on permitting up to an average power of 40 dBm EIRP and on specifying a peak power rather than an average power. The *NPRM* proposed FDS devices be limited to a duty cycle of 10% based on a maximum 3.3 ms transmission time in every 33 ms interval but also discussed the concerns parties have expressed with the proposed duty cycle and timeframe. The *NPRM* also sought comment on frameworks suggested by the 60 GHz Coexistence Study Group which included taking a channelization approach to radars in the 60 GHz band and having different operating parameters for radars when they are operating in a vehicle, indoors, or

outdoors, or between implementations that are fixed, mobile, or portable.

To facilitate use by all technologies, the Commission agrees with Acconeer that because pulse radars necessitate wide bandwidths to accommodate their spread spectrum technique, the Commission must also consider rules that are not solely predicated on using the small partitioned bands outlined in the Industry Consensus Agreement. Although Acconeer appears to be the only pulse radar provider that participated in the proceeding, many commercial parties plan to incorporate the Acconeer pulse radar chip into their finished products and other manufacturers may have plans for similar systems, thus making it likely that pulse FDS devices will see widespread use in the 57–64 GHz band. By adopting technical parameters that are compatible with the Pulse Radar Joint Agreement, the Commission will further enhance the potential for innovative product deployments in the 60 GHz spectrum without increasing the potential for causing harmful interference to authorized users. Because the Pulse Radar Joint Agreement represents the interests of proponents of pulse radar and leading communications device stakeholders, on balance, the economic benefits experienced by band users will outweigh economic costs. Accordingly, the rules the Commission is adopting also recognize the approach set forth in the Pulse Radar Joint Agreement.

Technical Considerations

Frequency range. In the *NPRM*, based on the parameters in the multiple waiver grants that pertain to FDS use of the 60 GHz band, the Commission proposed to limit operation of FDS devices operating under the proposed rules to the 57–64 GHz band to be consistent with the European ETSI Harmonized Standard EN 305 550 that restricts short-range devices, e.g., radars, to the 57–64 GHz band. While the Commission proposed to retain FDS operation in the 64–71 GHz band at the existing low-power limits in the rules, it sought comment on allowing use across the entire 57–71 GHz frequency range at higher power limits in conjunction with a specified duty cycle. In addition, in the *NPRM*, the Commission noted the work of the 60 GHz Co-existence Study Group on developing “a consensus approach” to a suitable co-existence framework, with discussions concerning duty cycles; transmission on- and off-times; operating bandwidth and channelization.

Initially, interested parties were unable to achieve consensus on what

frequency range would be most appropriate for expanded FDS use. For instance, Google suggested that limiting operating frequencies for FDS devices to the 57–64 GHz band, consistent with the EN 305 550 standard, would reserve the upper 7 gigahertz of the band for future potential use cases, while both Acconeer and Amazon supported extending the proposed higher power limits to the entire 14-gigahertz spectrum in the 57–71 GHz band to promote more FDS deployment. Other parties addressed potential harmonization benefits in use of the 57–64 GHz band, and suggested that minimizing the level of interference from FDS devices used outdoors in hand-held devices would be useful to facilitate compatibility with future generations of point-to-point radios that are expected to feature the band segment. To protect communications devices' ability to access the spectrum amidst radars' repetitive transmission bursts, a Joint Comment from Intel Corporation, Meta Platforms Inc. and Qualcomm Incorporated proposed that FDS devices limit their operating bandwidth to certain partitions of the 57–64 GHz band if using higher power levels and subject to strict duty cycles. The radar industry initially opposed this approach.

Ultimately, parties representing both FDS and communications interests found common ground in a soft segmentation approach to the 57–64 GHz band. As discussed above, the Industry Consensus Agreement proposes three segments within the 57–64 GHz band, corresponding respectively to WiGig Channel 1 (57.0–59.4 GHz), WiGig Channels 1–2 (57.0–61.56 GHz), and WiGig Channels 1–3 (57–64 GHz). The Pulse Radar Joint Agreement also envisions use of the 57–64 GHz band, but under separate provisions designed to accommodate the technical characteristics of pulse radars. Adopting rules for use of the 57–64 GHz band that account for the existing WiGig channelization plan is preferable to the initial *NPRM* proposal because it provides a level of compatibility among unlicensed device types without imposing uniformly low power levels and band-wide duty cycle limitations that parties indicated would retard continued use and development of the band. Therefore, the Commission is adopting the soft segmentation plan as specified in the Industry Consensus Agreement and the technical parameters for pulse radars as specified in the Pulse Radar Joint Agreement.

EIRP Limits. In the *NPRM*, the Commission proposed allowing FDS devices to operate at no more than 20

dBm average EIRP and asked parties that opposed those limits to propose appropriate parameters. This proposed EIRP limit is higher than the existing limit in the rules which permits fixed FDS devices to operate at no more than 10 dBm peak EIRP and is also higher than the level requested in the multiple waivers that were granted, but is consistent with ETSI EN 305 550. All of the granted waivers permit operation at 13 dBm peak EIRP to provide greater accuracy and finer resolution imaging than the 10 dBm permitted in the rules. The waiver requesters argued that such higher power is necessary to achieve the necessary accuracy needed to detect small-size targets due to poor signal-to-noise ratio conditions. For example, these radars are intended to detect movement or objects in the sub-millimeter range such as the breathing patterns of a child in a car seat, or as in the case of Leica Geosystems AG, thin cables as small as 2.5 mm in diameter.

Radar proponents strongly supported the proposed 20 dBm average EIRP power limit, claiming it is needed to provide the range and sensing detail necessary for many applications, including those that support health and safety. In addition, many of these parties submitted technical studies purporting to demonstrate that radars operating at higher power than currently allowed in the rules would not cause harmful interference to communication devices in the band. On the other hand, Facebook/Intel Corporation/Qualcomm Incorporated (FB *et al.*) argue that radar operations at the proposed 20 dBm EIRP level greatly increase the radar device's zone of interference to communications devices and significantly increases the likelihood that multiple radar devices will interfere with communications devices, and suggested that the Commission adopts a 13 dBm peak EIRP limit, the same as that granted in the waivers. Finally, Blu Wireless opposed the Commission's proposals, arguing that regulatory changes are unnecessary because the native IEEE 802.11ad protocol can be used to perform radar sensing under the existing rules. However, Google disputed that use of this standard and argued that it would produce unsatisfactory outcomes for many of the anticipated new use cases for reasons including performance, complexity and cost.

The Commission finds that the power limits endorsed in the Industry Consensus Agreement, represents the best way forward. Initial comments demonstrated the parties' contention that the Commission's "one size fits all" approach would not result in a satisfactory product performance to

support anticipated use models. The Commission agrees with the Industry Consensus Agreement that establishing power levels for each band segment of the 57–64 GHz is a better solution for fostering both unlicensed FDS and communications operations in the 60 GHz band while enabling a band sharing approach that can support the capabilities envisioned by the commenters. With respect to the Blu Wireless comments, the Commission notes that operations that were permitted under its existing rules can continue under the revised rules and parties may continue operating under the IEEE 802.11ad protocol if they choose to. However, the Commission finds that there is a strong public benefit in expanding its rules to support the many innovative applications identified by the commenters, and that setting one power limit for all applications is not necessary.

The Commission notes that thorough technical analyses were conducted in 2022 in joint efforts by a Technical Interchange Group (TIG) between the Commission, the National Oceanic and Atmospheric Administration (NOAA), the National Aeronautics and Space Administration (NASA), the Department of the Navy, and the National Telecommunications and Information Administration (NTIA). NTIA supports the TIG's consensus conclusion that 60 GHz FDS/radars operating at ground level with the proposed power limits in the *NPRM* would not result in harmful interference to passive EESS sensors in this band because of the high level of atmospheric attenuation that exists between transmitters on the surface of the Earth and the passive sensors in this frequency band. The Commission observes that in the *NPRM*, the Commission proposed a limit of 20 dBm average EIRP without any limit on the peak EIRP, but sought comment on whether requiring a peak power limit might be necessary. The technical parameters adopted herein place a limit on the peak EIRP, which is a more stringent requirement that enhances the protection of authorized services and minimizes any potential risk that these operations would cause instantaneous harmful interference. Therefore, the Commission is adopting the EIRP limits provided by Industry in the Industry Consensus Agreement and consistent with the analysis provided by the TIG.

Duty Cycle Limit. One area of particular contention throughout the proceeding has been whether, where, and how to impose a duty cycle limit on FDS operations. There are two components to the duty cycle, the percentage or ratio of the time during

which the transmitter is active versus the time during which there is no transmission and the total period or reference interval during which this ratio is considered. The Commission proposed to require the same 10% duty cycle restriction associated with the multiple waiver grants based on a maximum 3.3 ms total transmission time in every 33 ms interval (which was derived from Google's 2018 final agreement with stakeholders from the WLAN communications industry whose technology operates in the 60 GHz spectrum), and sought comment on whether that or some other duty cycle would be most appropriate.

Radar proponents opposed a duty cycle requirement for FDS operations, stating that it would unnecessarily constrain the radars sensor's capabilities. Parties further claim that limiting transmission time to a maximum of 3.3 ms in every 33 ms interval would be problematic for radars, because isochronous chirp transmission is essential to attain proper measurements. Infineon states that relaxing the 10% duty cycle imposed in the waiver orders would allow the use of more transmit (TX) antennas (generating more virtual antennas) with the same number of chirps for each TX antenna, which in turn would allow higher angular resolution, improving and expanding the radars applications that can be provided in automotive, residential, business, and industrial contexts.

On the other hand, FB *et al.* state that even the 10% duty cycle limit on radar operations by itself does not ensure fair coexistence with communications applications, because radars operate with very short pulses (*i.e.*, radar "on times") sent in rapid succession with off times that are at least 90% longer but still unusable by communication systems. These parties argue that communication system transmissions or acknowledgment messages can be either blocked or repeatedly interrupted and corrupted by radars operating with short transmission gaps. The communications proponents advocated for a duty cycle restriction in conjunction with a limit on the duration between radar chirps/pulses (minimum transmitter off-time) to allow for sufficient silent periods during which the spectrum may be accessed—or re-accessed—by communication devices.

In the NPRM, the Commission also observed that certain parties had recommended modifying the duty cycle restriction adopted in the waivers to read that "any radar off-time period between two successive radar pulses that is less than 2 ms shall be

considered 'on time' for purposes of computing the duty cycle." These parties expressed concern that the duty cycle requirement in the waivers, if expanded to the rules, would not promote coexistence with communications operations, including immersive augmented reality/virtual reality/extended reality (AR/VR/XR) applications, which require very high data throughput and very low latency. In their comments, radar interests claimed that such a rule would impair radar deployment and prevent their ability to meaningfully operate in the band. FB *et al.* offered a contrasting perspective, arguing that communication transmissions or acknowledgment messages would either be blocked or repeatedly interrupted if such a standard is not adopted. They claim that under a 10% duty cycle requirement, radars transmitting short bursts of micro/nano-second durations followed by similarly short silent periods during the entire total 33 ms interval would result in too short of a quiet interval for 60 GHz immersive virtual reality communication devices to effectively access the spectrum—even though such radars would be in technical compliance with the rules. This outcome would be especially harmful for the virtual-reality-enabled headsets and eyewear and other real-time audiovisual applications anticipated for 57–64 GHz band, due to the strict latency they need to operate successfully.

Based on the record, the Commission concludes that a uniform duty cycle requirement as proposed in the NPRM will not promote the Commission's interest in expanding the types of unlicensed devices that are able to operate in the 60 GHz band. Both radar and communications interests offer convincing reasons why adopting such a requirement could jeopardize their ability to make productive use of the band. Instead, the Commission notes that the Industry Consensus Agreement provides for frequency band segmentation along with associated EIRP levels and duty cycle/radar transmission off-time solutions that resolves the parties' previous impasse. With respect to pulse radar operations, the duty cycle expressed in the Pulse Radar Joint Agreement provides similar assurances to all parties. Because this duty cycle satisfies the goals the Commission have in the proceeding, the Commission is adopting rules consistent with the provisions of those agreements. Finally, the Commission recognizes that the final rules it is adopting do not

follow the duty cycle requirements associated with the ETSI standards.

Transmitter Conducted Output Power Limit. In the NPRM, the Commission proposed to allow a maximum (peak) conducted output power for FDS devices, consistent with the waivers the Commission had already granted in the band, but also asked whether a transmitter conducted output limit was necessary for 60 GHz transmitters, including communications and radar devices. The Commission also sought input on whether it should consider adopting an average transmitter conducted output power limit and what impact this would have on the different types of FDS devices (*e.g.*, FMCW, pulse, etc.) envisioned for the band.

The Commission finds that, based on the technical analyses submitted into the record, radars operating in this band typically use a relatively wide antenna beamwidth to detect scattered small objects and fine movements (*e.g.*, chest movements on a patient, hand gestures, obstructive objects, etc.). The Commission agrees with Valeo and Vayyar that modern chip technologies for 60 GHz devices incorporate antenna arrays such that the transmitter output port is difficult to access and thus output power is difficult to directly measure. In such cases, transmitter conducted output power limits are typically calculated for compliance purposes based on the applicant's provided antenna gain information, thereby making such a requirement difficult to enforce. The Commission also observes that the Industry Consensus Agreement suggests completely removing the conducted output power limit from FDS devices operating in specific segments of the 57–64 GHz band. The Commission notes that the rules must address use cases that involve FDS devices that employ wide beamwidth antennas over the entire 57–71 GHz band, in addition to those FDS devices that limit their operation to certain portions of the band. For these reasons, the Commission declines to specify a conducted output power limit in the rules it is adopting for frequency-segmented FDS devices; however, to limit potential harmful interference, the Commission continues to maintain the conducted output power limit for devices that operate over the entire 57–71 GHz band. Similarly, the Commission declines to adopt an antenna gain requirement for FDS devices in lieu of a conducted power limit as such a requirement would result in more complex measurements.

Power Spectral Density Limit. The existing rules do not restrict the power

spectral density for 60 GHz devices. In the *NPRM*, the Commission proposed to require a 13 dBm/MHz EIRP power spectral density on FDS devices, to be consistent with the ETSI limit. This is the same restriction placed on Google and other parties operating FDS devices pursuant to Commission-issued waivers. However, the Commission sought input on the ramifications of not adopting a PSD limit, and instead, relying on the EIRP limits to avoid harmful interference. The Commission notes that a power spectral density limit is not well matched to the nature of radar transmissions—which are in bursts, or chirps. Accordingly, the Commission finds that adopting a power spectral density limit is unnecessary. Commenters have pointed out that while the Commission proposed such a limit with the primary intent to be consistent with ETSI, subsequent changes in the EU regulations have made the Commission's proposal incompatible with that standard. The Commission also agrees with Google that a power spectral density limit may be too restrictive for certain radar use cases with narrow bandwidths. The Commission therefore will not adopt this requirement into the final rules.

Use of Spectrum Sensing Technologies. Although the Commission did not suggest allowing FDS operation at the proposed higher power limits throughout the entire 57–71 GHz band in the *NPRM*, it noted that the Technical Advisory Committee (TAC) suggested the possibility of allowing radars that incorporate a sensing technology such as listen-before-talk (LBT) to operate at the same emission limits as WLAN devices in the band, *i.e.*, 40 dBm EIRP and 27 dBm transmitter conducted output power. Commenters had different reactions to the concept. Acconeer, for example, argued that LBT generally does not provide efficient coexistence among different systems in high millimeter wave frequencies such as the 60 GHz band, where transmissions have high directivity. WISPA further states that LBT would only complicate devices and add latency, driving up equipment costs and forcing a re-design and retrofitting of equipment already deployed in hundreds, if not thousands, of locations. Other parties suggested the Commission could allow FDS devices to operate with power limits as high as those accorded to communication devices (*i.e.*, up to 40 dBm EIRP) if they incorporated spectrum sharing techniques.

Given the Commission's decision to adopt final rules as described above, the Commission sees no need to further pursue the use of spectrum sensing

technologies in the 60 GHz band at this time. Nothing in the Commission's decision should be read to preclude standards bodies from developing industry voluntary standards for consideration by the Commission if they determine it is appropriate to do so.

Operation On-Board Aircraft

In the *NPRM*, the Commission stated that it did not anticipate altering the existing restrictions in § 15.255(b) of the rules relating to the use of 60 GHz band unlicensed devices on-board aircraft, but nevertheless sought comment as to whether it should expand the situations where such use is permissible. These restrictions prohibit operation on-board aircraft, except on aircraft that are equipped with a high RF attenuation body (*e.g.*, commercial airliners) while forming “closed exclusive on-board communication networks within the aircraft,” such as entertainment systems that deliver movies and music to passengers on-board commercial aircraft. The rule specifically prohibits 60 GHz transmitters from operating on unmanned aircraft, because these types of aircraft do not provide substantial RF shielding. The Commission observed that it has only authorized 60 GHz radars to operate on board aircraft beyond the uses permitted in the rules via waiver in two limited situations in conjunction with specific use cases.

Operation On-Board Unmanned Aircraft (UA)

In its comments, Amazon requests that the final rules allow FDS device use cases on board aircraft in the 60–64 GHz segment of the 60 GHz band for unmanned aircraft. Amazon states that it would like to deploy 60 GHz radar on unmanned aircraft (UA) for obstacle avoidance and situational awareness similar to the use cases the Commission have previously permitted via waiver to Leica Geosystems AG. Amazon states that using 60 GHz radars on drones would enable it and other companies to develop and deploy Near Surround Detection (NSD) systems to enhance the drone's ability to sense and avoid persons and obstacles in and near its ascent and descent path, thereby improving aviation safety as NSD systems provide situational awareness that help prevent collisions. Amazon further claims that authorized drone operations conducted below 121.92 meters (400 feet) above ground level (AGL) in the 60–64 GHz band can coexist with, and will not cause harmful interference to, adjacent Earth-Exploration Satellite Service (EESS) and Radio Astronomy Service (RAS) operations.

Over the course of the rulemaking, the Commission have seen increasing interest in, and support of, Amazon's position. For instance, the General Aviation Manufacturers Association (GAMA) believes that airborne FDS radars operating in the 60 GHz band will not cause harmful interference to other spectrum users, arguing that “radar devices in this frequency range operate at a relatively low EIRP; the nearest frequency band that is used on aircraft is 24 GHz; and there is existing communications equipment using this same band at the same power where no harmful interference has been observed.” The Consumer Technology Association, CTIA, Information Technology Industry Council (ITI), NetChoice, TechNet and the U.S. Chamber of Commerce, in a joint comment, assert that allowing the use of this band for low-altitude drone operations would enable systems that sense and avoid obstacles and provide situational awareness to develop; these parties argue that this would help enhance aviation safety and reduce the risk to both people and property on the ground and other airspace users.

The Commission finds that the rules could accommodate 60 GHz FDS operations on UA provided that these operations are limited to the 60–64 GHz sub-band while airborne at low altitudes (less than 121.92 meters (400 feet) above ground level (AGL)) without increasing the potential for interference to authorized services in this band. As the Commission stated in the Leica Waiver Order, limiting operation to the 60–64 GHz frequency band (instead of the entire 57–71 GHz band) avoids the passive EESS band by providing a natural 700-megahertz guard band between the EESS passive service at 57–59.3 GHz and the device's operating band at 60–64 GHz, thus protecting EESS users. The Commission further stated that “[r]egarding RAS, for which there is no allocation in the 57–71 GHz band, its strict out-of-band limits in the rules already prevent any increase in potential harmful interference caused by the device's operation.” The Commission also observed that the high oxygen attenuation at frequencies around 60 GHz, added to the fact that the UA is mostly in motion, will serve to mitigate any potential for harmful interference to other users. The Commission further noted that, because fixed outdoor point-to-point 60 GHz transmitters generally use narrow antenna beams, the likelihood that a UA equipped with a 60 GHz radar would be located within the antenna beamwidth of these transmitters is very small,

thereby mitigating any potential increase in harmful interference. The Commission agrees with the logic of these prior assessments, and based on the absence of interference complaints from the Leica deployments since 2020 and support in the record, the Commission finds that 60–64 GHz FDS devices can operate on UA at altitudes less than 121.92 meters (400 feet) above ground level without increasing the potential for harmful interference to authorized services. The Commission also notes that the Federal Aviation Administration (FAA) part 107 rules limit operation of small unmanned aircraft to 121.92 meters (400 feet) AGL. The rules the Commission is adopting herein address the operation of unlicensed FDS devices in the 60 GHz band that may be used on UA and do not alter any obligations under applicable FAA regulations.

Power Levels. With respect to power levels for FDS devices operating on UA, the Commission notes that the Industry Consensus Agreement proposes such operations be limited to 20 dBm peak EIRP with a 50% duty cycle. These EIRP and duty cycle limits are consistent with those permitted in the Leica Waiver Order, and the 60–64 GHz frequency range selected for FDS devices operating on UA avoids the EESS passive band at 57–59.3 GHz with a 700-megahertz guard band, consistent with NTIA's support of the TIG's efforts regarding FDS co-channel use of the EESS band. Accordingly, the Commission is authorizing these parameters for 60–64 GHz FDS operating on-board UA, limited to flying altitudes less than 121.92 meters (400 feet) above ground level. Operations on UA at these power levels will enable more expansive use to deliver new innovative services to the American public without increasing the potential of causing harmful interference to incumbent users.

Operation On-Board Aircraft Other Than UA

As indicated above, § 15.255(b)(2) prohibits operation on aircraft, unless the device is part of “closed exclusive on-board communication networks within the aircraft.” However, in 2018, the Commission waived this rule to allow the Google Soli radar incorporated into a smartphone to operate on aircraft without being part of the aircraft's communication network. In the *NPRM*, the Commission noted that compliance options exist for portable electronic devices that may be brought aboard airplanes; these could include, for example, requiring “airplane mode” to be activated during flight.

CORF argues that there is no publicly available data on the effect that 60 GHz networking devices on aircraft have on EESS remote sensing in the 57–59.3 GHz band. Therefore, CORF believes it is unreasonable to loosen the standards and allow additional devices such as 60 GHz radars on aircraft. The Frequency Allocation on Remote Sensing (FARS) Committee agrees with CORF's concerns about the accuracy of Google's report on the total reflection of radar signals off of an aircraft window and the absence in Google's report of any discussion regarding the effect of radar signals reflections off of the aircraft wings, and requests that the Commission does not expand airborne use of radars. Conversely, Google states that “the 2018 Google study did take the effect of radar reflections off of airplane wings into account.” Google argues that the Soli radar emissions at issue in Google's study are beamed out of the front of the phone; therefore, a user would have to point the phone out of the aircraft window and downward. In such a scenario, “the user would have difficulty viewing the screen in this configuration, let alone using hand gestures to control any interaction with content on the screen.”

As indicated *supra*, NTIA supports the consensus conclusion of the TIG that the high level of atmospheric attenuation between 60 GHz FDS/radars operating at ground level and the passive EESS sensors operating in the 57.0–59.3 GHz band would not result in any harmful interference to EESS sensors in this band. However, NTIA requests that, if alternate deployment scenarios are considered in the future whereby the atmospheric absorption loss may be different (particularly, aeronautical deployments), further analysis be conducted.

The Commission recognizes and supports the vital interest in protecting the passive EESS services in the 57.0–59.3 GHz band. The Commission also acknowledges that, consistent with NTIA's request, further analysis is being undertaken at this time by the TIG regarding the potential to deploy radars on aircraft in this band. The Commission therefore will only allow FDS/radar operation on aircraft other than UA in the 59.3–71 GHz band at this time, limited to installations within personal portable electronic devices such as smartphones, laptop computers, etc. These radar operations would not need to be part of the on-board communication system within the aircraft.

Implementation Considerations—Compliance Testing

In the *NPRM*, the Commission proposed to exempt FMCW and other similar swept-frequency radars from the § 15.31(c) requirement to stop the frequency sweep when measuring the relevant technical parameters. The Commission explained that stopping the sweep is physically impractical for most of these devices and can result in inaccurate measurements. In addition, the Commission proposed to remove the § 15.255(c)(4) requirement to use an RF detector with a detection bandwidth that encompasses the 57–71 GHz frequency range for performing peak power measurements. The Commission stated that this requirement has been superseded by the more recent inclusion of § 15.255(i), which sets out a flexible approach toward measurement that can be adapted more effectively as device technology and test instrumentation evolve. Finally, the Commission proposed to specify that the provision of § 15.35(c) that requires calculating average field strength over a complete pulse train or 100 ms is not applicable to pulsed or burst radars that operate in the 60 GHz band. The Commission explained that this measurement requirement was originally designed for low frequency pulse-code modulated devices such as garage door openers and would not be appropriate for high frequency radars.

Bosch proposes that instead of measuring transmitter conducted output power, the Commission should consider the equivalent requirement of the total radiated power (TRP), which may be considered and specified as described in ETSI EN 303 883–1 Version 1.2.1 clause 5.6. Bosch argues that this is the only feasible option for measuring the total radiated power of FDS devices. Acconeer argues that using a 20 dB bandwidth to measure wideband pulse systems is challenging, because the low spectral density is usually below the noise floor of the measurement equipment. Additionally, Acconeer proposes that the same method used for evaluating the bandwidth of ultra-wideband (UWB) devices in the 3.1–10.6 GHz band be applied to radar devices in the 60 GHz band. Infineon states that, given that the goal is to establish an average EIRP for purposes of increased compatibility with other 60 GHz Band devices, and different devices may have different cycle periods, a more objective standard that is uniform over all affected radar and FDS devices is appropriate; Infineon proposes that an absolute temporal measure be used, specifically 100 ms. Valeo suggests that

transmission bandwidth should be expressed as a measured occupied bandwidth. If the transmission bandwidth would be specified only by the chirp specification, it could happen that a chirp timing constraint (*e.g.*, maximum chirp slope) may occur. Valeo suggests that the occupied bandwidth be measured, including the overshoots caused by the slow rate of the chirp and the return ramp. Vayyar supports removing the requirement that the sweep is stopped during parts of the compliance testing. The Auto Innovators recommend that compliance measurements should allow evaluation over at least five repetition cycles of the equipment under test (EUT), as it believes this will simplify testing.

The Commission finds that exempting FMCW and other swept-frequency radars from § 15.31(c) is necessary for performing meaningful compliance measurements. In addition, the Commission finds it appropriate to remove § 15.255(c)(4). This rule section was intended to address legacy spectrum analyzers' limited capability for measuring radar waveforms at these frequencies, which is no longer an issue with modern spectrum analyzers. Additionally, the anticipated FMCW and pulsed radar waveforms will likely exceed the 10 MHz video bandwidth specification, resulting in some degree of video averaging. Further, § 15.255(c)(4) specifies that average emission measurements be performed only over a period of active transmission. Retaining such a requirement will prohibit application of a duty cycle correction in determining the average radar transmit power. Finally, the Commission finds that the provision of § 15.35(c) that requires calculating average field strength over a complete pulse train or 100 ms is not applicable to FMCW or to pulsed radar in the 60 GHz band. The Commission disagrees with Bosch's suggestion to consider TRP instead of EIRP. TRP measurements require substantial sampling over the 4π steradian space, thus leading to significant complications in performing compliance measurements. Furthermore, potential interference is essentially driven by the maximum EIRP in the direction of the victim, and due to the highly directional nature of radars, EIRP measurement is correspondingly a more appropriate and efficient compliance measurement. With respect to transmission bandwidth, the Commission agrees with Valeo that the occupied bandwidth be measured as part of the compliance measurements. Doing so will ensure fidelity to the

requirements specified in § 2.1049 as required by § 15.201(b). The Commission disagrees with Acconeer's justification for applying the same method used for evaluating the bandwidth of UWB devices to radar bandwidth measurements. UWB devices are held to a very low fundamental power level and thus warrant bandwidth measurement based upon the 10 dB down points to accommodate measurement sensitivity challenges. The higher power limits provided to 60 GHz radar will permit the measurement of occupied bandwidth, even in a radiated measurement, with adequate sensitivity.

Operation of Equipment Subject to Prior Waivers and Transition Provisions

As noted above, a number of parties have been granted waivers of certain provisions of § 15.255 to permit operation of innovative radar devices in the 60 GHz band. In the *NPRM*, the Commission noted that, to the extent that the rules are modified to expand unlicensed FDS device operations in the 60 GHz band, all future 60 GHz FDS operations would be conducted subject to the Commission's modified rules. The Commission proposed to terminate all previously granted 60 GHz FDS waivers and FDS device manufacturers would be expected to conform their operations to its rules as revised.

Most commenters agree that if the adopted 60 GHz technical and operational rules are more stringent than existing FDS waiver conditions, the Commission should grandfather the existing, more flexible waivers for approved radar devices or, at minimum, provide a reasonable transition period for waiver holders to bring their technology into compliance with more rigorous regulatory standards. The Industry Consensus Agreement suggests a six-month transition period applicable only to new certifications under the terms of the waivers. The Pulse Radar Joint Agreement suggested that Acconeer be permitted to continue to market and sell pulse radars under its existing waiver for two years after the effective date of new rules.

The Commission agrees that it is appropriate to afford parties that are operating unlicensed 60 GHz band FDS equipment under waivers a period of time to transition to the new rules and to sell products that they have produced under the terms of their waivers, but the Commission also wants to encourage parties to begin producing equipment that complies with the new rules in a timely manner, notwithstanding whether their existing waivers are more restrictive than the newly adopted rules.

The Industry Consensus Agreement shows that manufacturers are comfortable that a relatively short, six-month, period is a realistic and manageable transition time period. The Commission agrees that this is an appropriate timeframe, given that it is important to begin the transition to the new rules as soon as practicable. Accordingly, in these cases where a waiver has previously been granted, the Commission will require that all new FDS/radar devices that are approved by Telecommunication Certification Bodies (TCBs) beginning six months after the effective date of the rules adopted in the proceeding must comply with the new rules. The Commission terminates the 60 GHz band waivers that are currently in effect at the conclusion of this transition period. However, the Commission specifies that so long as a 60 GHz FDS/radar does not cause harmful interference, it can continue to operate until its natural replacement. Any equipment currently operating pursuant to a waiver that is subsequently modified, however, must be brought into compliance with the new rules.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 302, 303(b), (c), (e), (f), (r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302a, 303(b), (c), (e), (f), (r), 307, this document *is hereby adopted*.

It is further ordered that part 15 of the Commission's rules *is amended* as specified in below, and such rule amendments *will become effective* 30 days after the date of publication in the **Federal Register**.

It is further ordered that the 60 GHz waivers currently in effect, as granted in DA 18-1308, DA 20-795, DA 21-407, DA 21-811, DA 21-812, DA 21-813, DA 21-814, DA 21-815, and DA 21-816 are *terminated* effective six months after the effective date of the rule amendments adopted herein unless expressly extended by the Chief, Office of Engineering and Technology. However, a device that was certified to be marketed and to operate under waiver on or before six months after the effective date of the rule amendments adopted herein *may continue to be marketed and operate* in accordance with the terms of its certification so long as the device does not cause harmful interference.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Report and Order*, including the

Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

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

List of Subjects in 47 CFR Part 15

Communications equipment,
Computer technology, Field Disturbance
Sensor, Radar, Radio, and Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Amend § 15.3 by revising paragraph (l) to read as follows:

§ 15.3 Definitions.

* * * * *

(l) *Field disturbance sensor.* A device that establishes a radio frequency field in its vicinity and detects changes in that field resulting from the movement of persons or objects within its range. A radar operating pursuant to the definition for radiodetermination station in § 2.1 of this chapter is an example of a field disturbance sensor.

* * * * *

■ 3. Amend § 15.31 by revising paragraph (c) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(c) Except as otherwise indicated in §§ 15.255 and 15.256, for swept frequency equipment, measurements shall be made with the frequency sweep stopped at those frequencies chosen for the measurements to be reported.

* * * * *

■ 4. Amend § 15.35 by revising paragraph (c) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(c) Unless otherwise specified, *e.g.*, §§ 15.255 and 15.256(l)(5), when the radiated emission limits are expressed

in terms of the average value of the emission, and pulsed operation is employed, the measurement field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative (provided the transmitter operates for longer than 0.1 seconds) or in cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval during which the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for certification or shall be retained in the measurement data file for equipment subject to Supplier's Declaration of Conformity.

■ 5. Amend § 15.37 by adding paragraph (r) to read as follows:

§ 15.37 Transition provisions for compliance with this part.

* * * * *

(r) Field disturbance sensor/radar devices being marketed or operating in the frequency band 57–64 GHz approved by Telecommunication Certification Bodies as being in compliance with previously adopted rules or waivers thereof on or before [six months after the effective date of the rules] may continue to be marketed and operate in accordance with their certifications. All other field disturbance sensor/radar devices shall comply with the requirements in § 15.255.

■ 6. Amend § 15.255 by:

■ a. Removing paragraphs (a)(1) and (2) and revising paragraph (a);

■ b. Adding a subject heading to the introductory text of paragraph (b);

■ c. Revising paragraph (b)(2)(ii);

■ d. Adding paragraphs (b)(2)(iii) and (b)(3);

■ e. Revising the introductory text of paragraphs (c) and (c)(1) and paragraphs (c)(2) through (4);

■ f. Revising paragraph (d) introductory text to be an italicized subject heading;

■ g. Revising paragraph (e) introductory text, (e)(1) and (2), and removing paragraph (e)(3);

■ h. Adding a subject heading to paragraphs (g) and (h); and

■ i. Revising paragraph (i).

The revisions and additions read as follows:

§ 15.255 Operation within the band 57–71 GHz.

(a) *General.* Operation under the provisions of this section is not permitted for equipment used on satellites.

(b) *Operation on aircraft.* * * *

(2) * * *

(ii) Except as permitted in paragraph (b)(3) of this section, equipment shall not be used on aircraft where there is little attenuation of RF signals by the body/fuselage of the aircraft.

(iii) Field disturbance sensor/radar devices may only operate in the frequency band 59.3–71.0 GHz while installed in passengers' personal portable electronic equipment (*e.g.*, smartphones, tablets) and shall comply with paragraph (b)(2)(i) of this section, and relevant requirements of paragraphs (c)(2) through (c)(4) of this section.

(3) Field disturbance sensors/radar devices deployed on unmanned aircraft may operate within the frequency band 60–64 GHz, provided that the transmitter not exceed 20 dBm peak EIRP. The sum of continuous transmitter off-times of at least two milliseconds shall equal at least 16.5 milliseconds within any contiguous interval of 33 milliseconds. Operation shall be limited to a maximum of 121.92 meters (400 feet) above ground level.

(c) *Radiated power limits.* Within the 57–71 GHz band, emission levels shall not exceed the following equivalent isotropically radiated power (EIRP):

(1) Devices other than field disturbance sensors shall comply with one of the following power limits, as measured during the transmit interval:

* * * * *

(2) Field disturbance sensors/radars shall not exceed –10 dBm peak conducted output power and 10 dBm peak EIRP except that field disturbance sensors/radars that limit their operation to all or part of the specified frequency band may operate without being subject to a transmitter conducted output power limit if they operate in compliance with paragraph (b)(3) of this section or with one or more of the provisions below:

(i) *57.0–59.4 GHz:* the peak EIRP level shall not exceed 20 dBm for indoor operation or 30 dBm for outdoor operation;

(ii) *57.0–61.56 GHz:* the peak EIRP shall not exceed 3 dBm except that the peak EIRP shall not exceed 20 dBm if the sum of continuous transmitter off-times of at least two milliseconds equals at least 16.5 milliseconds within any contiguous interval of 33 milliseconds;

(iii) *57.0–64.0 GHz:*

(A) The peak EIRP shall not exceed 14 dBm, and the sum of continuous transmitter off-times of at least two milliseconds shall equal at least 25.5 milliseconds within any contiguous interval of 33 milliseconds, except as specific in paragraph (c)(2)(iii)(B) of this section;

(B) The peak EIRP shall not exceed 20 dBm, and the sum of continuous transmitter off-times of at least two milliseconds shall equal at least 16.5 milliseconds within any contiguous interval of 33 milliseconds when operated outdoors:

(1) As part of a temporary or permanently fixed application; or

(2) When being used in vehicular applications to perform specific tasks of moving something or someone, except for in-cabin applications;

(iv) A field disturbance sensor may operate in any of the modes in the above sub-sections so long as the device operates in only one mode at any time and does so for at least 33 milliseconds before switching to another mode.

(v) *61.0–61.5 GHz*: For field disturbance sensors/radars that occupy 500 MHz bandwidth or less that are contained wholly within the frequency band 61.0–61.5 GHz, the average power of any emission, measured during the transmit interval, shall not exceed 40 dBm, and the peak power of any emission shall not exceed 43 dBm. In addition, the average power of any emission outside of the 61.0–61.5 GHz band, measured during the transmit interval, but still within the 57–71 GHz band, shall not exceed 10 dBm, and the peak power of any emission shall not exceed 13 dBm.

(3) For pulsed field disturbance sensors/radars operating in the 57–64 GHz band that have a maximum pulse duration of 6 ns, the average EIRP shall not exceed 13 dBm and the transmit duty cycle shall not exceed 10% during

any 0.3 μ s time window. In addition, the average integrated EIRP within the frequency band 61.5–64.0 GHz shall not exceed 5 dBm in any 0.3 μ s time window. Peak emissions shall not exceed 20 dB above the maximum permitted average emission limit applicable to the equipment under test. The radar bandwidth is the frequency band bounded by the points that are 10 dB below the highest radiated emission, as based on the complete transmission system including the antenna.

(4) The provisions in § 15.35(b) and (c) that require emissions to be averaged over a 100 millisecond period and that limits the peak power to 20 dB above the average limit do not apply to devices operating under paragraphs (c)(2) and (3) of this section.

(d) *Limits on spurious emissions.*

* * *

(e) *Limits on transmitter conducted output power.*

(1) Except as specified in paragraph (e)(2) of this section, the peak transmitter conducted output power of devices other than field disturbance sensors/radars shall not exceed 500 mW. Depending on the gain of the antenna, it may be necessary to operate the intentional radiator using a lower peak transmitter output power in order to comply with the EIRP limits specified in paragraph (c) of this section.

(2) Devices other than field disturbance sensors/radars with an emission bandwidth of less than 100 megahertz must limit their peak transmitter conducted output power to the product of 500 mW times their

emission bandwidth divided by 100 megahertz. For the purposes of this paragraph, emission bandwidth is defined as the instantaneous frequency range occupied by a steady state radiated signal with modulation, outside which the radiated power spectral density never exceeds 6 dB below the maximum radiated power spectral density in the band, as measured with a 100 kilohertz resolution bandwidth spectrum analyzer. The center frequency must be stationary during the measurement interval, even if not stationary during normal operation (e.g., for frequency hopping devices).

* * * * *

(g) *Radio frequency radiation exposure.* * * *

(h) *Group installation.* * * *

(i) *Compliance measurement.* Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

(1) For purposes of demonstrating compliance with this section, corrections to the transmitter conducted output power may be made due to the antenna and circuit loss.

(2) Compliance measurements of frequency-agile field disturbance sensors/radars shall be performed with any related frequency sweep, step, or hop function activated.

[FR Doc. 2023–15367 Filed 7–21–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 88, No. 140

Monday, July 24, 2023

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Doc. No. 23–J–0067; AMS–DA–23–0031]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Marketing Agreements and Orders

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

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider and take evidence on proposals to amend the pricing formulas in the 11 Federal Milk Marketing Orders (FMMOs).

DATES: The hearing will convene at 9:00 a.m. ET on Wednesday, August 23, 2023.

ADDRESSES: The hearing will be held at the 502 East Event Centre, 502 East

Carmel Drive, Carmel, Indiana 46032. Telephone (317) 843–1234.

Copies of this notice of hearing may be procured from the Market Administrator of any of the 11 marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue SW, Washington, DC 20250–9200.

Copies of the notice of hearing and the corresponding hearing record will be made available online on the Hearing website: <https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing>.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0225—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225, (202) 720–7311, email: Erin.Taylor@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact FMMOHearing@usda.gov a minimum of five days before the start of the hearing.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of 5 U.S.C. 556 and 557 and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the 502 East Event Centre, 502 East Carmel Drive, Carmel,

Indiana, beginning Wednesday, August 23, 2023, at 9:00 a.m. ET, with respect to proposed amendments to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure governing amendments to marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions related to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof to the marketing orders.

Actions under the FMMO program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a “small business” if it has an annual gross revenue of \$3.75 million or less, and a dairy products manufacturer is a “small business” if it has no more than the number of employees listed in the chart below (13 CFR 121.201):

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,000
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750

Most parties subject to a FMMO are considered a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act to promote 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.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order,

any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the United States District Court in any district in which the handler is an inhabitant or has its principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an appeal is filed not later than 20 days after the ruling is issued.

Testimony Guidelines

Each witness will have 60 minutes to present their testimony and have direct examination. If a witness's prepared testimony and direct examination would be expected to exceed 60 minutes, the witness should submit in advance a written prepared statement as an exhibit and present a summary of that statement during their allotted time. This summary does not need to be submitted in advance, but paper copies should be provided the day of submission in accordance with the exhibit guidelines outlined below, if the summary is in written form. The full written prepared statement should be submitted as an exhibit in advance of testifying according to the Exhibit Submission Schedule found on the Hearing website. There will be no time limit on cross-examination or re-direct.

Dairy farmers may testify in person at any time during the hearing, or virtually via Zoom on Fridays. Starting Friday, September 1, 2023, and each Friday thereafter during the hearing, beginning at 12:00 p.m. ET, ten (10) time slots will be available for dairy farmers to testify virtually. Dairy farmers must pre-register to testify virtually, as outlined in the instructions provided on the Hearing website. Each registered dairy farmer will be allocated up to 15 minutes to present testimony. Additional time may be requested. There will be no time limit on cross-examination. Dairy farmers testifying, either in person or virtually, are not required to pre-submit testimony or exhibits.

Exhibit Guidelines

Any party with a proposal noticed herein, when participating as a witness, must enter exhibits related to testimony in advance, according to an Exhibit Submission Schedule posted on the Hearing website. Prepared exhibits must be submitted electronically to FMMOHearing@usda.gov. Submitted exhibits will be posted online within 2 business days following the submission deadline. Fifteen (15) paper copies of each exhibit submitted in advance should also be submitted at the hearing to the designated USDA official. Four of the 15 copies will be submitted to the Administrative Law Judge for the Official Record, and the remaining copies will be distributed to USDA staff.

Interested parties entering exhibits during the hearing, not in advance, must provide 15 paper copies to the designated USDA official, plus additional paper copies for distribution to other hearing participants and interested parties. In order to submit

exhibits into the record, exhibits should be sent to FMMOHearing@usda.gov by 8:00 a.m. ET on the day of scheduled testimony.

All exhibits should be prenumbered in the following format: "[Submitter Name or Acronym]—Number" on the top righthand corner of each page. For example, "USDA–1." Each exhibit must include a page number "X of Y" on the bottom righthand corner. For example, "1 of 100." Each exhibit will be given an Official Exhibit Number upon presentation.

Individual dairy farmers are not subject to the Exhibit Guidelines.

Data Requests

Interested parties requesting USDA data to be used at the hearing must submit requests via FMMOHearing@usda.gov by August 11, 2023.

Hearing Schedule

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. The hearing will be in recess and will not convene on September 4, 2023, for the Labor Day holiday or on September 21–22, 2023. If necessary, in addition to the dates listed, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the Hearing website.

Testimony is invited on the following proposals or appropriate modifications to such proposals. Proposed regulatory text may be found in a supplemental document on the Hearing website.

Testimony will be heard by subject area, in the following order:

1. Milk Composition
 - Proposal 1: Submitted by the National Milk Producers Federation*
 - Proposal 2: Submitted by National All-Jersey Inc.*
2. Surveyed Commodity Products
 - Proposal 3: Submitted by the National Milk Producers Federation*
 - Proposal 4: Submitted by the American Farm Bureau Federation*
 - Proposal 5: Submitted by the American Farm Bureau Federation*
 - Proposal 6: Submitted by the California Dairy Campaign*
3. Class III and Class IV Formula Factors
 - Proposal 7: Submitted by the National Milk Producers Federation*
 - Proposal 8: Submitted by the Wisconsin Cheese Makers Association*
 - Proposal 9: Submitted by the International Dairy Foods Association*
 - Proposal 10: Submitted by Select Milk Producers, Inc.*
 - Proposal 11: Submitted by Select Milk*

Producers, Inc.

Proposal 12: Submitted by Select Milk Producers, Inc.

4. Base Class I Skim Milk Price
Proposal 13: Submitted by the National Milk Producers Federation

Proposal 14: Submitted by the International Dairy Foods Association

Proposal 15: Submitted by the Milk Innovation Group

Proposal 16: Submitted by Edge Dairy Farmer Cooperative

Proposal 17: Submitted by Edge Dairy Farmer Cooperative

Proposal 18: Submitted by the American Farm Bureau Federation

5. Class I and Class II Differentials
Proposal 19: Submitted by the National Milk Producers Federation

Proposal 20: Submitted by the Milk Innovation Group

Proposal 21: Submitted by the American Farm Bureau

6. AMS Proposal
Proposal 22: Submitted by Dairy Programs, Agricultural Marketing Service

Summary of Proposals

Milk Composition

Proposal 1: Submitted by the National Milk Producers Federation

This proposal seeks to amend the milk component factors in the Class III and Class IV skim milk price formulas. Specifically, the proposal seeks to increase the skim component factors to equal the weighted average nonfat solids, true protein, and other solids factors for milk pooled on Federal orders using data for the three years prior to implementation, with a 12-month implementation lag. The factors are proposed to be updated as follows:

- *Nonfat solids*: from 9.0 to 9.41 per hundredweight of Class IV skim milk;
- *Protein*: from 3.1 to 3.39 per hundredweight of Class III skim milk;

and

- *Other solids*: from 5.9 to 6.02 per hundredweight of Class III skim milk.

The proponent also proposes the skim component factors be updated no less than every three years, but only once the weighted average nonfat solids component for the prior three years changes by at least 0.07 percentage points. The updated component values would be calculated, and, if a change is warranted, formally announced in February of such year, with the implementation of such changes occurring March 1 of the following year.

Proposal 2: Submitted by National All-Jersey Inc.

This proposal seeks to amend the milk component factors in the Class III

and Class IV skim milk price formulas. The proposal seeks to update the factors annually using the previous year's weighted average calculations, with a 12-month implementation lag.

Surveyed Commodity Products

Proposal 3: Submitted by the National Milk Producers Federation

This proposal seeks to eliminate the Cheddar cheese 500-pound barrel price series from protein price formula.

Proposal 4: Submitted by the American Farm Bureau Federation

This proposal seeks to add 640-pound Cheddar cheese blocks to the protein price formula.

Proposal 5: Submitted by the American Farm Bureau Federation

This proposal seeks to add unsalted butter to the butterfat and protein price formulas.

Proposal 6: Submitted by the California Dairy Campaign

This proposal seeks to add mozzarella to the protein price formula.

Class III and Class IV Formula Factors

Proposal 7: Submitted by the National Milk Producers Federation

This proposal seeks to amend the manufacturing cost (make) allowances found in the four component price formulas. The proposal includes the following increases:

Butterfat: from \$0.1715 to \$0.2100 per pound of butter,

Nonfat solids: from \$0.1678 to \$0.2100 per pound of nonfat dry milk (NFD),

Protein: from \$0.2003 to \$0.2400 per pound of Cheddar cheese,

Other solids: from \$0.1991 to \$0.2300 per pound of dry whey.

The requested changes are equivalent to an increase of \$0.0385 per pound in the butter make allowance, an increase of \$0.0422 per pound in the nonfat dry milk make allowance, an increase of \$0.0397 per pound in the Cheddar cheese make allowance, and an increase of \$0.0309 per pound in the dry whey make allowance.

Proposal 8: Submitted by the Wisconsin Cheese Makers Association

This proposal seeks to update the current make allowances with a 4-year phase-in implementation schedule.

PROPOSED MAKE ALLOWANCE LEVELS

Product	Current	Year 1	Year 2	Year 3	Year 4
Cheese	\$0.2003	\$0.2422	\$0.2561	\$0.2701	\$0.2840
Whey	0.1991	0.2582	0.2778	0.2976	0.3172
NFDM	0.1678	0.2198	0.2370	0.2544	0.2716
Butter	0.1715	0.2251	0.2428	0.2607	0.2785

This proposal also proposes not to adopt any of the increases described above if, prior to January 1 of that year, USDA has been provided authority and funding to conduct audited dairy product cost studies of all

manufacturers of products used to set Class III and Class IV prices, has promulgated regulations implementing that authority, and has adopted make allowances pursuant thereto.

Proposal 9: Submitted by the International Dairy Foods Association

This proposal seeks to update the current make allowances with a 4-year phase-in implementation schedule.

PROPOSED MAKE ALLOWANCE LEVELS

Product	Current	Year 1	Year 2	Year 3	Year 4
Cheese	\$0.2003	\$0.2422	\$0.2561	\$0.2701	\$0.2840
Whey	0.1991	0.2582	0.2778	0.2976	0.3172
NFDM	0.1678	0.2198	0.2370	0.2544	0.2716
Butter	0.1715	0.2251	0.2428	0.2607	0.2785

This proposal also proposes not to adopt any of the increases described above if, prior to January 1 of that year, USDA has been provided authority and funding to conduct audited dairy product cost studies of all manufacturers of products used to set Class III and Class IV prices, has promulgated regulations implementing that authority, and has adopted make allowances pursuant thereto.

Proposal 10: Submitted by Select Milk Producers, Inc.

This proposal seeks to increase the butterfat recovery factor in the Class III price formula to 93 percent, which would necessitate a corresponding

increase in the butterfat yield in cheese to 1.624.

Proposal 11: Submitted by Select Milk Producers, Inc.

This proposal seeks to update the specified yield factors to reflect actual farm-to-plant shrink. The yield factors for nonfat solids and other solids would remain unchanged. The proposed yield factors are:

Butterfat: 1.22;

Protein value in cheese: 1.386; and

Butterfat value in cheese: 1.582.

Proposal 12: Submitted by Select Milk Producers, Inc.

This proposal seeks to update the nonfat solids factor from 0.99 to 1.03.

Base Class I Skim Milk Price

Proposal 13: Submitted by the National Milk Producers Federation

This proposal seeks to amend the base Class I skim milk price in all Federal orders. Specifically, the proposal seeks to replace the simple average of the Class III and Class IV Advanced Skim Milk pricing factors with the "higher of" the two factors and remove the additional \$0.74 per hundredweight.

Proposal 14: Submitted by the International Dairy Foods Association

This proposal seeks to amend the base Class I skim milk price to equal the simple average of the Advanced Class III and Class IV prices, plus the "higher of"

either \$0.74 or an adjuster equal to the 24-month (August–July) rolling simple average difference between the Advanced Class III and Class IV skim milk prices.

Proposal 15: Submitted by the Milk Innovation Group

This proposal seeks to retain the current “average of” formula for the base Class I skim milk price and proposes to update the adjuster monthly using a 24-month look back period with a 12-month lag, *i.e.*, the preceding the 13-to-36-month period. The “rolling” adjuster calculation would be the *difference between* the “higher of” the advanced Class III or IV skim milk price for each month and the “average of” the advanced Class III or IV skim milk price, averaged over the preceding 13-to-36-month period, *plus* the “average of” the Class III and IV advanced skim milk prices for that month.

Proposal 16: Submitted by Edge Dairy Farmer Cooperative

This proposal seeks to change the base Class I skim milk price to the announced Class III skim milk price, plus an adjuster. The proposal seeks to amend calculation of Class I prices to use announced rather than advanced prices. The proposed adjuster would be a 36-month average (August–July) of the monthly differences between the “higher of” the advanced Class III skim milk price or advanced Class IV skim milk price, and the Class III skim milk price.

Proposal 17: Submitted by Edge Dairy Farmer Cooperative

This proposal seeks to use the “higher of” the Class III skim milk price or the Class IV skim milk price to calculate the base Class I skim milk price. The proposal also seeks to amend calculation of Class I prices to use announced rather than advanced prices.

Proposal 18: Submitted by the American Farm Bureau Federation

This proposal seeks to eliminate the advanced pricing of Class I milk and components, and Class II skim milk and components. As proposed, the Class II skim milk price would be equal to the Announced Class IV skim milk price plus the Class II differential; the Class II nonfat solids price would be equal to the Announced Class IV nonfat solids price plus one-hundredth of the Class II differential. The proponent proposes the Class I skim milk price would be the “higher of” the Announced Class III or Class IV skim milk prices plus the Class I differential; and the Class I butterfat price would be equal to the butterfat

price plus one-hundredth of the Class I differential.

Class I and Class II Differentials

Proposal 19: Submitted by the National Milk Producers Federation

This proposal seeks to update the Adjusted Class I differentials as referenced in all Federal orders for the 3,108 named counties, parishes, and independent cities in the contiguous 48 United States. The proposed update would increase Class I differentials at all locations, in varying amounts.

Proposal 20: Submitted by the Milk Innovation Group

This proposal seeks to lower the current base Class I differential from \$1.60 to \$0.00.

Proposal 21: Submitted by the American Farm Bureau Federation

This proposal seeks to update the Class II differential to \$1.56. Specifically, the proposal seeks to calculate the Class II differential using the current nonfat dry milk make allowance multiplied by the current nonfat solids yield factor and updated butterfat and nonfat solids tests for milk in the FMMOs.

Proposal 22: Submitted by Dairy Program, Agricultural Marketing Service:

Make such changes as may be necessary to make the respective marketing orders conform with any amendments thereto that may result from this hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, USDA employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Program, Agricultural Marketing Service (Washington, DC Office, and the Offices of all Market Administrators)

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–15496 Filed 7–21–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1413; Project Identifier AD–2023–00087–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER airplanes. This proposed AD was prompted by reports of cracks in the forward galley door cutout forward upper corner bear strap. It has been determined that the cracks were caused by high operating stresses in the fuselage skin door cutout corner area due to stress concentration at the door cutout. This proposed AD would require an inspection of the fuselage skin and the bear strap at the forward galley door cutout forward upper corner for existing repairs, and applicable related investigative and corrective inspections. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 7, 2023.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1413; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1413.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–1413; Project Identifier AD–2023–00087–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports indicating cracks in the forward galley door cutout forward upper corner bear strap. The airplanes had accumulated between 33,070 and 44,224 total flight cycles at the time of the crack findings. The cracks were caused by high operating stresses in the fuselage skin door cutout corner area due to stress concentration at the door cutout. This condition, if not addressed, could result in an undetected crack in the fuselage skin and bear strap, and could increase in length until the fuselage skin and bear strap severs. If not detected and

corrected, a severed fuselage skin and bear strap may lead to the inability to sustain limit loads and may result in rapid decompression of the fuselage and loss of structural integrity of the aircraft.

FAA’s Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022. This service information specifies procedures for an external general visual inspection of the fuselage skin at the forward galley door cutout forward upper corner for any repair, and applicable related investigative and corrective actions. Related investigative actions include detailed inspections for cracking of the fuselage skin and bear strap. Corrective actions include obtaining and following instructions for crack repair.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–1413.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,938 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS				
Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
External general visual inspection for repairs.	0.5 work-hour × \$85 per hour = \$42.50 per inspection cycle.	\$0	\$42.50 per inspection cycle.	\$82,365 per inspection cycle.
External detailed and eddy current inspection for cracks.	3.5 work-hours × \$85 per hour = \$197.50.	0	\$197.50	\$576,555.
External eddy current inspection without a quadrupler repair.	4 work-hours × \$85 per hour = \$340 per inspection cycle.	0	\$340 per inspection cycle	Up to \$658,920 per inspection cycle.
External eddy current inspection with a quadrupler repair.	4 work-hours × \$85 per hour = \$340 per inspection cycle.	0	\$340 per inspection cycle	Up to \$658,920 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Internal eddy current inspection for cracks.	26 work-hours × \$85 per hour = \$2,210.	0	\$2,210	\$4,282,980.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–1413; Project Identifier AD–2023–00087–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the forward galley door cutout forward upper corner bear strap. The FAA is issuing this AD to address cracks in the fuselage skin and bear strap, which could increase in length until the fuselage skin and bear strap severs. If not detected and corrected, a severed fuselage skin and bear strap may lead to the inability of the principal structural element (PSE) to sustain limit loads and may result in rapid decompression of the fuselage and loss of structural integrity.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022, do all applicable

actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1407, dated December 20, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022, use the phrase "the original issue date of Requirements Bulletin 737–53A1407 RB," this AD requires using "the effective date of this AD."

(2) Where Boeing Alert Requirements Bulletin 737–53A1407 RB, dated December 20, 2022, specifies contacting Boeing for repair instructions or for alternative inspections, this AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3520; email: bill.ashforth@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737-53A1407 RB, dated December 20, 2022.

(ii) [Reserved]

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

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

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

Issued on July 7, 2023.

Michael Linegang,

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

[FR Doc. 2023-15304 Filed 7-21-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2023-1053; Project Identifier AD-2023-00164-T]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Model Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757-200, -200CB, and -200PF series airplanes. This proposed AD was prompted by a crack growth analysis, which indicated that current

inspections are not adequate to detect cracks in certain sections of the upper frame at the frame splice between certain stringers before a single frame fails. This proposed AD would require an inspection or records review for existing repairs; repetitive inspections for cracks of the upper frame at the frame splices between certain stringers in certain sections, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 7, 2023.

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

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

- **Fax:** 202-493-2251.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-1053; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov by searching for and locating Docket No. FAA-2023-1053.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562-627-5238; email: wayne.ha@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-1053; Project Identifier AD-2023-00164-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562-627-5238; email: wayne.ha@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that cracking has occurred in the frame splice doubler and may occur in the upper frame at the upper frame splice between stringer S-13 and S-14 on Boeing Model 737-300, -400, and -500 airplanes at multiple frame locations. The FAA issued AD 2021-26-

03, Amendment 29–21861 (87 FR 2534, January 18, 2022) to address the unsafe condition on Boeing Model 737–300, –400, and –500 airplanes. Since Boeing Model 757–200, –200CB, and –200PF series airplanes have a similar design, Boeing conducted a cross model evaluation and crack growth analysis on these airplane models. The analysis indicated that current Maintenance Planning Data (MPD) and Supplemental Structural Inspection Program (SSIP) tasks do not provide adequate inspections to detect cracks before a single frame fails. The single frame failure criteria is needed because of the potential interaction between cracks in the upper frame at the frame splice between S–13 and S–14 and known fuselage skin cracking at the S–14 lap splice in the affected 757 airplanes. This condition, if not addressed, could result in the inability of principal structural element to sustain limit loads and could adversely affect the structural integrity of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022. This service information specifies procedures for a general visual inspection (GVI) or records review between stringers S–13 and S–14 in Sections 43 and 46 for existing repairs. This service information also describes procedures, depending on the configuration, for repetitive high frequency eddy current (HFEC) and low frequency eddy current (LFEC) inspections for cracking of the upper frames at the frame splices between stringers S–13 and S–14, left- and right-hand sides, in Sections 43 and

46; and applicable on-condition actions. On-condition actions include repair.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at regulations.gov under Docket No. FAA–2023–1053.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 456 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
GVI	2 work-hours × \$85 per hour = \$170 per inspection cycle.	\$0	\$170	\$77,520.
Repetitive Inspections	Up to 267 work-hour × \$85 per hour = \$22,695 per inspection cycle.	0	Up to \$22,695	Up to \$10,348,920.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–1053; Project Identifier AD–2023–00164–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –200PF series

airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a crack growth analysis, which indicated that current inspections are not adequate to detect cracks in the Sections 43 and 46 upper frame at the frame splice between stringers S–13 and S–14 before a single frame fails. The FAA is issuing this AD to address cracking at the upper frames common to the splice at stringers S–13 to S–14, which could interact with fuselage skin cracking at the stringer S–14 lap splice. The unsafe condition, if not addressed, could result in the inability of a principal structural element to sustain limit loads and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0115, dated January 25, 2022, which is referred to in Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022, use the phrase “the original issue date of Requirements Bulletin 757–53A0115 RB,” this AD requires using “the effective date of this AD.”

(2) Where Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair and doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) For Group 1, Group 2, and Group 3 airplanes, as identified in Boeing Requirements Bulletin 757–53A0115 RB, dated January 25, 2022, with APB winglets installed in accordance with STC ST01518SE: Where Table 1, Conditions 2.1, 2.2, 4.1, 4.2; Table 2, Conditions 6.1, 6.2, 8.1, 8.2; Table 3 Conditions 10.1, 10.2, 12.1, 12.2; and Table 4 Conditions 14.1, 14.2, 16.1, 16.2

in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022, specify a repeat inspection interval of 3,000 flight cycles, this AD requires using a repeat inspection interval of 2,600 flight cycles.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, Continued Operational Safety Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: wayne.ha@faa.gov.

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 757–53A0115 RB, dated January 25, 2022.

(ii) [Reserved]

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

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

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

Issued on May 24, 2023.

Michael Linegang,

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

[FR Doc. 2023–15302 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1216; Project Identifier AD–2023–00502–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 (LEAP–1B) engines. This proposed AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks) and a certain compressor rotor stages 6–10 spool were manufactured from material suspected to have reduced material properties due to iron inclusion. This proposed AD would require replacement of certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 7, 2023.

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

- **Federal eRulemaking Portal:** Go to regulations.gov. Follow the instructions for submitting comments.
- **Fax:** (202) 493–2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) by searching for and locating Docket No. FAA-2023-1216; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For service information identified in this NPRM, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432-3272; email: aviation.fleetsupport@ge.com.

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7743; email: Mehdi.Lamnyi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-1216; Project Identifier AD-2023-00502-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in three non-LEAP-1B HPT rotor disks. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain LEAP-1B HPT stage 1 disks and a certain compressor rotor stages 6-10 spool manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and subsequent uncontained

failure of certain HPT stage 1 disks and a certain compressor rotor stages 6-10 spool. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

FAA’s Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin LEAP-1B-72-00-0392-01A-930A-D, Issue 001, dated March 7, 2023. This service information identifies the part numbers and serial numbers of HPT stage 1 disks and a compressor rotor stages 6-10 spool with potentially reduced material properties and specifies procedures for replacement of these parts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require replacement of certain HPT stage 1 disks and a certain compressor rotor stages 6-10 spool. This proposed AD would also prohibit installation of an HPT stage 1 disk or compressor rotor stages 6-10 spool that has a part number and serial number identified in the service information onto any engine.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 39 engines installed on airplanes of U.S. registry. These 39 engines would require replacement of the HPT stage 1 disk. The FAA estimates that there are no engines installed on airplanes of U.S. registry that would require replacement of the compressor rotor stages 6-10 spool.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 1 disk	8 work-hours × \$85 per hour = \$680.	\$215,635 (pro-rated)	\$216,315	\$8,436,285
Replace compressor rotor stages 6-10 spool.	8 work-hours × \$85 per hour = \$680.	\$37,660 (pro-rated)	38,340	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

CFM International, S.A.: Docket No. FAA–2023–1216; Project Identifier AD–2023–00502–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks) and a certain compressor rotor stages 6–10 spool were manufactured from material suspected to have reduced material properties due to iron inclusion. The FAA is issuing this AD to prevent fracture and subsequent uncontained failure of certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For engines with an installed HPT stage 1 disk having a part number (P/N) and serial number (S/N) identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM Service Bulletin (SB) LEAP–1B–72–00–0392–01A–930A–D, Issue 001, dated March 7, 2023 (CFM SB LEAP–1B–72–00–0392–01A–930A–D): At the next piece-part exposure of the HPT stage 1 disk, or before exceeding the applicable cycles since new (CSN) threshold identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1B–72–00–0392–01A–930A–D, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 flight cycles (FCs) from the effective date of this AD; remove the HPT stage 1 disk from service and replace with a part eligible for installation.

(2) For engines with an installed compressor rotor stages 6–10 spool having a P/N and S/N identified in Compliance, paragraph 3.E., Table 3, of CFM SB LEAP–1B–72–00–0392–01A–930A–D: At the next

piece-part exposure of the compressor rotor stages 6–10 spool, or before exceeding the applicable CSN threshold identified in Compliance, paragraph 3.E., Table 3, of CFM SB LEAP–1B–72–00–0392–01A–930A–D, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 FCs from the effective date of this AD; remove the compressor rotor stages 6–10 spool from service and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a "part eligible for installation" is an HPT stage 1 disk or compressor rotor stages 6–10 spool that does not have a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 3 of CFM SB LEAP–1B–72–00–0392–01A–930A–D.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 1 disk or compressor rotor stages 6–10 spool that has a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 3 of CFM SB LEAP–1B–72–00–0392–01A–930A–D.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD and email to: ANE-AD-AMOC@faa.gov.

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

(k) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: mehdi.lamnyi@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) CFM International, S.A. Service Bulletin LEAP–1B–72–00–0392–01A–930A–D, Issue 001, dated March 7, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/ D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: aviation.fleet-support@ge.com.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on June 12, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023-15378 Filed 7-21-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0490]

RIN 1625-AA00

Safety Zone; Mercury Powerboat Race; Sheboygan Harbor, Sheboygan, Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a two temporary safety zones for certain navigable waters in and around Sheboygan Harbor in Sheboygan, WI. The safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards association from the Mercury Powerboat Race event. This proposed rulemaking would prohibit entry of vessels or persons into these zones unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before the abridged comment period of 15 days beginning on July 21, 2023 and ending on August 4, 2023.

ADDRESSES: You may submit comments identified by docket number USCG-2023-0490 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the

SUPPLEMENTARY INFORMATION section for

further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7136, email brianna.m.henry@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, Purpose, and Legal Basis

On February 8, 2023, Powerboat P1 USA notified the Coast Guard that was planning on hosting the Mercury Racing Midwest Challenge in Sheboygan, WI from August 11 to August 13, 2023. The race event will take place in two locations in and near the Sheboygan Harbor. The Captain of the Port Sector Lake Michigan (COTP) has determined that potential hazards associated with the boat races would be a safety concern for anyone within the two designated race areas.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within and near the two race areas before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).]

III. Discussion of Proposed Rule

The COTP is proposing to establish two safety zones from 8 a.m. on August 11 to 6:30 p.m. on August 13, 2023. One of the safety zones would be located off shore of Sheboygan, WI and would cover all navigable waters within the offshore course located within the following coordinates: NW corner 43°44'54.32" N, 87°42'5.77" W, NE corner 43°44'54.10" N, 87°41'3.21" W, SW corner 43°42'27.10" N, 87°42'10.11" W, SE corner 43°42'26.73" N, 87°40'54.66" W. The other safety zone would be located in a triangular area within Sheboygan Harbor and would cover all navigable waters within the following coordinates: 43°44'56.76" N, 87°41'05.60" W, 43°45'07.29" N, 87°41'51.07" W, 43°44'57.24" N, 87°42'05.24" W. The duration of the zones is intended to protect personnel, vessels, and the marine environment in these navigable waters during the race events. Entry into, transiting, or anchoring within the safety zone is

prohibited unless authorized by the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zones. The safety zones created by this proposed rule will impact a small part of the waterway and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of Lake Michigan and Sheboygan Harbor near in Sheboygan, WI and it is not anticipated to exceed 3 days in duration. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

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 proposed rule would 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 zones may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this proposed rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is 1 of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two safety zones lasting for 3 days that prohibit entry within the designated race areas. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the

Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0490 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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.T09–0490 to read as follows:

§ 165.T09–0490 Safety Zone; Mercury Powerboat Race; Sheboygan Harbor, Sheboygan, Wisconsin

(a) *Location.* All navigable waters within the offshore course located within the following coordinates: NW corner 43°44′54.32″ N, 87°42′5.77″ W, NE corner 43°44′54.10″ N, 87°41′3.21″

W, SW corner 43°42'27.10" N, 87°42'10.11" W, SE corner 43°42'26.73" N, 87°40'54.66" W, and all navigable waters located in a triangular area within Sheboygan Harbor within the following coordinates: 43°44'56.76" N, 87°41'05.60" W, 43°45'07.29" N, 87°41'51.07" W, 43°44'57.24" N, 87°42'05.24" W.

(b) *Enforcement Period.* 8 a.m. on August 11 to 6:30 p.m. on August 13, 2023.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry, transiting, or anchoring within this safety zones are prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The "designated representative" of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zones must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or an on-scene representative.

Dated: July 18, 2023.

Gregory J. Knoll,

Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.

[FR Doc. 2023-15593 Filed 7-21-23; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0933; FRL-11004-01-R9]

Air Plan Revisions; California; Placer County Air Pollution Control District; General Permit Requirements, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on two permitting rules submitted as a revision to the Placer County Air Pollution Control District (PCAPCD or "District") portion of the California State Implementation Plan (SIP). We are proposing an approval of one rule and proposing a limited approval and limited disapproval of the second rule. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under title I of the Clean Air Act (CAA). This action updates the District's applicable SIP with revised rules that the District has amended to address deficiencies identified in a previous limited approval and limited disapproval action, as well as other updates related to NSR requirements. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received by August 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0933 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Po-Chieh Ting, EPA Region IX, Air-3-1, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3191 or by email at ting.pochieh@epa.gov.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the dates on which they were adopted by the District and the date on which they were submitted to the EPA by the California Air Resources Board (CARB), which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adopted date	Submitted date
501	General Permit Requirements	04/08/2021	10/06/2021
502	New Source Review	08/12/2021	10/06/2021

On April 6, 2022, the submittal for Rules 501 and 502 was deemed complete by operation of law.

B. Are there other versions of these rules?

The SIP-approved versions of Rules 501 and 502 are identified in Table 2.

TABLE 2—SIP APPROVED RULES

Rule No.	Rule title	SIP approval date	Federal Register citation
501	General Permit Requirements	04/20/2020	85 FR 21777
502	New Source Review	09/29/2014	79 FR 58263

If the EPA finalizes the actions proposed herein, these rules will be replaced in the SIP by the submitted rules listed in Table 1. Additionally, as described below, the EPA's final approval of Rule 501 will resolve our limited disapproval of Rule 501 from our 2020 rulemaking action.¹

C. What is the purpose of the submitted rule revisions?

The submitted rules constitute part of the District's current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent an update to the District's preconstruction review and permitting program and are intended to satisfy the 2015 ozone NAAQS NSR program requirements under part D of title I of the Act ("nonattainment NSR" or "NNSR"), the general preconstruction review requirements under section 110(a)(2)(C) of the Act ("minor NSR"), and related EPA regulations.

Minor NSR requirements are generally applicable to permitted sources, wherever located, while NNSR requirements apply only within areas designated as nonattainment for one or more NAAQS. A portion of Placer County is within the Sacramento Metro, CA ozone nonattainment area, which is classified as "Severe" for the 2008 ozone NAAQS and as Serious for the 2015 ozone NAAQS.² A portion of Placer County is also within the Sacramento nonattainment area for the 2006 fine particle (PM_{2.5}) NAAQS with a Moderate classification.³ The remaining areas within Placer County are designated attainment or unclassifiable for all other NAAQS. Therefore, in addition to being subject to the requirements for minor NSR at

section 110(a)(2)(C) of the Act, the District is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone precursors, PM_{2.5}, and PM_{2.5} precursors within the corresponding portions of the Placer County designated nonattainment under part D of title I of the Act.

Rule 501 and Rule 502 provide requirements and procedures for review of new stationary sources of air pollution and modification and operation of existing stationary sources of air pollution, through the issuance of permits under the minor NSR and NNSR programs. Additionally, the submitted rules address each of the four deficiencies identified in the EPA's 2020 limited disapproval of the previous submitted version of Rule 501.⁴ Specifically, the revisions to Rule 501 address our findings that the previous Rule 501: (1) did not fully satisfy the requirements at 40 CFR 51.160(b) regarding a permitting agency's authority to deny a permit if a proposed project will cause a violation of the SIP or interfere with attainment or maintenance of a NAAQS; (2) did not fully satisfy requirements at 40 CFR 51.164 relating to stack height procedures; and (3) relied on definitions in Rule 504, "Emission Reduction Credits," which is not SIP-approved. The submitted Rule 502 addresses our finding that the previous Rule 501 did not fully satisfy the public notice requirements at 40 CFR 51.161 for new or modified emissions units located in the Lake Tahoe Air Basin portion of Placer County.

The District has also further amended Rule 502 to ensure compliance with NNSR permitting program requirements and recent federal court rulings that have become effective since Rule 502 was last approved into the SIP in 2014, as well as additional amendments not specifically required for approval into the SIP, but which provide streamlining and clarifying revisions. The District

also added provisions to Rule 502 to implement the visibility protection provisions in CAA section 169A and 40 CFR 51.307(b).⁵

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submitted rules?

The EPA reviewed the submitted rules for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including sections 110(a)(2)(C), 172(c)(5), 173, 182, and 189; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in a Severe ozone and Moderate PM_{2.5} nonattainment area (the area's highest applicable classifications); (3) the review of new major stationary sources or major modifications located in a designated nonattainment area that may have an impact on visibility in any Mandatory Class I Federal area, in accordance with CAA section 169A and 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A);⁶ and (5) SIP revisions as set forth in CAA section 110(l)⁷ and 193.⁸ For Rule 501, which was the subject of our 2020 limited approval/limited disapproval, we have

⁵ Such sources are required to perform a visibility impact analysis consistent with the provisions of 40 CFR 51.307(a) and 40 CFR 51.166(o), (p)(1) through (2) and (q). See 40 CFR 51.307(c). 40 CFR 51.307(d) also provides for States to require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification.

⁶ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable.

⁷ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

⁸ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

¹ 85 FR 21777 (April 20, 2020).

² 77 FR 30087 (May 21, 2012); 86 FR 59648 (October 28, 2021). Sacramento Metro is also classified as Severe nonattainment for the revoked 1979 and 1997 ozone NAAQS. See 60 FR 20237 (April 25, 1995); 75 FR 24409 (May 5, 2010).

³ 74 FR 58687 (November 13, 2009); 79 FR 31566 (June 2, 2014).

⁴ 85 FR 21777 (April 20, 2020).

focused on our analysis on revisions made in the most recent submittal. We reviewed both rules to determine whether they address the deficiencies identified in our 2020 limited disapproval of Rule 501.

B. Do the rules meet the evaluation criteria?

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the October 6, 2021 submittal of Rules 501 and 502, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rules to the EPA.

With respect to the substantive requirements found in CAA sections 110(a)(2)(C), 172(c)(5), 173, 182, 189, and 40 CFR 51.160–51.165, we have evaluated the rules in accordance with the applicable CAA statutory and regulatory requirements for NNSR permit programs under part D of title I of the Act based on the area's Severe ozone and Moderate PM_{2.5} classifications.⁹ Except for the deficiencies discussed in Section II.C. of this preamble, we find that Rule 502 satisfies these requirements. We have also determined that Rule 502 satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rules 501 and 502 satisfy the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable.

With respect to correcting the deficiencies in our 2020 limited disapproval of Rule 501, we find that submitted Rules 501 and 502 address these deficiencies and satisfy all minor NSR program requirements.

Additionally, we have concluded that our action would comply with CAA section 110(l) because our approval of Rule 501 and limited approval of Rule 502 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. Similarly, we find that our action is consistent with the requirements of CAA section 193 because our approval of Rule 501 and limited approval of Rule 502 will not

relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District.

For more information about how the rules and our proposed approval satisfy the applicable requirements, please see the technical support document (TSD) found in the docket for this action.

C. What are the rule deficiencies?

The EPA identified five deficiencies in Rule 502. These deficiencies relate to the requirements of CAA sections 173(a), 173, 182(c), and 302(z), and 40 CFR 51.165(a), as summarized below:

1. Rule 502 does not contain provisions to restrict permitting when the EPA finds the SIP is not being adequately implemented in the area, as required under CAA section 173(a)(4).

2. The definition of the term “Major Modification” in Section 231 of the rule does not correctly apply the CAA section 182(c)(6) requirements regarding aggregation of net emission increases and incorrectly specifies use of potential to emit as the basis for calculating emission increases.

3. The rule does not contain the definition of “Federal Land Manager” from 40 CFR 51.165(a)(1)(xlii).

4. The definition of the term “Major Stationary Source—Sacramento Air Basin” in Section 229 of the rule does not specify a major source threshold for ammonia, which is a PM_{2.5} precursor, as required by 40 CFR 51.165(a)(13). Similarly, the definition of the term “Major Modification” in Section 231 of the rule is deficient because it relies on the section 229 definition.

5. The definition of “Sacramento Valley Air Basin” in Section 251 does not include a small area that is included in the federal definition of the Sacramento PM_{2.5} nonattainment area. Therefore, the rule is deficient because it does not apply the PM_{2.5} NNSR program requirements to this area, as required under CAA section 173.

Our TSD contains a more detailed discussion of our analysis of Rule 502 and an explanation for each deficiency.

D. EPA Recommendations To Further Improve the Rule

The TSD also includes recommendations for additional clarifying revisions for the District to consider when it next revises Rule 502.

E. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing a full

approval of Rule 501 because it corrects the previously identified deficiencies and continues to satisfy the applicable administrative statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C).

Additionally, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rule 502 because it fulfills most of the relevant CAA requirements, and strengthens the SIP, but also contains five deficiencies. We have concluded that our limited approval of the submitted rule would comply with the relevant CAA requirements, including provisions of CAA sections 110(a)(2)(C), 110(l), 172(c)(5), 173, 182, 189, and 193, and 40 CFR 51.160–51.165 and 51.307.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan—in part). This action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under CAA sections 110(k)(3) and 301(a). In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a FIP unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiencies relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the designated ozone and PM_{2.5} nonattainment areas in Placer County 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the areas six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies

⁹ An NNSR program that satisfies the requirements of the Act and the EPA's regulations for Severe ozone nonattainment areas also satisfies the NNSR program requirements for lower classifications, including the NNSR program requirements applicable to the District based on its Serious classification for the 2015 ozone NAAQS.

that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until August 23, 2023.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules listed in Table 1 of this preamble, which implement the District's NSR permitting program for new and modified sources of air pollution and further described in Sections I and II of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review State choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action proposes a limited approval and limited disapproval of State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law.

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by State law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it merely proposes a limited approval and limited disapproval of State law as meeting federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 13, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–15346 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0673; FRL–10900–01–R5]

Air Plan Approval; Illinois; NAAQS Update

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 Illinois Environmental Protection Agency (IEPA or Illinois). The revision, submitted on July 8, 2022, incorporates revisions to the Illinois air pollution control rules entitled “Part 243—Ambient Air Quality Standards” and also updates the “List of Designated Reference and Equivalent Methods” in response to EPA rulemakings and changes to the National Ambient Air Quality Standards (NAAQS) that EPA adopted in 2021.

DATES: Comments must be received on or before August 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0673 at <https://www.regulations.gov>, or via email to blakley.pamela@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, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Daphne Onsay, Life Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–5945, onsay.daphne@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. What are the State rule revisions?

On July 8, 2022, IEPA submitted a request to EPA to incorporate revisions to the Illinois air pollution control rules in Title 35 of the Illinois Administrative Code, Part 243—Air Quality Standards. The submission updates sections 243.108 and 243.122. Part 243 includes Illinois’ adoption of ambient air quality standards related to the NAAQS.

II. What is EPA’s analysis of the State’s submittal?

Illinois revised Part 243 to reflect amendments to EPA’s “List of Designated References and Equivalent Methods” used to determine compliance with the NAAQS (fine particulate matter (PM_{2.5}) and coarse particulate matter (PM₁₀), SO₂, carbon monoxide (CO), lead (Pb), oxides of nitrogen (NO_x), and ozone (O₃)). In addition to these changes, Illinois updated existing rule language to address EPA’s revocation of the 1971 primary, 24-hour, and annual average NAAQS for SO₂.

Other revisions to Part 243 include a range of administrative changes, such as making grammatical corrections, removing the unnecessary version date from the Code of Federal Regulations (CFR) citations, and updating the CFR citations to the latest version available.

EPA is proposing to approve the revisions to Part 243 which are described below:

Section 243.108 Incorporation by Reference—incorporates by reference EPA’s “List of Designated Reference and Equivalent Methods” for measuring ambient concentrations to demonstrate compliance with the NAAQS (PM_{2.5} and PM₁₀, SO₂, CO, Pb, NO_x, and O₃).

EPA designated one new Federal reference monitoring method on March 4, 2021 (86 FR 12682) for SO₂ in ambient air. On December 15, 2021, EPA updated the “List of Designated Reference and Equivalent Methods” to include the new Federal reference monitoring method for SO₂. The proposed SIP revision would update section 243.108 to incorporate the changes based on EPA’s action dated December 15, 2021.

Section 243.122 Sulfur Oxides (Sulfur Dioxide)—the sulfur oxide (as SO₂) primary and secondary standards and measurement methods, respectively, in subsections 243.122(a) and (b). EPA removed the 1971 primary, 24 hour, and annual standard on April 30, 2022. IEPA has removed (subsection 243.122(a) to be consistent with EPA’s actions. IEPA has updated its SO₂ standard (section 243.122) to reflect updates at the Federal level.

III. Section 110(l) Analysis of the State’s Submittal

EPA is proposing to approve the revisions to Part 243 discussed above because the revisions meet all applicable requirements under section 110(k)(3) the Clean Air Act (CAA). Furthermore, Illinois has shown that the revisions to Part 243 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision would not interfere with any applicable CAA requirements based on technical analysis submitted by Illinois. Part 243 contains the state’s ambient air quality standards, which are now consistent with the NAAQS. The changes to the ambient air quality standards in Part 243 rules will have no effect on actual or allowable emissions as they only update references to the NAAQS in the Illinois SIP. Illinois has shown there is no impact of revising Part 243 that

would hinder Illinois' ability to maintain and meet the NAAQS for NO₂, O₃, Pb, PM_{2.5}, PM₁₀, SO₂, and CO. Therefore, these revisions to sections 243.108 and 243.122 are approvable as they update sections 243.108 and 243.122 to be consistent with EPA's promulgated NAAQS. The revisions will not increase any emissions to the atmosphere because they do not impact on any source applicability or emissions.

IV. What action is EPA taking?

EPA is proposing to approve a revision to the Illinois SIP. The submittal updates revisions to the Illinois regulations at Title 35 of the Illinois Administrative Code, Part 243—Air Quality Standards (Part 243). Specifically, the updates made to the following rules in Part 243: Sections 243.108 and 243.122 to be “identical in substance” to and consistent with updates to the list of designated Federal equivalent and reference methods and updates to the NAAQS adopted by EPA. IEPA's revisions mirror EPA's reference method for the 2010 1-hour SO₂ standard. IEPA removed the 1971 primary, 24 hour and annual SO₂ standard reflecting EPA's action at the Federal level.

V. Incorporation by Reference

In this rule, 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, EPA is proposing to incorporate by reference Illinois rules 243.108 and 243.122, effective May 18, 2022, discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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, the rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of

environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

IEPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 13, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–15290 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0031; FRL–10954–01–R5]

Air Plan Approval; Michigan; DTE River Rouge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on January 12, 2023, and supplemented on April 19, 2023, to revise the Michigan state implementation plan (SIP) for particulate matter (PM). The revision updates the fugitive dust plan for Detroit Edison—River Rouge Power Plant (DTE Energy) located in River Rouge, Michigan. The facility is no longer in operation and therefore, the plan eliminates requirements to reflect plant shut down.

DATES: Comments must be received on or before August 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–

OAR–2023–0031 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, hatten.charles@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph,

or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 13, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–15403 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0430; FRL–7522–04–OAR]

RIN 2060–AU63

National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action supplements our proposed amendments to the national emission standards for hazardous air pollutants (NESHAP) for the Primary Copper Smelting source category published in the **Federal Register** on January 11, 2022. In that action, the Environmental Protection Agency (EPA) proposed amendments based on the residual risk and technology review (RTR) for the major source category and the technology review for the area source category. Although the proposal included the technology review for the area source category, this supplemental proposal does not include any changes for the area source category. In order to complete the required technology review for the major source category, the EPA is proposing additional hazardous air pollutant (HAP) standards for the following pollutants: benzene, toluene, hydrogen chloride (HCl), chlorine, polycyclic aromatic hydrocarbons (PAH), naphthalene and dioxin/furans (D/F). The EPA also evaluated the potential for changes to the previously proposed residual risk assessment and the decisions related to risk. Furthermore, in this action the EPA is also proposing revised standards for certain provisions initially proposed in the January 11, 2022, RTR proposal based on additional information

gathered since the publication of the 2022 proposed rule.

DATES: Comments must be received on or before September 7, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 23, 2023.

Public hearing: If anyone contacts us requesting a public hearing on or before July 31, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0430, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA–HQ–OAR–2020–0430 in the subject line of the message.
- **Fax:** (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2020–0430.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2020–0430, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Tonisha Dawson, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1454; and email address: dawson.tonisha@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. If requested, the hearing will be held via virtual platform on August 8, 2023. The hearing will convene at 11 a.m. Eastern Time (ET) and will conclude at 3 p.m. ET. The EPA will close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air> or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be August 7, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to dawson.tonisha@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air>.

emissions-standards-hazardous-air. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by July 31, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2020-0430. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2020-0430. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to <https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/submitting-cbi>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted

directly to the OAQPS CBI Office at the email address oaqpscbi@epa.gov, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2020-0430. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACI activated carbon injection
ADEQ Arizona Department of Environmental Quality
ADL above detection limit
ANSI American National Standards Institute
BDL below detection limit
BTF beyond-the-floor
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
D/F dioxins and furans
DLL detection level limited
DSI dry sorbent injection
EPA Environmental Protection Agency
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrogen chloride
ICR Information Collection Request
km kilometers
lbs pounds
lbs/hr pounds per hour
lb/ton pounds per ton
LEAN Louisiana Environmental Action Network
MACT maximum achievable control technology
MIR maximum individual risk
mg/dscm milligram per dry standard cubic meter
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
ng TEQ/Mg nanograms Toxic Equivalent per megagrams
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards

OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbons
PM particulate matter
PRA Paperwork Reduction Act
RDL representative detection level
RFA Regulatory Flexibility Act
RTR risk and technology review
SO₂ sulfur dioxide
SO₃ sulfur trioxide
SSM startup, shutdown, and malfunction
TEF toxicity equivalence factors
TEQ toxic equivalency
THC Total hydrocarbons
tpy tons per year
ug/m³ micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
UOM unit of measure
UPL upper predictive level
VCS voluntary consensus standards
WESP wet electrostatic precipitator

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I. General Information

A. Does this action apply to me?

The source category that is the subject of this proposal is primary copper smelting major sources regulated under 40 CFR part 63, subpart QQQ. The North American Industry Classification System (NAICS) code for the primary copper smelting industry is 331410. This list of categories and NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030, July 1992), the primary copper smelting source category is any major source facility engaged in the pyrometallurgical process used for the extraction of copper from sulfur oxides, native ore concentrates, or other copper bearing minerals. As originally defined, the category includes, but is not limited to, the following smelting process units: roasters, smelting furnaces, and converters. Affected sources under the current major source NESHAP are

concentrate dryers, smelting furnaces, slag cleaning vessels, converters, and fugitive emission sources.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 63, subpart QQQ proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2020-0430). The EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/primary-copper-smelting-national-emissions-standards-hazardous-air>.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the “residual risk review.” In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any “developments in practices, processes, or control technologies.” This review is commonly referred to as the “technology review.” The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in

the document titled CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology, in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. “Major sources” are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are “area sources.” For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT “floor.” In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor (BTF) standards. For area sources, CAA section 112(d)(5) allows the EPA to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.*, “residual”) risk pursuant to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA’s use of the two-step approach for developing standards to address any residual risk and the Agency’s interpretation of “ample margin of safety” developed in the *National Emissions Standards for*

Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044; September 14, 1989). The EPA notified Congress in the Residual Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA-453/R-99-001, p. ES-11). The EPA subsequently adopted this approach in its residual risk determinations, and the United States Court of Appeals for the District of Columbia Circuit upheld the EPA’s interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination “considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)¹ of approximately 1-in-10 thousand.” (54 FR at 38045). If risk is unacceptable, the EPA must determine the emissions standards necessary to reduce risks to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health “in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.” *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, the Agency considers whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards

¹ Although defined as “maximum individual risk,” MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

promulgated under CAA section 112 and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less often than every 8 years. While conducting this review, which we call the “technology review,” the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC) v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). The EPA is also required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category, and any new MACT standards must be established under CAA sections 112(d)(2) and (3), or, in specific circumstances, CAA sections 112(d)(4) or (h). *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020).

As described in detail in section III of this preamble, pursuant to the authorities described above in this section, this supplemental proposed rule addresses additional currently unregulated emissions of HAP from the primary copper smelting major source category. In addition to the unregulated HAP addressed in the 2022 RTR proposed rule (87 FR 1616; January 11, 2022), available data indicate the following unregulated pollutants are emitted from the source category: benzene, dioxins and furans, HCl, chlorine, PAH including naphthalene, and toluene. These pollutants are mainly emitted due to the combustion of natural gas and coke. Therefore, the EPA is proposing amendments establishing standards that reflect MACT for these pollutants emitted by the source category, pursuant to CAA sections 112(d)(2) and (3).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

Consistent with the description in section II.A. of this preamble, this supplemental proposal is applicable to major sources in the primary copper smelting major source category. There is one area source which is regulated by the primary copper smelting area source NESHAP (40 CFR part 63, subpart EEEEE), but the following description is limited to the major source facilities consistent with this supplemental proposed rule. The primary copper smelting major source category includes any facility that is a major source of HAP and uses a pyrometallurgical process to produce anode copper from

copper ore concentrates. Primary copper smelting begins with copper mines supplying the ore concentrate (typically 30 percent copper). In most cases, the moisture is reduced from the ore concentrate in dryers, and the concentrate is then fed through a smelting furnace where it is melted and reacts to produce copper matte. One existing smelter is able to feed its copper concentrate directly to the smelting furnace without prior drying. Copper matte is a molten solution of copper sulfide mixed with iron sulfide and is about 60 percent copper. The solution is further refined using converters to make blister copper, which is approximately 98 percent copper. Converters use oxidation to remove sulfide as sulfur dioxide (SO₂) gas and the iron as a ferrous oxide slag. The majority of the SO₂ gases are sent to a sulfuric acid plant. The slag is removed, cooled, and often processed again to remove any residual copper. The blister copper is reduced in the anode refining furnace to remove impurities and oxygen, typically by injecting natural gas and steam, to produce a high purity copper. The molten copper from the anode refining furnace is poured into molds and cooled to produce solid copper ingots called anodes. This process is known as casting. The anodes are sent to a copper refinery, either on-site or at an off-site location, for further purification using an electrolytic process to obtain high purity copper that is sold as a product. The processing units of interest at primary copper smelters, because of their potential to generate HAP emissions, are the following: dryers, smelting furnaces, copper converters, anode refining furnaces, and, if present, copper holding vessels, slag cleaning vessels, and matte drying and grinding plants. The smelting furnaces, converters and anode refining are sources of HAP emissions from point sources (i.e., stacks, control devices) and process fugitive emissions from roof vents. In addition, the transfers of matte, converter slag, and blister copper are sources of process fugitive emissions.

There are two facilities (Asarco and Freeport—both located in Arizona) which are major sources of HAP emissions and are subject to 40 CFR part 63, subpart QQQ, the major source NESHAP. The Asarco facility uses an INCO brand flash smelting furnace. Flash smelting furnaces consist of blowing fine, dried copper sulfide concentrate and silica flux with air, oxygen-enriched air or oxygen into a hot hearth-type furnace. The sulfide minerals in the concentrate react with

oxygen resulting in oxidation of the iron and sulfur, which produces heat and therefore melting of the solids. The molten matte and slag are removed separately from the furnace as they accumulate, and the matte is transferred via ladles to the copper converters. The Freeport facility uses an ISASMELT smelting furnace. The ISASMELT process involves dropping wet feed through a feed port, such that dryers are not needed. A mixture of air, oxygen, and natural gas is blown through a vertical lance in the center of the furnace, generating heat and melting the feed. The molten metal is then tapped from the bottom and sent to an electric furnace to separate the matte from slag. The slag is removed from the electric furnace through tapholes and is transferred to slag pots via ladles. The matte is also removed from the electric furnace through tapholes and transferred to the converter via ladles.

Molten blister copper is transferred from the converting vessel to an anode furnace for refining to further remove residual impurities and oxygen. The blister copper is reduced in the anode refining furnace to remove oxygen, typically by injecting natural gas and steam to produce a high purity copper. The molten copper from the anode refining furnace is poured into molds to produce solid copper ingots called anodes. The anode copper is sent to a copper refinery, either on-site or at another location, where it is further purified using an electrolytic process to obtain the high purity copper that is sold as a product. The copper refinery is not part of the primary copper smelting source category. The current NESHAP for major sources (40 CFR part 63, subpart QQQ) was proposed on April 20, 1998 (63 FR 19582), with a supplement to the proposed rulemaking published on June 26, 2000 (65 FR 39326). The final rule, promulgated on June 12, 2002 (67 FR 40478), established particulate matter (PM) standards as a surrogate for HAP metals for copper concentrate dryers, smelting furnaces, slag cleaning vessels, and existing converters. The major source NESHAP applies to major sources that use batch copper converters. Regarding new sources, the NESHAP prohibits batch converters for new sources, which indirectly means that any new source would need to install continuous converters or another technology. The reason for this prohibition for new sources is that continuous converters have lower process fugitive emissions than batch converters. Further explanation is provided in the 2002

NESHAP final rule preamble (67 FR 40478; June 12, 2002).

The converter building is subject to an opacity limit in the NESHAP that only applies during performance testing. A fugitive dust plan is required to minimize fugitive dust emissions.

Subpart QQQ also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements. Annual performance testing is required to demonstrate compliance with the PM and opacity standards contained in the current NESHAP.

C. What is the history of the Primary Copper Smelting Risk and Technology Review?

On January 11, 2022, the EPA proposed the risk and technology review required by CAA sections 112(d)(6) and 112(f)(2) for the NESHAP for Copper Smelting (hereafter referred to as the “2022 proposed RTR”).² Since the issuance of the 2022 proposed RTR, the EPA has obtained additional information that impacts the decisions made for certain amendments in the 2022 proposed RTR and that indicates there are additional unregulated HAP for the source category. Therefore, based on this new information, the EPA is proposing supplemental amendments to the NESHAP to ensure that all emissions of HAP from sources in the source category are regulated. Additionally, based on this new information and as described in more detail in section III of this preamble, we are proposing revised standards for certain amendments that were initially included in the 2022 proposed RTR for the copper smelting major source category.

D. What was included in the 2022 proposed RTR affecting major sources in the primary copper smelting source category?

Consistent with the statutory requirements described in section II.A of this preamble, the 2022 proposed RTR included a risk review pursuant to CAA section 112(f)(2) and a technology review pursuant to CAA section 112(d)(6) for the major source category. Additionally, the Agency reviewed available data to determine whether there were any unregulated emissions of HAP within the source category and evaluated the data for use in developing new emission standards.

As described in the 2022 proposed RTR, as part of the technology review

for the major source category, the EPA identified previously unregulated processes and pollutants and proposed to regulate them under CAA section 112(d)(2) and (3) for the major source NESHAP (40 CFR part 63, subpart QQQ), as follows:

- PM limits, as a surrogate for metal HAP, for anode refining point sources at existing and new sources.
- PM limits, as a surrogate for metal HAP, for process fugitive emissions from roofline vents of smelting furnaces at existing and new sources.
- PM limits, as a surrogate for metal HAP, for process fugitive emissions from converters at existing and new sources.
- PM limits, as a surrogate for metal HAP, for process fugitive emissions from roof vents at anode refining operations at existing and new sources.
- Mercury limits for any existing and new combination of stacks or other vents from the copper concentrate dryers, converting department, the anode refining department, and the smelting vessels affected sources.
- PM limits, as a surrogate for metal HAP, for new converters.

The Agency also completed a review of residual risk for the source category consistent with CAA section 112(f). Based on the results of the risk review, the EPA proposed that risks from emissions of air toxics from the major source category were unacceptable due to HAP metal (primarily lead and arsenic) emissions. The largest contributor to risk was the process fugitive emissions from roof vents at anode refining operations (constituting about 71 percent of the MIR) followed by the aisle scrubber (constituting about 23 percent of the MIR) at the Freeport facility. In the 2022 proposed RTR, the EPA concluded that the emission limits proposed under CAA section 112(d)(2) and (3) for the process fugitive emissions from roof vents at anode refining operations will require additional controls that are expected to provide enough emissions reduction to reduce risks to an acceptable level; therefore, they were also proposed pursuant to CAA section 112(f)(2). The Agency also considered proposing additional control requirements for the aisle scrubber as part of the Agency’s ample margin of safety analysis. The EPA did not propose any control requirements for the aisle scrubber in the 2022 proposed RTR but did seek comment on its analysis (including the costs, costs effectiveness, and risk reductions) and whether the EPA should establish more stringent standards to reduce HAP metal emissions from the aisle scrubber. Also,

as part of the ample margin of safety analysis, the EPA evaluated additional work practices to reduce fugitive dust emissions, consistent with Asarco’s current consent decree. The Agency found that the implementation of a more robust fugitive dust plan would result in an unquantified reduction of HAP, at minimal cost for implementation, and therefore proposed this requirement in the 2022 proposed RTR. In the 2022 proposed RTR, the EPA proposed that the combination of the standards for anode refining roof vents, fugitive dust plan and all other current standards in the NESHAP would ensure the NESHAP provides an ample margin of safety to protect public health.

The EPA did not identify developments in practices, processes, or control technologies pursuant to CAA section 112(d)(6) to achieve further emissions reductions beyond the controls and reductions proposed under the risk review for major sources.

The EPA also proposed to remove exemptions for periods of startup, shutdown, and malfunction (SSM) and specified that the emission standards apply at all times and proposed a requirement for electronic reporting of performance test results and notification of compliance reports.

Of central relevance to this supplemental proposal are the proposed emission limits for the process fugitive emissions from roof vents at anode refining operations at new and existing sources; the mercury limits for any existing and new combination of stacks or other vents from the copper concentrate dryers, converting department, the anode refining department, and the smelting vessels affected sources; the potential control options for metal HAP at the aisle scrubber; and the proposed MACT limits for additional unregulated HAP. As detailed in the next section II.E of this preamble, the EPA has obtained additional information relative to these processes and pollutants. As a result of evaluating this new information, we are proposing both revised and new requirements in this supplemental proposed rulemaking (compared to the proposed requirements in the 2022 proposed RTR) for these processes and pollutants. A detailed discussion is provided in section III of this preamble, which covers what was proposed for these processes and pollutants in the 2022 proposed RTR, the evaluation of new information, and what we are proposing for these processes and pollutants in this supplemental proposed rulemaking.

² 87 FR 1616; January 11, 2022.

E. What data collection activities were conducted to support this action?

The 2022 proposed RTR was published in the **Federal Register** on January 11, 2022 (87 FR 1616). The initial 45-day comment period was extended by 60 days and ended on April 26, 2022. During the comment period, the EPA received public comments from industry, tribal nations, two environmental groups, Arizona Department of Environmental Quality (ADEQ), and private citizens. Some of the comments on the proposed rulemaking claimed that there are additional unregulated HAP from the source category beyond those the EPA addressed in the 2022 proposed RTR. In response to these public comments, the EPA issued a CAA section 114 information request to collect further information. The section 114 information request was sent to the Freeport facility only, as the Asarco facility has been idled since October 2019. The section 114 information request was delivered to the Freeport facility on August 31, 2022. The key components of the response to the request included the following:

- Results of performance testing which was required to be conducted in two phases. Initially, performance tests were conducted at the vent fume and aisle scrubber stacks of the Freeport facility for the following compounds: benzene, 1,4-dichlorobenzene, formaldehyde, hexane, hydrogen fluoride, hydrochloric acid, toluene, total hydrocarbons, polycyclic aromatic hydrocarbons including naphthalene, and dioxins and furans. For compounds that were detected at the vent fume and aisle scrubber, additional performance testing and reporting were required to be conducted at the acid plant tail gas stack. The Agency did not request chlorine testing; however, chlorine test results were included in respective test reports.

- Data regarding the costs and feasibility of installing additional controls for the aisle scrubber. This included the evaluation of two options: (1) installing a wet electrostatic precipitator (WESP) which would operate in series with the aisle scrubber to provide further emissions reductions, and (2) installing a baghouse which would control the secondary converter emissions before they enter the aisle scrubber.

- Detailed information regarding all input materials.

In addition to the information collected through the section 114 information request, the EPA also received information during and after

the public comment period of the 2022 proposed RTR. This additional information included cost estimates for the control devices which would be required by the emission limits proposed in the 2022 proposed RTR (e.g., for mercury, lead and arsenic). It also included additional performance testing results for the roofline vents, vent fume, aisle scrubber, and acid plant. Finally, Freeport also voluntarily performed an additional performance test for mercury in 2022 and submitted those results to the EPA. The data collected and used in this action are provided in the docket for this action.

Regarding the anode roofline vents, we received one additional stack test that resulted in a small increase to the annual emissions of lead, which we now estimate to be 4.47 tons/yr, relative to the estimate in the 2022 proposed rule, which was 4.09 tons/yr. For mercury, based on the additional mercury test, we now estimate mercury emissions from point and non-point sources at the Freeport facility to be 139 lb/yr, while the Asarco mercury emissions are unchanged from the 2022 Proposed RTR (10 lb/yr). Finally, we received two new stack tests for the aisle scrubber at the Freeport facility, and based on these new test data, the estimates of PM metals emissions from the aisle scrubber are slightly lower compared to the 2022 proposed RTR, but only have a small effect on the overall risk assessment results. Nevertheless, we updated our risk analysis based on the additional data and concluded that the new data would not change our proposed determination that risk is unacceptable at baseline. We did not revise or redo the demographic analysis. The 2022 risk assessment and demographics analyses conducted for this action are available in the preamble of the 2022 proposed rule (87 FR 1616; January 11, 2022) and associated technical documents cited in that 2022 preamble. These documents can also be found in the docket of this supplemental proposal. Aspects of the updated risk review are summarized in sections III.C. and II.E of this preamble, and a more detailed discussion is provided in section III.F of this preamble.

III. Analytical Results and Proposed Decisions

In this section, the EPA describes the analytical results and proposed decisions for addressing the additional unregulated HAP for the major source category. Additionally, this section discusses analytical results and revised decisions for certain provisions of the 2022 proposed RTR. For more

information regarding the types of analytical procedures used and the types of information the EPA evaluates for actions, see section III of the 2022 proposed rule (87 FR 1616; January 11, 2022). These revised decisions affect the proposed emission limits for the process fugitive emissions from roof vents at anode refining operations at new and existing sources; the mercury limits for any existing and new combination of stacks or other vents from the copper concentrate dryers, converting department, the anode refining department, and the smelting vessels affected sources; and the proposed regulatory options for the particulate metal HAP (e.g., lead, arsenic) for the aisle scrubber at the Freeport facility. Finally, the EPA is proposing amendments to address the use of bypass stacks for major sources within the primary copper smelting category.

A. What are the results of our analyses of unregulated pollutants and how did we establish the proposed MACT standards?

As mentioned in section II.E of this preamble, the EPA received comments on the 2022 proposed RTR concerning unregulated HAP from the major sources within the primary copper smelting category. In response, the EPA issued a CAA section 114 information request to the Freeport facility on August 31, 2022. The CAA section 114 information request required performance testing in two phases. Initially, performance testing was to be conducted for the required HAP at the vent fume and aisle scrubber. The acid plant stack was required to be tested for a required HAP only if the preliminary test results from the vent fume stack demonstrated that the pollutant is emitted above detection levels (ADL) for at least one sample run. Any pollutant that was not ADL at the vent fume stack was not required to be tested at the acid plant stack because it was assumed that the pollutant would not be detected at the acid plant stack as well. A summary of the HAP tested, the EPA test method, and the results by stack by detection classification (e.g., ADL; below detection levels (BDL); detection level limited (DLL)) are shown in Table 1. We note that while not required, the test report for the vent fume and aisle scrubber included results for chlorine. Complete copies of the stack test reports for the vent fume and aisle scrubber as well as the acid plant are available in the docket for this supplemental rule.³

³ The vent fume and aisle scrubber test report was initially submitted to the EPA on November 25,

TABLE 1—SUMMARY OF UNREGULATED HAP PERFORMANCE TESTING FOR THE MAJOR SOURCE COPPER SMELTING SOURCE CATEGORY IN 2022–2023

HAP	Test method	Vent fume/aisle scrubber	Acid plant
Benzene	EPA Method 18	DLL	BDL.
1,4-dichlorobenzene	EPA Method 18	BDL	Not tested.
Hexane	EPA Method 18	BDL	Not tested.
Toluene	EPA Method 18	DLL	BDL.
Formaldehyde	EPA Method 320	BDL	Not tested.
THC	EPA Method 25A	N/A	N/A.
HCl	EPA Method 26A	ADL	ADL.
Chlorine	EPA Method 26A	ADL	Not tested.
Hydrogen Fluoride	EPA Method 26A	BDL	Not tested.
PAH (including Naphthalene)	EPA OTM 46	DLL	DLL.
Dioxins and Furans	EPA OTM 46	DLL	DLL.

* Revisions of Method 23 finalized March 20, 2023, is equivalent to OTM–46.

As described in more detail in the following sections III.A.1 through III.A.5 of this preamble, the EPA is proposing a source category MACT emission limit pursuant to CAA section 112(d)(2) and (3) for each unregulated HAP that was found to be emitted through these performance tests. The EPA contemplated using the total hydrocarbons (THC) results as a surrogate for some of the organics (*e.g.*, benzene, toluene) but has decided to not propose THC as a surrogate, since the THC test was not conducted in accordance with all of the requirements of the EPA test method.

The “MACT floor” for existing sources is calculated based on the average performance of the best-performing units in each category or subcategory and on a consideration of the variability of HAP emissions from these units. The MACT floor for new sources is based on the single best-performing source, with a similar consideration of variability. The MACT floor for new sources cannot be less stringent than the emissions performance that is achieved in practice by the best-controlled similar source. Also as described in section II.E of this preamble, the section 114 request was issued to the only currently operating major source copper smelting facility, Freeport. Therefore, the proposed MACT floor for existing and new sources will be determined using these data (*i.e.*, the proposed MACT emission limits are the same for existing and new sources). To account for variability in

the copper smelting operations and resulting emissions, we calculated the MACT floors using the 99 percent Upper Predictive Limit (UPL) using all available stack test data.⁴ We are proposing MACT floor limits in units of mass of emissions allowed per mass of concentrate feed (for example, a proposed emissions limit of 0.0017 lbs of benzene per ton concentrated ore fed).

The UPL approach addresses variability of emissions data from the best-performing source or sources in setting MACT standards. The UPL also accounts for uncertainty associated with emission values in a dataset, which can be influenced by components such as the number of samples available for developing MACT standards and the number of samples that will be collected to assess compliance with the emission limit. The UPL approach has been used in many environmental science applications. As explained in more detail in the UPL Memo cited above, the EPA uses the UPL approach to reasonably estimate the emissions performance of the best-performing source or sources to establish MACT floor standards.

Additionally, we reviewed the December 13, 2011, memorandum from Peter Westlin and Ray Merrill titled *Data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits* (Docket ID No. EPA–HQ–OAR–2017–0015), which describes the procedure for handling

BDL data and developing representative detection level (RDL) data when setting MACT emission limits. In accordance with these guidance documents, the proposed new and existing UPL emission standards for each applicable compound (*i.e.*, benzene, toluene, HCl, chlorine, PAH (excluding naphthalene), naphthalene, and D/F) were compared to the emission limit value determined to be equivalent to 3 times the RDL (3xRDL)⁵ of the test method. If the 3xRDL value was larger than the MACT Floor 99 percent UPL value, then the proposed MACT floor limit is proposed as the 3xRDL value of the test method.

Further information on the development of the 99 percent UPL and 3xRDL values for compounds for which emission standards are being proposed is included in a memorandum entitled, *Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for Unregulated HAP for the Primary Copper Smelting Major Source Category* which is available in the docket for this rulemaking (Docket ID EPA–HQ–OAR–2020–0430).

In addition, the EPA must examine more stringent BTF regulatory options to determine MACT. Unlike the floor minimum stringency requirements, the EPA must consider various impacts (such as costs and cost effectiveness) of the more stringent regulatory options in determining whether MACT standards should reflect beyond-the-floor requirements. If the EPA concludes that the more stringent regulatory options have unreasonable impacts, the EPA

2022. The EPA sent Freeport several questions on the test report and Freeport submitted a revised version of the test report on February 10, 2023. All versions of the test report and related EPA correspondence are available in the docket EPA–HQ–OAR–2020–0430.

⁴ For more information regarding the general use of the UPL and why it is appropriate for calculating MACT floors, see *Use of Upper Prediction Limit for Calculating MACT Floors* (UPL Memo), which is available in the docket for this action.

⁵ The factor of three used in the 3xRDL calculation is based on a scientifically accepted definition of level of quantitation—simply stated, the level where a test method performs with acceptable precision. The level of quantitation has been defined as ten times the standard deviation of seven replicate analyses of a sample at a concentration level close to the MDL units of the emission standard is then compared to the MACT floor value to ensure that the resulting emission limit is in a range that can be measured with

reasonable precision. In other words, if the 3xRDL value were less than the calculated floor (*e.g.*, calculated from the UPL), we would conclude that measurement variability has been adequately addressed; if it were greater than the calculated floor, we would adjust the emissions limit to comport with the 3xRDL value to address measurement variability.

selects the MACT floor as MACT. However, if the EPA concludes that impacts associated with beyond-the-floor levels of control are reasonable in light of additional emissions reductions achieved, the EPA selects those BTF levels as MACT.

1. Benzene

The performance testing conducted at Freeport included the results of stack testing for benzene using EPA Method 18. The proposed MACT floor emissions limit was calculated by summing the emission rates from the vent fume, aisle scrubber and acid plant combined, accounting for variability using the 99 percent UPL. Using this approach, we calculated a source category MACT floor emissions limit of 0.0017 lbs benzene/ton concentrated ore fed for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet the MACT floor emissions limit with no additional controls.

We then evaluated and considered a BTF option to further reduce emissions of benzene from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of benzene emissions at Freeport, accounting for 87 percent of the total, with an estimated 414 lbs/yr of benzene emissions. The BTF option for existing sources would require Freeport to install and operate an activated carbon injection (ACI) system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the ACI system would achieve approximately 60 percent reduction of benzene from the aisle scrubber (*i.e.*, 248 lbs/yr reduction of benzene). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$2.7 million. This results in a cost effectiveness of approximately \$22 million per ton of benzene reduced. We do not find costs associated with this BTF option to be reasonable and are therefore not proposing a BTF emission limit for benzene. Instead, we are proposing the source category MACT floor emissions limit of 0.0017 lbs benzene/ton concentrated ore fed for new and existing sources. A detailed description of the analysis of benzene emissions, the controls necessary to reduce benzene emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

2. Toluene

The performance testing conducted at Freeport included the results of stack testing for toluene using EPA Method 18. The proposed MACT floor emissions limit was calculated by summing the emission rates from the vent fume, aisle scrubber and acid plant combined, accounting for variability using the 99 percent UPL. Using this approach, we calculated a source category MACT floor emissions limit of 0.00084 lbs toluene/ton concentrated ore fed for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet the MACT floor emissions limit with no additional controls.

We then evaluated and considered a BTF option to further reduce emissions of toluene from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of toluene emissions at Freeport, accounting for 66 percent of the total, with an estimated 187 lbs/yr of toluene emissions. The BTF option for existing sources would require Freeport to install and operate an ACI system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the ACI system would achieve approximately 60 percent reduction of toluene from the aisle scrubber (*i.e.*, 112 lbs/yr reduction of toluene). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$2.7 million. This results in a cost effectiveness of approximately \$48 million per ton of toluene reduced. We do not find costs associated with this BTF option to be reasonable and are therefore not proposing a BTF emission limit for toluene. Instead, we are proposing the source category MACT floor emissions limit of 0.00084 lbs toluene/ton concentrated ore fed for new and existing sources. A detailed description of the analysis of toluene emissions, the controls necessary to reduce toluene emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

3. HCl

The performance testing conducted at Freeport included the results of stack testing for HCl using EPA Method 26A. The proposed MACT floor emissions limit was calculated by summing the emission rates from the vent fume, aisle scrubber and acid plant combined, accounting for variability using the 99

percent UPL. The 99 percent UPL value HCl was 0.0013. The 3xRDL was found to be slightly larger, 0.0015 pounds per ton (lb/ton) concentrated ore fed, so consistent with EPA guidelines, we have determined that the 3xRDL value (0.0015 lb/ton) represents the MACT floor emissions limit for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet the emissions limit with no additional controls.

We then evaluated and considered a BTF option to further reduce emissions of HCl from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of HCl emissions at Freeport, accounting for 55 percent of the total, with an estimated 682 lbs/yr of HCl emissions. The BTF option for existing sources would require Freeport to install and operate a dry sorbent injection (DSI) system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the DSI system would achieve approximately 98 percent reduction of HCl from the aisle scrubber (*i.e.*, 668 lbs/yr reduction of HCl). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$0.5 million. This results in a cost effectiveness of approximately \$1.5 million per ton of HCl reduced. We do not find costs associated with this BTF option to be reasonable and are therefore not proposing a BTF emission limit for HCl. Instead, we are proposing the source category MACT floor emissions limit of 0.0015 lb/ton concentrated ore fed for HCl for new and existing sources. A detailed description of the analysis of HCl emissions, the controls necessary to reduce HCl emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

4. Chlorine

The EPA did not require facilities to test for chlorine, however the performance testing conducted at Freeport included the results of stack testing for chlorine using EPA Method 26A. Because the acid plant had no data for chlorine, a percentage was calculated from the ratio of HCl to chlorine at the aisle scrubber and vent fume stack. The highest average ratio was used to estimate the chlorine emissions for the acid plant. The proposed MACT floor emissions limit was calculated by summing the

emission rates from the vent fume and aisle scrubber and the estimated emission rate from the acid plant, accounting for variability using the 99 percent UPL. Using this approach, we calculated a source category MACT floor emissions limit of 0.0054 lbs chlorine/ton concentrated ore fed for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet the emissions limit with no additional controls.

We then evaluated and considered a BTF option to further reduce emissions of chlorine from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of chlorine emissions at Freeport, accounting for 53 percent of the total, with an estimated 2,490 lbs/yr of chlorine emissions. The BTF option for existing sources would require Freeport to install and operate a DSI system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the DSI system would achieve approximately 98 percent reduction of chlorine from the aisle scrubber (*i.e.*, 2,440 lbs/yr reduction of chlorine). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$0.5 million. This results in a cost effectiveness of approximately \$0.4 million per ton of chlorine reduced. We do not find costs associated with BTF options to be reasonable and are therefore not proposing a BTF emission limit for chlorine. Instead, we are proposing the source category MACT floor emissions limit of 0.0054 lbs chlorine/ton concentrated ore fed for new and existing sources. A detailed description of the analysis of chlorine emissions, the controls necessary to reduce chlorine emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

5. PAH

The performance testing conducted at Freeport included the results of stack testing for PAH using EPA OTM-46. EPA OTM-46 is nearly identical to the updated EPA Method 23, for which revisions were promulgated on March 20, 2023 (88 FR 16732). In reviewing the test results, we found that approximately 70 percent of the PAH measured was naphthalene; therefore, we are proposing a PAH MACT floor

emissions limit excluding naphthalene and a separate naphthalene MACT floor emissions limit. These proposed MACT floor emissions limits were calculated by summing the emission rates from the vent fume, aisle scrubber and acid plant combined, accounting for variability using the 99 percent UPL. We are proposing a source category MACT floor emissions limit for PAH excluding naphthalene of 0.0001 lbs PAH excluding naphthalene/ton concentrated ore fed for new and existing sources. We are proposing a source category MACT floor emissions limit for naphthalene of 0.00028 lbs naphthalene/ton concentrated ore fed for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet these MACT floor emissions limits with no additional controls.

We also evaluated and considered a BTF option to further reduce emissions of PAH and naphthalene from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of PAH and naphthalene emissions at Freeport, accounting for 77 percent of the total, with an estimated 97 lbs/yr of PAH emissions. The BTF option for existing sources would require Freeport to install and operate an ACI system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the ACI system would achieve approximately 60 percent reduction of PAH from the aisle scrubber (*i.e.*, 58 lbs/yr reduction of PAH). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$2.7 million. This results in a cost effectiveness of approximately \$92 million per ton of PAH reduced. We do not find costs associated with BTF options to be reasonable and are therefore not proposing a BTF emission limit for PAH. Because it was not cost effective to propose further control of PAH, and since naphthalene is one compound in this group, we conclude it is also not cost effective to require BTF controls for naphthalene. Therefore, we are proposing the MACT floor limits for PAHs and naphthalene described previously in this section. A detailed description of the analysis of PAH emissions, the controls necessary to reduce PAH emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

6. D/F

The performance testing conducted at Freeport included the results of stack testing for congeners of D/F using EPA OTM-46. The proposed MACT floor emissions limit was calculated by summing the emission rates from the vent fume, aisle scrubber and acid plant combined, accounting for variability using the 99 percent UPL. We are proposing a source category MACT floor emissions limit of 60 nanograms D/F Toxic Equivalent (TEQ)/Mg concentrated ore fed for new and existing sources. Based on the available data, the Agency concludes that both facilities in the major source copper smelting source category would be able to meet the MACT floor emissions limit with no additional controls.

We also evaluated and considered a BTF option to further reduce emissions of D/F from new and existing sources. Based on the available test data, the Agency estimates that the aisle scrubber is the largest source of D/F emissions at Freeport, accounting for 83 percent of the total, with an estimated 0.04 grams/yr of D/F TEQ emissions. The BTF option for existing sources would require Freeport to install and operate an ACI system with the existing air pollution control device (*i.e.*, aisle scrubber). The Agency estimates the ACI system would achieve approximately 85 percent reduction of D/F from the aisle scrubber (*i.e.*, 0.03 grams/yr reduction of D/F TEQ). The EPA estimates \$0.6 million for capital costs, and annualized costs are \$2.7 million. This results in a cost effectiveness of approximately \$83 million per gram of D/F TEQ reduced. We do not find costs associated with the BTF option to be reasonable and are therefore not proposing a BTF emission limit for D/F. Therefore, we are proposing the MACT floor limit described previously in this section. A detailed description of the analysis of D/F emissions, the controls necessary to reduce D/F emissions, and the cost of these controls is included in the document, *Estimated Cost for Beyond-the-floor Controls for HAP Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430).

7. Summary of Proposed New and Existing Source Limits for Copper Smelting

The proposed emission limits for new and existing sources in the major source copper smelting source category are summarized in Table 2.

TABLE 2—SUMMARY OF PROPOSED NEW AND EXISTING SOURCE MACT EMISSION LIMITS FOR THE MAJOR SOURCE COPPER SMELTING SOURCE CATEGORY

HAP	Existing source		New source	
	Limit	Unit of Measure (UOM)	Limit	UOM
Benzene	1.7E-03	lb/ton concentrated ore fed	1.7E-03	lb/ton concentrated ore fed.
Toluene	8.4E-04	lb/ton concentrated ore fed	8.4E-04	lb/ton concentrated ore fed.
HCl	1.5E-03	lb/ton concentrated ore fed	1.5E-03	lb/ton concentrated ore fed.
Chlorine	5.4E-03	lb/ton concentrated ore fed	5.4E-03	lb/ton concentrated ore fed.
PAH (excluding Naphthalene)	1.0E-04	lb/ton concentrated ore fed	1.0E-04	lb/ton concentrated ore fed.
Naphthalene	2.8E-04	lb/ton concentrated ore fed	2.8E-04	lb/ton concentrated ore fed.
Dioxins and Furans	60	ng TEQ/Mg concentrated ore fed ..	60	ng TEQ/Mg concentrated ore fed.

B. What performance testing, monitoring, and recordkeeping and reporting are we proposing relative to the unregulated HAP emission limits?

We are proposing, based on the new and existing source emissions limits for copper smelting, that new sources demonstrate initial compliance upon start-up, and existing sources demonstrate initial compliance within 1 year after the promulgation of the final rule. We are proposing that the initial performance tests to demonstrate compliance with the MACT standards of Table 2 of this preamble are conducted using the methods identified in Table 3.

TABLE 3—SUMMARY OF PROPOSED TEST METHODS

Pollutant	EPA method
Benzene	EPA Method 18.
Toluene	EPA Method 18.
HCl	EPA Method 26A.
Chlorine	EPA Method 26A.
PAH (excluding Naphthalene)	EPA Method 23.
Naphthalene	EPA Method 23.
Dioxins and Furans	EPA Method 23.

Additionally, we are proposing that subsequent performance testing will be required every five years, using the methods identified in Table 3.

Under this proposal, and consistent with existing requirements in the Primary Copper Smelting NESHAP, a source owner will be required to submit semiannual compliance summary reports which document both compliance with the requirements of the Primary Copper Smelting NESHAP and any deviations from compliance with any of those requirements.

Owners and operators would be required to maintain the records specified by 40 CFR 63.10 and, in addition, would be required to maintain records of all inspection and monitoring data, in accordance with the Primary Copper Smelting NESHAP (40 CFR 63.1456).

We considered the possibility of proposing a fenceline monitoring

requirement. However, we determined that fenceline monitoring is not appropriate for this source category primarily because the main emissions of interest for this source category are process fugitive emissions that are released from roofline vents that are at about 100 feet elevation (*i.e.*, not “ground level” like the source categories where we have required or proposed fenceline monitoring). Due to the elevation of the fugitive release points, the emissions would pass over the fenceline monitors and would not be effectively measured. In addition, EPA has determined that there are effective technologies for capturing these process fugitive emissions and routing them to control devices, and is proposing to require the use of such approaches in this rulemaking. Unlike many other source categories, it is also feasible to measure the process fugitive emissions at these facilities. These characteristics suggest that fenceline monitoring—which is typically used to detect emissions that can be difficult to control or measure at the points where they are emitted, and to identify the need for follow-up investigation and corrective action—would have relatively limited value in the context of this source category.

C. What revisions are we proposing specific to the emission limit for process fugitive emissions from roof vents at the anode refining operations from the 2022 proposed RTR?

As described in the 2022 proposed RTR, the current NESHAP does not include standards for process fugitive emissions from the rooflines of smelting furnaces, converters, or anode refining operations, except for an opacity limit for converter roof vents that applies during testing. During the development of the 2022 proposed RTR, the EPA determined that risk for the major source category was unacceptable. One of the main risk drivers was metal HAP emissions (mainly lead and arsenic) from the anode refining roofline at the

Freeport facility, which comprised 71 percent of the MIR. Therefore, in the 2022 proposed RTR, pursuant to CAA sections 112(d)(2) and (3) for new and existing major sources, PM limits were proposed for process fugitive emissions from the rooflines of the converters and smelting furnaces. Pursuant to CAA sections 112(d)(2), (d)(3), and (f)(2) PM limits were proposed for process fugitive emissions for new and existing major sources’ anode refining operations roofline vents.

In the 2022 proposed RTR for converter and smelting furnace rooflines, we developed MACT floor emissions limits for PM, as a surrogate for particulate HAP metals, which include antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium compounds, based on the available test data. The use of PM as a surrogate for particulate metal HAP is consistent with the approach used to limit particulate metal HAP emissions from other copper smelting processes in the current NESHAP and for many other source categories (*i.e.*, Ferroalloys Production, Integrated Iron and Steel Manufacturing, and Integrated Iron and Steel Foundries). The data used in the MACT floor emission limit development was from the Freeport facility. The Agency used the UPL methodology to develop the emission limits. The development of the MACT floor limits included in the 2022 proposed RTR is described in detail in the memorandum entitled, *Draft MACT Floor Analyses for the Primary Copper Smelting Source Category* (Docket Item No. EPA-HQ-OAR-2020-0430-0055), which is available in the docket. Based on these analyses, the proposed MACT floor emission limits included in the 2022 proposed RTR were 1.7 pounds per hour (lbs/hr) PM for process fugitive emissions for existing and new converter rooflines and 4.3 lbs/hr PM for existing and new smelting furnace rooflines. We also evaluated BTF PM limits for smelting furnace and

converter rooflines based on the potential addition of capture and control equipment designed to achieve approximately 90 percent reduction in process fugitive emissions. Based on the results of these analyses, the Agency did not propose BTF limits in the 2022 proposed RTR for converters or smelting furnaces because of the high costs and poor cost effectiveness and uncertainties in the estimates of emissions, emissions reductions and costs. Further details of these BTF analyses included in the 2022 proposed RTR are provided in the technical memo, *Evaluation of Beyond-the-floor and Ample Margin of Safety Control Options and Costs for Process Fugitive Emissions from Smelting Furnaces and Converters, and for Point Source Emissions from Anode Refining Furnaces and for the Combined Emissions Stream Emitted from the Freeport Aisle Scrubber* (Docket Item No. EPA-HQ-OAR-2020-0430-0060).

In the 2022 proposed RTR for the roofline vents of anode refining operations, we initially developed a MACT floor emissions PM limit of 15.2 lbs/hr using the available test data and application of the UPL methodology. For this standard, PM also serves as a surrogate for particulate metal HAP similar to the other PM limits in the NESHAP. Subsequently, we evaluated a BTF emission limit for the anode refining operation roofline vents. The BTF emission limit was set at 90 percent lower than the MACT floor, or 1.6 lb PM/hr. As described in the 2022 proposed RTR, in order to comply with the proposed anode refining operation BTF limit, the EPA expected that Freeport would need to install improved capture systems, including hoods, ductwork, and fans, and one additional baghouse. These improved capture systems would need to be applied to four units including the two-anode refining furnace pouring operations, the anode casting wheel, and the holding vessel. In the January 2022 proposed RTR, we estimated a total capital cost of \$5,887,000 (2019 dollars), a total O&M cost of \$1,002,000 (2019 dollars) and total annualized costs of \$1,558,000 (2019 dollars). The expected emission reductions were 4.25 tpy of lead and arsenic. The resulting cost effectiveness was \$367,000/ton (2019 dollars). We concluded that this option was cost effective and proposed the BTF PM emission limit for the anode refining roofline vents. The same emission limit proposed pursuant to CAA 112(d)(2) and (3) for the anode refining operation roofline vent was also proposed to reduce risks to an acceptable level pursuant to CAA section 112(f)(2).

Further information on the development of the proposed emission limit and the related cost estimates for control equipment are included in the record for the 2022 proposed RTR in the memorandums entitled, *Draft MACT Floor Analyses for the Primary Copper Smelting Source Category* (Docket Item No. EPA-HQ-OAR-2020-0430-0055) and *Development of Estimated Costs for Enhanced Capture and Control of Process Fugitive Emissions from Anode Refining Operations at Freeport* (Docket Item No. EPA-HQ-OAR-2020-0430-0061).

During the public comment period for the 2022 proposed RTR, the EPA received comments from industry stakeholders that a combined limit would be preferred over individual limits. Commenters noted several reasons for this:

- Increased flexibility with respect to compliance options resulting in lower costs to comply;
- Lack of physical separation between departments and potential for emissions transfer; and
- Variability of department-specific emissions driven by the type of material being processed rather than by lack of emissions prevention measures.

The Freeport facility also provided additional test data for the roofline vents for all three process areas in Appendices H1 and H2 of their public comment letter (Docket Item No. EPA-HQ-OAR-2020-0430-0134). In reviewing these additional test data, we note that for completeness they should be included in the calculation of emission limits for these emission sources.

In their comment letter, Freeport noted that the emission rates from the test data underlying the MACT floor emission limits from each smelter (electric and ISASMELT) should be added together rather than averaged since they are two distinct emission points. In reviewing the test data, we agree that the emission rates for the smelters should be added rather than averaged. This change is incorporated in our revised analyses included in this supplemental proposal for these emission sources.

In response to the comments the EPA received on combining the three proposed roofline emission limits (*i.e.*, from the smelters, converters, and anode refining rooflines) into a single combined emission limit, we performed an evaluation of the approach used in the 2022 proposed RTR and an evaluation of combining the emissions data to develop the emissions limit. The evaluations use all test data now available and incorporate the change to

the processing of the smelter test data (*i.e.*, adding the emission rates from each smelter rather than averaging them). Our evaluation of separate emission limits for filterable PM from the converter, smelter, and anode refining rooflines using the methodology in the 2022 proposed RTR, results in PM MACT floor emission limits of 2.4 lbs/hr for the converter roofline and 5.7 lbs/hr for the smelting roofline, and a BTF emission limit (assuming 90 percent control) of 1.6 lbs/hr for the anode refining roofline.

We also evaluated the development of a combined emission limit for all the rooflines. This new emission limit is also calculated using the 99 percent UPL methodology. Specifically, for calculating the combined emission limit, we first determined the 99 percent UPL of the combined emission rates based on all test data now available for filterable PM. We then determined the average fraction of emissions which are attributable to the anode refining roof vent (72 percent). Then we adjusted the anode refining roof vent's portion of the 99 percent UPL by reducing that portion of the value by 90 percent. This results in a combined filterable PM emission limit of 6.3 lbs/hr. We note that this emission limit is still expected to require 90 percent control of the anode refining roofline vent at the Freeport facility, and we expect the Freeport facility will still have to apply controls at this emission source. Therefore, despite the emission limit changing in format (*i.e.*, becoming a single limit as opposed to three separate limits), we expect slightly higher emission reductions (*i.e.*, 4.59 tpy of lead and arsenic). While we expect the Freeport facility will need to apply some control of the anode refining source, a combined limit would provide the facility with options to determine which source or combination of sources to control and to what level to achieve the overall needed emission reductions to comply with the combined emission limit. Because the option is expected to provide the same emission reductions as separate emission limits while also providing some flexibility for subject facilities, we are proposing a single combined emission limit for the converter, smelting, and anode refining roofline vents in this supplemental proposed rulemaking. Further information on our evaluation of separate and combined emission limits using all test data are available in the memorandum entitled *Revised MACT Floor Analysis for the Fugitive Process Emission Sources* in the docket for this

rulemaking (Docket ID EPA-HQ-OAR-2020-0430).

The EPA also received comments from the Freeport facility concerning its cost estimates for the anode refining process fugitive roofline emissions controls. In their public comment letter on the 2022 proposed RTR, the Freeport facility suggested that the EPA had underestimated costs for controlling the anode refining operations' process fugitive emissions. They provided their own cost assessment data in Attachment F of their comment letter (Docket Item No. EPA-HQ-OAR-2020-0430-0134).

After evaluating the comment letter and associated documents provided by Freeport, we determined that it is appropriate to update certain data input parameters in the cost estimates to reflect design requirements at the Freeport facility primarily by increasing the baghouse flowrate, lowering the air to cloth ratio, and adding a lime injection system to treat any acid gases in the exhaust stream. Additionally, the cost estimates have been updated to reflect 2022 dollars and using an updated bank prime interest rate. The Agency now estimates that the BTF standard for the process fugitive emissions from the roofline at the Freeport facility would have capital costs of \$10,239,666 and annualized costs of \$2,143,972 and achieve about 4.59 tpy reduction of lead and arsenic, with cost effectiveness of \$467,000/ton lead and arsenic, which is a level that, while higher than the cost effectiveness in the 2022 proposed RTR, we consider to be cost effective for these pollutants. Further information on our revised cost estimates can be found in the memorandum entitled, *Cost Estimates for Enhanced Capture and Control of Process Fugitive Emissions from the Anode Refining Operations at Freeport* in the docket for this rulemaking (Docket ID EPA-HQ-OAR-2020-0430). As described above, we are maintaining a proposed BTF emission limit for the roof vents in this supplemental proposal because it is cost effective and feasible to achieve. We also note that this BTF limit would ensure that risks are acceptable. We estimate that this BTF limit would reduce the cancer MIR near Freeport from 70-in-1 million to 20-in-1 million, ensure 3-month rolling average ambient lead concentrations remain well below the lead NAAQS near Freeport, and reduce the maximum noncancer acute HQ (for arsenic) from 7 to 2. Furthermore, this BTF limit would reduce the number of people with an estimated increased risk of cancer of greater than or equal to 1-in-1 million from 22,900 people (at baseline) to 17,400 (post-control) and decrease the

estimated cancer incidence from 0.002 cases per year to 0.001 cases per year. The cancer MIR for Asarco would remain at 60-in-1 million.

Consistent with the analysis provided in the 2022 proposed RTR, we expect the costs for the other major source copper smelting facility, Asarco, to be limited to emissions compliance testing and recordkeeping and reporting requirements. Also, consistent with the analysis provided in the 2022 proposed RTR, the EPA estimates the costs for the Asarco facility are \$107,581 per year (after adjusting to 2022 dollars) to comply with the proposed testing and recordkeeping and reporting requirements for process fugitive lead emissions from its three roofline vents (*i.e.*, for the anode, converter, and smelting furnace rooflines). While we are proposing a combined roofline emissions limit in this supplemental proposal, instead of separate limits for each department, we expect the testing costs to remain the same as those estimated in the 2022 proposed RTR since all three sources will have to be tested to compare to the proposed combined emission limit included in this supplemental proposal. This estimate is based on the EPA's experience and knowledge of typical costs associated with these types of testing requirements. We also note that the Freeport facility already performs the emissions testing that is required by the emissions limit in this supplemental proposal, thus this proposed rule does not impose any additional costs related to emissions testing and recordkeeping and reporting on the Freeport facility because these costs would be incurred in the absence of the supplemental proposed rule.

We are proposing that existing facilities would need to comply within two years after promulgation of the final rule and that compliance would be demonstrated through an initial performance test followed by a compliance test once per year. Moreover, facilities would need to monitor control parameters (*e.g.*, fan speed, amperage, pressure drops, and/or damper positioning), as applicable, on a continuous basis to ensure the control systems are working properly. All new or reconstructed facilities must comply with all requirements in the final rule upon startup.

D. What revisions are we proposing specific to the emission limit for mercury from the 2022 proposed RTR?

As described in the 2022 proposed RTR, the current NESHAP does not include standards for mercury. Using the test data available during the

development of the 2022 proposed RTR, the source category was estimated to emit 55 pounds per year of mercury with 45 pounds per year emitted from the Freeport facility. Because of the temperatures of the exhaust gas streams encountered at primary copper smelting operations, much of the mercury emitted is in vapor form, not in particulate form. The vapor form of mercury is not captured by the controls used to reduce PM emission. Therefore, the PM limits in the NESHAP do not serve as a surrogate for mercury.

Therefore, in the 2022 proposed RTR, pursuant to CAA sections 112(d)(2) and (3) for new and existing major sources, mercury limits were proposed. In the 2022 proposed RTR, the Agency used the available test data from Asarco and Freeport to develop the mercury standards for new and existing sources (details can be found in *Draft MACT Floor Analyses for the Primary Copper Smelting Source Category* (Docket Item No. EPA-HQ-OAR-2020-0430-0055)).

In the 2022 proposed RTR, the new source standard was based on the best performer, Asarco. The Agency evaluated proposing a BTF emission standard for new sources based on Asarco data in the 2022 proposed RTR but rejected this option based on the cost effectiveness, uncertainty in the quantity of emission reductions, and the fact that the new source MACT floor standard is significantly lower than the limit for existing sources. The proposed emission standard for new sources in the 2022 proposed RTR was 0.00097 lbs/hr. The Agency has not received any new information relative to the new source standard included in the 2022 proposed RTR and, therefore, maintains this proposed MACT floor emission limit for new sources.

In the 2022 proposed RTR, the MACT floor emissions limit for existing sources was calculated based on the average of all the emissions tests from both facilities, accounting for variability using the 99 percent UPL. A MACT floor based on the 99 percent UPL for the combined facility-wide sources was 0.01 lbs/hr. The Agency also evaluated a BTF emission standard for existing sources, a value of 0.0043 lbs/hr. The BTF standard was based on the addition of controls at the Freeport facility's acid plant which was identified as the largest source of mercury emissions at the Freeport facility using data available at the time. The additional controls were expected to include the installation of a polishing baghouse with activated carbon injection. The expected emission reductions were 26 lb/yr, based on 90 percent control of the emissions from Freeport's acid plant. The estimated

capital costs for the polishing baghouse with activated carbon injection were \$1.5 million (2019 dollars), and the estimated annualized costs were \$714,000 (2019 dollars), for a cost effectiveness of \$27,500 (2019 dollars) per pound of mercury reduced. In the 2022 proposed RTR, the Agency proposed the BTF standard of 0.0043 lbs/hr for existing sources. The development of this beyond-the-floor limit is described in detail in the memorandum entitled, *Estimated Costs for Beyond-the-floor Controls for Mercury Emissions from Primary Copper Smelting Facilities* (Docket Item No. EPA-HQ-OAR-2020-0430-0059).

Since the 2022 proposed RTR, the EPA received comments on the proposed existing source mercury standard and new information from the Freeport facility through the CAA section 114 information request described in II.E of this preamble. Freeport provided additional mercury performance test reports with results for the vent fume, aisle scrubber and acid plant covering calendar years 2019–2021. The Freeport facility noted that these test reports used a variation of EPA Method 29 that may result in mercury emissions measurements that are biased low. These mercury tests conducted in 2019–21 were not done according to the EPA method. The facility voluntarily completed an additional mercury performance test at the vent fume, aisle scrubber, and acid plant in 2022 which fully followed EPA Method 29. These test reports are available in the docket for this rulemaking (Docket ID EPA-HQ-OAR-2020-0430).

In their public comment letter, Freeport provided comments specifically on controlling emissions from the acid plant. The facility questioned the technical feasibility of these controls, stating that they are unaware of a polishing baghouse with ACI operating downstream of a wet scrubber on an acid plant. They explained that the conditions of the acid plant exhaust streams are unsuited for ACI since the stream has a high moisture content, low mercury concentrations, and high concentrations of SO₂/SO₃ which inhibit mercury removal.

Freeport argued that even if it was technically feasible, the EPA had underestimated costs and overstated reductions. Freeport submitted their own cost estimates for ACI plus a polishing baghouse on the acid plant as part of their comment letter on the 2022 proposed RTR (see Attachment I of Docket Item No. EPA-HQ-OAR-2020-0430-0134). The facility subsequently

revised and resubmitted their evaluation of the baghouse with activated carbon injection control option for the acid plant to the EPA on March 12, 2023 (Docket ID EPA-HQ-OAR-2020-0430). In this evaluation, the Freeport facility estimated the emission reductions of mercury to be between 50 and 75 percent using a polishing baghouse with ACI, or about 15 to 22 lbs of mercury. The cost estimate from Freeport provided capital costs of \$16.4M, annualized costs of \$4.4 million and a cost effectiveness of about \$169,000 per pound.

The EPA has performed a review of all available mercury test data from Freeport and the cost estimate provided by Freeport. In reviewing the test data, we decided that only the test which was fully compliant with EPA Method 29 should be used to calculate emission limits and to estimate the quantity of potential emissions reductions. Using the data from this test report, the point and non-point source emissions from Freeport are estimated to be 139 lbs/yr which, when combined with the test report from Asarco which indicates that 10 lbs/yr are estimated to be emitted from that facility, results in an estimated total of 149 lbs/yr mercury emitted from the source category. In Freeport's 2022 mercury test which complied fully with EPA Method 29, the emissions were more evenly distributed between the three stacks at the facility with an estimated 45 lbs/yr from the vent fume stack, an estimated 49.3 lbs/yr estimated from the aisle scrubber and an estimated 38.5 lbs/yr from the acid plant.

Using the 2022 mercury test from Freeport and the performance test from Asarco, we calculated the MACT floor limit for existing sources by averaging all the test results from both facilities, accounting for variability using the 99 percent UPL. A MACT floor based on the 99 percent UPL for the combined facility-wide limit for existing sources is 0.033 lbs/hr. Based on the available data, we conclude that both facilities would be able to meet the MACT floor limit with no additional controls. For new sources, we are maintaining the MACT floor limit of 0.00097 lbs/hr provided in the 2022 proposed RTR which was based on data from the best performer, Asarco. We have no new data with which to update this value. A detailed analysis and documentation of the revised MACT floor calculations for existing sources can be found in the technical document, *Revised MACT Floor Analysis for Mercury*, available in the docket (Docket ID EPA-HQ-2020-0430).

As discussed previously, the Freeport facility submitted comments indicating

several technical reasons that control of mercury from the acid plant would be difficult. In reviewing the 2022 mercury test from Freeport, we find that the mercury emissions were distributed more evenly among the facility's three stacks when compared to the other test reports which included mercury from 2018–2021. We have evaluated the technical aspects of Freeport's comment letter regarding mercury control from the acid plant and agree characteristics of the exhaust stream and equipment configuration may inhibit mercury control (e.g., moisture content, acid gas content, mercury concentration). Considering this, and the emissions distribution from the 2022 mercury test, we examined other control options to determine whether there is a more technically suitable and cost-effective option for controlling mercury emissions at Freeport. When reviewing the stack characteristics, we find that the aisle scrubber has a high flowrate, typically in excess of one million cubic feet per minute, and a very similar quantity of mercury emissions compared to the other two stacks based on the 2022 test. The aisle scrubber also combines streams which are currently uncontrolled (i.e., secondary converter) with streams that are controlled (i.e., primary anode refining baghouse emissions). On the other hand, the vent fume stack handles emissions from the secondary capture system for the furnaces and has a lower flowrate than the aisle scrubber. Often, a higher flowrate and the complexity of combining multiple streams increase control costs. When evaluating beyond-the-floor options for controlling mercury, we estimated costs and emissions reductions for controlling the vent fume exhaust stream because we expect the more simplistic exhaust stream configuration, lower flowrate, and similar quantity of expected reductions to be more favorable for controlling mercury than the aisle scrubber. For the BTF option, we estimated costs and emissions reductions associated with a baghouse with lime injection and activated carbon injection with an expected control efficiency of 90 percent for mercury from the vent fume. The estimated reduction would be 40.5 lbs of mercury from the vent fume stack. The overall reduction of mercury emissions that would occur from the Freeport facility with this BTF option is estimated to be 30 percent (i.e., the facility-wide total emissions of 139 lbs mercury would be reduced by 40.5 lbs mercury). The capital costs of the baghouse with lime injection and activated carbon injection

are estimated to be \$6.04M, with annualized costs of \$1.91M and a cost effectiveness of \$47,000/lb mercury reduced. We do not find costs associated with the BTF option to be reasonable and are therefore not proposing a BTF emission limit for existing sources for mercury. We also considered other BTF options, but all other options were less cost effective than the option presented in this section. The EPA is requesting comment on the BTF options evaluated for mercury and whether the EPA should determine in this case that \$47,000/lb mercury is cost-effective for mercury control and include a BTF limit in the final rule. A detailed description of the BTF analysis of mercury emissions, the controls necessary to reduce mercury emissions, and the cost of these BTF controls are included in the document, *Estimated Cost for Beyond-the-floor Controls for Mercury Emissions from Primary Copper Smelting Facilities*, located in the docket (Docket ID No. EPA-HQ-OAR-2020-0430). Since we have not identified a cost-effective BTF option, we are proposing the MACT floor limit for the combined facility-wide limit for mercury of 0.033 lbs/hr for existing sources.

The EPA is proposing that compliance with the mercury emissions limits for existing sources will be demonstrated through an initial compliance test for each of the affected sources (e.g., furnaces, converters, anode refining) within 1 year of publication of the rule followed by a compliance test at least once every year. We estimate that Freeport and Asarco will incur performance testing costs for mercury of \$49,940 per facility per year. For newly affected facilities, compliance is to be achieved no later than the effective date of the final rule or upon startup, whichever is later.

E. What emissions standards are we proposing for the Aisle Scrubber in this supplemental proposed rule that are different than decisions proposed in the 2022 proposed RTR?

As discussed in the preamble of the 2022 proposed RTR, we proposed that the risks for the major source category were unacceptable. The EPA identified controls to reduce risk to an acceptable level, which were proposed to be achieved by controlling the anode refining roofline vents (as described in section III.C. of this preamble). Then, the EPA considered whether additional measures were required to provide an ample margin of safety to protect public health. An aisle scrubber located at one of the two major source facilities (Freeport) was estimated to emit 9.2 tpy

metal HAP (mostly lead and arsenic) and was identified as an emission source that contributed significantly to risk at the Freeport facility (e.g., 23 percent of the cancer MIR). Therefore, the EPA evaluated the cost, the emissions reductions and risk reductions that could be achieved by additional controls for the aisle scrubber as part of the ample margin of safety analysis.

Specifically, in the 2022 proposed RTR the EPA evaluated the cost and emission reductions of adding a WESP to the combined emissions stream from the aisle scrubber. The evaluation is described in the memorandum entitled *Evaluation of Beyond-the-floor and Ample Margin of Safety Control Options and Costs for Process Fugitive Emissions from Smelting Furnaces and Converters, and for Point Source Emissions from Anode Refining Furnaces and for the Combined Emissions Stream Emitted from the Freeport Aisle Scrubber—REVISED* (Docket Item No. EPA-HQ-OAR-0430-0108). Based on the analysis included in the 2022 Proposed RTR, the estimated capital costs were \$67 million (2019 dollars), and the estimated annualized costs were \$17 million (2019 dollars). The associated emissions reduction achieved were estimated to be 8.7 tpy total metal HAP of which 7.6 tpy were estimated to be lead and arsenic resulting in a cost effectiveness of \$2 million/ton (2019 dollars).

The aisle scrubber at the Freeport facility is used to control the combined secondary emissions from the converter plus the emissions exiting the baghouse used to control primary anode refining point source emissions. Currently, there are emission limits for secondary capture systems from existing converter departments in 40 CFR 63.1444(d)(6). Furthermore, the EPA proposed emissions limits for new and existing anode refining departments in the 2022 proposed RTR (i.e., proposed limits for 40 CFR 63.1444(i)(1)). In this supplemental proposal, the EPA is co-proposing regulatory options for additional control of either the secondary capture system for the converter department or additional control of the combined emissions stream of the secondary capture system for the converter department and the point source emissions from the anode refining department. These control options would result in more stringent emissions standards for these emission sources than what is currently required by the Primary Copper Smelting NESHAP as discussed more below. These standards are being proposed as technology developments pursuant to CAA section 112(d)(6) and to provide an

ample margin of safety to protect public health pursuant to CAA section 112(f)(2).

In order to best inform these options for additional controls, after the January 2022 proposal the EPA issued a CAA section 114 information request to the Freeport facility as described in section II.E of this preamble. The CAA section 114 information request requested that Freeport perform a feasibility analysis of whether Freeport could further reduce the HAP metal emissions either from the secondary capture system for the converter department or from the combined emissions stream entering the aisle scrubber (i.e., the emissions stream from the secondary capture system for the converter department and the anode refining department).

The Freeport facility subsequently provided the EPA with an evaluation of control options for the aisle scrubber, including:

- Option 1—Addition of a WESP downstream of the aisle scrubber to provide additional control of the combined emissions stream from the secondary capture system for the converter department and the anode refining department (i.e., the same option evaluated by the EPA in the ample margin of safety analysis included in the January 2022 proposal);
- Option 2—Addition of a baghouse upstream of the aisle scrubber to provide additional control of the secondary capture system for the converter department.

The Freeport facility regularly conducts performance testing of its aisle scrubber for filterable PM and metals. The EPA has obtained copies of the performance test results from 2018, 2019, 2020, 2021 and 2022 for the aisle scrubber, which are available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2020-0430). We used these performance tests to estimate the baseline emissions and subsequently estimate the quantity of emissions reductions for the options for controlling the aisle scrubber at the Freeport facility. Using these test data, we now estimate the annual emissions of metal HAP to be 6.63 tpy, of which more than 90 percent is lead and arsenic, on average. We also used the test reports to inform the development of potential emissions standards. Initially we developed a limit that represents current emissions from the aisle scrubber, accounting for variability using the 99 percent UPL. The resulting limit based on the 99 percent UPL for the combined emissions stream from the secondary capture system for the converter department and the anode refining department is 7.48 milligram

per dry cubic standard meter (mg/dscm). This UPL served as the baseline for the development of the two control options described in this section. A detailed discussion of the option-specific control equipment, expected emission reductions, associated emissions standard, and control costs are described in the following paragraphs.

For Option 1, as described previously, the WESP would be located downstream of the aisle scrubber and therefore further control the combined emissions stream from the secondary capture system for the converter department and the anode refining department. The expected control efficiency for the WESP is 95 percent, thus expected emission reductions from this option are 95 percent of the baseline emissions (6.63 tpy metal HAP) or 6.3 tpy metal HAP. The EPA updated the expected flowrate for the WESP in its cost estimates from the value used in the cost estimate we provided in the 2022 proposed RTR based on comments from Freeport. We also updated the cost estimate to reflect 2022 dollars and updated the bank prime interest rate. Based on our analysis, the estimated capital costs for the WESP are \$98.5 million, the annualized costs are \$25.2 million, and estimated reductions are 6.3 tpy reduction of metal HAP, with cost effectiveness of \$4.0 million/ton metal HAP. The emission limit for this option would be 0.374 mg/dscm, which is based on applying the expected control of 95 percent to the 99 percent UPL for the combined emissions stream from the secondary capture system for the converter department and the anode refining department.

As described in the previous section III.C. of this preamble, we estimate the reductions of process fugitive emissions from the roof vents would reduce the MIR at Freeport from 70-in-1 million to 20-in-1 million; reduce the number of people with cancer risk greater than 1-in-1 million from 22,900 to 17,400; reduce ambient lead exposures below the lead NAAQS; and reduce the maximum HQ (due to arsenic emissions) from 7 to 2. We estimate that the proposed limit of 0.374 mg/dscm for the aisle scrubber (option 1) would reduce the incremental cancer risk of an additional 1,900 people below 1-in-1 million (from 17,400 to 15,500). Furthermore, the maximum acute HQ due to arsenic emissions would be reduced from 2 to 1. Option 1 would result in a small additional reduction in the MIR at Freeport, but after rounding up (to 1 significant figure) the MIR remains at 20-in-1 million. However, we note that the estimated cancer MIR for

the source category would be 60-in-1 million, which is the maximum cancer risk near the Asarco facility.

Option 2, as described previously, would require a baghouse upstream of the aisle scrubber which would be designed to control the secondary capture system for the converter department. Currently, the uncontrolled emissions from the secondary capture system for the converter department combine with the baghouse-controlled primary anode refining point source emissions and route to the aisle scrubber. Unlike the aisle scrubber which is routinely tested for particulate matter and lead emissions, the secondary converter duct is not sampled at any regular frequency. However, in an engineering evaluation submitted by Freeport as part of the CAA section 114 information request in which the converter duct was sampled, the facility explained that approximately 75 percent of the emissions from the aisle scrubber are attributable to the secondary capture system for the converter department. Therefore, we estimate that average annual metal HAP emissions from the secondary capture system for the converter department are 4.97 tpy (75 percent of the estimated total average annual metal HAP emissions from the aisle scrubber, which is 6.63 tpy). To estimate the expected reductions from this option, we applied the expected control efficiency of the baghouse (90 percent) to the emissions which are estimated to be from the secondary capture system for the converter department (4.97 tpy). This results in an estimated emissions reduction of 4.5 tpy metal HAP from the aisle scrubber, which is about a 68 percent reduction of emissions from the aisle scrubber. We estimate these controls (*i.e.*, baghouse) will have capital costs of \$37M, annualized costs of \$6.2 million and achieve about a 4.5 tpy reduction in metal HAP with cost effectiveness of \$1.38 million/ton metal HAP. The emission standard for this option was calculated by first determining the fraction of the 99 percent UPL that is estimated to be from the secondary capture system for the converter department, 5.61 mg/dscm, and then applying the expected control efficiency of the baghouse (*i.e.*, 90 percent) to determine the reduction in the emission limit (5.09 mg/dscm). The resulting emissions limit under option 2 would be 2.43 mg/dscm for additional controls on the secondary capture system for the converter department.

As described in the previous section III.C. of this preamble, we estimate the reductions of process fugitive emissions from the roof vents would reduce the

MIR at Freeport from 70-in-1 million to 20-in-1 million; reduce the number of people with cancer risk greater than 1-in-1 million from 22,900 to 17,400; reduce ambient lead exposures below the lead NAAQS; and reduce the maximum HQ (due to arsenic emissions) from 7 to 2. We estimate that the proposed limit of 2.43 mg/dscm (based on addition of a baghouse on the secondary capture system for the converter department—option 2) would reduce the incremental cancer risk of an additional 700 people to below 1-in-1 million (from 17,400 to 16,700). Furthermore, the maximum acute HQ due to arsenic emissions would be reduced from 2 to 1. Option 2 would also result in a small additional reduction in the maximum cancer risk at Freeport, but after rounding up (to 1 significant figure) the maximum risk would remain at 20-in-1 million. The estimated cancer MIR for the source category would be 60-in-1 million, which is the maximum cancer risk near the Asarco facility.

As discussed below, based on consideration and evaluation of both options, the EPA is proposing both options pursuant to CAA section 112(d)(6) and CAA section 112(f). We propose that both options are feasible, achieve significant reductions of the HAP metals and risk reduction, and that the cost impacts are reasonable. Therefore, both options represent cost-effective developments in control technology pursuant to CAA section 112(d)(6) and ensure the NESHAP will provide an ample margin of safety to protect public health pursuant to CAA section 112(f). We expect that the Asarco facility can comply with either option without the need to install additional controls. We are proposing that facilities would need to comply within two years after promulgation of the final rule and that compliance would be demonstrated through an initial performance test followed by a compliance test once per year. Moreover, facilities would need to monitor control parameters (*e.g.*, fan speed, amperage, pressure drops, and/or damper positioning), as applicable, on a continuous basis to ensure the control systems are working properly.

Further information regarding our estimated control costs, associated emission reductions, and estimated cost effectiveness can be found in the memorandum entitled, *Cost Estimates for Additional Controls of Freeport's Aisle Scrubber* which is available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2020-0430). Further information regarding the development of the proposed emission standards for

each option can be found in the memorandum entitled, *Emission Standard Development for the Options to Provide Additional Controls for the Secondary Capture System for the Converter Department and Anode Refining Department* which is available in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2020-0430).

The EPA is presenting both options (described in this section) in this supplemental proposal as potential regulatory options that we may finalize for this source category under CAA section 112(d)(6) and/or CAA section 112(f) after consideration of public comments. Under CAA section 112(d)(6) we propose that both options represent cost-effective developments in control technology and that it is necessary to revise the standards to reduce emissions from the aisle scrubber. In addition to the controls described above, we note that in the 2022 RTR Proposed Rule we also proposed a requirement that facilities develop and operate according to a fugitive dust minimization plan, which would provide some additional unquantified health protection. We are not proposing any changes to that proposed fugitive dust minimization requirement in this action.

Noting that in setting standards to provide ample margin of safety to protect public health EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million (54 FR 38044; September 14, 1989), and after considering the risk reduction

achieved under both options as well as the cost and feasibility of controls, along with the fugitive dust plan, we propose that either option provides an ample margin of safety to protect public health under CAA section 112(f). We are seeking comments on the technical feasibility, costs, expected emission reductions, and risk reductions achieved and whether one option is preferable over the other and why.

F. What are the results of risk analyses completed for this action?

In the January 11, 2022, proposed amendments to the Primary Copper Smelting RTR rule (87 FR 1616; January 11, 2022), the EPA conducted a residual risk assessment and determined that risks from the primary copper smelting source category were unacceptable due to HAP metal (primarily lead and arsenic) emissions and proposed standards to reduce risk to an acceptable level and provide an ample margin of safety to protect public health. The risk analysis supporting the proposed rule indicated exceedances of the lead NAAQS at the baseline (*i.e.*, based on current HAP emissions). That risk analysis also indicated that the cancer risk for the individual most exposed could be up to 80-in-1 million based on actual emissions and up to 90-in-1 million based on allowable emissions. In addition to the noncancer risk from lead, the analysis also indicated a chronic HI of 1 due to arsenic and a maximum acute HQ of 7 for arsenic (see Docket No. EPA-HQ-OAR-2020-0430). Since issuance of the proposal, the EPA has received new facility operation and

HAP emissions data from the Freeport facility through the public comments and issuance of a 2022 CAA section 114 information request. Detailed information on the new data is provided in the memorandum *Updated Stack/Emissions Data Collected for 2023 Primary Copper Smelting Risk Review*, which is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2020-0430).

Based on the updated stack and performance tests submitted by Freeport as part of the section 114 request, we updated the baseline risk assessment for this supplemental proposal. The new assessment reflects emissions changes to the known risk drivers (arsenic and lead) and a potential risk driver (mercury) at Freeport. Since this supplemental proposal only reflects emissions changes for the Freeport facility, we only updated the risk assessment for this facility.

Also, this supplemental proposal includes an updated control option 1 and a new control option 2 that affect the Freeport facility only, as described in Table 4. Because of these changes, we conducted for this supplemental proposal an updated assessment of post-control risk for both of these emission control scenarios for Freeport. The risk results for the Asarco facility have not changed since the 2022 proposal. The details of the risk assessment for Asarco are described in the 2022 proposal **Federal Register** publication (87 FR 1616; January 11, 2022) for details and the 2022 risk report, which is available in the docket for this proposed rule.

TABLE 4—COMPARISON OF THE PRIMARY COPPER SMELTING BASELINE INHALATION RISK ASSESSMENT RESULTS FOR FREEPORT WITH POST-CONTROL RISK ESTIMATES FOR TWO 2023 PROPOSED SUPPLEMENTAL CONTROL OPTIONS
[Estimated risks based on actual emissions]

Risk assessment scenario ¹	Maximum individual cancer risk (in-1 million)	Population at increased risk of cancer ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI ²	Maximum residential annual Pb conc. (ug/m ³) ³	Max predicted 3-month modeled Pb conc. (ug/m ³) ⁴	Acute HQ (REL) ⁵
Proposed Rule (original baseline)	80 (As)	24,400	0.002	1 (As)	0.12	0.17 (Pb)	7 (As)
Supplemental Proposal (revised baseline) ...	70 (As)	22,900	0.002	1 (As)	0.12	0.17 (Pb)	7 (As)
Supplemental Proposal Post-Control for Anode Roofline	20 (As)	17,400	0.001	0.3 (As)	0.041	0.06 (Pb)	2 (As)
Supplemental Proposal Post-Control Option 1 for Aisle Scrubber ⁶	20 (As)	15,500	0.0006	0.3 (As)	0.026	0.04 (Pb)	1 (As)
Supplemental Proposal Post-Control Option 2 for Aisle Scrubber ⁷	20 (As)	16,700	0.0006	0.3 (As)	0.028	0.04 (Pb)	1 (As)

¹ All values provided in this table are based upon only arsenic and lead emissions from Freeport (Miami, AZ).

² TOSHI value for developmental effects does not include contribution from lead.

³ The maximum annual concentration for lead is based upon the MIR location which is also the maximum off-site exposure location for Freeport.

⁴ The maximum predicted 3-month Pb (lead) conc based on actual emissions at the time of proposal was based on AERMOD modeling with LEAD_POST, while the maximum predicted 3-month Pb conc for the supplemental proposal are based upon extrapolations of the HEM-4 annual Pb concentrations using the annual and 3-month modeled results from proposal.

⁵ The HQ values are based upon the lowest 1-hour acute health benchmark, the reference exposure level (REL) for arsenic. Arsenic also has an AEGL-2 value (irreversible or escape-impairing effects) which resulted in a maximum HQ value of 0.0006 based upon actual emissions estimated in this supplemental proposal.

⁶ Option 1 represents controls on anode roofline (described in section III.C of this preamble) +WESP on aisle scrubber (described in section III.E of this preamble).

⁷ Option 2 represents controls on anode roofline (described in section III.C of this preamble) + baghouse upstream of aisle scrubber (described in section III.E of this preamble).

The methodologies used for the updated baseline risk analysis are described in section III.C. of the preamble to the January 11, 2022, proposed rule *National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review* (87 FR 1616; January 11, 2022). We present the results of the updated baseline risk analysis for Freeport and the analysis of the proposed control options in Table 4 of this preamble (rows labeled “Supplemental Proposal Post-Control Option 1” and “Supplemental Proposal Post-Control Option 2”) and in more detail in the document: *Revised Residual Risk Assessment for the Freeport Smelter (Miami, AZ) in Support of the 2023 Supplemental Proposal for the Primary Copper Smelting Source Category*, available in the docket for this action (Docket No. EPA-HQ-OAR-2020-0430). For more detail on the proposed control options, refer to sections III.C and III.E. of this preamble.

The updated baseline risk assessment did not result in a significant change to the estimated cancer or non-cancer impacts at the Freeport facility. The updated cancer MIR for Freeport changed from 80-in-1 million to 70-in-1 million with cancer incidence remaining the same at 0.002 excess cancer cases per year, or one excess case every 500 years. These results are summarized in Table 4 of this preamble. The maximum individual cancer risk at Freeport is driven mostly by process fugitive emissions of arsenic from the anode refining roofline (about 70% of the MIR), and to a lesser degree the anode furnaces and secondary converter point source emissions that are emitted through the aisle scrubber (about 20% of the MIR). The arsenic emissions represent more than 97 percent of the cancer risk at the MIR location for the Freeport facility. The population exposed to excess cancer risks greater than or equal to 1-in-1 million are approximately 23,000 people for the baseline scenario. The chronic non-cancer risk remained the same with an HI equal to 1, driven by arsenic exposure. The acute noncancer risks from arsenic emissions remained the same with an HQ (based on the Reference Exposure Level) of 7. More detail is provided in the revised risk assessment document cited previously in this section. When applying the acute exposure guideline levels-2 (AEG-2) value for arsenic for the supplemental proposal, the acute HQ results in a HQ (AEG-2) less than 1 (0.0006).

There was no change to the risk results for lead. The emissions update

resulted in the same estimated ambient annual concentration of 0.12 ug/m³. This concentration results in a maximum ambient concentration of lead for 3-month intervals of 0.17 ug/m³ based on actual emissions, which is the same result as in the 2022 proposal and which still exceeds the lead NAAQS of 0.15 ug/m³.

Regarding multipathway risk, in the Primary Copper Smelting RTR proposed rule (87 FR 1616; January 11, 2022), we concluded that there was “no significant potential for multipathway health effects.” This determination was based on applying site-specific multipathway assessments conducted for other source categories with multipathway Tier 2 and Tier 3 screening estimates for the Freeport facility. The multipathway risk screening results for arsenic are now estimated to be lower than presented in the 2022 proposal based upon the reduced arsenic emissions in the revised baseline (described previously in this section). The new stack test data for mercury provided by Freeport resulted in an increase in emissions by a factor of 3, with annual emissions increasing to 139 pounds per year. This increase in baseline emissions would still result in an estimated mercury HQ less than 1 (0.2) for the fisher scenario.

Based on the results of the *Updated Stack/Emissions Data Collected for 2023 Primary Copper Smelting Risk Review*, the EPA proposes that the risks for this source category under the current MACT provisions remain unacceptable. The updated risk analysis still indicates exceedances of the lead NAAQS and a HI of 1 based on exposure to arsenic. The noncancer risk from lead is not included in the cumulative noncancer HI calculation. However, the health benchmarks for lead and arsenic are based on adverse neurocognitive effects, and the two chemicals may have combined effects on neurodevelopment. In addition, the updated risk analysis indicates a maximum acute HQ of 7 for arsenic for the baseline scenario. The risk analysis also indicates that the estimated inhalation cancer risk to the individual most exposed is 70-in-1 million based on actual emissions, which is approaching the presumptive level of unacceptability of 100-in-1 million.

The details of the risk assessment for allowable emissions for the baseline have not changed since the 2022 proposed rule. The estimated risks based on allowable emissions are described in the 2022 proposal **Federal Register** publication (87 FR 1616; January 11, 2022), and the 2022 risk report, which is available in the docket for this proposed rule.

With regard to the risk assessment we conducted for the updated control option 1 (i.e., the BTF limit for process fugitive emissions from roof vents discussed in section III.C of this preamble, plus a WESP on the aisle scrubber described in section III.E of this preamble) and the new control option 2 (i.e., the BTF limit for roof vents discussed in section III.C of this preamble, plus a baghouse upstream of the aisle scrubber described in section III.E of this preamble), we estimate the controls from option 1 would reduce the maximum risk at Freeport from 70-in-1 million to 20-in-1 million and would also reduce the population with cancer risks greater than or equal to 1-in-1 million from 22,900 to 15,500 people. Cancer incidence would also decrease from 0.002 to 0.0006, or from 1 excess cancer case every 500 years to every 1,600 years with additional reductions in potential noncancer developmental risks from arsenic and lead emissions. The maximum acute risk at public locations from arsenic emissions would also be reduced from an HQ of 7 to 1. Both control options 1 and 2 (as described in this section) would reduce the estimated maximum 3-month lead concentration from 0.17 ug/m³ to 0.04 ug/m³. The expected controls for option 2 (shown in Table 4 of this preamble) provide almost the same level of risk reduction as option 1, except the post-control population with cancer risks greater than or equal to 1-in-1 million is slightly higher at 16,700 people.

Refer to the document titled: *Revised Residual Risk Assessment for the Freeport Smelter (Miami, AZ) in Support of the 2023 Supplemental Proposal for the Primary Copper Smelting Source Category*, in the docket for this rulemaking for more details regarding the updated risk assessment.

G. What other actions are we proposing, and what is the rationale for those actions?

In addition to the proposed actions described above, we are proposing an additional revision to the NESHAP. We are proposing revisions to the startup, shutdown, and malfunction (SSM) provisions of the NESHAP in order to ensure that they are consistent with the decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. Specifically, we are proposing to prohibit the use of a bypass stack. We are proposing to define the term “bypass stack” in 40 CFR 63.1459 and are also proposing that use

of a bypass stack will result in a violation of the numerical emission standards contained in the Primary Copper Smelting NESHAP in 40 CFR 63.1448. We are also proposing that the use of a bypass stack during a performance test will invalidate the test. These proposed conditions are consistent with the EPA's interpretation of the application of the court's decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008) and consistent with the treatment of bypass stacks other rules (e.g., 40 CFR part 60 subpart Ec).

H. What compliance dates are we proposing and what is the rationale for the proposed compliance dates?

For the additional MACT floor emission limits (mercury, HCl, chlorine, D/F, benzene, toluene, PAHs excluding naphthalene, and naphthalene), the EPA proposes that existing facilities must comply with MACT floor limits within 1 year after promulgation of the final rule, because the EPA estimated that both facilities can meet MACT floor limits without having to install new controls. For affected facilities that commence construction or reconstruction after July 24, 2023, owners or operators must comply with all requirements of the subpart, including all the amendments being proposed, no later than the effective date of the final rule or upon startup, whichever is later.

The EPA is proposing a single combined PM roofline emissions limit for converters, anode refining and smelting furnace roof vents due to plant configurations and comingling of process fugitive emissions. The Agency maintains the proposed requirement that existing facilities must comply with the limit within 2 years after promulgation of the final rule.

The EPA is also proposing that existing facilities must comply with the applicable emissions limit that the EPA promulgates for secondary converter emissions and anode baghouse emissions, which will apply to the emissions from the aisle scrubber at Freeport, as described in section III.E of this preamble, within 2 years after promulgation of the final rule.

The EPA is proposing that facilities must comply with the PM roofline emissions limit and the PM limit that applies to the aisle scrubber within 2 years after promulgation of the final rule because we expect the facility will need up to 2 years to design, construct and operate the necessary capture and control equipment to meet these limits. The reason the Agency is not proposing to allow more than 2 years for compliance is because the controls on

the roofline are required to achieve acceptable risk pursuant to CAA section 112(f), the additional controls on the aisle scrubber are required to provide an ample margin of safety to protect public health pursuant to CAA section 112(f), and section 112(f) only allows up to 2 years to comply with standards promulgated pursuant section 112(f). For affected facilities that commence construction or reconstruction after July 24, 2023, owners or operators must comply with all requirements of the subpart, including all the amendments being proposed, no later than the effective date of the final rule or upon startup, whichever is later.

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The Primary Copper Smelting major source category includes any major source facility that uses a pyrometallurgical process to extract copper from copper sulfide ore concentrates, native ore concentrates, or other copper bearing minerals. There are currently two major source copper smelting facilities in the United States. No new copper smelting facilities are currently being constructed or are planned in the near future.

The affected sources subject to 40 CFR part 63, subpart QQQ, the major source NESHAP, are copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and fugitive emission sources.

B. What are the air quality impacts?

The proposed amendments in this action would achieve estimated emissions reductions of 4.59 tpy of HAP metals (primarily lead, arsenic and cadmium) from the roof vents at the anode refining operations. Additionally, depending on the option chosen for additional controls of either: the secondary capture system for the converter department; or the combined emissions stream of the secondary capture system for the converter department and the point source emissions from the anode refining department, as described in section III.E of this preamble, additional emission reductions from the updated baseline of 4.5 or 6.3 tpy of metal HAP are expected. Therefore, the total expected estimated reductions from the updated baseline are either 9.1 tpy or 11.1 tpy of metal HAP (primarily lead and arsenic) for the source category. The proposed amendments also include removal of the SSM exemptions relative to the use of a bypass stack which will result in an

unquantified reduction of episodic emissions.

C. What are the cost impacts?

As described above, the proposed BTF standard for the combined emissions from roofline vents, which we expect will mainly require reductions from the anode refining process fugitive emissions roof vents, would require estimated capital costs of \$10.2 million and annualized costs of \$2.1 million for the Freeport facility (2022 dollars). Additionally, depending on the option chosen for additional controls of either: (1) the secondary capture system for the converter department; or (2) the combined emissions stream of the secondary capture system for the converter department and the point source emissions from the anode refining department, as described in section III.E. of this preamble, the estimated capital costs are \$37 million or \$98 million, respectively, and the estimated annualized costs are \$6.2 million or \$25.2 million, respectively, for the Freeport facility (2022 dollars). The total estimated capital costs are \$47.2 million or \$108.7 million. The Asarco facility is not expected to require controls for any standard in this supplemental proposal, so no capital costs or annualized costs related to control options are included for Asarco.

This supplemental proposal also includes performance testing requirements for unregulated HAP which are expected to be incurred by both facilities, including testing requirements for benzene, toluene, chlorine, HCl, PAH excluding naphthalene, naphthalene, D/F, and mercury. The Freeport facility has three units (vent fume, aisle scrubber, acid plant) which will require testing, and the Asarco facility has five units (vent gas baghouse, secondary hood baghouse, tertiary hoods, anode baghouse, and acid plant). The estimated costs for performance testing of these unregulated HAP are \$240,140 (2022 dollars) for the Freeport facility and \$366,940 (2022 dollars) for the Asarco facility on each occurrence (once every five years). The annualized testing costs for unregulated HAP (assuming mercury testing is performed annually, and all other performance testing related to the new standards occurs once every five years) are \$87,980 for Freeport and \$113,340 for Asarco. Additionally, the Asarco facility will incur estimated costs of about \$107,581 (2022 dollars) per year to complete compliance testing for the process fugitive rooflines emission standards. Freeport already conducts annual testing of these roofline vents pursuant to state ADEQ

requirements; therefore, the Agency does not expect Freeport to incur new testing costs related to the BTF standard.

The total annual costs of the requirements in the supplemental proposal (*i.e.*, annualized capital, annual operating and maintenance, and annual emissions testing costs) are estimated to be about \$9 million if the baghouse regulatory control option is applied to the Freeport aisle scrubber and about \$28 million if the WESP regulatory control option is applied to the aisle scrubber.

D. What are the economic impacts?

The net present value (NPV) of the estimated cost impacts of this proposed rule, discounted at a 7 percent rate over an eight-year period from 2024 to 2031, is \$75 million in 2022 dollars for the baghouse upstream of the aisle scrubber option. The equivalent annualized value (EAV) is \$13 million at a 7 percent discount rate. At a 3 percent discount rate, the NPV and EAV of the cost impacts (baghouse upstream of aisle scrubber) are estimated to be \$78 million and \$11.8 million, respectively. When applying the WESP controls for the aisle scrubber, the NPV of the estimated cost impacts of this proposed rule, discounted at a 7 percent rate over the 2024 to 2031 period, is \$219 million in 2022 dollars. The EAV is \$37 million at a 7 percent discount rate. At a 3 percent discount rate, the NPV and EAV of the cost impacts (WESP for aisle scrubber) are estimated to be \$233 million and \$33 million, respectively.

This proposed rule does not affect any small businesses. Nonetheless, neither of the ultimate owners of the two affected facilities are expected to incur annualized costs greater than one percent of company-wide annual revenues. This supplemental proposal is not expected to have market impacts, so the EPA does not expect effects on primary copper smelter production or prices.

E. What are the benefits?

As described above, the supplemental proposed amendments would result in reductions in emissions of HAP metals, especially lead and arsenic, with corresponding reductions in human health risk. The proposed amendments also revise the standards such that they apply at all times and prohibit the use of a bypass stack.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to

experience unequal burdens from environmental harms, which are specifically minority populations (people of color), low-income populations, and Indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009, January 20, 2021). The EPA defines 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.”⁶ The EPA further defines 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.” In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution. For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,”⁷ which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) create new disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples through the promulgation of these actions.

We did not conduct any additional demographics analyses for this supplemental proposed rule. EPA performed a risk-based demographic analysis for the 2022 proposed rule to

identify the demographics of the populations with cancer risks greater than or equal to 1-in-1 million living within 5 kilometers (km) and within 50 km of the two major source primary copper facilities. The estimated baseline population with cancer risks greater than or equal to 1-in-1 million due to emissions from primary copper major sources has not changed significantly since proposal.

In the 2022 proposal, the EPA determined that elevated cancer risks associated with emissions from the major source facilities disproportionately affect Native Americans, Hispanics, those living Below the Poverty Level and those Over 25 without High School Diploma living near primary copper major sources. For one facility, Asarco, the proposed baseline demographic analysis indicated that of the population with risks at or above 1-in-1 million, 73 percent are Hispanic, which is significantly greater than the nationwide percentage, 19 percent.

As indicated in Section III.F. of this preamble, this proposed action is projected to reduce the number of individuals with cancer risks equal to or greater than 1-in-1 million associated with emissions from the Freeport facility. See Section III.F. of this preamble for more details.

The methodology and the results of the demographic analysis presented in the 2022 proposal are presented in the preamble of the 2022 proposed rule (87 FR 1616; January 11, 2022) and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Primary Copper Smelting Source Category Operations* (Docket Item No. EPA-HQ-OAR-2020-0430-0052).

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 Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

The EPA prepared an economic analysis of the proposed action. This analysis, *Economic Impact Analysis for the Supplemental Proposed Residual Risk and Technology Review of the*

⁶ <https://www.epa.gov/environmentaljustice>.

⁷ See <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Sources, Residual Risk and Technology Review, is available in the docket EPA–HQ–OAR–2020–0430.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1850.10. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments that affect reporting and recordkeeping requirements for primary copper smelting facilities, such as requirements to submit new performance test reports and to maintain new operating parameter records to demonstrate compliance with new standards. This information would be collected to assure compliance with 40 CFR part 63, subpart QQQ.

Respondents/affected entities:

Owners or operators of primary copper smelting facilities.

Respondent's obligation to respond:

Mandatory (40 CFR part 63, subpart QQQ).

Estimated number of respondents:

Two (total).

Frequency of response: The frequency of responses varies depending on the burden item.

Total estimated burden: The annual recordkeeping and reporting burden for facilities from the proposed recordkeeping and reporting requirements is estimated to be 5,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAP is estimated to be \$1,020,000 (per year), of which \$331,000 is for this rule, and \$685,000 is for the other costs related to continued compliance with the NESHAP. There are no annualized capital or operation & maintenance costs.

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 for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to

the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than August 23, 2023.

C. Regulatory Flexibility Act (RFA)

We certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Based on the Small Business Administration size category for this source category, no small entities are subject to this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. However, consistent with the EPA policy on coordination and consultation with Indian tribes, the EPA will offer government-to-government consultation with tribes as requested.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to

potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action proposes emission standards for six previously unregulated pollutants and emissions limits for the anode refining process fugitive emissions and the aisle scrubber, which will achieve reductions of HAP metals (as described previously in section III of this preamble); therefore, the proposed rule would provide health benefits to children by reducing the level of HAP emissions (e.g., lead and arsenic) emitted from the copper smelting process. This action's health and risk assessments are contained in sections III and IV of the 2022 RTR proposed rule (87 FR 1616; January 11, 2022), and in section III.F of this preamble, and also in the document titled *Residual Risk Assessment for the Primary Copper Smelting Major Source Category in Support of the 2021 Risk and Technology Review Proposed Rule*, which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0430–0051).

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action as defined in Executive Order 12866 and as amended by Executive Order 14094.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the Primary Copper Smelting NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also conducted a review of voluntary consensus standards (VCS) organizations and accessed and searched their databases. Searches were conducted for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5B, 5D, 9, 17, 18, 22, 23, 26A, 29, 30A, 30B of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's referenced method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We

reviewed all potential standards to determine the practicality of the VCS for this rule. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5B, 5D, 22, 30A and 30B.

Four voluntary consensus standards were identified as an acceptable alternative to EPA test methods for the purposes of this rule.

The EPA proposes to incorporate by reference the VCS ANSI/ASME PTC 19–10–1981 Part 10 (2010), “Flue and Exhaust Gas Analyses” as an acceptable alternative to EPA Methods 3B, manual portion only and not the instrumental portion. This standard is acceptable as an alternative to EPA Method 3B and is available from ASME at <http://www.asme.org>; by mail at Three Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. This method determines quantitatively the gaseous constituents of exhausts resulting from stationary combustion sources. The gases covered in ANSI/ASME PTC 19.10–1981 are oxygen, carbon dioxide, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons; however, the use in this rule is only applicable to oxygen and carbon dioxide.

The EPA proposes to incorporate by reference the VCS ASTM D7520–16, “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere” as an acceptable alternative to EPA Method 9 only if the following conditions are followed:

- During the digital camera opacity technique (DCOT) certification procedure outlined in Section 9.2 of ASTM D7520–16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).

- You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16.

- You must follow the record keeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.

- You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15

percent opacity of anyone reading and the average error must not exceed 7.5 percent opacity.)

This approval does not provide or imply a certification or validation of any vendor’s hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor. The EPA proposes to incorporate by reference the VCS ASTM D6420–99 (2010), “Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry.” This ASTM procedure has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420 as measurable. This alternative should not be used for methane and ethane because atomic mass is less than 35. ASTM D6420 should never be specified as a total VOC method.

The EPA proposes to incorporate by reference the VCS ASTM D6784–16, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)” (D6784–16 was reapproved in 2016 to include better quality control than earlier 2008 version) as an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury. [Note: Applies to concentrations approximately 0.5–100 µg/Nm³].

The ASTM D7520–16; D6420–99 (2010); and D6784–16 documents are available from ASTM at <https://www.astm.org> or 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 8329555 at service@astm.org.

The EPA proposes to incorporate by reference “Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds” (EPA/100/R–10/005 December 2010), which is the source of the toxicity equivalent factors for dioxins and furans used in calculating the toxic equivalence quotient of the proposed dioxin and furan standard. This document can be found at <https://www.epa.gov/risk/documents-recommended-toxicity-equivalency-factors-human-health-risk-assessments-dioxin-and>.

Detailed information on the VCS search and determination can be found in the memorandum, *Voluntary*

Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Copper Smelting Supplemental Proposal, which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0430).

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/or Indigenous peoples) and low-income populations.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. In the 2022 proposal, the evaluated the demographic characteristics of communities located near the major source facilities and determined that elevated cancer risks associated with emissions from these facilities disproportionately affect Native American, Hispanic, Below Poverty Level and Over 25 without High School Diploma individuals living nearby.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples living near the Freeport facility. To support the 2022 proposal, EPA determined that the population living within 5 km of the Freeport facility is 1.5 percent Native American (versus 0.7 percent nationwide); 45 percent Hispanic or Latino (versus 19 percent nationwide); 23 percent Below Poverty Level (versus 13 percent nationwide); and 23 percent Over 25 without a High School Diploma (versus 12 percent nationwide). The standards proposed in this supplemental proposal are estimated to reduce metal HAP emissions, primarily lead and arsenic, from the Freeport facility by either 9.1 tpy or 11.1 tpy and are projected to reduce the number of individuals with cancer risks equal to or greater than 1-in-1 million associated with emissions from the Freeport facility. EPA does not anticipate that

this action will reduce emissions from the Asarco facility.

The methodology and the results of the demographic analysis are presented in the preamble of the 2022 proposed rule (87 FR 1616; January 11, 2022) and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Primary Copper Smelting Source Category Operations* (Docket Item No. EPA–HQ–OAR–2020–0430–0052). The information supporting this Executive Order review is contained in section V.E. of the 2022 proposed RTR preamble (87 FR 1616; January 11, 2022). We did not conduct any additional demographics analyses for this supplemental proposed rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

[FR Doc. 2023–15303 Filed 7–21–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2023–0122]

RIN 2126–AC61

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes amendments to its Hazardous Materials Safety Permits (HMSPs) regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route-controlled quantities (HRCQs) of radioactive material (RAM). The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1,

2022, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2023, edition.

DATES: Comments must be received on or before August 23, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2023–0122 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document>. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–1812. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

FOR FURTHER INFORMATION CONTACT: José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, jose.cestero@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

FMCSA organizes this notice of proposed rulemaking (NPRM) as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy
- II. Executive Summary
- III. Abbreviations
- IV. Legal Basis
- V. Background
- VI. Discussion of Proposed Rulemaking
- VII. Severability
- VIII. Section-by-Section Analysis

IX. Regulatory Analyses

- A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
- B. Congressional Review Act
- C. Advance Notice of Proposed Rulemaking
- D. Regulatory Flexibility Act
- E. Assistance for Small Entities
- F. Unfunded Mandates Reform Act of 1995
- G. Paperwork Reduction Act
- H. E.O. 13132 (Federalism)
- I. Privacy
 - J. E.O. 13175 (Indian Tribal Governments)
 - K. National Environmental Policy Act of 1969

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2023–0122), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

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

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the 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 the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as

“PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2023-0122/document> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Executive Summary

This NPRM proposes to update an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2022, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route

Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and HRCQs of RAM. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA’s State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366–1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, (301) 830–6143, www.cvsa.org.

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2023, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2022 edition of the handbook.

Nine updates distinguish the April 1, 2023, handbook edition from the 2022 edition. The incorporation by reference of the 2023 edition does not impose new regulatory requirements.

III. Abbreviations

CDL Commercial Driver’s License
 CFR Code of Federal Regulations
 CVSA Commercial Vehicle Safety Alliance
 DOT Department of Transportation
 FMCSA Federal Motor Carrier Safety Administration
 FMCSRs Federal Motor Carrier Safety Regulations
 FR Federal Register
 HMSP Hazardous Materials Safety Permit
 HRCQ Highway Route-Controlled Quantity
 MCMIS Motor Carrier Management Information System
 OOS Out-of-Service
 OOSC Out-of-Service Criteria
 RAM Radioactive Material
 RODS Record of Duty Status
 RFA Regulatory Flexibility Act
 UMRA The Unfunded Mandates Reform Act of 1995
 U.S.C. United States Code

IV. Legal Basis

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits (hereinafter “HMSPs”), the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on HMSPs. The FMCSA Administrator has been delegated authority under 49

U.S.C. 113(f) and 49 Code of Federal Regulations (CFR) 1.87(d)(2) to carry out the functions vested in the Secretary of Transportation related to HMSPs. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on HMSPs. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and HRCQs of RAM. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” As of January 1, 2005, all vehicles and carriers transporting HRCQs of RAM are regulated by the U.S. Department of Transportation. All HRCQs of RAM must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route controlled quantities of RAM shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the United States.

49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a HMSP is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a HRCQ of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-

of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.”

According to 2019–2022 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 3 million Level I through Level VI inspections were performed annually. Nearly 96.3 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 756 Level VI inspections were performed annually, comprising only 0.03 percent of all inspections. On average, OOS violations were cited in only 6 Level VI inspections annually (0.8 percent), whereas on average, OOS violations were cited in 233,259 Level I inspections (26 percent), 264,926 Level II inspections (26 percent), and 57,990 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2023 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2023 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

VI. Discussion of Proposed Rulemaking

Section 385.4(b)(1), as amended on December 22, 2022 (87 FR 78579), references the April 1, 2022, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2022, edition date with a reference to the new edition date of April 1, 2023.

The changes made based on the 2023 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement

officials have convenient access to the correctly identified inspection criteria referenced in the rules.

April 1, 2023, Changes

Nine changes in the 2023 edition of the CVSA handbook distinguish it from the April 1, 2022, edition:

1. Part I, Item 4.b.4 was revised by removing a section of the paragraph to provide more clarity to the OOSC, as this criterion was causing confusion for inspectors. Previously, inspectors interpreted Item 4.b.4 as a driver’s operation of a property-carrying vehicle without a medical certificate or with an expired medical certificate. However, language was removed to make clear that an OOS violation exists if a driver operates a property-carrying vehicle without a valid medical certificate, either in the driver’s possession or on file with the State driver licensing agency, and has a history of either failing to produce a medical certificate or having an expired medical certificate. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

2. Part I, Item 7.b, was amended to clarify that if evidence of a driver’s use of a drug or other controlled substance within the previous 24 hours is noted by the inspector, then the driver is considered to be under the influence with probable cause and shall be declared out of service for 24 consecutive hours. This clarifies the previous OOSC language specifying that drivers must not be under the influence of drugs or any other substances at the time of the inspection. A note has been added to the section to define the term *driver’s use*, which covers instances where drivers have acknowledged using drugs or other substances or where an inspector has directly observed such use within the previous 24 hours. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

3. Part I, Items 9, 10, and 11 were amended to provide clear guidance on when a driver should be declared OOS for false record of duty status (RODS). CVSA added language that clarifies that a false RODS violation does not present an “imminent hazard” if the falsification occurred on a previous date and the driver had an intervening confirmed qualifying rest period. In addition, footnote 2 was relocated as a note in the applicable U.S., Canadian, and Mexican OOS sections to assist

inspectors in identifying the OOS criterion. Furthermore, the footnotes in these sections were reorganized, and the outdated “Removed and Reserved” footnotes deleted. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

4. Part I, Item 9, was amended to clarify footnote 10 concerning when to consider a driver OOS for not being able to print or sign their RODS. CVSA determined that, as the prevalence of digital documents and credentials in the Federal Motor Carrier Safety Regulations (FMCSRs) increases, electronic versions of those documents and credentials will replace paper copies. Therefore, a driver will not be placed OOS for not having a physical RODS, provided that their hours of service can be verified on an electronic display, as the absence of a physical RODS alone does not present an imminent hazard. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

5. Part II, Item a.6.d, Item a.7.e, Item b.3.e, and Item b.4.e were amended to clarify the severity of rust required on a brake rotor to be included in the 20 percent brake criterion. The 20 percent criterion relates to the number of brakes on the vehicle or combination and the number of those brakes that are found to be defective during an inspection. Specifically, if 20 percent or more of the total number of brakes on the vehicle are found to be defective, the vehicle is considered OOS. With this update, CVSA added language to clarify that a brake can be considered defective only if rust is present on the entire surface of both sides of the rotor, rather than just a section. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

6. Part II, Item 2.e.3 and Item 2.f were amended to clarify that placement of tiedowns on cargo is not specified in the FMCSRs or National Safety Code (NSC) Standard 10. Section 393.110(b)(3) of the FMCSRs and NSC Standard 10 state that 2 tiedowns are required for articles exceeding a length of 10 feet (3.04 meters), and 1 additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length. The FMCSRs use the term “for” instead of “in” or “within,” implying a quantity

¹ Level I is a 37-step inspection procedure that involves examination of the motor carrier’s and driver’s credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

² Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

³ Level III is a driver-only inspection that includes examination of the driver’s credentials and documents.

requirement rather than a location specification. As a result, the note in the OOSC can be interpreted differently from the regulations. Therefore, CVSA updated the OOSC to specify that the correct number of tiedowns, rather than their specific placement on the cargo, should be enforced. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

7. Part II, Item 9.a was amended to modify the title by adding “To Be On” to clarify the conditions under which certain lighting devices, including headlamps, tail lamps, stop lamps, turn signals, and lamp/flags on projecting loads, should be considered OOS. The previous language of “When lights are required” led some inspectors to believe that the vehicle is OOS when these lighting devices are not operating. However, the intention of the OOSC is to declare the vehicle OOS only when these lighting devices are required to be turned on. To avoid confusion, CVSA added the language “to be on” to the title, which will help clarify this OOS criterion. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

8. Part II, Item 11.d was amended to add language to clarify that spring hangers and equalizers are part of the vehicle’s frame and axle when declaring the vehicle OOS. A vehicle is OOS if any part of a suspension connecting rod or tracking component assembly, including spring leaves that are used as a suspension connecting rod, or any part used to attach these components to the vehicle’s frame or axle, such as spring hangers or equalizers, is cracked, loosened, broken, or missing. The addition was necessary as spring hangers and equalizers are considered part of the vehicle’s frame or axle but, previously, were not specifically identified. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

9. Part II, Item 11.d was amended to add a diagram to aid inspectors in identifying the various parts of the suspension system during vehicle inspections for OOS violations. The suspension system contains numerous components and parts that may require inspectors to have other reference materials readily available to aid in the identification of the item(s). To simplify

the identification process during inspections, CVSA supplemented the section with a diagram to enable inspectors to quickly identify those areas. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

VII. Severability

Congress authorized DOT by statute to promote safe transportation of hazardous materials in interstate commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures for inspections and safety permits for motor vehicles carrying certain hazardous materials. 49 U.S.C. 5105(d); 49 U.S.C. 5109. The purpose of this rule is to incorporate by reference the 2023 edition of the CVSA handbook outlining the out-of-service criteria and inspection procedures for commercial highway vehicles transporting RAMs. The provisions within the CVSA handbook are intended to operate holistically in addressing a range of issues necessary to ensure the safe transport of hazardous materials. However, FMCSA recognizes that certain provisions focus on unique topics. Therefore, FMCSA finds that the various provisions within the CVSA handbook would be severable and able to operate functionally if one or more provisions were rendered null or otherwise eliminated. The remaining provision or provisions within the handbook would continue to operate functionally if any one or more provisions were invalidated and any other provision(s) remained. In the event a court were to invalidate one or more of the CVSA handbook’s unique provisions, the remaining provisions should stand, thus allowing this congressionally mandated program to continue to operate.

VIII. Section-by-Section Analysis

Section 385.4 Matter Incorporated by Reference

Section 385.4(b)(1), as amended on December 22, 2022, references the April 1, 2022, edition of the CVSA handbook. This NPRM proposes to replace the reference to the April 1, 2022, edition date with a reference to the new edition date of April 1, 2023.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT’s regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2022, edition to the April 1, 2023, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” FMCSA reviewed its MCMIS data on inspections performed from 2019 to 2022 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule’s impact would be de minimis.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).⁴

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of

⁴ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁵ 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2023 edition impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule would update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and would incorporate by reference the April 1, 2023, edition of the CVSA handbook. The changes to the 2023 edition of the CVSA handbook from the 2022 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2023 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections in the United States. Accordingly, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions.

The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

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

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,⁶ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

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

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE.

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

⁵ Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

⁶ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Amend § 385.4 by revising paragraph (b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,” April 1, 2023, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

[FR Doc. 2023–15412 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

[Docket No. FWS–HQ–NWRS–2019–0017; FF09R50000–XXX–FVRS8451900000]

RIN 1018–BD78

Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising our proposed rule that would streamline our process for permitting of rights-of-way across National Wildlife Refuge System lands and other Service-

administered lands. By aligning Service processes more closely with those of other Department of the Interior (DOI) bureaus, to the extent practicable and consistent with applicable law, we will reduce the amount of time the Service requires to process applications for rights-of-way across Service-managed lands. We originally proposed revisions that included requiring a preapplication meeting and use of a standard application, allowing electronic submission of applications, and providing the Service with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across Service-managed lands. We now further propose new permit terms and conditions and other regulatory changes. The Service seeks comments on this revised proposed rule.

DATES: The public comment period on the proposed rule that published on January 19, 2021, at 86 FR 5120, is reopened. We will accept comments until August 23, 2023.

ADDRESSES: This revised proposed rule, the original proposed rule (86 FR 5120, January 19, 2021), supporting documents, and the comments we received on the proposed rule are available at <https://www.regulations.gov> at Docket No. FWS–HQ–NWRS–2019–0017.

Information collection requirements: Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or Info_Coll@fws.gov (email). Please reference “OMB Control Number 0596–0249” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Ken Fowler, U.S. Fish and Wildlife Service, MS: NWRS, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1876. 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 Service’s mission is working with others to conserve, protect, and enhance, fish, wildlife, plants, and their habitats for the continuing benefit of the

American people. The Service has some amount of management responsibility for more than 96 million terrestrial acres as well as an additional 760 million acres of submerged lands in marine national monuments. The 96 million acres of terrestrial land includes approximately 89 million acres where the Service is the principal land manager and permitting authority; nearly 4.9 million acres of conservation easements on private lands, where landowners are the principal land managers, but the Service has a permitting role when a proposed use will affect the United States’ real property interest; more than 1.7 million acres of public land where another Federal agency is the principal land manager and permitting authority, but where the Service has some management responsibility through an agreement with another agency; and approximately 775,000 acres under a temporary lease or agreement where another entity is the permitting authority.

Of the 89 million acres of terrestrial land principally managed by the Service, 76.8 million acres are in Alaska, 12.2 million acres are in the lower 48 States, and 50,000 acres are in Hawaii. The vast majority of these acres are part of the National Wildlife Refuge System (Refuge System), the mission of which is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (16 U.S.C. 668dd(a)(2)). The total also includes approximately 21,000 acres of public land in the National Fish Hatchery System, which the Service manages for the propagation and distribution of fish and other aquatic animal life.

The 89 million acres of terrestrial land includes more than 20 million acres of designated wilderness that the Service manages for “the preservation of their wilderness character” in accordance with the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). Subject to existing private rights, and special provisions included in specific wilderness-designation statutes and the Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96–487; 16 U.S.C. 3101 *et seq.*), the Wilderness Act prohibits commercial enterprises and permanent roads. The law also prohibits temporary roads; motor vehicles, motorized equipment, motorboats, landing of aircraft, and other forms of mechanical transport; structures; and installations, unless their use can be

demonstrated to be necessary to meet minimum requirements for the administration of the area for Wilderness Act purposes.

Statutory Authority

Refuge System lands and waters are managed according to the authorities of the National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105–57), and ANILCA. For lands in Alaska, the Improvement Act specifies that ANILCA provisions prevail in any situation in which there is a conflict between any provision in the Improvement Act and any provision of ANILCA. If a right-of-way across Refuge System lands is specifically authorized by ANILCA, then the Service must follow the procedures in 43 CFR part 36 when permitting the right-of-way and follow other applicable Refuge System laws and regulations where they do not conflict with ANILCA.

The Administration Act authorizes the Service to permit a new use, or expand, renew, or extend an existing use, of a refuge only when the Service determines it is a compatible use. The term “compatible use” means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Service Director, will not materially interfere with or detract from the fulfillment of the mission of the Refuge System or the purpose(s) of the refuge.

Compatible Use Determinations

A “compatibility determination” is a written determination, signed and dated by the Refuge Manager, that an existing or new use of a refuge is compatible with the Refuge System mission and the purpose(s) of the refuge. Currently, there are more than 560 national wildlife refuges, and each refuge has different establishing authorities, purposes, habitat types, wildlife species, and public uses, which can result in different compatibility determinations for the same use. The Improvement Act required the Service to issue regulations establishing a process for determining whether a proposed use is a compatible use; these regulations are set forth in title 50 of the Code of Federal Regulations in part 26. The Improvement Act authorizes the Service to permit a right-of-way across Refuge System land only when the right-of-way is a compatible use.

The Improvement Act’s compatibility requirements apply only to Service permitting of rights-of-way across

Refuge System lands and do not apply to other Service lands, except in the case of National Fish Hatchery System lands, where, by regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are equally applicable to fish hatcheries, and at 50 CFR 70.7, where the right-of-way regulations are equally applicable to fish hatcheries. The Service processes applications for other rights-of-way across lands outside the Refuge System and National Fish Hatchery System under the applicable authority cited at 43 CFR part 2800, and these lands are not subject to the Improvement Act’s compatibility requirement.

The Administration Act authorizes the Secretary of the Interior, acting through the Service Director, to issue a right-of-way permit across Refuge System lands only after the applicant pays the Service the fair market value or fair market rental value of the right-of-way, unless the applicant is exempt from such payment by any other provision of Federal law, including ANILCA title XI. In addition, before issuing a right-of-way permit, the Service must assess the effects of the proposed use, as required by the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), as amended; the National Historic Preservation Act of 1966 (NHPA; 54 U.S.C. 300101 *et seq.*); and other applicable laws and Executive orders.

Existing Rights-of-Way

The regulations at 50 CFR 26.41 state that, for existing rights-of-way, the Service will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way that will affect a unit of the Refuge System, unless:

- The design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality;
- Restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and
- All restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable.

In accordance with the Improvement Act, in instances where an existing use is authorized for more than 10 years (such as an electric utility right-of-way), the Service will not reevaluate whether the use is a compatible use during the permit term so long as the right-of-way

holder is in compliance with all the terms and conditions of the permit. In a permit’s terms and conditions, the Service may require permit modifications at a future date to ensure that the use remains a compatible use. All right-of-way permits issued by the Service include language allowing the Service to terminate the right-of-way permit if the permittee’s use violates the permit terms and conditions.

Additionally, this proposed rule and the Improvement Act’s compatibility requirement do not apply to permanent rights-of-way in existence prior to land acquisitions by the United States, including prior existing highway rights-of-way held by State and local units of government, except in situations where there is a proposed expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands. The Improvement Act requires that all uses of Refuge System lands be compatible with the purpose(s) for which those areas were established and the mission of the Refuge System, and activities not authorized by a preexisting right-of-way are subject to 50 CFR 26.41 and the procedures in this proposed rule.

The Service may not authorize an expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands unless the use is compatible with the purpose(s) for which those areas were established and the Refuge System mission.

Original Proposed Amendments to the Right-of-Way Regulations

On January 19, 2021, we published in the **Federal Register** (86 FR 5120) a proposed rule to revise and streamline Service regulations for permitting of rights-of-way by aligning Service processes more closely with those of other DOI bureaus, to the extent practicable and consistent with applicable law. The original proposed rule proposed to revise the Service’s regulations in 50 CFR part 29, subpart B, for permitting of rights-of-way across Service lands. The proposed changes would streamline the right-of-way permitting process for proposed uses on Service-managed lands and reorganize the right-of-way regulations. For a description of the substantive changes originally proposed to the regulations in 50 CFR part 29, subpart B, see the January 19, 2021, proposed rule (86 FR 5120).

Summary of Comments and Responses

We accepted public comments on the proposed rule for 60 days, ending March 22, 2021. By that date, we received 15 comments on the proposed rule. Three

comments suggested that the Service make no changes to its regulations to streamline right-of-way permitting. Overall, nine comments suggested no additional changes to those we had proposed. We discuss the remaining comments by topic, below.

Comment (1): The State of Alaska and Doyan, an Alaska Native corporation, commented that ANILCA authorizes certain types of rights-of-way in Alaska, and that these rights-of-way have their own set of regulations in 43 CFR part 36.

Our Response: In this document, we updated the proposed rule to clarify that rights-of-way authorized by ANILCA must follow the procedures in 43 CFR part 36.

Comment (2): The State of Utah and the Incorporated Research Institutions for Seismology suggested that, in remote areas, requiring an applicant to provide a survey plat prepared by a licensed professional land surveyor or another professional licensed by the State will create an unnecessary burden. These commenters suggested that, in remote areas located far from any road system, the Service should waive the requirement for an applicant to provide a survey plat before the Service will issue a right-of-way permit.

Our Response: The regulations as previously written required applicants to provide documentation that “show the right-of-way in such detail that the right-of-way can be accurately located on the ground.” As part of the development of the proposed rule, the Service reviewed different types of location information, including GIS coordinates, provided by some applicants in lieu of a survey plat, and found that the information was generally insufficient for the Service to accurately locate these sites on the ground.

The purpose of the revised land-survey portion of the proposed regulations is to standardize applicant documentation that supports the geographic location, linear length and direction, and overall land area for those uses that will alter the landscape or otherwise provide for long-term exclusive use of Federal land within national wildlife refuges. The proposed rule requires an applicant to provide a survey plat prepared by a licensed professional land surveyor or another professional licensed by the State before the Service will issue a right-of-way permit. However, the proposed rule does not require applicants to submit a survey plat with their initial application, and, in most cases, the Service is able to determine whether a proposed use is a compatible use before

the applicant must provide a survey plat. The Service recognizes the challenges in surveying rights-of-way in remote areas. However, the Service requires that a tenable right-of-way boundary is in place and locatable on the ground. We did not make any changes to the proposed rule as a result of these comments.

Comment (3): The Incorporated Research Institutions for Seismology singled out the EarthScope: Transportable Array project, which installs seismic monitoring stations in remote locations throughout Alaska, as a scientific project that will be burdened if the Service requires applicants to provide a survey plat before the agency permits a right-of-way.

Our Response: The Service issues right-of-way permits to authorize longer term uses, typically uses lasting 10 years or more. The Service issues special use permits to authorize short-term uses of Refuge System lands, and special use permits do not require a survey plat. To authorize nonpermanent placement of equipment on Refuge System lands for short-term scientific research purposes, the Service may issue a special use permit if the Service determines the use is a compatible use. We did not make any changes to the proposed rule as a result of these comments.

Comment (4): ExteNet Systems suggested that the Service exempt “small wireless facilities” (as that term is defined at 47 CFR 1.6002(l)) from the requirement to pay the fair market value or fair market rental value for use and occupancy of Service land, and, in its place, implement a fixed use and occupancy fee of \$270 per year for each small wireless facility.

Our Response: The Administration Act requires the Service to obtain payment of fair market value or fair market rental value for use and occupancy of Refuge System land before permitting a right-of-way. If the Department of the Interior approves a fee schedule for small wireless facilities that assesses the fair market value or fair market rental value for use and occupancy of Federal land for small wireless facilities, then this rule would allow the Service to use that fee schedule. We did not make any changes to the proposed rule as a result of these comments.

Comment (5): The State of Alaska and the State of Utah stated that the Service has no authority to regulate lands within existing State road and highway systems, and they requested that the Service clarify that these proposed regulations do not apply to existing State road and highway systems.

Our Response: This proposed rule has no impact on prior existing highway rights-of-way held by State and local units of government on FWS-administered land, except that, consistent with 23 CFR 645.205, activities not authorized by a prior existing highway right-of-way, as well as activities that fall outside the footprint of an existing right-of-way, are subject to 50 CFR 26.41 and the procedures in this revised proposed rule. Under 50 CFR 26.41, which implements the Improvement Act’s compatible-use requirement, the Service may not authorize an expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands unless the use is compatible with the purpose(s) for which those areas were established. We did not make any changes to the proposed rule as a result of these comments.

Comment (6): The National Rural Electric Cooperative Association suggested that the Service clarify that the compatible-use requirement for rights-of-way across Refuge System land does not apply to Service lands outside the Refuge System.

Our Response: We clarified that Refuge compatibility requirements do not apply to lands outside the Refuge System and National Fish Hatchery System. By regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are applicable to fish hatcheries.

Comment (7): A commenter suggested we eliminate gender-specific references.

Our Response: We agree and made appropriate changes to the proposed regulatory text in this revised proposed rule.

Changes From the Proposed Rule

As discussed above, under *Summary of Comments and Responses*, we made changes to the proposed rule based on comments we received. We clarified that permitting for rights-of-way authorized by ANILCA must follow the procedures in 43 CFR part 36. We clarified that the compatible-use requirement for rights-of-way applies to rights-of-way on Refuge System land and does not apply to rights-of-way on other Service lands, except in the case of National Fish Hatchery System lands, where, by regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are equally applicable to fish hatcheries. We also eliminated gender-specific references in the proposed rule.

In addition to these changes, we determined that additional regulatory revisions are also necessary for clarity and to align Service requirements more

closely with those of other DOI bureaus. Under § 29.21–3, we clarified that our evaluation of rights-of-way previously permitted for more than 10 years will examine compliance with the terms and conditions of the authorization and not reexamine the original authorization, consistent with 16 U.S.C.

668dd(d)(3)(B)(vii). Under § 29.21–7, we clarified that a permit will be issued for a term of up to 50 years when the Service Regional Director deems it appropriate, or for a lesser term, as the existing regulatory language authorizing a permit term (*i.e.*, generally up to 50 years, or so long as the permit is used for the purpose for which it was issued, or for a lesser term when considered appropriate) is interpreted inconsistently by different Service Regional offices.

Under § 29.21–4(b)(2), we clarified that an applicant must provide an environmental analysis for a proposed new right-of-way, but that an environmental analysis for renewals of existing rights-of-way that involve no changes to the permitted use need address only the impacts of ongoing operation and maintenance and any new statutory requirements since the original permit issuance. We also clarified that, before the Service will issue a right-of-way permit, an applicant must provide a preliminary site and facility construction plan for a proposed right-of-way that requires construction, and provide a vegetation management plan when vegetation will be disturbed by construction, operation, or maintenance of the right-of-way; however, this proposed rule would provide the Service Regional Director discretion with respect to timing, *i.e.*, when the Service requires this information. The original proposed rule left it to a Regional Director to determine, in all cases, whether the Service requires an environmental analysis, preliminary construction plan, and vegetation management plan.

Consistent with our goal of aligning Service processes more closely with those of other DOI bureaus, we propose to update § 29.21–6 to clarify our cost-recovery procedures for application processing and monitoring of rights-of-way. Under proposed § 29.21–6(c)(2), the Regional Director has the discretion to waive reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities so long as there are appropriated funds for these activities. Under § 29.21–6(d), we clarified that payments received by the Service to reimburse the United States for the costs incurred in evaluating and processing applications, and for monitoring, will be

deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

Under § 29.21–8, we updated our proposed permit terms and conditions to make them more consistent with those of other DOI bureaus. We also clarified that certain permit terms and conditions are always required and cannot be waived, and that other terms and conditions are required but may be waived if the Regional Director determines they are not relevant to the requested use. Under § 29.21–8(e), we added the option for the Service to require a bond for a right-of-way when the Regional Director determines that the Service is likely to incur reclamation costs due to the construction or operation of the right-of-way, or if the right-of-way is abandoned or terminated; similar to the Bureau of Land Management, we propose to exempt Federal, State, and local governments from these bonding requirements. Under § 29.21–8(f), we added terms and conditions for rights-of-way for communications facilities to implement the Mobile Now Act (47 U.S.C. 1455(d)(1)).

Under § 29.21–11(b), we clarified that the terms of the right-of-way permit will specify the amount of the lump sum paid by the applicant for use and occupancy during the current permit term, or, if applicable, the initial annual rental payment amount for use and occupancy of the permitted area. Under § 29.21–11(d), we clarified that, consistent with 16 U.S.C. 668dd(d)(2), payments received by the Service for use and occupancy of rights-of-way on Refuge lands and interests in land will be deposited into the Migratory Bird Conservation Fund to carry out the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 *et seq.*). We also clarified that, consistent with 16 U.S.C. 715s(a), payments received for use and occupancy of rights-of-way on other Service-managed lands and interests in land will be deposited into the National Wildlife Refuge Fund, to make payments annually to counties and other units of local government.

We propose to revise § 29.21–13(m) to be consistent with Public Law 101–475, enacted October 3, 1990, which amended the Mineral Leasing Act to eliminate the 60-day waiting period after the Secretary of the Interior notifies Congress of DOI's intention to permit a right-of-way for a pipeline 24 inches or more in diameter that will be used for the transportation of oil, natural gas,

synthetic liquid or gaseous fuels, or any refined product produced from these substances.

Finally, we updated the structure of the regulatory language to improve readability.

Required Determinations

As stated above, before issuing a right-of-way permit, the Service must assess the effects of the proposed use, as required by NEPA, the ESA, and the NHPA as well as other applicable laws and Executive orders. In regard to NEPA, we believe that this proposed rulemaking action qualifies for a categorical exclusion as described in 43 CFR 46.210(i) for rulemaking actions that are primarily procedural in nature. As set forth in that regulation, under this proposed rule, we will conduct NEPA analysis for individual permit applications.

For descriptions of our actions to ensure compliance with the following statutes and Executive orders, see our January 19, 2021, proposed rule (86 FR 5120):

- Regulatory Flexibility Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

List of Subjects in 50 CFR Part 29

Public lands mineral resources, Public lands rights-of-way, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons given in the preamble, we hereby propose to further amend part 29, subchapter C of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended January 19, 2021, at 86 FR 5120, as set forth below:

PART 29—LAND USE MANAGEMENT

- 1. The authority citation for part 29 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 685, 690d, 715i, 725, 3161; 30 U.S.C. 185; 31 U.S.C. 3711, 9701; 40 U.S.C. 319; 43 U.S.C. 315a; 113 Stat. 1501A–140.

- 2. Amend § 29.21 by:
 - a. Revising the section heading;
 - b. Adding introductory text;
 - c. Adding the definitions for “ANILCA” and “National Fish Hatchery System land” in alphabetical order;
 - d. Revising the definitions for “National Wildlife Refuge System land” and “Other lands”; and
 - e. Adding the definitions for “Regional Director” and “Right-of-way” in alphabetical order.

The revisions and additions read as follows:

§ 29.21 Definitions.

In this subpart, the following terms will have the meanings set forth in this section:

ANILCA means the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*).

* * * * *

National Fish Hatchery System land means lands and waters, and interests therein, administered by the Secretary to propagate and distribute fish and other aquatic animal life and managed for the protection of all species of wildlife.

National Wildlife Refuge System land means lands and waters, and interests therein, administered by the Secretary under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), as amended, including wildlife refuges, game ranges, wildlife management areas, conservation areas, waterfowl production areas, and other areas administered for the protection and conservation of fish, wildlife, and plant species.

Other lands mean all other lands, or interests therein, and waters administered by the Secretary through the U.S. Fish and Wildlife Service that are not included in the National Wildlife Refuge System or the National Fish Hatchery System, *e.g.*, administrative sites.

* * * * *

Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or an authorized representative of the Regional Director. When the regulations in this part require the Regional Director's signature or written approval, only the Regional Director or the person acting in the Regional Director's official capacity may sign.

Right-of-way means a use on, under, or over Federal lands that is authorized pursuant to a right-of-way permit issued by the U.S. Fish and Wildlife Service, unless the use is included in a contract for services to a Service facility or if the use is requested by the Service to benefit the mission of the National Wildlife Refuge System or the National Fish Hatchery System.

■ 3. Revise § 29.21–1 to read as follows:

§ 29.21–1 Purpose and scope.

The regulations in this subpart prescribe the procedures for filing applications and the terms and conditions under which rights-of-way over and across the lands administered by the U.S. Fish and Wildlife Service may be permitted.

(a) *National Wildlife Refuge System lands except lands in Alaska.*

Applications for all forms of rights-of-way on or over such lands must be submitted under authority of Public Law 89–669, as amended (80 Stat. 926; 16 U.S.C. 668dd), or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), following the application procedures set out in § 29.21–4. The Service will not permit a right-of-way unless it meets the compatibility-determination requirement described in § 29.21–3. See § 29.21–12 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21–13 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these substances.

(b) *National Wildlife Refuge System lands in Alaska.* Applications for rights-of-way authorized under title XI of ANILCA must be submitted under authority of 16 U.S.C. 3101 *et seq.* and follow the procedures and requirements set forth in 43 CFR part 36 and other applicable Refuge laws and regulations where they do not conflict with ANILCA. Applications for all other rights-of-way on or over lands in Alaska must be submitted under authority of 16 U.S.C. 668dd, as amended, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), following the application procedures set out in § 29.21–4.

(c) *National Fish Hatchery System lands.* Applications for rights-of-way across National Fish Hatchery System lands follow the same procedures as applications for rights-of-way across National Wildlife Refuge System lands.

(d) *National Wildlife Refuge System lands—less than fee interest.* The Service requires permits for rights-of-way that may affect a property interest acquired by the United States. If the requested right-of-way or regular maintenance of the requested right-of-way may affect the United States' interest, then an application for a right-of-way permit must be submitted in accordance with procedures set forth in § 29.21–4, except those applications for rights-of-way authorized under title XI of ANILCA will follow the procedures set forth in 43 CFR part 36. If the Regional Director determines that the requested right-of-way and regular maintenance of the requested right-of-way will not adversely affect the United States' interest, then the Regional Director will sign a letter to the applicant stating that the proposed right-of-way will not affect the interest

of the United States and the Service has no objection to the fee owner allowing the right-of-way.

(e) *Other lands outside the National Wildlife Refuge System and National Fish Hatchery System.* Rights-of-way on or over other lands will be permitted in accordance with controlling authorities cited in 43 CFR part 2800, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). See § 29.21–12 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21–13 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any other refined product produced from those substances. Applications must be submitted in accordance with procedures set out in § 29.21–4, except that the compatibility-determination requirement in § 29.21–3 does not apply to lands outside the National Wildlife Refuge System and National Fish Hatchery System.

■ 4. Revise § 29.21–2 to read as follows:

§ 29.21–2 Preapplication meeting.

Before submitting an application for a permit for a new right-of-way or a modification of an existing right-of-way across lands managed by the Service, an applicant must contact the appropriate Regional Director to schedule a preapplication meeting with the Service. Contact information for the Service Regional Offices is available at <https://www.regulations.gov> in Docket No. FWS–HQ–NWRs–2019–0017. There is no fee for the preapplication meeting. During the meeting, the applicant may ask questions about the application process, provide information about the scope of the requested right-of-way and its location, and receive feedback. The Service will advise the applicant of the documentation required for the Service to review and process the application, provide an estimated timeline for the Service to review and process the application, and ask the applicant to provide information necessary for the Service to estimate application processing costs (See § 29.21–6(a)(2)).

■ 5. Redesignate §§ 29.21–3 through 29.21–9 as §§ 29.21–7 through 29.21–13, respectively, and add new §§ 29.21–3 through 29.21–6, to read as follows:

§ 29.21–3 Compatibility-determination requirement.

Consistent with the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd–668ee), and the procedures set forth in § 26.41 of this chapter, the Service will not permit

or renew a right-of-way across National Wildlife Refuge System land unless the Service determines that the use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. This requirement does not apply to the access of privately owned minerals, or when access is required by any other prevailing provision of law. In the case of any right-of-way previously permitted for a period longer than 10 years (such as an electric utility right-of-way), the Service will not reevaluate whether the permitted use is a compatible use during the permit term so long as the right-of-way permit holder is in compliance with all the terms and conditions of the permit. The requirements and procedures of § 26.41(c) of this chapter apply to any requested maintenance of or modifications to an existing right-of-way. No compatibility determination is necessary to permit or renew a right-of-way across lands outside of the National Wildlife Refuge System and the National Fish Hatchery System.

§ 29.21–4 Application procedures.

(a) *Preapplication meeting.* To request the preapplication meeting required by § 29.21–2, contact the appropriate Service Regional Office, the geographic jurisdictions of which are listed at 50 CFR 2.2. Contact information for the Service Regional Offices is available at <https://www.regulations.gov> in Docket No. FWS–HQ–NWR–2019–0017.

(b) *Application.* Applicants must use Standard Form 299 (SF–299), Application for Transportation and Utility Systems and Facilities on Federal Lands, to request new rights-of-way, modifications of existing rights-of-way, and renewals of existing rights-of-way. In addition to a completed and signed SF–299, each application must include the attachments described in paragraphs (b)(1) and (2) of this section. There is no application fee, but applicants must reimburse the Service for its costs to evaluate and process the application, as set forth at § 29.21–6(a). See paragraph (d) of this section for submission instructions.

(1) *Map.* The map must show a general view of the proposed right-of-way and a detailed view of the proposed project area in relationship to the Service boundary. If the proposed right-of-way is within a Public Land Survey System area, the map must show the section(s), township(s), and range(s) within which the proposed right-of-way would be located. See § 29.21–5 for requirements regarding a survey plat and legal description of the area.

(2) *Environmental analysis.* The environmental analysis supplements the

basic environmental information on the SF–299 and must include information concerning the impact of the proposed right-of-way on the environment, including, but not limited to, the impact on air and water quality; scenic and aesthetic features; historic, architectural, archeological, and cultural features; and wildlife, fish, and marine life, including habitat connectivity and migratory routes.

(i) The environmental analysis must include sufficient data to enable the Service to prepare a compatibility determination; prepare an environmental assessment or environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and comply with the requirements of the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*), and the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*). To comply with the National Environmental Policy Act, an environmental assessment or environmental impact statement prepared by another Federal agency, the applicant, or the applicant's contractor may be sufficient; however, in all cases, this documentation must be prepared in consultation with the Regional Director.

(ii) For renewals of existing rights-of-way that involve no changes to the permitted use, the environmental analysis need address only the impacts, including the cumulative effects, of the ongoing operation and maintenance of the right-of-way, as well as any statutory requirements not in place and therefore not considered at the time of original permit issuance.

(c) *Other required documents.* Unless otherwise stated in this section, the Service requires the following additional documents before issuing a right-of-way permit. During the preapplication meeting or in a subsequent communication, the applicant will be informed when the Service requires this information and other information, which the applicant must provide after the initial application submission but before a right-of-way permit may be issued.

(1) *Survey plat and legal description.* See § 29.21–5 for requirements.

(2) *Preliminary site and facility construction plans.* These plans are required for applications for rights-of-way or renewals of rights-of-way where construction is required. They must show all proposed construction work

and include a list of equipment to be used in construction and a proposed construction timeline.

(3) *Vegetation management plan.* A vegetation management plan is required for applications for rights-of-way or renewals of rights-of-way where there will be disturbance of vegetation resulting from the construction, operation, or maintenance of the right-of-way. The vegetation management plan must be prepared in consultation with the Regional Director and must describe:

(i) Vegetation clearing that may occur as part of structural construction, maintenance, and removal.

(ii) Routine vegetation management that may occur, including a description of all physical and mechanical methods that will be used, how equipment will be cleaned before and after entry to the right-of-way, and how the spread of nonnative species by equipment and activities will be minimized.

(iii) Any pesticides, herbicides, or other chemicals proposed for use, as well as the actions the applicant will take to minimize the adverse impacts of pesticides, herbicides, and other chemicals on native species including pollinators present in or adjacent to the right-of-way.

(iv) Any revegetation and restoration activities, including how the applicant will incorporate regionally appropriate native seeds and plants, particularly those that provide breeding, feeding, and sheltering habitat for native species present in the area, including but not limited to native pollinators.

(d) *Submission instructions.*

Applicants may submit applications for rights-of-way through electronic filing or certified mail.

(1) *Electronic filing.* Applications submitted through electronic filing (E-file) must include a digital copy of the SF–299, the map, and the environmental analysis, as well as any other attachments that the Regional Director requires for application processing. The Service may provide additional instructions at the preapplication meeting.

(2) *Certified mail.* Application submissions through certified mail must include one printed copy of the SF–299, the map, and the environmental analysis, as well as any other attachments that the Regional Director requires for application processing. Applicants must send all documents by certified mail to the Regional Director for the region where the proposed right-of-way is located. Addresses for the Service Regional Offices are provided at 50 CFR 2.2. Mailing envelopes should

be clearly marked “Attn: NWRS Realty Right-of-Way Permit Processing.”

§ 29.21–5 Survey plat and legal description.

(a) Before the Service will issue a right-of-way permit, the applicant must provide a final survey plat and legal description that shows and describes the proposed right-of-way in such detail that the Service can accurately locate the proposed right-of-way on the ground.

(b) Survey plats and legal descriptions of the right-of-way area must be stamped and signed by a licensed professional land surveyor or other professional licensed or authorized by the State to carry out land-surveying activities.

(1) Survey plats must meet the following standards:

(i) Survey plats must be geodetically referenced to the current State or national datum. In some cases, new geodetic control points will need to be set within or near the right-of-way area.

(ii) Survey plats must show ties to the monuments marking the boundaries of the Service-owned land that the right-of-way would affect, or from which those boundaries are calculated. In cases such as road construction that involve allowing full control of the right-of-way area, a boundary survey is required.

(iii) The points where the right-of-way enters and leaves Service land must be annotated on the survey with distance ties to the nearest boundary monuments.

(iv) For a linear strip right-of-way, the courses and distances of the center line and the width of the right-of-way on each side of the center line must be annotated.

(v) If the right-of-way or site is located wholly within Service land, a minimum of two ties to boundary corners or geodetic control points that can be readily recovered must be shown.

(vi) Survey plats must show the existing or proposed facilities in sufficient detail that an average person can determine the nature and extent of the proposed use.

(vii) Survey plats must include all uses of Service-managed land required as part of the right-of-way, including access roads.

(viii) Survey plats must show the location of any other right-of-way areas in the vicinity.

(ix) Survey plats must show major natural or cultural features such as roads, rivers, fences, etc., required for orientation and intelligent interpretation.

(x) The acreage contained within the right-of-way area must be shown.

(xi) Letter-sized plats are preferred, but larger format plats, such as the right-of-way plan sets prepared for highway and utility projects, are acceptable if they meet the other requirements.

(xii) A digital version of the plat in AutoCAD, ArcGIS, or similar format must be submitted along with a signed paper or document prepared in Adobe Acrobat or similar process.

(2) The legal description must:

(i) Be in metes-and-bounds, aliquot parts, or linear strip format;

(ii) Conform to and reference the survey plat;

(iii) Be tied to the controlling monuments shown on the plat;

(iv) Reference the geodetic coordinates of the point of beginning or point of commencement, and have a clearly documented basis of bearing; and

(v) For linear corridor projects, use a “strip description” format, based on a geometrically defined centerline. For example: “All that portion of [land unit description] lying within the following described strip of land.”

§ 29.21–6 Reimbursement of costs.

(a) *Application evaluation and processing activities.* (1) Unless reimbursement is waived as provided under paragraph (c) of this section, the applicant for a right-of-way permit must reimburse the United States for the costs the Service incurs in evaluating and processing the application, even if the result of this evaluation is a denial of the application. These costs may include, but are not limited to, the Service’s costs to review the application and related materials, conduct resource surveys of the proposed permit area, prepare a compatibility determination, prepare documentation to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and other applicable laws, obtain an appraisal, draft correspondence, and draft the permit.

(2) If requested by the applicant during or after the required preapplication meeting, the Regional Director will provide the applicant a preliminary estimate of the Service’s application evaluation and processing costs using the information provided by the applicant during or after the preapplication meeting.

(3) After receiving a complete application, the Regional Director will estimate the Service’s application evaluation and processing costs using the information the applicant provided in the application and during or after the preapplication meeting.

(4) Unless reimbursement is waived as provided under paragraph (c) of this

section, the applicant must submit a payment to reimburse the Service for its estimated costs before the Service will evaluate and process the right-of-way permit application.

(5) If the Service’s cost to evaluate and process the right-of-way application exceeds the estimated amount, the Regional Director will promptly notify the applicant of the deficient amount, and the applicant must submit payment for the deficient amount before the Service will issue a right-of-way permit. The Regional Director will refund any overpayments at the request of the applicant.

(b) *Monitoring activities.* (1) By accepting a permit under this subpart, the permit holder agrees to reimburse the Service for the costs incurred for all monitoring activities, which include monitoring the construction, operation, maintenance, and termination of facilities, to ensure compliance with the terms, conditions, and stipulations of the right-of-way permit.

(2) The Regional Director will estimate the total costs the Service expects to incur for monitoring activities over the permit term using the information the applicant provided in the application and during or after the preapplication meeting.

(3) At the discretion of the Regional Director, the Service may require reimbursement for its estimated monitoring costs in a lump-sum payment before the Service issues a right-of-way permit, or at periodic intervals, not to exceed 5 years, specified in the permit.

(4) When reimbursement for costs for monitoring activities is required at periodic intervals specified in the permit, the Regional Director will review the amount of reimbursement not more than every 5 years after the issuance of the permit. The Regional Director will provide the permit holder with written notice of intent to impose new charges to reflect current monitoring costs commencing with the ensuing charge year. The revised charges will be effective unless the permit holder files an appeal in accordance with § 29.22.

(c) *Waiver of reimbursement for Service costs.* (1) No reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities will be required of:

(i) State or local governments or agencies or related instrumentalities;

(ii) Federal Government agencies; or

(iii) Private individuals or organizations when the proposed right-of-way contributes to the Service’s operation or maintenance of the refuge

or fish hatchery as certified in writing by the Regional Director.

(2) Additionally, the Regional Director has the discretion to waive reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities so long as there are appropriated funds for these activities.

(3) When reimbursement for Service costs for monitoring activities is waived during the permit term, the permit will contain a statement to that effect.

(4) Reimbursement of costs is required and cannot be waived for any right-of-way permit issued under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

(d) *Service use of payments received for reimbursement of costs.* Payments received by the Service to reimburse the United States for the costs incurred in evaluating and processing applications, and for monitoring, will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

■ 6. Revise newly redesignated § 29.21–7 to read as follows:

§ 29.21–7 Nature of interest granted.

(a) Where the land administered by the Service is owned in fee by the United States and the right-of-way is compatible with the objectives of the area, the Service may issue a permit after it is approved in writing by the Regional Director.

(b) For rights-of-way permitted under authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these substances:

(1) The permit term may not exceed 30 years.

(2) The right-of-way may not exceed 50 feet in width, plus the area occupied by the pipeline and its related facilities, unless the Regional Director finds, and records the reasons for the finding based on the analysis in a compatibility determination, that a wider right-of-way is necessary for operation and maintenance after construction and to protect the environment or public safety. “Related facilities” include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, and terminals.

(c) For rights-of-way other than those referred to in paragraph (b) of this section, the permit term may be up to 50 years when the Regional Director deems it appropriate, or a lesser term.

(d) The Service may issue a temporary permit supplementing a right-of-way for additional land needed during construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(e) Unless otherwise provided, no interest granted shall give the grantee any right whatever to remove any material, earth, or stone for construction or other purpose, except that stone or earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

■ 7. Revise newly redesignated § 29.21–8 to read as follows:

§ 29.21–8 Terms and conditions.

(a) *Prior rights.* Any right-of-way permit issued will be subject to rights reserved, if any, by a prior owner, and rights held, if any, by a third party.

(b) *Agreement of terms and conditions.* An applicant, by accepting a permit, agrees to such terms and conditions as may be prescribed by the Regional Director, including special stipulations required to ensure the permitted use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. (See § 29.21–12 for specific requirements for electric powerlines and § 29.21–13 for specific requirements for oil and gas pipelines.)

(c) *Terms and conditions required for all permit holders.* In addition to any terms and conditions prescribed by the Regional Director, the permit holder must agree to all of the following terms and conditions:

(1) The permit is for the specific use described and may not be construed to authorize any other use within the permit area unless approved in writing by the Regional Director upon determination by the Service project manager that the additional use is a compatible use.

(2) The permit may be amended only by a written instrument signed and executed by the Regional Director and the permit holder.

(3) The permit holder may not transfer or assign this permit to another party without obtaining the Regional Director's prior written approval.

(4) The permit holder may not allow another party to collocate equipment or activities on their infrastructure or right-of-way. Any entity that wants to collocate equipment or activities must apply for its own Service right-of-way permit in accordance with the regulations in 50 CFR 29.21.

(5) The permit holder is responsible for ensuring that its officers, employees,

representatives, agents, contractors, and subcontractors are familiar with the permit and comply with its terms and conditions.

(6) The permit holder must provide the Service project manager with current contact information (company address, points of contact, telephone numbers, email addresses, etc.) for both routine and emergency communications, and, in the case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(7) Authorized representatives of the United States have the right to enter and inspect the permitted area at any time without providing prior notice to the permit holder.

(8) The Regional Director may suspend or terminate all or any part of the issued permit for failure of the permit holder to comply with any or all of the terms or conditions of the permit, or for abandonment.

(i) A rebuttable presumption of abandonment is raised by deliberate failure of the permit holder to use the permit, for any continuous 2-year period, for the purpose for which the permit was issued or renewed. In the event of noncompliance or abandonment, the Regional Director will notify the permit holder in writing of any intention to suspend or terminate the permit 60 days from the date of the notice and state the reasons, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may allow an extension of time within which to complete corrective actions if the Regional Director believes that extenuating circumstances, not within the permit holder's control, such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons, warrant an extension.

(ii) Should the holder of a right-of-way permit issued under authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding, pursuant to 5 U.S.C. 554, prior to a final departmental decision to suspend or terminate the permit. In the case of all other right-of-way permit holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the permit.

(iii) No administrative proceeding is required in cases in which the permit terminates under its terms.

(9) The permit holder must prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the permit holder has requested and received from the Regional Director written approval of measures that the permit holder will take to perpetuate the location of the monument.

(10) The permit holder must conduct operations, including by setting their time and location, in a manner that avoids or minimizes impacts to fish and wildlife or their habitats, including, but not limited to, impacts caused by exposure to physical and chemical hazards, disruption of hydrologic processes, lighting and visual disturbance, and duration and frequency of noise.

(11) The permit holder must comply with State and Federal laws and regulations that are applicable to the project within which the permit is issued and to the lands that are included in the right-of-way.

(i) The permit holder must comply with the Archaeological Resources Protection Act (16 U.S.C. 470aa *et seq.*). The disturbance of archaeological or historical sites and the removal of artifacts from Federal land are prohibited.

(ii) The permit holder must comply with the applicable requirements of the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*), and the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*).

(iii) The permit holder must immediately suspend all activities and notify the Service project manager upon the discovery of any threatened or endangered species or archeological, paleontological, or historical resources within or near the permitted area. All natural and cultural resources discovered in the permitted area are the property of the United States.

(12) The permit holder must clear and keep clear the lands within the permit area to the extent and in the manner directed by the Service project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project so as to decrease the fire hazard and also in accordance with any instructions that the Service project manager specifies.

(13) The permit holder must do everything reasonably within the permit holder's power, both independently and

on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the permitted area, including making available such construction and maintenance resources that are reasonably obtainable for the suppression of such fires.

(14) After the expiration or termination of this permit, the permit holder must remove all facilities and equipment from the permitted area and restore the permitted area to its pre-permit condition as directed and approved by the Service project manager. Any facilities or equipment not removed within 6 months, unless more time is deemed necessary for conservation purposes by the Regional Director, will be deemed abandoned and will be disposed of in accordance with applicable Federal law. In that event, the permit holder will be liable to the Service for all of its costs in disposing of the facilities or equipment and restoring the permitted area.

(15) In accordance with applicable Federal law, in the construction, operation, and maintenance of the project, the permit holder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and must require an identical provision to be included in all subcontracts.

(16) The permit holder must pay the United States the full value for all damages to the lands or other property of the United States caused by the permit holder or that person's employees, contractors, or agents of the contractors.

(i) In cases in which the permit is issued to a State or other governmental agency that has no legal power to assume such a liability with respect to damages caused to lands or property, that agency will repair all such damages.

(ii) In cases in which the permit involves lands that are under the exclusive jurisdiction of the United States, the permit holder or his or her employees, contractors, or agents of the contractors will be liable to third parties for injuries incurred in connection with the permit area.

(17) The permit holder will indemnify and hold harmless the United States and its officers, employees, agents, and representatives from and against all liability of any sort whatsoever arising out of the permit holder's activities under this permit. This agreement to indemnify and hold harmless from and against all liability includes liability under Federal or State environmental laws, including but not limited to the

Comprehensive Environmental Response, Compensation, and Restoration Act, as amended (42 U.S.C. chapter 103); the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 *et seq.*); and what is commonly known as the Clean Water Act, as amended (33 U.S.C. 1251–1387). This agreement to indemnify and hold harmless will survive the permit's termination or expiration.

(18) The Regional Director may require permit modifications at any future date to ensure that the permitted use is compatible with the Refuge System mission and the purpose(s) of the refuge. Required permit modifications could include but are not limited to changes to permit conditions and/or additional stipulations that a Regional Director deems necessary based on new information.

(d) *Terms and conditions required of most permit holders.* The permit holder must also agree to the following terms and conditions, which are required unless the Regional Director determines they are not relevant to the requested use:

(1) The permit holder must notify the Service project manager in writing at least 5 business days before conducting any maintenance or nonemergency repair work within the permitted area. The written notice must describe the location of the proposed work, the equipment to be used, and the size of work crews anticipated to be working on Service land. The Service project manager may require an onsite meeting before any maintenance or nonemergency repair work commences and may assign a site monitor to be present during such work. Except in emergencies, all work in the permitted area must be conducted during normal business hours. To respond to an emergency, the permit holder may enter the permitted area at other times to conduct repair work after calling the Service project manager.

(2) The permit holder must erect and maintain appropriate warning signs, barricades, or other warning devices during all periods when the permit holder is using the permitted area, including periods of maintenance or repair.

(3) The permit holder must rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work.

(4) Notwithstanding the issuance of this permit, the Service may establish trails, roads, or other improvements across, over, on, or through the permitted area for use by the Service, by visitors, or by others.

(5) Upon request by the Regional Director, the permit holder must build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(6) The permit holder must take any soil and resource conservation and protection measures, including weed control, on the land covered by the permit that the Service project manager in charge requests.

(7) The permit holder must provide for habitat connectivity on the land covered by the permit to the maximum extent possible, for example through use of wildlife-friendly fencing, perches or perch deterrents for birds, fish-passable culverts, vegetative screening or hiding cover, that the Service project manager in charge requests.

(8) The permit holder must promptly notify the Service project manager in charge of the amount of merchantable timber, if any, that will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such sum of money that the project manager determines to be the full stumpage value of the timber to be cut, removed, or destroyed.

(9) Issuance of the permit is subject to the express condition that the exercise of the permit will not unduly interfere with the management, administration, or disposal by the United States of the land to be affected. The permit holder agrees and consents to the occupancy and use by the United States, or its grantees, permittees, or lessees, of any part of the permit area not actually occupied for the purpose of the permitted rights to the extent that the use does not unreasonably interfere with the permittee's use of the permitted area.

(10) Any facility constructed on the permit area will be modified or adapted, if modification is found by the Regional Director to be necessary, without liability or expense to the United States, so that the facility will not conflict with the use and occupancy of the land for any authorized works that may be constructed on the land under the authority of the United States. The modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements for Service facilities.

(e) *General liability insurance.* The Service may require the permit holder to procure and maintain in force and effect during the term of this permit commercial general liability insurance to protect against claims arising out of

the acts or omissions of the permit holder or its officers, employees, agents, or representatives while conducting the activities authorized by this permit. The insurance policy must provide coverage for discharges or escapes of pollutants or contaminants into the environment, including sudden or accidental discharges or escapes. The Regional Director will determine the minimum amount of coverage per occurrence and in the aggregate. The policy must be issued by a company duly licensed to do business in the State where the project is located and must name the United States of America as an additional insured. Before the Regional Director executes this permit, the permittee must provide the Service with a copy of its certificate of insurance showing the required coverage.

(f) *Bonds.* The Service may require a bond for a permit when the Regional Director determines that the Service is likely to incur reclamation costs during or after the term of the right-of-way due to the construction, operation, or maintenance of the right-of-way. The Service also may require a bond for a permit when the Service is likely to incur reclamation costs if the right-of-way is abandoned or terminated.

(1) No bond will be required of a Federal, State, or local government or its agent or instrumentality, except those that are:

(i) Using the facility, system, space, or any part of the right-of-way area for commercial purposes; or

(ii) A municipal utility or cooperative whose principal source of revenue is customer charges.

(2) When the Service requires a bond, the permit holder must agree to the following terms and conditions: Before the permit's effective date, the permit holder must file with the Service a performance bond payable to the Service, issued by a surety satisfactory to the Service, to guarantee its compliance with all terms and conditions of the permit and with all applicable laws and regulations. The Regional Director will determine the amount of the bond and with whom it must be filed.

(g) *Communications facilities.* If this permit is for a communications facility as defined by the Mobile Now Act (47 U.S.C. 1455(d)(1)), then the permit holder must also agree to the following terms and conditions:

(1) The permit holder agrees that use of wireless communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or National Telecommunications and Information Administration (NTIA) authorization/

license (if required), and the operation of the equipment is in strict compliance with applicable requirements of FCC or NTIA. A copy of each applicable license or authorization must be maintained at all times by the permit holder for each transmitter being operated. The permit holder must provide the Service project manager, when requested, with current copies of all licenses for equipment in or on facilities covered by this permit.

(2) The permit holder must, at the permit holder's sole cost and expense, take all necessary actions to comply with all applicable FCC radio frequency (RF) exposure regulations and requirements, and take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC specific levels.

(3) The permit holder agrees that the provisions of 18 U.S.C. 431 (contracts by Member of Congress) and 41 U.S.C. 6306 (prohibition on Members of Congress making contracts with the Federal Government) apply to the permit, as if set forth in full.

§ 29.21–9 [Amended]

■ 8. Amend newly redesignated § 29.21–9, in paragraph (a), by removing the words “at his discretion”.

■ 9. Amend newly redesignated § 29.21–10 by revising the section heading and paragraphs (b) and (c) to read as follows:

§ 29.21–10 Disposal, transfer, or termination of interest.

* * * * *

(b) *Transfer of permit.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a permit must be filed with the Regional Director and must be supported by a stipulation that the transferee agrees to comply with and be bound by the terms and conditions of the original permit. A \$100 nonrefundable service fee must accompany the proposal. No transfer will occur unless and until approved in writing by the Regional Director.

(c) *Disposal of property on termination of right-of-way.* In the absence of any agreement to the contrary:

(1) The holder of the right-of-way must, within 6 months after termination of the right-of-way, remove all property or improvements placed there by the holder, other than a road and usable improvements to a road.

(2) After 6 months, all property and improvements in the right-of-way area become the property of the United States.

(3) The Regional Director may use discretion to extend this timeframe.

■ 10. Revise newly redesignated § 29.21–11 to read as follows:

§ 29.21–11 Required payment for use and occupancy of National Wildlife Refuge System land.

(a) Payment for use and occupancy of lands under the regulations of this subpart is required for the fair market value or fair market rental value as determined by the Regional Director using any method approved by the Department of the Interior to determine those values.

(1) At the discretion of the Regional Director, the payment may be a fair market rental payment, paid annually, or a lump-sum payment, made before permit issuance.

(2) If any Federal, State, or local agency is exempt from payment under any other provision of Federal law, the agency must inform the Service of the applicable Federal law during the preapplication meeting required by § 29.21–2. The agency must also otherwise compensate the Service by any other means acceptable to the Regional Director, including, but not limited to, making other land available or loaning of equipment or personnel, except that any such compensation must relate to, and be consistent with, the mission of the National Wildlife Refuge System. For agencies exempted from payment by law, the Regional Director may waive the requirement for other compensation upon finding this requirement to be impracticable or unnecessary.

(b) The terms of the permit will specify the amount of the lump sum paid by the applicant for use and occupancy during the current permit term, or, if applicable, the initial annual rental payment amount for use and occupancy of the permitted area.

(c) When annual rental payments are used, the Regional Director will periodically review and adjust the charges to reflect fair market value. The Regional Director will provide the permit holder with written notice of intent to impose new charges to reflect fair market value commencing with the ensuing charge year. The revised charges will be effective unless the permit holder files an appeal in accordance with § 29.22.

(d) Payments received by the Service for use and occupancy of rights-of-way on Refuge lands and interests in land will be deposited into the Migratory Bird Conservation Fund to carry out the land-acquisition provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 *et seq.*). Payments received for use and occupancy of rights-of-way on other Service-managed lands and interests in land will be deposited into the National

Wildlife Refuge Fund, to make payments annually to counties and other units of local government in accordance with regulations in 50 CFR part 34.

§ 29.21–12 [Amended]

■ 11. Amend newly redesignated § 29.21–12:

■ a. In the introductory text, by removing the citation “§ 29.21–4(b)” and adding in its place the citation “§ 29.21–8”;

■ b. In paragraph (a), by removing the word “his” both times that it appears and adding in its place the word “the”; and

■ c. In paragraph (b), by removing the word “him” both times that it appears and adding in its place the words “the applicant”.

■ 12. Revise newly redesignated § 29.21–13 to read as follows:

§ 29.21–13 Rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these substances.

(a) *Application procedure.* (1) Applications for pipelines and related facilities under this section are to be filed in accordance with § 29.21–4 with the following exception: When the right-of-way or proposed facility will occupy Federal land under the control of more than one Federal agency or more than one bureau or office of the Department of the Interior, a single application must be filed with the appropriate State Director of the Bureau of Land Management in accordance with regulations in 43 CFR part 2800.

(2) Any portion of the facility occupying land of the National Wildlife Refuge System is subject to the provisions of the regulations in this part.

(b) *Right-of-way permits.* Right-of-way permits issued under this section are subject to the special requirements of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). Gathering lines and associated structures used solely in the production of oil and gas under valid leases on the lands administered by the Service are excepted from the provisions of this section.

(1) *Pipeline safety.* Rights-of-way permits issued under this section will include requirements that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline. An applicant must agree to design, construct, and operate all proposed facilities in accordance with the provisions of 49 CFR part 192 or part

195 and in accordance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and any future amendments to that act.

(2) *Environmental protection.* An application for a right-of-way must contain environmental information required by § 29.21–4(b)(2). The applicant must also provide a plan of construction, operation, and rehabilitation of the proposed facilities. In addition to terms and conditions imposed under § 29.21–8, the Regional Director will impose any stipulations required to ensure:

(i) Restoration, revegetation, and curtailment of erosion of the surface;

(ii) That activities in connection with the right-of-way or permit will not violate applicable air- and water-quality standards in related facilities siting standards established by law;

(iii) Control or prevention of damage to the environment, including damage to fish and wildlife habitat, public or private property, and public health and safety; and

(iv) Protection of the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) *Disclosure.* Applicants that are a partnership, corporation, association, or other business entity must disclose the identity of all participants. Such disclosure will include where applicable:

(1) The name and address of each partner;

(2) The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares that the shareholder is authorized for voting purposes; and

(3) The name and address of each affiliate of the entity, together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate that controls the entity, the number of shares and the percentage of any class of voting stock of the entity owned, directly or indirectly, by the affiliate.

(d) *Technical and financial capability.* The Regional Director may require a financial statement and will issue or renew a right-of-way permit under this section only when satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the facility.

(e) *Reimbursement of costs.* (1) In accordance with § 29.21–6, the holder of

a right-of-way permit must reimburse the Service for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities as determined by the Regional Director.

(2) Payments received by the Service to reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

(f) *Public hearing.* The Regional Director will give notice to Federal, State, and local government agencies and the public of the opportunity to comment on right-of-way applications under this section. A notice will be published in the **Federal Register**, and a public hearing may be held where appropriate.

(g) *Bonding.* Where appropriate, the Regional Director will require the holder of a right-of-way permit to furnish a bond or other satisfactory financial assurance to secure all or any of the obligations imposed by the terms and conditions of the right-of-way permit or by any rule or regulation, not to exceed the period of construction plus 1 year or a longer period if necessary for the pipeline to stabilize or for any reclamation or restoration requirements to be met.

(h) *Suspension of right-of-way.* If the project manager determines that an immediate temporary suspension of activities within a right-of-way permit area is necessary to protect public health and safety or the environment, the project manager may issue an emergency suspension order to abate such activities prior to an administrative proceeding. The Regional Director must make a determination and notify the permit holder in writing within 15 days from the date of suspension as to whether the suspension should continue and list actions needed to terminate the suspension. The suspension will remain in effect for only so long as an emergency condition continues.

(i) *Joint use of rights-of-way.* Each right-of-way permit will reserve to the Regional Director the right to issue additional rights-of-way permits for compatible uses on or adjacent to permitted rights-of-way areas after giving notice to the permit holder and an opportunity to comment.

(j) *Common carriers.* Pipelines and related facilities used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any

refined product made from these substances will be constructed, operated, and maintained as common carriers.

(1) The owners or operators of pipelines subject to this subpart will accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(2) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipelines, the Secretary may, after a full hearing following due notice to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(3) The common carrier provisions of this section will not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. ch. 15B sec. 717 *et seq.*) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(4) The owners or operators of pipelines will purchase, without discrimination, any natural gas produced in the vicinity of the pipeline that is offered for sale unless that natural gas is subject to State regulatory or conservation laws governing its purchase by owners or operators of pipelines.

(k) *Required information.* The Regional Director will require, prior to issuing or renewing a right-of-way permit, that the applicant submit and disclose all plans, contracts, agreements, or other information or material that the Regional Director deems necessary to determine whether to issue or renew the right-of-way permit or the terms and conditions that should be included in the permit. That information may include, but is not limited to:

(1) Conditions for and agreements among owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

(l) *State standards.* The Regional Director will take into consideration, and to the extent practical comply with, applicable State standards for right-of-

way construction, operation, and maintenance, taking into account any additional standards necessary to protect refuge resources.

(m) *Congressional notification.* The Secretary will promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for pipeline 24 inches or more in diameter, and no right-of-way permit for such a pipeline will be issued until a notice of intention to permit the right-of-way, together with the Secretary's detailed findings as to the terms and conditions the Secretary proposes to impose, has been submitted to those committees.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 230711-0164]

RIN 0648-BL86

Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale

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

ACTION: Proposed rule; request for comments and notice of public hearing.

SUMMARY: We, NMFS, propose to designate critical habitat for the Rice's whale (*Balaenoptera ricei*) by designating waters from the 100 meter (m) isobath to the 400 m isobath in the Gulf of Mexico (GOMx), pursuant to section 4 of the Endangered Species Act (ESA). We have considered economic, national security, and other relevant impacts of the proposed designation. We are not excluding any particular area from the critical habitat designation. We seek comments on all aspects of the proposed critical habitat designation and will consider information received before issuing a final designation.

DATES:

Comments due: Written comments and information must be received by September 22, 2023.

Public hearings: Virtual public hearings will be held on August 24, 2023, and August 30, 2023. Requests for additional public hearings must be made in writing by September 7, 2023.

ADDRESSES: You may submit data, information, or comments on this document, identified by NOAA–NMFS–2023–0028, as well as the supporting documents, by the following methods:

- **Electronic Submission:** Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0028. Click on the “Comment” icon and complete the required fields. Enter or attach your comments.

- **Mail:** Submit written comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document format (PDF) formats only.

Details on the virtual public hearings will be made available on our website at: <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>. The Endangered Species Act Critical Habitat Report, GIS data, and maps that were prepared to support the development of this proposed rule are available on our website at: <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>. Previous rulemaking documents related to the listing of the species can also be obtained electronically on our website at: <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>.

FOR FURTHER INFORMATION CONTACT: Grant Baysinger, NMFS Southeast Region, (727) 551–5790; or Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, we are responsible for determining whether certain species are threatened or endangered, and, to the maximum extent prudent and determinable, designating critical habitat for endangered and threatened species at the time of listing (16 U.S.C. 1533(a)(3)(A)(i)). On August 23, 2021, we published a final rule that revised the listing of Rice’s whales under the ESA to reflect the change in the scientifically accepted taxonomy and nomenclature of this species (86 FR 47022). Prior to this revision, the Rice’s whale had been listed in 2019 under the ESA as an endangered subspecies of the Bryde’s whale, *Balaenoptera edeni* (Gulf of Mexico subspecies). The 2019 listing rule indicated that, with a total abundance of approximately 100 individuals, small population size and restricted range are the most serious threats to this species (84 FR 15446, April 15, 2019). However, other threats such as energy exploration, development, and production; oil spills and oil spill responses; vessel collision; fishing gear entanglement; and anthropogenic noise were also identified as threats that contribute to the risk of extinction.

In the final listing rule, we stated that critical habitat was not determinable at the time of the listing, because sufficient information was not currently available on the geographical area occupied by the species (84 FR 15446, April 15, 2019). Under section 4 of the ESA, if critical habitat is not determinable at the time of listing, a final critical habitat designation must be published 1 year after listing (16 U.S.C. 1533(b)(6)(C)(ii)). The Natural Resources Defense Council and Healthy Gulf filed a complaint in July 2020 with the U.S. District Court for the District of Columbia seeking an order to compel NMFS to designate critical habitat for the Rice’s whale. A settlement agreement was approved on October 14, 2021, and a modified settlement agreement was approved on October 26, 2022 (*Natural Resources Defense Council, Inc. and Healthy Gulf v. Raimondo*, 1:20–cv–2047–KBJ (D.D.C.)). The modified settlement agreement stipulates that NMFS will submit a proposed rule to the Office of the Federal Register by July 15, 2023, and the final rule by June 15, 2024. This proposed rule describes the proposed critical habitat designation, including supporting information on Rice’s whale biology, distribution, and habitat use, and the methods used to develop the proposed designation.

Section 3(5)(A) of the ESA defines critical habitat as (i) the specific areas

within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species. (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (16 U.S.C. 1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

Section 4(a)(3)(B) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD) or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. Our regulations also provide that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction (50 CFR 424.12(g)).

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened or endangered species “on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.” This section also grants the Secretary discretion to exclude any area from critical habitat if the Secretary determines “the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.” However, the Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536 (a)(2)). This

requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. See 16 U.S.C. 1536(a)(1). The ESA section 7 consultation requirements do not apply to citizens engaged in actions on private lands that do not involve a Federal agency. However, designating critical habitat can help focus the efforts of other conservation partners (e.g., State and local governments, individuals, and nongovernmental organizations).

This proposed rule describes information on the biology of the Rice's whale, the methods used to develop the proposed designation, and our proposal to designate critical habitat for the Rice's whale. The Endangered Species Act Critical Habitat Report, referenced throughout this proposed rule and available for review (see **ADDRESSES**), provides more detailed discussions of information and analyses that contributed to the conclusions presented in this proposed rule.

The proposed designation was developed in accordance with the current implementing regulations, which include changes made in 2019 to the definition of physical or biological feature and the requirements for designating unoccupied critical habitat (84 FR 45020, August 27, 2019). On July 5, 2022, the United States District Court for the Northern District of California issued an order vacating regulations, promulgated in 2019, that adopted changes to 50 CFR part 424 (84 FR 45020, August 27, 2019) ("2019 regulations"). Among other things, the 2019 regulations made changes to the definition of "physical or biological features" (50 CFR 424.02) and the criteria for designating specific areas outside the geographical area occupied by the species as critical habitat (50 CFR 424.12(b)(2)). On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order 2 days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For the purposes of

developing this proposed rule, however, we considered whether the analysis or its conclusion would be any different under the regulations in effect prior to 2019. We have determined that while our analysis in some respects would differ, the conclusions ultimately reached and presented here would not be any different. Additional discussion regarding these analyses is provided in this document where applicable.

As detailed in the sections that follow, the specific occupied areas proposed for designation as critical habitat for the Rice's whale contain approximately 73,220.65 square kilometers (28,270.65 square miles) of continental shelf and slope associated waters within the Gulf of Mexico.

Species Description and Life History

This section summarizes life history and biological characteristics of endangered Rice's whales to provide context for the determination of physical or biological features that are essential for the conservation of the species. Rice's whales were estimated to be the most impacted shelf and oceanic stock of marine mammals exposed to the 2010 *Deepwater Horizon* (DWH) oil spill (*Deepwater Horizon* Natural Resource Damage Assessment Trustees, 2016) and much of what we know about the species has been learned since 2010. Following the DWH event, Rice's whales were estimated to have experienced 17 percent increase in mortality (confidence interval of 7 to 24 percent), 22 percent increase in failed pregnancies (confidence interval of 10 to 31 percent), and an 18 percent higher likelihood of having adverse health effects (confidence interval of 7 to 28 percent) (DWH MMIQT, 2015). An estimated 48 percent of the Rice's whale population was exposed to DWH oil, resulting in an estimated 22 percent maximum decline in population size that will require an estimated 69 years until recovery, meaning the time it would take for the population to return to 95 percent of the baseline trajectory (DWH MMIQT, 2015).

Limited information is available on the life history of Rice's whales. Consequently, we provide specific information for Rice's whales where possible and pertinent information on the closely related Bryde's-like whales in general, highlighting traits that these species likely share. The information below summarizes information contained in the final listing rule (84 FR 15446, April 15, 2019) updated with the best scientific information available.

Like other members of the "Bryde's whale complex" or "Bryde's-like whales" in the genus *Balaenoptera*,

Rice's whales are medium-sized rorqual whales. Rice's whales have a streamlined and sleek body shape, a somewhat pointed, flat rostrum with three prominent ridges (i.e., a large central ridge, and smaller left and right lateral ridges), a large, falcate dorsal fin located about two-thirds of the way back on its body, and counter-shaded coloration that is fairly uniformly dark dorsally and light to pinkish ventrally (Jefferson *et al.*, 2015). The pectoral fins are uniformly dark, slender and pointed. The head of a Rice's whale makes up about one quarter of its entire body length. Its fluke, or tail, is broad. These whales exhibit no external asymmetrical pigmentation on the lower jaws, differentiating them from fin and Omura's whales. Limited data (from eight whales) indicate total length measurements for Rice's whales ranged from 470 centimeters (cm) (15.4 ft) to 1,265 cm (41.5 ft). The largest verified Rice's whale observed in the GOMx was a lactating female measuring 1,265 cm (41.5 ft) in length and the largest male was 1,126 cm (36.9 ft) (Rosel *et al.*, 2021). Based on bristle coarseness, a stranded animal initially identified as a juvenile sei whale (*B. borealis*) was reclassified as a Bryde's whale (Mead, 1977). While baleen from across the Bryde's whale complex has not been comprehensively analyzed, Mead (1977) and Kato and Perrin (2018) indicate that the baleen bristles from members of the Bryde's whale complex are coarser than those of sei whales. Similarly, Rosel *et al.* (2021) found that the baleen bristles of three Rice's whales from the GOMx were coarser than that of a sei whale that stranded in the GOMx in 1994.

Similar to other marine mammals, the Rice's whale is considered to be a k-selected species (large body size, long life expectancy, slow growth rate, late maturity, and with few offspring). Taylor *et al.* (2007) estimate that Bryde's whales worldwide may reproduce every 2 to 3 years and reach sexual maturity at age 9. Given the basic biology of baleen whales, it is likely that under normal conditions, female Rice's whales produce a calf every 2 to 3 years. The sex ratio determined for 32 individual whales stranded or biopsied from the northern GOMx was 18 females and 14 males, which is not significantly different from a 50:50 ratio (Rosel *et al.*, 2021).

Identification of several smaller Rice's whales in the GOMx stranding records (Edds *et al.*, 1993) and observations of smaller individuals during NMFS Southeast Fisheries Science Center (SEFSC) large-vessel surveys in the GOMx provide evidence of breeding. In October of 2009, a dead, lactating female

whale was found in Tampa Bay, with internal injuries consistent with blunt force trauma likely caused by a vessel strike. As a long-lived marine mammal with low reproduction rates and a very small population size, the loss of a single individual could drive the species towards extinction (Franklin, 1980; Rosenfeld, 2014).

As with its life history, little information exists on the behavior of the Rice's whale. Maze-Foley and Mullin (2006) found Rice's whales to have a mean group size of 2 (range 1–5, $n = 14$), similar to group sizes of the Eden's and Bryde's whales (Wade and Gerrodette, 1993). The Rice's whale is known to be periodically “curious” around ships and has been documented approaching ships in the GOMx (Rosel *et al.*, 2016), as has also been observed in Bryde's whales worldwide (Leatherwood *et al.*, 1976; Cummings, 1985). Two Rice's whales have shown evidence for vessel strike. This includes the dead adult, lactating female mentioned above that was discovered in Tampa Bay in 2009 with injuries, including separated vertebrae, lung damage, and subdermal contusions, consistent with impact caused by a large object, and a free-swimming Bryde's-like whale that was observed in 2019 in the northeastern GOMx with a severely deformed spine posterior to the dorsal fin consistent with a vessel strike. In September 2015, a female Rice's whale was tagged with an acoustic and kinematic data-logging tag in the De Soto Canyon (Soldevilla *et al.*, 2017). Over the nearly 3-day tagging period, the whale spent 47 percent of its time within 15 m of the surface during the day and 88 percent of its time within 15 m of the surface during the night (Soldevilla *et al.*, 2017). Curiosity around vessels, documented injuries consistent with vessel strikes, and documented behavior near the surface for a considerable amount of time illustrate the anthropogenic threat that vessels pose to Rice's whales. Bryde's whales are the third most commonly reported whale species to be struck by vessels in the southern hemisphere (vanWaerbeck and Leaper, 2008).

Taylor *et al.* (2007) estimated generation length for cetaceans using the following parameters: oldest age (or an estimate based on length), calf survival, adult survival, age at maturity, gestation length, and interbirth interval. For all Bryde's whales, the estimated generation length is 18.4 years using the following estimated parameters: maximum age of 58 years based on length (Best, 1977), age at first reproduction of 9 years based on gestation length (Lockyer, 1984) and age of sexual maturity (IWC, 1997), an

interbirth interval of 2.5 years (Lockyer, 1984), calf survival rate of 0.840, and non-calf survival rate of 0.925 (IWC, 1997). According to Rosel *et al.* (2016), the majority of the samples used to estimate these parameters came from Japanese whaling data from the ‘typical’ or pelagic form of Bryde's whale in the North Pacific and from South Africa, and are probably the *B. e. brydei* subspecies.

Vocalizations and Sound

Sound production associated with behaviors including mating, rearing, social interaction, group cohesion, and feeding have been documented in marine mammal species (Erbe *et al.*, 2016). Baleen whale species produce a variety of highly stereotyped, low-frequency tonal and broadband calls for communication purposes that are thought to function in a reproductive or territorial context, provide individual identification, and communicate the presence of danger or food (Richardson *et al.*, 1995). Marine mammal species with and without specialized biosonar capabilities may rely on biological sounds to find prey, avoid predators, and likely use environmental sounds to support spatial orientation and navigation in three-dimensional marine habitats (Erbe *et al.*, 2016; Cure *et al.*, 2013; Deecke *et al.*, 2002; Gannon *et al.*, 2005). Generally, balaenopterids produce a variety of low-frequency tonal and broadband calls, with durations ranging from 1 to 60 seconds (s), fundamental frequencies between 10–1,000 Hertz (Hz), and high source levels from around 145 to over 190 decibels referenced to 1 micropascal (re 1 μ Pa) at 1 m (Richardson *et al.*, 1995; Miller *et al.*, 2021). Most balaenopterids produce some call types that are distinctive, stereotyped, and unique at the species or population level, including Rice's whales, which can be detected with autonomous passive acoustic monitoring surveys. Bryde's whales worldwide produce a variety of calls that are distinctive among geographic regions, and these calls may be useful for delineating subspecies or populations (Oleson *et al.*, 2003; Širović *et al.*, 2014). In the GOMx, Širović *et al.* (2014) reported ‘Bryde's’ whale call types composed of downsweeps (frequency modulated signals with decreasing frequency over time) and downsweep sequences and localized these calls (*i.e.*, researchers recorded the calls on multiple instruments that allowed them to triangulate the location of the calls and then confirmed the location with visual sightings). Rice *et al.* (2014) detected these sequences, as well as two stereotyped tonal call types

that originated from ‘Bryde's’ whales in the GOMx.

Soldevilla *et al.* (2022a) used sonobuoys and passive acoustic tagging from three marine mammal surveys with focused effort in the Rice's whale core distribution area between 2015 and 2018 to validate potential call type sources and to characterize Rice's whale calls. Validation includes manually reviewing each automated detection and scoring each as a true or false detection. During concurrent visual and acoustic surveys, acoustic-directed approaches were conducted to obtain visual verifications of sources of localized sounds. The call repertoire that was validated to Rice's whales includes downsweep sequences (including downswept pulse pairs), long-moan calls, and tonal-sequence calls. Širović *et al.* (2014) proposed a fourth Rice's whale call type, the high-frequency downsweep call, which was not detected during the Soldevilla *et al.* (2022a) study and therefore the source remains unvalidated.

Soldevilla *et al.* (2022b) detected novel stereotyped tonal calls at three locations in the northwestern GOMx. The calls are similar to the Rice's whale long-moan calls detected in the northeastern GOMx, but with distinct differences from the northeastern calls and with at least six stereotyped variations. The cause and occurrence of these call features require further study.

Distribution, Movement, and Habitat Use

The Rice's whale is the only species of large whale endemic to the United States and the only year-round resident baleen whale species in the Gulf of Mexico (Rosel *et al.*, 2021).

Members of the Bryde's whale complex are tropical and subtropical in distribution, generally non-migratory, and found in all major ocean basins (Rosel *et al.*, 2021). Bryde's-like whales do not migrate long distances to feed in polar or temperate regions (Constantine *et al.*, 2018), nor do they have specific or separate feeding or breeding grounds (Penry *et al.*, 2011).

Based on a compilation of 181 sightings from NMFS marine mammal vessel and aerial survey sightings, the primary Rice's whale core habitat is considered to be in the northeastern GOMx, centered over the De Soto Canyon in waters between 150 m and 410 m depth (Rosel *et al.*, 2021). This area, referred to by NMFS as the Rice's whale “core distribution area,” is characterized by seasonal advection of low salinity, high productivity surface waters (*i.e.*, waters with high production of organic matter by planktonic plants),

leading to persistent upwelling driven by both winds and interactions with the loop current (Farmer *et al.*, 2022). In 2017, there was a genetically confirmed sighting of a Rice's whale in the western GOMx off the central Texas coast in 225 m depth (NMFS, 2018a; Rosel *et al.*, 2021).

Passive acoustic monitoring recordings from the western GOMx along the shelf break south of the Flower Garden Banks National Marine Sanctuary (FGBNMS) confirm the presence of Rice's whales in the same area as two balaenopterid sightings made by NMFS in the early 1990s (Soldevilla *et al.*, 2022b). A predictive density model highlights the importance of the 200 m isobath as an area Rice's whales may occupy along the northwestern GOMx shelf break (Roberts *et al.*, 2016). Soldevilla *et al.* (2022b) detected baleen whale calls from passive acoustic moorings deployed from June 2016 to August 2017 in areas of predicted Rice's whale habitat in several locations in the northern GOMx. Passive acoustic recorder site selection was based on the median water depth of 221 m for Rice's whale sightings in the core distribution area and locations of unidentified baleen whale sightings, as well as dispersed sampling sites along the north-central to northwestern GOMx shelf break (Soldevilla *et al.*, 2022b). A combined 1,285 days of acoustic data were collected at four western sites, and a total of 304 days of acoustic data were recorded at the concurrently deployed site in the core distribution area. Variants of Rice's whale long-moan calls were detected at three sites in the northwestern GOMx. At the westernmost FGBNMS site, 1,939 calls were detected on 47 days over 10 months of data collection (16 percent of days with data collected). The eastern FGBNMS site detected 429 calls on 18 days over 10 months (6 percent of days with data collected), and the Eugene Isles South site detected 22 calls on 3 days over 10 months (1 percent of days with data collected). No calls were detected at a site off Grand Isle, Louisiana. The recorder at the site in the core distribution area detected 66,583 long-moan Rice's whale calls over 11 months of data collection. On several occasions overlapping calls were detected and in some instances the overlapping calls were of different call subtypes indicating at least two individuals were calling during that encounter. Overlapping calls were recorded at both of the FGBNMS sites and at the site in the core distribution area. Long-moan call detections

occurred in sporadic clusters throughout the year, with no evidence of seasonality at the western sites. At the western sites, at least one call was detected in every month of the year, which suggests year-round use of the western habitat area. Further research is needed to understand how many animals are using the northwestern sites and whether animals are moving between the northwestern and northeastern sites, or whether the calls at these sites represent different groups of animals.

Comparing numbers of acoustic call detections among sites is difficult. Local sound propagation conditions and ambient sound levels influence the ability to detect Rice's whale calls and the area over which whales can be detected. Higher numbers of acoustic call detections at a site may reflect higher call production rates, or it may reflect larger detection areas instead of higher animal presence. Soldevilla *et al.* (2022b) expected detection ranges at the western FGBNMS site to be approximately 25–50 percent of the detection range at the site in the core distribution area. Ambient noise levels at Rice's whale call frequencies are 6–13 decibels higher at the western FGBNMS site than the site in the core distribution area. Baleen whale calls in the 100–150 Hz frequency range generally can be detected on scales of tens of kilometers in pelagic environments (*e.g.*, McDonald, 2004). Rice's whale long-moan calls were commonly detected on scales of 20–75 km, suggesting a Rice's whale call could be detected over as much as 25 percent of the core distribution area in some conditions (Soldevilla *et al.*, 2022a). In the western GOMx, which has 6–13 decibel higher mean ambient noise levels, resulting in smaller detection distances, the same long-moan calls were detected on two sensors 40 km apart, which suggests the Rice's whale call could be detected out to distances of at least 20 km (Soldevilla *et al.*, 2022b). In the core distribution area, Rice *et al.* (2014) documented an occurrence of the same call on three sensors with a maximum of 150 km spacing, suggesting the calls could be detected out to distances of at least 75 km at times. Anthropogenic noise sources, including seismic survey airgun pulses and shipping traffic noise, appear to be the main contributors to the increased noise levels that lead to reduced detection ranges in the western GOMx. Studies in baleen whales, including Bryde's whales, have shown a decrease in communication range as a result of masking, which occurs when

biologically irrelevant sounds prevent an animal from hearing biologically important sounds (Clark *et al.*, 2009; Cholewiak *et al.*, 2018; Gabriele *et al.*, 2018; Putland *et al.*, 2018). The three westernmost sites used by Soldevilla *et al.* (2022b) were not far from a major shipping fairway and vessel traffic noise was common in the recordings at those sites. The effects of low-frequency noise from shipping traffic and airguns on researchers' ability to detect calls were apparent in the detectable features of Rice's whale calls in the western GOMx. For example, many of the manually detected calls at the western sites consisted of only the 150 Hz tone due to increased noise levels below 125 Hz, and these were often of low signal-to-noise ratio likely due to a combination of sound propagation losses with distance and higher levels of shipping or seismic survey noise at the lower frequencies.

While contemporary sightings are primarily confined to the core distribution area in the northeastern GOMx, Rice's whales historically may have had a broader distribution in the northern and southern GOMx. Reeves *et al.* (2011) reviewed whaling logbooks from the GOMx and identified records of “finback” whales from the north-central GOMx south of the Mississippi River delta and in the southern GOMx on the Campeche Banks. Because fin whales are not part of the GOMx ecosystem, these records were likely Rice's whales misidentified as fin whales (Reeves *et al.*, 2011), suggesting the distribution of the Rice's whale was likely broader than we see currently. In the north-central GOMx, whether Rice's whales stay in this area or their use of this area is restricted to travel between the northwest and northeast through areas of high shipping traffic near the Mississippi River delta is unknown. Soldevilla *et al.* (2022b) did not record Rice's whale calls at a site offshore of Grand Isle, Louisiana or during 2 months at a site in the north-central GOMx. The absence of Rice's whale call detections at these sites could indicate an absence of Rice's whales, an absence of calling Rice's whales, or an inability to detect whales in these areas due to higher ambient noise conditions and sound propagation conditions within the Mississippi Canyon. However, Rice's whale western long-moan call variants were detected both at the western-most sites and a site in the core distribution area, which suggests movement between the areas. Rice's whale western long-moan calls were detected on 6.4 percent of days at the site in the core distribution area. Rice's

whale western long-moan call variants were detected on the same or consecutive days in the western-most and eastern-most GOMx sites, which were separated by a distance that is too far for one whale to travel in a single day (740 km), indicating that different Rice's whales produced the calls.

Based on the best available data, we conclude that the normal distribution of Rice's whales is limited to the Gulf of Mexico. No NMFS marine mammal vessel or aerial surveys from 1992 through 2019 have recorded a confirmed sighting of Rice's whales or any type of Bryde's whale along the U.S. eastern seaboard (Rosel *et al.*, 2021). While Roberts *et al.* (2016) predicted a mean monthly abundance of seven Bryde's whales along the entire U.S. eastern seaboard based on four ambiguous "sei or Bryde's whale" sightings documented during surveys conducted between 1992 and 2014, Roberts *et al.* (2023) later concluded that these four sightings were most likely sei whales, and that given the lack of more recent evidence of Bryde's whales and the expert opinions of Rosel *et al.*, 2021, Bryde's whales are effectively absent from the U.S. east coast. Acoustic studies off Jacksonville, Florida (Frasier *et al.*, 2016), North Carolina (Debich *et al.*, 2014), and Norfolk Canyon (Rafter *et al.*, 2018) during 2011 through 2017 have not detected any types of Bryde's whales or similar species. This evidence suggests that Bryde's whales and similar species, including Rice's whales, are extremely rare along the U.S. east coast (Rosel *et al.*, 2021). Rosel *et al.* (2021) compiled and scrutinized stranding reports from the U.S. Atlantic coast dating back to 1954 and confirmed six records of whales from the Bryde's whale complex. Of these, only two could be genetically confirmed as Rice's whales. All six whales were characterized as small. Mead (1977) suggested Bryde's whale strandings along the U.S. Atlantic were likely extralimital strays from the GOMx.

Northern Gulf of Mexico continental shelf habitat is characterized by sediment transported by the Mississippi River with soft-bottom sediment being the dominant substrate type (Balsam and Beeson, 2003; Love *et al.*, 2013; Rezak *et al.*, 1985). Froeschke and Dale (2012) attribute 96 percent of the GOMx floor to soft-bottom and 4 percent to hard substrate. This hard substrate provides Essential Fish Habitat (EFH) in the U.S. Exclusive Economic Zone of the GOMx. These substrate types support a wide variety of marine life, with some species' distributions that tend to change with depth, among other environmental factors (Etnoyer, 2009;

Gallaway *et al.*, 2001). There are no absolute biological or physical barriers or boundaries separating individual benthic habitats and communities that extend from the depths up across the continental shelf to the shoreline, but there appear to be transition zones with some biota moving between habitats. The continental shelf (10–200 meter depth) is heavily influenced by light, the shoreline, and surface currents, with sand and hardground habitats supporting reef forming corals and non-reef forming corals (Sulak and Dixon, 2015). The continental slope (>200–800 meter depth) is characterized by relatively rapid changes in depth over short horizontal distances with occasional canyons and hardground dominated by seeps or corals (Gallaway *et al.*, 2001).

Garrison *et al.* (2022) developed a density surface model to predict Rice's whale distribution in the GOMx based on bathymetric and oceanographic features. Visual line transect survey data collected throughout the northern GOMx between 2003 and 2019 were analyzed, including broad-scale surveys of oceanic waters and directed studies within the Rice's whale core distribution area. Depth, sea surface temperature, surface and bottom salinity, sea surface height, surface geostrophic velocity, chlorophyll-a, and bottom temperature were among the variables considered. The model identified water depth, surface chlorophyll-a concentration, bottom temperature, and bottom salinity as the key parameters that characterize Rice's whale habitat. The model predicted additional suitable Rice's whale habitat outside the core distribution area in the northeastern GOMx, generally throughout the GOMx within 100 and 400 meters depth. Concentration of Rice's whales in the core distribution area appeared to be explained by higher summer chlorophyll-a concentrations, an indicator of phytoplankton abundance and biomass in coastal and estuarine waters, in the northeast region of the GOMx as compared to other regions in the GOMx with suitable bottom temperatures, but less surface productivity.

The Garrison *et al.* (2022) results build on earlier spatial density modeling efforts for Rice's whales based on sightings data that identified a relatively high density area ranging from shelf-edge Alabama to southwest Florida, with further suitable habitat in a narrower strip of shelf-edge extending to central Texas to the west and the Florida Keys to the east (Roberts *et al.*, 2016). Garrison *et al.* (2022) stated that the model results are consistent with

cold, high salinity water upwelling along the continental shelf break and seasonal inputs of high productivity surface water derived from coastal sources. The presence of eddies that have separated from the warm water loop current and the dominant circulation patterns in the GOMx lead to increased productivity and are likely a factor in maintaining the high density of forage species needed to support Rice's whales. The model also suggests additional habitat outside of U.S. waters in the southern GOMx may be suitable for Rice's whales, however these areas were not further considered, as areas outside U.S. jurisdiction cannot be designated as critical habitat.

Diet and Foraging

Understanding predator-prey interactions is difficult for highly mobile and elusive species, such as marine mammals, that forage at depth (Sekiguchi *et al.*, 1992; Pauly *et al.*, 1998; Pierce and Boyle, 1991; Trites and Spitz, 2018). Cetaceans rely on predictable prey resources, and changes in prey availability and quality can potentially have population-level consequences, including decreased survival and reproduction rates leading to subsequent population declines (Bearzi *et al.*, 2006; Piroddi *et al.*, 2011; Ford *et al.*, 2010). While information on the feeding ecology and drivers of prey selection are lacking for many cetacean species, foraging specialization has been documented among and within species and populations. Predators with high levels of specialization or higher energetic requirements are more susceptible to risks associated with the decline of their prey (Kiszka *et al.*, in press).

Worldwide, members of the Bryde's whale complex exhibit a variety of foraging tactics and prey preferences, often with observations of surface feeding. Overall, pelagic schooling fishes in the order Clupiformes (sardines, herring, menhaden, anchovies) are the most commonly recorded prey, along with similar schooling species, such as members of the family Carangidae (Best, 2001; Konishi *et al.*, 2009; Murase *et al.*, 2007; Siciliano *et al.*, 2004; Tershy, 1992; Watanabe *et al.*, 2012). Populations examined further offshore also target krill (Best, 2001; Konishi *et al.*, 2009), while the *B. e. brydei* population of the Hauraki Gulf in New Zealand appears to prey on copepods and krill along with ray-finned fishes and salps (Carroll *et al.*, 2019).

Diet is poorly characterized for Rice's whales. Stomach contents, which traditionally provide most information

on the diets and feeding ecology of baleen whales, are unavailable for Rice's whales. In 2019, an adult male Rice's whale stranded and died near Flamingo, Florida Bay, on the southwestern coast of Florida in the GOMx (field number FMMSN1908). The whale was collected and a necropsy was performed. However, stomach contents were unavailable due to a sharp piece of intragastric plastic in the second stomach chamber that caused hemorrhaging and acute gastric necrosis leading to the stranding and subsequent mortality of the whale. No direct information on the foraging ecology of Rice's whales exists. Surface feeding has never been observed, and, as a result, fish scales and tissue remains collected from Rice's whale feeding activity are not available. Fecal sampling has not been conducted for Rice's whales. In 2015, Soldevilla *et al.* (2017) placed an Acousonde suction-cup tag on a Rice's whale in the northeastern GOMx. The tag remained attached for nearly 3 days (63.85 hours) and revealed a diel diving pattern. The whale remained within 15 m the surface of the water 88 percent of the time during the night. Daytime dive behavior was characterized by repeated dives to depths >200 m, likely at or near the seafloor. Some of these deep dives included lunges near the seafloor associated with foraging (Soldevilla *et al.*, 2017). Similar deep foraging dives throughout daylight hours were observed during 25 hours of tag deployment on a Rice's whale in the summer of 2018 (Soldevilla *et al.*, 2022a). This type of bottom feeding is unusual for members of the Bryde's whale complex. What they may have been feeding on at those depths remains unknown.

Although direct evidence of Rice's whale prey species is lacking, analysis of stable isotopes of Rice's whale tissues collected by at-sea biopsies has provided data to better understand the feeding relationships among Rice's whales and other species within the ecosystem, *i.e.*, the food web, also known as the trophic relationships. Stable carbon and nitrogen isotope ratios (noted $\delta^{13}\text{C}$ and $\delta^{15}\text{N}$, respectively) within tissues of a predator reflect those of its prey and provide a useful method for assessing trophic relationships and can help identify foraging habitats. The use of stable isotope analysis of multiple elements (nitrogen, carbon, and sulfur) from biopsy samples collected on free-ranging whales to assess the trophic relationships and feeding ecology of cetaceans has recently increased (*e.g.*,

Hooker *et al.*, 2001; Ryan *et al.*, 2013; Caputo *et al.*, 2021).

Kiszka *et al.* (in press) are the first to attempt to describe the feeding ecology of Rice's whales and the first to examine the potential drivers affecting prey selection by Rice's whales in relation to prey availability and energy density. They used a combination of data from whale skin biopsy samples, fish trawl collections, and analysis of proximate composition in potential prey samples collected during research cruises conducted by the NMFS SEFSC in 2019. To account for the changes in isotopes through the food web, stable isotope mixing models incorporate uncertainty for each parameter and employ trophic enrichment factors (TEF). No TEF is available specifically for Rice's whales and therefore TEFs from the skin of fin whales were used.

Potential Rice's whale prey items were collected in 21 mid-water trawl hauls, conducted during daylight hours in the Rice's whale core distribution area from July 4–28, 2019. Trawls were operated close to the seafloor, consistent with the near-bottom foraging depths of individual Rice's whales observed by Soldevilla *et al.* (2017, 2022a). The trawls collected 35,598 organisms with an overall biomass of 158.21 kg. A total of 25 species/species groups were identified with 8 of those in less than 10 percent of the trawls. *Maurolicus weitzmani*, the Atlantic pearlside, was by far the most abundant species by number at 88.05 percent of the total catch (confidence interval of 86 to 90 percent). It also represented 19.67 percent of the total biomass (confidence interval of 17.4 to 22 percent). A different species dominated in biomass: *Ariomma bondi*, the silver-rag driftfish, made up 26.7 percent of the biomass (confidence interval of 23.9 to 29.5 percent), while making up only 1.21 percent of the total catch by number (confidence interval of 0.6 to 1.9) (Kiszka *et al.* in press).

Kiszka *et al.* (in press) selected four species for the stable isotope mixing model due to their prevalence in the samples and potential significance as a prey source in the community: *Doryteuthis pealeii* (longfin inshore squid), *Diaphus dumerilii* (Dumeril's lanternfish), *Maurolicus weitzmani*, and *Ariomma bondi*. All Rice's whale tissue samples fell within the mixing polygon, which suggests that the TEF and prey included in the analysis were appropriate. Mixing models of dietary contributions identified *Ariomma bondi* as the main prey (66.8 percent relative contribution), followed by *Diaphus dumerilii* (17.8 percent relative contribution), while other prey had

minor relative contributions to the diet of Rice's whales (*Doryteuthis pealeii*, 6.4 percent; and *Maurolicus weitzmani*, 9.1 percent). While stable isotope mixing models are a useful tool to understand trophic relationships within food webs, stomach content analysis is still the most reliable method to comprehensively investigate the diets of cetaceans. As explained above, stomach content analysis is not available for Rice's whales. Therefore, other prey species may be consumed that were not examined in the Kiszka *et al.* (in press) study.

The availability and quality of prey play important roles in the selection of prey in large predators, such as Rice's whales. Rice's whales forage during the day close to the seafloor. Because these deep dives require significant expenditures of energy, Rice's whales likely need high quality prey to meet their energetic requirements. Energy density data suggest that the high energy content of *Ariomma bondi*, relative to other available prey species, may be the primary driver of prey selection for Rice's whales. Kiszka *et al.* (in press) found that *Ariomma bondi* had significantly greater energy density (kilojoules/gram wet), lipids, and protein compared to the three other species selected for the model. *Ariomma bondi* were also significantly enriched in energy density (kilojoules/gram dry) compared to *Diaphus dumerilii* and *Maurolicus weitzmani* (Kiszka *et al.* (in press)). Moreover, Kiszka *et al.* (in press) found active prey selection was positive for *Ariomma bondi*, *Doryteuthis pealeii*, and *Diaphus dumerilii*, and that despite the fact *Maurolicus weitzmani* were the most abundant species in the trawl samples, *Maurolicus weitzmani* were relatively unimportant in the diets of Rice's whales. This suggests that prey abundance is likely not a primary driver of prey selection for Rice's whales. Overall, the results from Kiszka *et al.* (in press) suggest that Rice's whales are selective predators, preferentially targeting schooling demersal and vertically migrating prey with the highest energy content.

Abundance

Estimates of abundance for Rice's whales in the northern GOMx are less than 100 individuals, with mean estimates of <50 individuals remaining (Rosel *et al.*, 2021). Broad-scale aerial and ship-based line transect surveys to estimate cetacean abundance have been conducted in the northern GOMx as far back as 1991. Eleven abundance estimates were made between 1991 and 2012 and ranged between 0 and 44 individuals (see Rosel *et al.*, 2016 for

summary of surveys). Surveys with the lowest estimates covered waters primarily off the western GOMx, which is consistent with the species' preference for the northeastern GOMx, particularly the core distribution area. It should be noted, however, none of these surveys were focused on estimating abundance of a rare species and precision of all estimates is poor. The best and most recent population estimate available for Rice's whales is 51 individuals (confidence interval of 20 to 130 whales, Garrison *et al.*, 2020).

Critical Habitat Identification

In the following sections, we describe the relevant definitions and requirements in the ESA and implementing regulations at 50 CFR part 424 and the key information and criteria used to prepare this proposed critical habitat designation. In accordance with section 4(b)(2) of the ESA, this proposed critical habitat designation is based on the best scientific data available and takes into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Scientific data used to identify potential critical habitat includes the information contained in the status review for the species (Rosel *et al.*, 2016), proposed and final rules to list the Rice's whale under the ESA (81 FR 88639, December 8, 2016; 84 FR 15446, April 15, 2019), articles in peer-reviewed journals, other scientific reports and fishery management plans, and relevant Geographic Information System (GIS) data (*e.g.*, U.S. maritime limits and boundaries data) for geographic area calculations and mapping. To identify specific areas that may qualify as critical habitat for Rice's whale, in accordance with 50 CFR 424.12(b), we undertook the following steps: Identifying the geographical area occupied by the species at the time of listing; identifying physical or biological features essential to the conservation of the species; identifying the specific areas within the geographical area occupied by the species that contain one or more of the physical or biological features essential to the conservation of the species; determining whether these essential features may require special management considerations or protection; and considered whether any specific areas outside the geographical area occupied by the species are essential for the species' conservation. Our evaluation and conclusions are described in detail in the following sections.

Geographical Area Occupied by the Species

One of the first steps in the critical habitat designation process is to define the geographical area occupied by the species at the time of listing. NMFS is also required to designate critical habitat based on the best available scientific data. The phrase "geographical areas occupied by the species," which appears in the statutory definition of critical habitat (16 U.S.C. 1532(5)(A)(i)), is defined by regulation as "an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02).

At the time of listing (84 FR 15446, April 15, 2019), Rice's whales were considered to be limited to the northeastern Gulf of Mexico, in the vicinity of the De Soto Canyon, although historical whaling records and unconfirmed sightings suggested their occurrence in the southern and northwestern GOMx (Rosel *et al.*, 2016). Subsequent publications confirming that Rice's whales are continuing to use the northwestern GOMx include a sighting in the western GOMx off the central Texas coast in 2017 that was genetically confirmed as a Rice's whale (Rosel *et al.*, 2021) and Rice's whale calls that were detected acoustically along the shelf break in the western and northern Gulf of Mexico from July 2016 to August 2017 (Soldevilla *et al.*, 2022b). Soldevilla *et al.* (2022b) concluded that Rice's whales persistently occur over a broader distribution in the GOMx than was previously understood, which is documented to include both the northeastern and northwestern GOMx.

Rosel *et al.* (2021) reviewed Bryde's-like whale records in the Caribbean and greater Atlantic. They compiled sighting and stranding data from the U.S. eastern seaboard; reviewed acoustic studies off Cherry Point, North Carolina, in Norfolk Canyon, and off Jacksonville, Florida; and reviewed the published literature for the entire Atlantic Ocean to evaluate the distribution of Bryde's whale taxa in these areas. The investigators found that there are no confirmed sightings of Bryde's whales along the U.S. eastern seaboard and no acoustic detections in the specified study areas. Only six Bryde's whale strandings could be verified in the U.S. Atlantic coast, and of those, two were genetically

determined to be Rice's whales. Bryde's whale strandings along the U.S. Atlantic are likely extralimital strays from the Gulf of Mexico (Mead, 1977) or their carcasses may have been transported via currents and winds from their normal distribution (Rosel *et al.*, 2021). Therefore, the Atlantic Ocean is not considered part of the geographical area occupied by Rice's whales.

Because we cannot designate critical habitat areas outside of U.S. jurisdiction (50 CFR 424.12(g)) the geographical area under consideration for this designation is limited to areas under the jurisdiction of the United States that Rice's whale occupied at the time of listing. Based on the information above, we have determined that at the time of listing Rice's whales occupied the Gulf of Mexico.

Physical or Biological Features Essential for Conservation

The statutory definition of critical habitat refers to "physical or biological features essential to the conservation of the species," (16 U.S.C. 1532(3)), but the ESA does not specifically define or further describe these features. ESA implementing regulations, however, define such features as those that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. The ESA regulations further provide that a feature may be a single habitat characteristic, or a more complex combination of habitat characteristics and may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02).

To assess habitat features that may qualify as "essential to the conservation" of Rice's whales, we evaluated physical and biological features that are essential to support the life history needs and support the conservation of Rice's whales within the areas they occupy within U.S. waters. Section 3 of the ESA defines the terms "conserve," "conserving," and "conservation" to mean: "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" 16 U.S.C. 1532(3).

In the final listing rule, we determined that the Rice's whale is endangered under the ESA throughout all of its range due to its small population size and restricted range, and the threats of energy exploration, development and production, oil spills and oil spill response, vessel collision, fishing gear entanglement, and anthropogenic noise (84 FR 15446, April 15, 2019). Because Rice's whales rely entirely on the GOMx continental shelf and slope waters between the 100 and 400 m isobaths to support all of their life history stages, we have identified physical and biological features that support all of the Rice's whale life-history stages within its restricted range.

Based on the best scientific information available we have identified the following feature as being essential to the conservation of the Rice's whale: GOMx continental shelf and slope associated waters between the 100 and 400 m isobaths that support individual growth, reproduction, and development, social behavior, and overall population growth. The following attributes of this feature support Rice's whales' ability to forage, develop, communicate, reproduce, rear calves, and migrate throughout the GOMx continental shelf and slope waters and influence the value of the feature to the conservation of the species:

1. Sufficient density, quality, abundance, and accessibility of small demersal and vertically migrating prey species, including scombriformes, stomiiformes, myctophiformes, and myopsida;

2. Marine water with (i) elevated productivity, (ii) bottom temperatures of 10–19 degrees Celsius, and (iii) levels of pollutants that do not preclude or inhibit any demographic function; and

3. Sufficiently quiet conditions for normal use and occupancy, including intraspecific communication, navigation, and detection of prey, predators, and other threats.

Identification of “physical and biological features essential to the conservation of the species” must be done at an appropriate level of specificity, and that level of specificity is in turn determined by the best scientific data available (50 CFR 424.12(b)(1)(ii)). The description of these attributes reflects an appropriate level of specificity based on the best scientific data available.

With respect to the first attribute related to prey, we have identified four orders of prey that are important components of the Rice's whale diet, but we are not able to identify a quantitative threshold for a critical habitat prey feature. Even without such a threshold

for critical habitat, however, we conclude the scientific information available supports evaluation of prey availability as an attribute of the essential feature. Emerging scientific information supporting Rice's whale prey preferences suggest that Rice's whales feed primarily on a schooling fish, *Ariomma bondi*. However, data are limited (small sample size from limited area and seasons) and still emerging as research continues. Therefore, we have not specified prey at the species level in the description of the prey attribute at this time, and we will continue to use the best available information on prey species in the diet of the whales and incorporate new information on prey in consultations on Rice's whale critical habitat as our understanding evolves.

With respect to the second attribute related to marine water quality, the term “elevated productivity” refers to waters with higher than normal production of organic matter by planktonic plants when compared to typical Gulf of Mexico oceanic levels, which are influenced by a complex variety of factors, including seasonal inputs of surface water originating from coastal sources and the offshore presence of loop current eddies.

Finally, with respect to the third attribute related to sufficiently quiet conditions for normal use and occupancy, Rice's whales rely on their ability to produce and receive sound within their environment to navigate, communicate, and detect prey and predators. Rice's whales have a foraging strategy that is adapted to the waters near the continental shelf and slope of the Gulf of Mexico, and limited data from two tagged Rice's whales showed each whale made repeated dives to depths of 200 m or greater throughout daytime hours, followed by foraging lunges at or just above the seafloor. Little or no light reaches the seafloor at those depths, even during daylight hours, suggesting that these animals may use acoustic cues to locate and target schools of prey fish.

Scientific information on the effects of anthropogenic noise on the behavior and distribution of baleen whales, including Bryde's whales, demonstrates that the presence of anthropogenic noise can adversely affect the value of marine habitat to Bryde's whales (for more discussion see the Anthropogenic Noise section of the final listing rule, 84 FR 15446, April 15, 2019). Of particular concern are anthropogenic noise sources that are long-lasting, chronic, and/or persistent, and cumulatively inhibit and/or mask the animals' ability to receive and interpret sound (e.g., opportunities to forage or reproduce).

Rice's whales vocalize at frequencies between 60 and 160 Hz, and elevation of ambient noise in low frequencies (between 10 and 1,000 Hz) are the most likely to adversely affect Rice's whales' acoustic soundscape and use of their habitat.

How human activities introduce noise in the marine environment, and how those noises alter the animals' use of habitat, is complex. Determining the biological significance of such alterations is equally complex and involves considering site specific variables, including: the acoustic characteristics of the introduced sound (frequency (i.e., pitch), duration, and intensity); the physical characteristics of the habitat; the baseline soundscape; interactions with other sound sources; and the animals' use of that habitat. All of these factors will influence the pervasiveness and dominance of anthropogenic sound sources across the habitat. NMFS will continue to use the best scientific information available to analyze chronic or persistent noise sources and determine whether they degrade listening conditions within Rice's whale habitat.

Noises that would impair sufficiently quiet conditions for normal use and occupancy are those that inhibit Rice's whales' ability to receive and interpret sound for the purposes of navigation, communication, and detection of prey, predators, and other threats. As already noted, anthropogenic noises that are likely to impact the whales' habitat would be long-lasting, chronic, and/or persistent in the marine environment and, either alone or combined with other ambient noises, significantly raise sound levels over a significant portion of an area (in terms of size and use by the whale) on a prolonged basis (e.g., annual or multiannual).

Need for Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain essential features that “may require special management considerations or protection” (16 U.S.C. 1532 (5)(A)(i)(II)). Special management considerations or protection are any “methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species” (50 CFR 424.02).

The essential feature is particularly susceptible to impacts from human activity because of the moderate water depth range where this feature occurs as well as its proximity to the coast. We identified broad categories of actions, or threats, as having the potential to

negatively impact the essential feature, or its attributes, and the ability to support the conservation of listed Rice's whales, including, but not limited to, in-water construction, energy development, commercial shipping, aquaculture, military activities, and fisheries. Each of these threats could independently or in combination result in the need for special management or protections of the essential feature. For example, direct harvest of the prey by fisheries has the potential to negatively impact the essential feature and the ability of feeding areas to support the conservation of Rice's whales. Energy development could inhibit safe, unrestricted passage between important habitat areas to find prey and fulfill other life history requirements. Thus, the "may require" standard is met or exceeded with respect to management of the essential feature. Although we do not speculate as to what specific conservation measures might be required in the future through section 7 consultations on particular proposed Federal actions, the impacts from categories of actions described above, combined with those from natural factors may affect the habitat, including the attributes described for its essential feature. We therefore conclude that the essential feature identified herein may require special management considerations or protection because threats to this feature exist throughout the species' range.

Specific Areas Within the Geographical Area Occupied by the Species Containing the Essential Feature

To determine what areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify "specific areas" within the geographical area occupied by the species that contain the physical or biological features essential to the conservation of the species (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done "at a scale determined by the Secretary [of Commerce] to be appropriate" (50 CFR 424.12(b)(1)). Regulations at 50 CFR 424.12(c) also require that each critical habitat area be shown on a map. Because the ESA implementing regulations allow for discretion in determining the appropriate scale at which specific areas are drawn (50 CFR 424.12(b)(1)), we are not required to, nor do we have the ability to, determine that each square inch, acre, or even square mile independently meets the definition of "critical habitat." A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and

documentation of the areas containing the identified essential feature. This is ultimately crucial to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat.

To map the specific area, we reviewed available species occurrence and bathymetric data. We used the highest resolution bathymetric data available. We used contours created from NOAA Office for Coastal Management, 2022 Bathymetric Contours, which provides data and maps at <https://www.fisheries.noaa.gov/inport/item/54364>. These bathymetric data (*i.e.*, isobaths) were used, with other geographic or management boundaries, to draw the boundary on the map of the specific areas identified as meeting the definition of occupied critical habitat. Sighting reports, species presence or absence, scientific papers and other research, the biology and ecology of Rice's whales, and information indicating the presence of one or more of the identified essential features within certain areas of their range were also used to inform the decision making. Expert opinion was important to identifying areas that contain the feature. These experts included a NMFS regional GIS lead, a NMFS Large Whale Recovery Coordinator, and other Rice's whale researchers from the SEFSC.

Ultimately, based on a review of the best available data, we identified one specific area in the Gulf of Mexico that meets the definition of critical habitat for the Rice's whale. To be eligible for designation as critical habitat under the ESA's definition of occupied areas, each specific area must contain at least one essential feature that may require special management considerations or protection. This area meets the definition of "critical habitat" because the best available scientific data indicate that the essential feature is present, as evidenced by Rice's whale sightings data, the presence of Rice's whale prey, and habitat use patterns. Due to the unique ecology of the continental shelf and slope associated waters, use by Rice's whales is largely driven by depth. Therefore, the feature essential to the species' conservation is found in those depths that allow the whales to travel throughout a majority of their range seeking food and opportunities to socialize and reproduce. The area identified as including the essential feature for Rice's whales ranges from the 100 m isobath to the 400 m isobath in the Gulf of Mexico. As noted above, Rice's whale sightings occurred predominantly between the 100 m isobath to the 400 m isobath within the northeastern GOMx centered along the

200 m isobath with one sighting during the summer of 2017 in a water depth of 263 m off the coast of Texas (Garrison *et al.*, 2022).

One hundred eighty-one sightings ranged in water depths from 117 m to 408 m, with only two sightings falling outside the range of 151–352 m (Rosel *et al.*, 2021). One Rice's whale was satellite-tagged for 33 days in the core distribution area in 2010 and remained between the 100 m isobath and the 400 m isobath for the duration of tracking (Soldevilla *et al.*, 2017). Additionally, *Ariomma bondi* is a small schooling fish that occupies demersal habitat over muddy bottoms, typically between 50 m and 500 m, but particularly near the continental shelf break throughout the north-central and northwestern GOMx (Kiszka *et al.*, in press). Moreover, moored passive acoustic monitoring units placed seaward of the continental shelf break in the western and central GOMx regularly detected Rice's whale vocalizations with no apparent seasonality (Soldevilla *et al.*, 2022b).

The 100 m isobath was selected to delineate the inshore extent of the area that would include the essential feature for Rice's whales due to consistent habitat use at depths greater than 100 m and because no sightings have been made in areas where the water is shallower than 117 m. The 400 m isobath was selected to delineate the offshore extent of the area that would include the essential feature for Rice's whales due to consistent habitat use at depths less than 400 m and because no sightings have been made in areas where the water is deeper than 408 m. This full range of depths, from the 100 m isobath to the 400 m isobath, incorporates nearly all of the recorded locations of Rice's whales and includes those continental shelf and slope waters and feature essential to Rice's whales.

Areas Outside of the Geographical Areas Occupied by the Species at the Time of Listing That Are Essential for Conservation

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied by the species at the time of listing if the areas are determined by the Secretary to be essential for the conservation of the species. An area must logically be "habitat" in order for that area to meet the narrower category of "critical habitat" as defined in the ESA. *Weyerhaeuser Co. v. U.S. FWS*, 139 S. Ct. 361, 368 (2018) (explaining that an area cannot be designated as critical habitat unless it is also habitat for the species). Our regulations at 50 CFR 424.12(b)(2) further explain that the

Secretary will identify, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species that are essential for its conservation. The regulations also state that the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species. Under the previous implementing regulations (*i.e.* those in effect prior to 2019), the Secretary's determination of specific areas outside the geographic area occupied by the species that are essential for its conservation considered the life history, status, and conservation needs of the species based on the best available scientific data.

The final rule that listed Rice's whales under the ESA identified energy exploration, development and production, oil spills and oil spill response, vessel collision, fishing gear entanglement, and anthropogenic noise as the most serious threats to Rice's whales (84 FR 15446, April 15, 2019). The presence of these threats within habitats used by Rice's whales likely influences the species' distribution, abundance, and survival. For example, noise levels within the 100 m to 400 m isobaths portion of the northern GOMx may be impacting the environment such that, in locations where noise levels are chronically the highest, Rice's whales may be periodically avoiding habitat they would otherwise inhabit. Should they be designated as critical habitat, the occupied areas identified and discussed above would help conserve areas that support individual growth, reproduction, and development; social behavior; and overall population growth of the species within U.S. jurisdiction. Based on our current understanding of the species' life history, status, and conservation needs, we are not able to identify any specific areas outside the geographical area occupied by the species that are essential for its conservation under either the current implementing regulations in 50 CFR 424.12(b)(2) or those in effect prior to 2019. Protecting the specific occupied area identified as critical habitat from destruction and adverse modification stemming from Federal actions would

help support the species' habitat-based conservation needs.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary [of Commerce] determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. Our regulations at 50 CFR 424.12(h) provide that, in determining whether an applicable benefit is provided, we will consider:

- (1) The extent of the area and features present;
- (2) The type and frequency of use of the area by the species;
- (3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and
- (4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

There are no geographical areas owned or controlled by the DOD or designated for its use that are subject to an INRMP that coincide with any of the areas under consideration for Rice's whale critical habitat.

Analysis of Impacts Under ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires that we consider the economic impact, the impact on national security, and any other relevant impact, of designating any particular area as critical habitat.

Additionally, the Secretary has the discretion to exclude any area from critical habitat if the Secretary determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation. The Secretary may not exclude an area from designation if the Secretary determines, based upon the best scientific and commercial data available, exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area.

The ESA provides the Secretary broad discretion in how to consider impacts. (See H.R. Rep. No. 95–1625, at 17, reprinted in 1978 U.S.C.A.N. 9453, 9467 (1978)). Regulations at 50 CFR 424.19(b) specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate, and that such impacts may be qualitatively or quantitatively described. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat. The consideration and weight given to any particular impact is determined by the Secretary. Courts have noted the ESA does not contain requirements for any particular methods or approaches. See, *e.g.*, *Bldg. Indus. Ass'n of the Bay Area et al. v. U.S. Dept. of Commerce et al.*, 792 F.3d 1027 (9th Cir. 2015) (upholding district court's ruling that the ESA does not require the agency to follow a specific methodology when designating critical habitat under section 4(b)(2)). NMFS and the U.S. Fish and Wildlife Service have adopted a joint policy setting out non-binding guidance explaining generally how we exercise our discretion under 4(b)(2). See Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act ("4(b)(2) Policy," 81 FR 7226, February 11, 2016). For this proposed rule, we followed the same basic approach to describing and evaluating impacts as we have for several recent critical habitat rulemakings, as informed by our 4(b)(2) Policy.

The following discussion of impacts is summarized from our Endangered Species Act Critical Habitat Report, which identifies the economic, national security, and other relevant impacts that we project would result from including the specified area in the proposed critical habitat designation. We considered these impacts when deciding whether to exercise our discretion to propose excluding particular areas from the designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where more appropriate to particular impacts. The primary impacts of a critical habitat designation result from the ESA section 7(a)(2)

requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat, and that they consult with NMFS in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. The incremental impact of critical habitat designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications the agencies would make because of listing and the requirement to avoid jeopardy to the Rice's whale. When the same modification would be required due to impacts to both the species and critical habitat, there would be no additional or incremental impact attributable to the critical habitat designation beyond the administrative impact associated with conducting the critical habitat analysis.

Relevant existing regulatory protections are referred to as the "baseline" for this analysis and are discussed in the Endangered Species Act Critical Habitat Report. In this case, notable baseline protections include the ESA listing of the species (84 FR 15446, April 15, 2019); other species listings and critical habitat designations, such as critical habitat for the Northwest Atlantic Ocean loggerhead sea turtle distinct population segment (79 FR 39855, August 11, 2014); and protections afforded the whales under the Marine Mammal Protection Act.

The Endangered Species Act Critical Habitat Report describes the projected future Federal activities that would trigger ESA section 7 consultation requirements if they are implemented in the future because the activities may affect the essential feature. These activities and the ESA consultation consequently may result in economic costs or negative impacts. The report also identifies the potential national security and other relevant impacts that may arise due to the proposed critical habitat designation, such as positive impacts that may arise from conservation of the species and its habitat, state and local protections that may be triggered as a result of designation, and educating the public about the importance of an area for species conservation.

Economic Impacts

Economic impacts of critical habitat designations primarily occur through implementation of section 7 of the ESA in consultations with Federal agencies

to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. The economic impacts of consultation may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits resulting from designation are described later.

To identify the types and geographic distribution of activities that may trigger section 7 consultation on Rice's whale critical habitat, we first reviewed the section 7 consultation histories from 2010 through 2021 for both the NMFS Southeast Region and its Office of Protected Resources for:

- Activities consulted on in the areas being proposed as critical habitat for the Rice's whale; and
- Activities that take place outside of the areas proposed critical habitat but whose effects extend into the critical habitat and are therefore subject to consultation.

We also considered section 7 consultations conducted in 2022 to the extent those consultations support modifying our projections of future consultations based on the 2010–2021 consultation history alone.

In addition, we convened discussions with NMFS personnel to identify future activities that may affect Rice's whale critical habitat that may not have been captured by relying on the section 7 consultation history. We reviewed the U.S. Army Corps of Engineers (USACE) permit application database for the South Atlantic Division and Southwestern Division to identify all USACE permit applications for projects located within the proposed critical habitat area. Review of USACE permit application data is useful because the database encompasses USACE-permitted activities that may not have been consulted on in the past if they were outside of previously designated critical habitats or areas containing species protected under the ESA. We compared the USACE permit application data to the NMFS section 7 consultation history and confirmed the latter's completeness, thereby validating use of the NMFS section 7 consultation database to project future informal consultations on USACE-permitted projects. We also will review more recent consultation information prior to the publication of any final rule. We determined that all categories of the activities identified have potential routes of effects to both the endangered Rice's whale and the proposed Rice's whale critical habitat, or to other species or designated critical habitat. We did not identify and we do not anticipate Federal actions that have the potential

to affect only the Rice's whale critical habitat.

We identified the following eleven categories of activities implemented by seven different Federal entities as having the potential to affect the essential feature of the Rice's whale critical habitat:

- Oil and gas exploration and development
- Commercial fishery management
- Military activities
- Water quality management
- Scientific research and monitoring
- Space vehicle launch and reentry
- In-water construction
- Aquaculture
- Vessel traffic
- Renewable energy development
- Activities that lead to or address greenhouse gas emissions or global climate change

Future consultations were projected based on the frequency and distribution of section 7 consultations conducted from 2010 through 2021 as well as some consultations conducted in 2022 that revealed a need to modify our projections of future consultations that was not captured in the 2010–2021 consultation history alone, review of USACE permit applications between 2010 and 2021, and discussions with NMFS personnel familiar with the scope of future activities that may affect the potential critical habitat. With certain exceptions, we consider it reasonable to assume that the breakdown of past consultations by type (into informal, formal, and programmatic consultations) and activity category (e.g., scientific research and monitoring, water quality management, etc.) between the years 2010 and 2021 will generally reflect the breakdown of future consultations. Accordingly, we assume for most potentially impacted activity categories that the number and type of activities occurring within or affecting Rice's whale critical habitat would not change in the future. Activity categories to which we do not apply this assumption include space vehicle launches and reentry, wind energy development, oil and gas exploration and development, and military activities. For oil and gas and military activities, we anticipate that current programmatic and formal consultations on activities that could affect the proposed critical habitat would require two reinitiations each over the next 10 years and that each of these consultations would consider effects to Rice's whale critical habitat. As of January 2022, NMFS consults with the Federal Aviation Administration, U.S. Space Force, and National Aeronautics

and Space Administration on space vehicle launches and reentries on a programmatic basis. Despite an expected increase in the frequency of space vehicle launches and reentries that could affect the proposed critical habitat, we project only one section 7 consultation over the next 10 years because these types of operations will be covered by a single programmatic consultation, and because we consider it unlikely that designation of critical habitat for the Rice's whale would change the outcome of the programmatic consultation. While there is considerable uncertainty regarding the scope of future renewable (*i.e.*, wind) energy development activities that would require Section 7 consultation on effects to Rice's whale critical habitat, our projections reflect the assumed reinitiation of the current programmatic consultation on site characterization and assessment activities. Our projections also assume formal consultation on the construction and operation of two wind energy projects over the next 10 years. While it is unlikely that such projects would be located seaward of the 100-meter isobath, it is possible that activities related to the construction and/or operation of the projects would affect the proposed critical habitat.

As discussed in more detail in our Endangered Species Act Critical Habitat Report, all categories of activities identified as having the potential to affect the proposed essential feature also have the potential to affect the endangered Rice's whales or other listed species or critical habitat. To estimate the economic impacts of critical habitat designation, our analysis compares the state of the world with and without the designation of critical habitat. The "without critical habitat" scenario represents the baseline for the analysis, considering protections already afforded the proposed critical habitat as a result of listing the Rice's whale as endangered and as a result of other Federal, state, and local regulations or protections, including other species listings and critical habitat designations. The "with critical habitat" scenario describes the state of the world with the critical

habitat designation. The incremental impacts that will be associated specifically with the critical habitat designation, if finalized as proposed, are the difference between the two scenarios. As it stands, baseline protections exist in large areas proposed for designation as critical habitat for Rice's whale. In particular, areas proposed for Rice's whale critical habitat designation overlap to varying degrees with the presence of the threatened or endangered sei whale, sperm whale, North Atlantic green sea turtle distinct population segment, Northwest Atlantic Ocean loggerhead sea turtle distinct population segment, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle; and critical habitat designated for the Northwest Atlantic Ocean loggerhead sea turtle distinct population segment. These areas already receive significant protections related to these listings and critical habitat designation. These protections may also protect the essential feature of the proposed Rice's whale critical habitat. Importantly, we do not expect designation of critical habitat for the Rice's whale to result in project modification for any of the activities that may affect the critical habitat because actions that are likely to adversely affect designated critical habitat may proceed so long as such actions do not result in the destruction or adverse modification of critical habitat. Unlike actions that are likely to adversely affect listed species, NMFS cannot specify reasonable and prudent measures that are necessary or appropriate to minimize impacts to critical habitat. In circumstances where NMFS determines an action is likely to result in destruction or adverse modification of critical habitat, NMFS must propose reasonable and prudent alternatives that avoid the destruction and adverse modification of the critical habitat.

Administrative Section 7 Costs

The effort required to address adverse effects to the proposed critical habitat is assumed to be the same, on average, across categories of activities. Informal consultations are expected to require

comparatively low levels of administrative effort, while formal and programmatic consultations are expected to require comparatively higher levels of administrative effort. For all formal and informal consultations, we anticipate that incremental administrative costs will be incurred by NMFS, the consulting Federal action agencies, and potentially, third parties. For programmatic consultations, we anticipate that costs will be incurred by NMFS and the consulting Federal action agencies. Incremental administrative costs per consultation that would occur absent designation of critical habitat for the Rice's whale and that would consider effects to Rice's whale critical habitat, are expected on average to be \$12,000 for programmatic, \$6,300 for formal consultations, and \$3,000 for informal consultations (in 2022 dollars). These costs are assumed to double, on a per consultation basis, for consultations that are reinitiated to consider effects to Rice's whale critical habitat (NMFS, 2022).

We estimate the incremental administrative costs of section 7 consultation by applying these per consultation costs to the forecasted number of consultations. We anticipate that there will be approximately 8 programmatic consultations, 12 formal consultations, and 29 informal consultations that will require incremental administrative effort. Incremental costs are expected to total approximately \$240,000 over the next 10 years (discounted at 7 percent), at an annualized cost of \$37,000 (in 2022 dollars). We conservatively assume that there will be approximately 10 re-initiations of existing consultations to specifically address effects to Rice's whale critical habitat. We anticipate that the reinitiated consultations will be for Federal actions related to oil and gas activities, fishery management, military activities, water quality management, renewable energy development, and space vehicle launch and reentry operations. Table 1 shows the projected incremental costs of designation of critical habitat for the Rice's whale, by activity category.

TABLE 1—PROJECTED INCREMENTAL COSTS OF RICE'S WHALE CRITICAL HABITAT DESIGNATION BY ACTIVITY TYPE, 2023–2032
[2022 Dollars]

Activity	Total cost (7 percent discount rate)	Annualized cost
Oil and Gas Activities	\$53,000	\$8,100
Renewable Energy	24,000	3,700
Fishery Management	52,000	7,900
Military	36,000	5,500

TABLE 1—PROJECTED INCREMENTAL COSTS OF RICE’S WHALE CRITICAL HABITAT DESIGNATION BY ACTIVITY TYPE, 2023–2032—Continued
[2022 Dollars]

Activity	Total cost (7 percent discount rate)	Annualized cost
Water Quality	41,000	6,200
Scientific Research and Monitoring	18,000	2,800
Space Vehicle Launch and Reentry	16,000	2,400
Construction	1,700	250
Total	240,000	37,000

Note: The estimates may not sum to the totals reported due to rounding.

In summary, significant baseline protections exist in areas proposed for Rice’s whale critical habitat. Incremental impacts of the proposed designation are projected to reflect the incremental administrative effort required for section 7 consultations to consider effects to the critical habitat. Taking into consideration several assumptions and uncertainties, total projected incremental costs are approximately \$240,000 over the next 10 years (discounted at 7 percent), or \$37,000 in annualized costs (in 2022 dollars). Notwithstanding the uncertainty underlying the projection of incremental costs, the results provide an indication of the potential activities that may be affected and a reasonable projection of future costs.

National Security Impacts

Impacts to national security could occur if a designation triggers future ESA section 7 consultations because a proposed military activity “may affect” the feature essential to the listed species’ conservation. Interference with mission-essential training or testing or unit readiness could result from the additional commitment of resources by the DOD or United States Coast Guard (USCG) to modify the action to prevent adverse modification of critical habitat or implement Reasonable and Prudent Alternatives. Whether national security impacts result from the designation also depends on whether future consultations and associated project modifications and/or implementation of reasonable and prudent alternatives, reasonable and prudent measures and terms and conditions would be required due to potential effects to Rice’s whale or other ESA-listed species or designated critical habitat, regardless of the Rice’s whale critical habitat designation, and whether the Rice’s whale designation would add costs beyond those related to the consultation on effects to Rice’s whale or other species or critical habitat.

As described previously, we identified DOD military operations as a category of activity that has the potential to affect the essential feature of the proposed Rice’s whale critical habitat. However, for the actions that may affect Rice’s whale critical habitat, designating critical habitat for Rice’s whale is not expected to result in incremental impacts beyond administrative costs because the consultations would otherwise be required to address effects to either the Rice’s whale or other listed species. National security impacts could result from the designation of critical habitat for the Rice’s whale if it is determined through section 7 consultation that modifications to DOD activities are required to mitigate adverse effects to the critical habitat alone. We anticipate two reinitiations each over the next 10 years of existing consultations that would address effects to Rice’s whale critical habitat. These include a programmatic consultation on U.S. Navy Atlantic Fleet Testing and Training operations and a formal consultation on U.S. Air Force training and testing operations based out of Eglin Air Force Base. While these reinitiated consultations represent an incremental administrative impact of the proposed rule, which is considered in the economic analysis, the reinitiated consultations would not impact national security. We did not identify any other areas managed by DOD branches that are of potential concern.

Other Relevant Impacts

We identified three broad categories of other relevant impacts related to this proposed critical habitat designation: Conservation benefits, both to the species and to the ecosystem; impacts on governmental or private entities that are implementing existing management plans that provide benefits to the listed species; and educational and awareness benefits. Our economic analysis provided in the Endangered Species Act Critical Habitat Report discusses

conservation benefits of designating the proposed area and the benefits to society of conserving the species.

Conservation Benefits

The primary benefit of critical habitat designation is the contribution to conservation and recovery of the Rice’s whale. That is, in protecting the feature essential to the conservation of the species, critical habitat directly contributes to the conservation and recovery of the species. This analysis contemplates two broad categories of conservation benefits of critical habitat designation: (1) Increased probability of conservation and recovery of the species, and (2) Ecosystem service benefits.

The most direct benefits of the critical habitat designations stem from the enhanced probability of conservation and recovery of the species. From an economic perspective, the appropriate measure of the value of this benefit is people’s “willingness-to-pay” for the incremental change. While the existing economics literature is insufficient to provide a quantitative estimate of the extent to which people value incremental changes in recovery potential, the literature does provide evidence that people have a positive preference for listed species conservation, even beyond any direct (e.g., recreation, such as viewing the species while whale watching) or indirect use for the species (e.g., fishing that is supported by the presence of healthy ecosystems).

In addition, designating critical habitat can benefit the ecosystem. Overall, the GOMx continental shelf and slope associated waters, including those comprising Rice’s whale proposed critical habitat, provide important ecosystem services of value to individuals, communities, and economies. These include recreational opportunities (and associated tourism spending in the regional economy), habitat for recreationally and commercially valuable fish species, and

climate stabilization via carbon sequestration. Critical habitat most directly influences the recovery potential of the species and protects ecosystem services through its implementation under section 7 of the ESA. Our analysis finds that the proposed rule is not anticipated to result in incremental project modifications. However, the protections afforded to the GOMx continental shelf and slope associated waters proposed as Rice's whale critical habitat could increase awareness of the importance of these habitat areas, which in turn could lead to additional conservation efforts.

Impacts to Governmental and Private Entities With Existing Management Plans Benefitting the Listed Species

Among other relevant impacts of critical habitat designations that we consider under section 4(b)(2) of the ESA are impacts on the efforts of private and public entities involved in management or conservation efforts benefiting listed species. In cases where there is a Federal nexus (e.g., a Federal grant or permit), critical habitat designation could necessitate consultation with NMFS to incrementally address the effects of the management or conservation activities on critical habitat. In such cases, these entities may have to allocate resources to fulfill their section 7 consultation obligations as third parties to the consultation—including the administrative effort of consultation and, potentially, modification of projects or conservation measures to avoid adverse modification to the critical habitat—that, absent critical habitat designation, would be applied to management or conservation efforts benefiting listed species. As we anticipate the proposed designation would result in no project modifications beyond those that would already occur absent designation, the potential for reallocation of these private and public entities' resources would be limited to the incremental administrative costs of section 7 consultations that would occur absent Rice's whale critical habitat. Therefore, we do not expect that designating critical habitat for the Rice's whale would diminish private and public entities' ability to provide for the conservation of the Rice's whale.

Education and Awareness Benefits

The critical habitat designation could potentially have benefits associated with education and awareness. The potential for such benefits stems from three sources: (1) Entities that engage in section 7 consultation, including Federal action agencies and, in some

cases, third party applicants; (2) members of the general public interested in conservation; and (3) state and local governments that take action to complement the critical habitat designation. Certain entities, such as applicants for particular permits, may alter their activities to benefit the essential feature of the critical habitat because they were made aware of the critical habitat designation through the section 7 consultation process. Similarly, Federal action agencies that undertake activities that affect the critical habitat may alter their activities to benefit the critical habitat. Members of the public interested in conservation also may adjust their behavior to benefit critical habitat because they learned of the critical habitat designation through outreach materials or the regulatory process. In our experience, designation raises the public's awareness that there are special considerations to be taken within areas identified as critical habitat. Similarly, state and local governments may be prompted to enact laws or rules to complement the critical habitat designations and benefit the listed species. Those laws would likely result in additional impacts of the designations.

However, quantifying the beneficial effects of the awareness gained through, or the impacts from state and local regulations resulting from, the proposed critical habitat designation is not possible.

Exclusions Under Section 4(b)(2)

We are not exercising our discretion to exclude any particular areas from designation based on economic, national security, and other relevant impacts. In summary, there are significant baseline protections that exist in the areas proposed for the Rice's whale critical habitat, and as a result, the incremental impacts of the proposed designation are low and reflect the incremental administrative effort required for section 7 consultations to consider effects specific to critical habitat. Taking into consideration several assumptions and uncertainties, the total projected incremental costs are approximately \$240,000 over the next 10 years (\$37,000 annualized), applying a discount rate of 7 percent. As the proposed critical habitat comprises a single unit, the analysis does not identify any particular area within the proposed critical habitat unit where these costs would be highly concentrated. Moreover, we anticipate that no particular industry would be disproportionately impacted. Similarly, we are not proposing to exclude any areas on the basis of national security

impacts because no national security concerns exist related to the proposed critical habitat designation. We are also not proposing to exclude any particular area based on other relevant impacts. Other relevant impacts include conservation benefits of the designation, both to the species and to the ecosystem. We expect that designation of critical habitat will support conservation and recovery of the species. Future section 7 consultations on some of the activities that may affect Rice's whale will also consider effects to the critical habitat. While we do not expect these consultations to result in additional conservation measures, the additional consideration of effects specific to the critical habitat will increase overall awareness of the importance of Rice's whale and its habitat. For these reasons, we are not proposing to exclude any areas as a result of these other relevant impacts.

Proposed Critical Habitat Designation

Our critical habitat regulations state that we will show critical habitat on a map with more detailed information discussed in the preamble of the critical habitat rulemaking and made available from NMFS (50 CFR 424.12(c)). When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)). The habitat containing the essential feature and that may require special management considerations or protection is continental shelf and slope associated waters in the Gulf of Mexico. The boundaries of the specific area were determined by the presence of the essential feature and Rice's whales, as described earlier within this document. Because the quality of the available GIS data varies based on collection method, resolution, and processing, the proposed critical habitat boundaries are defined by the maps in combination with the textual information included in the proposed regulation. This textual information clarifies and refines the location and boundaries of each specific area.

Occupied Critical Habitat Unit Description

The specific area of occupied critical habitat for the Rice's whale consists of waters from the 100 meter isobath to the 400 meter isobath in the Gulf of Mexico starting at the U.S. Exclusive Economic Zone boundary off of Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of

Florida. The area of the Gulf of Mexico unit is 73,220.65 square kilometers or 28,270.65 square miles. The map and regulatory text in this document provide more detail regarding the location and boundaries of this area.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with NMFS regarding any actions likely to jeopardize the continued existence of any species proposed for listing under the ESA, or likely to destroy or adversely modify proposed critical habitat, pursuant to section 7(a)(4).

A conference involves informal discussions in which NMFS may recommend conservation measures to minimize or avoid adverse effects (50 CFR 402.02). The discussions and conservation recommendations are documented in a conference report provided to the Federal agency (50 CFR 402.10(e)). If requested by the Federal agency and deemed appropriate by NMFS, the conference may be conducted following the procedures for formal consultation in 50 CFR 402.14, and NMFS may issue an opinion at the conclusion of the conference. This opinion may be adopted as the biological opinion when the species is listed or critical habitat designated if no significant new information or changes to the action alter the content of the opinion (50 CFR 402.10(d)).

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions that may affect a listed species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a letter of concurrence or in a biological opinion. If we conclude in the biological opinion that the action would likely result in the destruction or adverse modification of critical habitat, we would also identify any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority

and jurisdiction, that are economically and technologically feasible, and that we believe would avoid the likelihood of destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinstate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated that may be affected by the identified action; or (2) New information or changes to the action may result in effects to critical habitat in a manner or to an extent not previously considered. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions that may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process are those activities authorized, funded, or carried out by Federal action agencies, whether on Federal, state, or private lands or waters. ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions that are not federally funded, authorized, or carried out.

Activities That May Be Affected

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate in any proposed or final regulation to designate critical habitat those activities, whether public or private, that may adversely modify such habitat or that may be affected by such designation. As described in our Endangered Species Act Critical Habitat Report, a wide variety of Federal activities may require ESA section 7 consultation because they may affect the essential feature of Rice's whale critical habitat. Specific future activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat, in addition to their potential to affect and jeopardize the continued existence of listed species. For example, activities may adversely modify the continental shelf and slope associated waters by destroying or altering the habitat. These activities, whether public or private, would require ESA section 7 consultation when they are authorized, funded, or carried out by a Federal agency. A private entity may also be affected by proposed critical habitat designations if it is a proponent of a project that requires a Federal permit or

receives Federal funding. Categories of activities that may be affected through section 7 consultation by designating Rice's whale critical habitat include oil and exploration and development, renewable energy development, fishery management, military activities, water quality management, scientific research and monitoring, space vehicle launches and reentry, and in-water construction.

Questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat should be directed to us (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Identifying the extent or severity of an impact on the essential feature at which the conservation value of habitat for the listed species may be affected is inherently complex. Consequently, the actual responses of the critical habitat to effects to the essential feature resulting from future Federal actions will be case- and site-specific, and predicting such responses will require case- and site-specific data and analyses.

Public Comments Solicited

We request that interested persons submit comments, information, and data concerning this proposed rule during the comment period (see **DATES**). We are soliciting comments from the public, other concerned governments and agencies, the scientific community, industry, or any other interested party concerning the areas proposed for designation and appropriateness and description of the essential feature. Specifically, we seek public comments concerning the attributes of the proposed essential feature. We also solicit comments regarding specific, probable benefits and impacts stemming from this designation, including any estimates of incremental impacts. We also request comment on any projects or activities that may be affected or delayed by this designation, and the assumption that consultations will not result in project modifications. We also seek comments on the identified geographic area occupied by the species and the potential benefits to the species from this designation or alternative designations. We seek information that would assist in further characterizing environmental parameters important to Rice's whales. We seek information about any additional sightings or areas that may support Rice's whales not addressed in this proposed rule or supporting information. We seek any additional information about strandings or other historical records of Bryde's-like whales in the Gulf of Mexico or Atlantic Ocean.

You may submit your comments and materials concerning this proposal by

any one of several methods (see **ADDRESSES**). We will consider all comments pertaining to these designations received during the comment period in preparing the final rule. Accordingly, the final designation may differ from this proposal.

Information Quality Act and Peer Review

The data and analyses supporting this proposed action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554). On December 16, 2004, OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and all of the requirements were effective by June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of “influential scientific information” and “highly influential scientific assessments” prior to public dissemination. “Influential scientific information” is defined as information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review of influential scientific information. Stricter standards were established for the peer review of highly influential scientific assessments, defined as information whose dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or for which the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.

The information in the Endangered Species Act Critical Habitat Report supporting this proposed critical habitat rule is considered influential scientific information and was thus subjected to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the biological information in the Endangered Species Act Critical Habitat Report and incorporated the peer review comments into the report prior to dissemination of this proposed rulemaking. Comments received from peer reviewers are available on our website at <https://www.noaa.gov/information-technology/endangered->

[species-act-critical-habitat-report-rices-whale-id452](https://www.noaa.gov/information-technology/endangered-species-act-critical-habitat-report-rices-whale-id452).

Classification

Takings (Executive Order 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of private property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. These designations would affect only Federal agency actions (*i.e.*, those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designation does not affect landowner actions that do not require Federal funding or permits.

Regulatory Planning and Review (Executive Order 12866)

This proposed rule has been determined to be significant for purposes of E.O. 12866 review. A report evaluating the economic impacts of the proposed rule has been prepared and is included in the Endangered Species Act Critical Habitat Report, incorporating the principles of E.O. 12866. Based on the economic impacts evaluation in the Endangered Species Act Critical Habitat Report, total incremental costs resulting from the critical habitat are approximately \$240,000 over the next 10 years (\$37,000 annualized), applying a discount rate of 7 percent.

Federalism (Executive Order 13132)

Executive Order 13132 requires agencies to ensure state and local officials have the opportunity for meaningful and timely input when developing regulatory policies that have federalism implications. Policies that have federalism implications are those with substantial, direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on local governments are sufficiently substantial, the agency must prepare a Federal assessment. Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not required. However, in

keeping with Department of Commerce policies and consistent with ESA regulations at 50 CFR 424.16(c)(1)(ii), we will request information for this proposed rule from state and territorial resource agencies in Florida, Alabama, Mississippi, Louisiana, and Texas. The proposed designation may have some benefit to state and local resource agencies in that the proposed rule clearly defines the essential feature and the areas in which that feature is found. Clear definitions and information about the critical habitat may help local governments plan for activities that may require ESA section 7 consultation.

Energy Supply, Distribution, and Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule, if finalized, will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)/Initial Regulatory Flexibility Analysis (IRFA)

We prepared an initial regulatory flexibility analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*). The IRFA analyzes the impacts to small entities that may be affected by the proposed designations and is included as Appendix B of the Endangered Species Act Critical Habitat Report and is available upon request (see **ADDRESSES** section). We welcome public comment on this IRFA, which is summarized below, as required by section 603 of the RFA.

The IRFA uses the best available information to identify the potential impacts to small entities of designating critical habitat. However, a number of uncertainties complicate quantification of these impacts. These include (1) the fact that the manner in which potential impacts of critical habitat designations will be allocated between large and small entities is generally uncertain; and (2) as discussed in the main body of the economic report, there is uncertainty regarding the potential effects of critical habitat designation, and some categories of potential impacts that cannot be quantified must be described qualitatively.

The IRFA anticipates that the proposed critical habitat will result in negligible impacts to small entities. In-water construction is likely the only activity category for which a portion of incremental costs of the proposed rule would be borne by small entities, and the scope of in-water construction projects potentially undertaken by small entities is limited due to the 100 meter depth of the proposed critical habitat's shoreward boundary. Incremental costs of the proposed rule to activities other than in-water construction would likely be borne entirely by Federal agencies, which, by definition, are not small entities.

As documented in the Endangered Species Act Critical Habitat Report, incremental impacts of the proposed rule are expected to be limited to the administrative costs of addressing Rice's whale critical habitat in future section 7 consultations, as any project modifications to activities that may affect the proposed critical habitat are expected to be required absent designation. The forecast of section 7 consultations that would consider effects specific to Rice's whale critical habitat over the next 10 years includes consultation on approximately one in-water construction project over the 10 years. Based on assumed administrative costs of consultation to third parties, this would result in an average annualized cost of \$250 to the third party involved in the project. This average annualized cost represents the maximum potential impact of the proposed rule to small entities, as determined by the IRFA. This is reasonable given (1) as noted above, the nearshore boundary of the proposed critical habitat is the 100-meter isobath and well offshore of coastal areas where most in-water construction activity that involves small entities occurs and (2) the section 7 consultation history for 2010 through 2021 includes only one U.S. Army Corps of Engineers-permitted in-water construction project within the proposed critical habitat area. Based on this analysis, the IRFA concludes that the proposed designation of critical habitat for the Rice's whale would result in negligible impacts to small entities.

The proposed rule will not duplicate or conflict with any other laws or regulations. However, other aspects of the ESA may overlap with the proposed critical habitat designation. For instance, listing of the Rice's whale under the ESA requires Federal agencies to consult with NMFS to ensure against jeopardy to the species. Overlap of the presence of other ESA-listed species, including ESA-listed whales and sea turtles, and critical habitat designated

for the Northwest Atlantic Ocean Distinct Population Segment of the loggerhead sea turtle with the areas proposed for critical habitat designation protects the essential feature of the proposed critical habitat to the extent that projects or activities that may adversely affect the proposed critical habitat also pose a threat to the listed species or to loggerhead sea turtle critical habitat.

The RFA requires consideration of significant alternatives that would minimize impacts to small entities. We considered three alternatives when developing the proposed critical habitat rule: (1) a no action alternative that would not designate critical habitat (status quo), (2) our proposed critical habitat designation (the preferred alternative), and (3) a critical habitat designation with different geographic boundaries.

Under the no action alternative (status quo), we considered not designating critical habitat for the Rice's whale. Under this alternative, conservation and recovery of the listed species would depend exclusively upon the protection provided under the "jeopardy" provisions of section 7 of the ESA. This alternative would impose no additional economic, national security, or other relevant impacts. However, after compiling and reviewing the biological information for the Rice's whale, we have determined that the physical and biological feature forming the basis for our critical habitat designation is essential to the Rice's whale's conservation, and conservation of the species will not succeed without this feature being available. Thus, the lack of protection of the critical habitat feature from adverse modification could result in continued declines in abundance of Rice's whale, and loss of associated economic and other biodiversity values the whale provides. Thus, the no action alternative is not necessarily a "no cost" alternative for small entities. Moreover, this option would not be legally viable under section 4 of the ESA, which specifically requires that we designate critical habitat to the maximum extent prudent and determinable based on consideration of the best available scientific information.

Under the preferred alternative, we would designate the area ranging from the 100 m isobath to the 400 m isobath in GOMx waters from the Texas-Mexico border east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida. This area contains the physical and biological feature essential to the conservation of

Rice's whales. The preferred alternative was selected because it implements the critical habitat provisions of the ESA by including the feature we believe is essential to the conservation of the species based on the best available scientific information on the Rice's whale and offers greater conservation benefits relative to either of the other alternatives.

Under the third alternative that would have delineated different geographic boundaries, we would propose to designate a smaller area within the GOMx as critical habitat. Under section 4(b)(2) of the ESA, NMFS has the discretion to exclude a particular area from designation as critical habitat even though it meets the definition of "critical habitat" if the benefits of exclusion (*i.e.*, the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.*, the conservation benefits to the Rice's whale if an area were designated), as long as exclusion of the area will not result in extinction of the species. However, following our consideration of probable national security, economic, and other relevant impacts of designating all the specific areas, we rejected this alternative. We determined that the benefits of excluding any particular areas ranging from the 100 m isobath to the 400 m isobath in GOMx waters from the Texas-Mexico border east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida did not outweigh the conservation benefits of designating those areas. Thus, this alternative was rejected in favor of the preferred alternative.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on coastal uses or resources under the CZMA in Florida, Alabama, Mississippi, Louisiana, and Texas. Upon publication of this proposed rule, these determinations will be submitted to responsible State agencies for review under section 307 of the Coastal Zone Management Act.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new or revised collection of information requirements. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or

organizations. Therefore, the Paperwork Reduction Act does not apply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This proposed rule will not produce a Federal mandate. The designation of critical habitat does not impose a legally-binding duty on non-Federal government entities or private parties. The only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7 of the ESA. Non-Federal entities that receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, but the Federal agency has the legally binding duty to avoid destruction or adverse modification of critical habitat. We do not anticipate that this rule, if finalized, will significantly or uniquely affect small governments. Therefore, a Small Government Action Plan is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements,

which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government.

This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Tribal Nations and with respect to tribal lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Tribal Nations or have been set aside for tribal use. These lands are managed by Tribal Nations in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

In developing this proposed rule, we reviewed maps and did not identify any areas under consideration for critical habitat that overlap with tribal lands. Based on this, we preliminarily found the proposed critical habitat does not have tribal implications.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management> and is

available upon request from NMFS (see **ADDRESSES**).

List of Subjects

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 226

Endangered and threatened species.

Dated: July 13, 2023.

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 224 and 226 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101 amend paragraph (h) by revising the entry for “Whale, Rice’s” to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species ¹		Description of listed entity	Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name				
Marine Mammals					
*	*	*	*	*	*
Whale, Rice's	<i>Balaenoptera ricei</i>	Entire species	84 FR 15446, April 15, 2019	226.230	NA.
*	*	*	*	*	*

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.230 to read as follows:

§ 226.230 Critical habitat for the Rice’s whale (*Balaenoptera ricei*).

Critical habitat is designated for the Rice’s whale as described in this section. The maps, clarified by the textual descriptions in this section, are the definitive source for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat for the Rice’s whale includes all marine waters from a nearshore boundary corresponding to the 100-meter isobath to an offshore boundary corresponding to the 400-meter isobath in the Gulf of Mexico and between the U.S. Exclusive Economic Zone boundary off of Texas east to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council (50 CFR 600.105(c)) off of Florida.

(b) *Essential feature.* The feature essential to the conservation of the

Rice’s whale is the Gulf of Mexico continental shelf and slope associated waters between the 100 and 400-meter isobaths that support individual growth, reproduction, and development, social behavior, and overall population growth. The following attributes of this feature support Rice’s whales’ ability to forage, develop, communicate, reproduce, rear calves, and migrate throughout the Gulf of Mexico continental shelf and slope waters and influence the value of the feature to the conservation of the species:

(1) Sufficient density, quality, abundance, and accessibility of small

demersal and vertically migrating prey species, including scombriformes, stomiiformes, myctophiformes, and myopsida;

(2) Marine water with elevated productivity, bottom temperatures of 10–19 degrees Celsius, and levels of

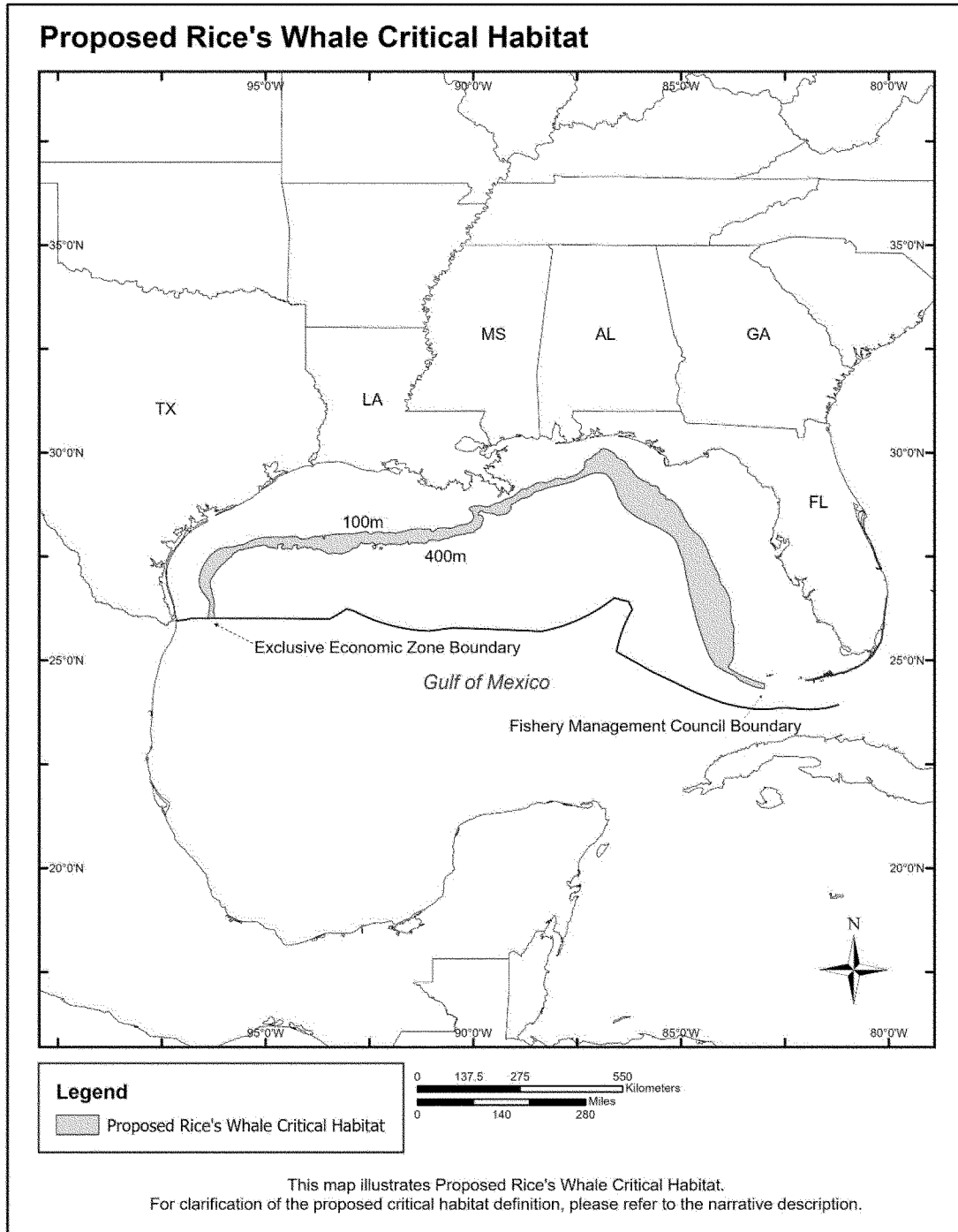
pollutants that do not preclude or inhibit any demographic function; and

(3) Sufficiently quiet conditions for normal use and occupancy, including intraspecific communication, navigation, and detection of prey, predators, and other threats.

(c) *Map.* Critical habitat map—an overview map of the proposed critical habitat follows. Key points are identified and depth information provided.

BILLING CODE 3510–22–P

Figure 1 to paragraph (c)



Notices

Federal Register

Vol. 88, No. 140

Monday, July 24, 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

Forest Service

Humboldt-Toiyabe National Forest; Nevada; Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Humboldt-Toiyabe Integrated Invasive Plant Treatment Project

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; withdrawal.

SUMMARY: The Humboldt-Toiyabe National Forest is withdrawing its notice of intent (NOI) to prepare an environmental impact statement (EIS) for the Humboldt-Toiyabe Integrated Invasive Plant Treatment Project.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Humboldt-Toiyabe Natural Resource Staff Officer Kendal Young, at kendal.young@usda.gov or 775-355-5313. Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The original NOI was published in the **Federal Register** on March 2, 2018 (83 FR 8963). The Forest Supervisor has determined the EIS should be withdrawn due to changes in the scope and scale of the project that have occurred since the publication of the NOI in the **Federal Register**. With the change in the proposed action our preliminary analysis indicates there may not be effects that rise to a level of significance that would warrant an EIS.

Dated: July 18, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-15597 Filed 7-21-23; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12:00 p.m. ET on Thursday, August 3, 2023. The purpose of this meeting is to review and vote on the final draft report on Legal Financial Obligations.

DATES: Thursday, August 3, 2023, from 12:00 p.m.–1:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1600849468>.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 160 084 9468.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515-0204.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-

line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Review and Vote on Report
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: July 18, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-15554 Filed 7-21-23; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03-6A008]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review for California Pistachio Export Council, LLC, Application No. 03-6A008.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, has received an application for an amended Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT:

Joseph Flynn, Director, OTEA, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to ETCA@trade.gov. An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the

Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03-5A008."

Summary of the Application

Applicant: California Pistachio Export Council, LLC, 512 C. St. NE, Washington, DC 20002.

Contact: Robert Schramm, Principal at Schramm, Williams & Associates, Inc.

Application No.: 03-6A008.

Date Deemed Submitted: July 10, 2023.

Proposed Amendment:

1. California Pistachio Export Council, LLC seeks to amend its Certificate as follows: add the following entity as a Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

a. Nichols Pistachio

The proposed amendment would result in the following Members under the Certificate:

1. Horizon Nut, LLC
2. Keenan Farms, Inc.
3. Meridian Nut Growers, LLC
4. Monarch Nut Company
5. Nichols Pistachio
6. Primex Farms, LLC
7. Setton Pistachio of Terra Bella, Inc.
8. Zymex Industries, Inc.

Dated: July 19, 2023.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2023-15594 Filed 7-21-23; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-133, C-570-134]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Initiation and Expedited Preliminary Results of Changed Circumstances Reviews, and Intent To Revoke the Antidumping and Countervailing Duty Orders, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating and issuing expedited preliminary results of changed circumstances reviews (CCR) of the antidumping duty (AD) and countervailing duty (CVD) orders on certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China), to revoke the orders, in part, with respect to certain

gun safes. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 24, 2023.

FOR FURTHER INFORMATION CONTACT:

Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1678.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2021, Commerce published the AD and CVD orders on metal lockers from China.¹ On June 21, 2023, Tractor Supply Company (TSC), requested, through a CCR, the partial revocation of the *Orders* pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3)(ii).² TSC stated that it qualifies as an importer of certain gun safes currently subject to duties and, as such, is an interested party pursuant to section 771(9)(A) of the Act and 19 CFR 351.102(b)(29)(ii).³

On June 22, 2023, List Industries, Inc. (List) and Tennsco LLC (Tennsco), petitioners in the original investigations leading to the *Orders*, filed comments in support of partially revoking the *Orders* with regard to certain gun safes as defined in TSC's request.⁴ TSC's Request includes additional letters of support from the domestic industry,⁵ that, when including List and Tennsco's support,⁶ represents substantially all of the production of the domestic like product.⁷ On July 10, 2023, TSC filed follow-up comments reiterating its previous request.⁸

Scope of the Orders

The scope of the *Orders* covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The

¹ See *Certain Metal Lockers and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 46826 (August 20, 2021) (*Orders*).

² See TSC's Letter, "Request for Changed Circumstances Review," dated October 25, 2022 (TSC's Request).

³ See TSC's Letter, "Supporting Documents for Entry of Appearance and APO Application," dated June 20, 2023.

⁴ See Petitioner's Letter, "Response to Changed Circumstance Review Request," dated June 22, 2023 (Petitioner's Comments) (citing TSC's proposed exclusion language for certain gun safes that would cover TSC's TS12-30 and TS20-30 products).

⁵ See TSC's Request at 2 (citing Exhibit 1).

⁶ See Petitioner's Comments at 12-13.

⁷ See TSC's Request at 2 (citing Exhibit 1); see also Petitioner's Comments at 2.

⁸ See TSC's Letter, "Follow-Up to Request for Changed Circumstances Review," dated July 10, 2023.

subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallurgically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be

unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.*, all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.*, doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops*: Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases*: Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel*: Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers*: Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim*: Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels*: End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps*: End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and

installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of the *Orders*, unless such attachments are covered by the scope of the *Orders* on certain tool chests and cabinets from China. If the *Orders* on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of the *Orders*.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least 1-2 inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up

to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that: (1) Have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Orders* is dispositive.

Proposed Revocation of the Orders, in Part

TSC requested that the Orders be revoked, in part, with respect to certain gun safes, specifically requesting that TSC's gun safe models TS12-30 and TS20-30 be excluded from the Orders and further, that Commerce conduct an expedited CCR.⁹ TSC's Request proposes that Commerce adopt new exclusion language to the scope of the Orders as follows:¹⁰

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock with a lock body that is integrated into the door of the safe. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols.

(3) Bolt work shall consist of a minimum of three steel locking bolts of at least 1/2-inch diameter that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls (inclusive of the floor and top) shall be constructed of a minimum 14-gauge thick steel and shall be lined with one or more layers of fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the exterior walls. The fire retardant gypsum board shall be at least 15 mm in thickness for a single layer or shall sum to at least 19 mm in thickness where multiple layers are combined together.

(5) Doors shall be constructed of a minimum of one layer of 14-gauge steel lined with a minimum of one layer of 15 mm thick, fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the door. The doors shall fit into jambs equipped with a fire seal fitted completely around the door frame consisting of a hydrated sodium silicate encapsulated in a plastic film or sleeve that, when heat-activated by temperatures of over 210 degrees, expands to cover the space between the jambs and door, providing a barrier to prevent the intrusion of flames, gas, or smoke into the safe.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include but are not limited to: hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

(7) The excluded safe must be imported in the fully assembled condition.

For a complete description of the proposed scope of these *Orders*, see the appendix to this notice.

Initiation of CCRs

Pursuant to section 751(b) of the Act, Commerce will conduct a CCR upon receipt of a request from an interested party that shows changed circumstances sufficient to warrant a review of the *Orders*. In accordance with 19 CFR 351.216(d), Commerce determines that the information submitted by TSC, along with substantially all of the domestic industry's support, constitutes a sufficient basis to conduct an expedited CCR of the *Orders*.

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of

⁹ See TSC's Request at 1.

¹⁰ *Id.* at 3-4.

interest in the order, in whole or in part. In its administrative practice, Commerce has interpreted “substantially all” to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.¹¹

Furthermore, section 751(b)(4)(B) of the Act states that, “in the absence of good cause shown,” the Secretary of Commerce may not review a final determination less than 24 months after the date of publication of the notice of final determination or notice of suspension of an investigation. The final determinations in the less-than-fair-value-investigation and countervailing duty investigation of metal lockers from China published on July 7, 2021.¹² Therefore, because we are initiating this review more than 24 months after July 7, 2021, it is not necessary to establish good cause for conducting this review.

Preliminary Results of CCR and Intent To Revoke the Orders, in Part

Section 351.221(c)(3)(ii) of Commerce’s regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.¹³ In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.¹⁴

Pursuant to section 751(d)(1) of the Act, and 19 CFR 351.222(g), Commerce may revoke an AD or CVD order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a

CCR). Section 751(b)(1) of the Act requires a CCR to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) of Commerce’s regulations provides that Commerce will conduct a CCR of an AD or CVD order under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that: (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part; or (ii) if other changed circumstances sufficient to warrant revocation exist. Thus, both the Act and Commerce’s regulations require that “substantially all” domestic producers express a lack of interest in the order for Commerce to revoke the order, in whole or in part.¹⁵ In its administrative practice, Commerce has interpreted “substantially all” to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.¹⁶

As explained above, domestic locker producers accounting for greater than 85 percent of the domestic industry have expressed support for TSC’s requested CCR, which includes support from the original petitioners and other domestic locker producers.¹⁷ The domestic industry did not oppose the request for expedited changed circumstances reviews, or the addition of the specific exclusion language proposed by TSC.¹⁸

In the Petitioner’s Comments, List and Tennsco state their support for “the addition of TSC’s proposed exclusion language for certain gun safes that would cover its TS12–30 and TS20–30 models,”¹⁹ further stating that they “support retroactivity of the exclusion back to the date of the *Orders*.”²⁰ The

Petitioner’s Comments explain that the support for the exclusion is conditioned on the new exclusion language not being applied to entries prior to the *Orders*, effective August 20, 2021.²¹

In light of the domestic producers’ statements of support in modifying the *Orders*, in part, with respect to certain gun safes as described by TSC, and in the absence of any other interested party comments addressing the issue of domestic industry support, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to certain gun safes that are the subject of TSC’s CCR request. Thus, we preliminarily determine that changed circumstances warrant revocation of the *Orders*, in part, with respect to such gun safes, with retroactivity of the revocation only back to the date of the *Orders*. Accordingly, we are notifying the public of our intent to revoke the *Orders*, in part, with respect to certain gun safes described in the “Proposed Revocation of the *Orders*, in Part” section above, with retroactivity of the revocation applying back to the date of publication of the *Orders*, August 20, 2021.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.²² Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the due date for case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²³ All comments are to be filed electronically via ACCESS and must be served on interested parties.²⁴ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.²⁵ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m.

²¹ *Id.*

²² Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

²³ See 19 CFR 351.30(c)(2) and (d)(2).

²⁴ See, generally, 19 CFR 351.303.

²⁵ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹¹ See, e.g., *Certain Cased Pencils from the People’s Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent to Revoke Order in Part*, 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order, in Part*, 77 FR 53176 (August 31, 2012).

¹² See *Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 35737 (July 7, 2021); see also *Certain Metal Lockers and Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 35741 (July 7, 2021).

¹³ See 19 CFR 351.221(c)(3)(ii); see also *Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

¹⁴ See, e.g., *Pasta from Italy Preliminary Results*, 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results*, 80 FR at 48807.

¹⁵ See section 782(h) of the Act; and 19 CFR 351.222(g).

¹⁶ See, e.g., *Honey from Argentina: Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders*, 77 FR 67790, 67791 (November 14, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 77029 (December 31, 2012).

¹⁷ See TSC’s Request at 2 (citing Exhibit 1); see also Petitioner’s Comments at 12–13.

¹⁸ See TSC’s Request at 2 (citing Exhibit 1); see also Petitioner’s Comments at 12–13.

¹⁹ See Petitioner’s Comments at 12–13.

²⁰ *Id.* (specifically citing August 20, 2021).

Eastern Time on the day on which it is due.

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice in the **Federal Register**. Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. 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 the date and the time of the hearing two days before the scheduled date.

Final Results of Review

Unless extended, consistent with 19 CFR 351.216(e), Commerce intends to issue the final results of this CCR no later than 270 days after the date on which this review was initiated or 45 days if all parties agree to the outcome of the review.

Notification to Interested Parties

This initiation notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: July 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Proposed Scope of the Orders

The scope of the *Orders* covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or

expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallicity coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.*, all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.*, doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops*: Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a

sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases*: Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel*: Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers*: Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim*: Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels*: End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps*: End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

- (1) At least three sides, including the door, made from wire mesh;
- (2) the width and depth each exceed 25 inches; and
- (3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic,

internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of the *Orders*, unless such attachments are covered by the scope of the *Orders* on certain tool chests and cabinets from China. If the *Orders* on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of the *Orders*.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least 1–2 inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside,

interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock with a lock body that is integrated into the door of the safe. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols.

(3) Bolt work shall consist of a minimum of three steel locking bolts of at least 1/2-inch diameter that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls (inclusive of the floor and top) shall be constructed of a minimum 14-gauge thick steel and shall be lined with one or more layers of fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the exterior walls. The fire retardant gypsum board shall be at least 15 mm in thickness for a single layer or shall sum to at least 19 mm in thickness where multiple layers are combined together.

(5) Doors shall be constructed of a minimum of one layer of 14-gauge steel lined with a minimum of one layer of 15 mm thick, fire-retardant gypsum board bonded, affixed with brackets or otherwise securely attached to the door. The doors shall fit into jambs equipped with a fire seal fitted completely around the door frame consisting of a hydrated sodium silicate encapsulated in a plastic film or sleeve that, when heat-activated by temperatures of over 210 degrees, expands to cover the space between the jambs and door, providing a barrier to prevent the intrusion of flames, gas, or smoke into the safe.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include but are not limited to: hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

(7) The excluded safe must be imported in the fully assembled condition.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that: (1) Have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule

of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Orders* is dispositive.

[FR Doc. 2023–15557 Filed 7–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–820]

Prestressed Concrete Steel Wire Strand From Thailand: Final Results of Antidumping Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that The Siam Industrial Wire Co. Ltd. (SIW) made sales of subject merchandise in the United States at prices below normal value during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable July 24, 2023.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2285 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2023, Commerce published the *Preliminary Results* of the 2021 administrative review of the antidumping duty order on prestressed concrete steel wire strand (PC Strand) from Thailand.¹ We invited interested parties to comment on the *Preliminary Results*. On June 6, 2023, Commerce extended the deadline for the final results of this administrative review until July 20, 2023.² For a summary of the events that occurred since the *Preliminary Results*, see the Issues and

¹ See *Prestressed Concrete Steel Wire Strand from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2021*, 88 FR 8798 (February 10, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Prestressed Concrete Steel Wire Strand from Thailand: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2021,” dated June 6, 2023.

Decision Memorandum.³ Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁴

The merchandise covered by this *Order* is PC Strand from Thailand. For a full description of the scope of the *Order*, see the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed in this administrative review in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Although we made no changes to the preliminary dumping margin calculations for SIW based on our analysis of the comments received from interested parties, based on further review of these calculations, we made certain changes to correct errors in our implementation of the quarterly cost methodology.⁵

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period January 1, 2021, through December 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
The Siam Industrial Wire Co. Ltd	2.10

Disclosure

We intend to disclose the calculations performed for these final results of review to interested parties 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

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1).

Pursuant to 19 CFR 351.212(b)(1), and given that SIW reported entered values for all of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales. Where an importer-specific assessment rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.*, less than 0.5 percent), we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by SIW for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those unreviewed entries at the all-others rate determined in the original less-than-fair-value (LTFV) investigation⁶ if there is no rate for the intermediate company(ies) involved in the transaction.⁷

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

⁶ See *Order*.

⁷ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PC Strand from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for SIW will be equal to the weighted-average dumping margin established in the final results of this review; (2) for producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.91 percent, the all-others rate established in the LTFV investigation in this proceeding.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

⁸ See *Order*.

³ See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2021 Antidumping Duty Administrative Review: Prestressed Concrete Steel Wire Strand from Thailand," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand*, 69 FR 4111 (January 28, 2004) (*Order*).

⁵ See Issues and Decision Memorandum for a description of these errors; see also Memorandum, "Final Results Margin Calculation for The Siam Industrial Wire Co., Ltd.," dated concurrently with this notice.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 18, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary

II. Background

III. Scope of the Order

IV. Discussion of the Issues

Comment 1: Certain Adjustments Made in the Preliminary Results

Comment 2: Whether To Deny SIW's Scrap Offset

Comment 3: Whether To Adjust SIW's Cost of Production (COP) for Its Major Input

Comment 4: SIW's Home Market Inventory Carrying Costs

V. Recommendation

[FR Doc. 2023-15638 Filed 7-21-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Streamlined Supply Chain Information Collection Request (ICR)**

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 22, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Liz Reinhart, Management Analyst, National Institute of Standards

and Technology, *PRAcomments@doc.gov*). Please reference Streamlined Supply Chain Information Collection Request OMB Control Number 0693-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 Cierra Bean, Business Operations Specialist, CHIPS Program Office, (202) 815-2677, *askchips@chips.gov*.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The CHIPS Incentives Program is authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117-167). The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce (Department).

The CHIPS Program Office (CPO) intends to release a notice of funding opportunity (NOFO) to solicit applications for CHIPS Incentives that will support investments in the construction, expansion, and modernization of commercial facilities in the United States for semiconductor materials and semiconductor manufacturing equipment for which the capital investment falls below \$300 million.

Information collected as part of the application process may include but is not limited to project descriptions, project timelines, narrative justifications for incentives, applicant financial information, and relevant project environmental and workforce information.

II. Method of Collection

CPO intends to collect information from applicants electronically, although other methods, e.g., interviews, email, etc., may also be leveraged. The primary tool will be Salesforce, which CPO leverages for NOFO applications.

III. Data

OMB Control Number: 0693-XXXX.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 210.

Estimated Time per Response: 42 hours.

Estimated Total Annual Burden Hours: 8,750 hours.

Estimated Total Annual Cost to Public: \$414,050.

Respondent's Obligation: Mandatory to be eligible for CHIPS Act funding.

Legal Authority: CHIPS Act of 2022 (Division A of P.L. 117-167) (the Act).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-15538 Filed 7-21-23; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Research and Development (R&D) Information Collection Request (ICR)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 22, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Liz Reinhart, Management Analyst, National Institute of Standards and Technology, PRAComments@doc.gov. Please reference Research and Development (R&D) Information Collection Request (ICR) OMB Control Number 0693-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 Cierra Bean, Business Operations Specialist, CHIPS Program Office, (202) 815-2677, askchips@chips.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The CHIPS Incentives Program is authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117–167). The CHIPS Incentives Program is administered by

the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce (Department).

The CPO will collect data and information in support of the research and development (R&D) notice of funding opportunity (NOFO) application process. The R&D NOFO will be designed to fund projects that strengthen U.S. semiconductor R&D leadership to catalyze and capture the next set of critical technologies, applications, and industries. CPO funds will be awarded to projects and programs with intended outcomes of creating a dynamic, new network of innovation for the semiconductor ecosystem in the United States. The long-term payoff will be reestablishing this sector as the engine of innovation for the U.S. domestic economy.

Information collected as part of the application process may include but is not limited to project descriptions, project timelines, narrative justifications for incentives, applicant financial information, and relevant project environmental and workforce information.

II. Method of Collection

CPO intends to collect information from applicants electronically, although other methods, e.g., interviews, email, etc., may also be leveraged. The primary tool will be Salesforce, which CPO leverages for NOFO applications.

III. Data

OMB Control Number: 0693-XXXX.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 140.

Estimated Time per Response: 125 hours.

Estimated Total Annual Burden Hours: 17,500 hours.

Estimated Total Annual Cost to Public: \$828,100.

Respondent's Obligation: Mandatory to be eligible for CHIPS Act funding.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection,

including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–15560 Filed 7–21–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD178]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council, including joint meetings with the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board, the ASMFC Interstate Fishery Management Program Policy Board, and the ASMFC Bluefish Management Board.

DATES: The meetings will be held Tuesday, August 8 through Friday, August 11, 2023. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: This meeting will be an in-person meeting with a virtual option. Council members, other meeting participants, and members of the public

will have the option to participate in person at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401; phone: (410) 972-4300, or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: <https://www.mafmc.org/briefing/august-2023>.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., 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. The Council's website, www.mafmc.org, also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, August 8, 2023

Council Meeting With the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board Summer Flounder 2024–2025 Specifications

Review recommendations from the Scientific and Statistical Committee (SSC), Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024–2025

Review and revise 2024–2025 commercial measures if needed

Scup 2024–2025 Specifications

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024–2025

Review and revise 2024–2025 commercial measures if needed

Scup Commercial Discards Report

Review commercial scup discards through 2022

Review Scup GRA analysis and discuss next steps

Black Sea Bass 2024 Specifications

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024

Review and revise 2024 commercial measures if needed

ASMFC Summer Flounder, Scup, and Black Sea Bass Board Only

ASMFC Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

Review

Elect Board vice chair

Wednesday, August 9, 2023

Council Meeting With the ASMFC Interstate Fishery Management Program (ISFMP) Policy Board

Recreational Harvest Control Rule Framework/Addenda 2.0

Review progress and discuss next steps

Council Meeting with the ASMFC Bluefish Management Board

Bluefish 2024–2025 Specifications

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024–2025 including recreational management measures

ASMFC Bluefish Board Only

ASMFC Bluefish Fishery Management Plan Review

Elect Board vice chair

Mid-Atlantic Fishery Management Council Convenes

East Coast Scenario Planning Initiative

Review outcomes and discuss MAFMC next steps

NOAA Fisheries Climate Governance Policy

Review NOAA Fisheries draft policy and SSC comments

Develop Council comments

Award Presentations

Presentation of Award of Excellence, Ricks E Savage Award, and acknowledgement of outgoing Council member

Thursday, August 10, 2023

Atlantic Mackerel 2024–2025 Specifications

Review results of 2023 Management Track Assessment and rebuilding progress

Review results of 2023 Canadian assessment/management actions

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024–2025 Consider emergency action request and/or Framework initiation if appropriate given assessment results

River Herring and Shad (RH/S)

Review RH/S update

Review recommendations from the RH/S Committee, RH/S Advisory Panel,

Mackerel, Squid, and Butterfish Monitoring Committee, and staff Adopt RH/S cap (Atlantic mackerel fishery) for 2024–2025

National Fish and Wildlife Foundation Electronic Monitoring and Reporting Grant Program—Gray Redding, NFWF

Update on the NFWF electronic monitoring and reporting grant program

Longfin Squid 2024–2026 Specifications

Review results of 2023 Management Track Assessment

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Adopt specifications for 2024–2026

Illex Hold Baseline FW Meeting #1

Review recommendations from the Mackerel, Squid, and Butterfish Committee, Advisory Panel, and staff

Review and approve range of alternatives

Research Set-Aside Program Redevelopment

Update on the redevelopment of the Research Set-Aside program

Advanced Notice of Proposed Rulemaking (ANPR): National Standard 4, 8, and 9 Comments

Review comments developed for NOAA Fisheries related to National Standard 4, 8, and 9

Friday, August 11, 2023

Swearing in of New Council Members and Election of Officers

Business Session

Committee Reports (SSC, Ecosystem and Ocean Planning, Highly Migratory Species); Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: July 19, 2023.

Key Israel Marquez,

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

[FR Doc. 2023–15628 Filed 7–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–C–2022–0039]

Trademarks for Humanity Awards Competition Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice; extension of application submission deadline.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the application submission deadline for the pilot awards program announced in the **Federal Register** Notice titled “Trademarks for Humanity Awards Competition Program” that was published on April 11, 2023.

DATES: The USPTO will now accept applications through September 15, 2023, or until 200 applications are received, whichever occurs first.

ADDRESSES: Applications must be submitted electronically via an online application portal that applicants can access from the USPTO’s Trademarks for Humanity web page at www.uspto.gov/ip-policy/trademarks-humanity-awards-program.

FOR FURTHER INFORMATION CONTACT:

Anna Manville, Attorney-Advisor, USPTO, at anna.manville@uspto.gov or 571–272–9300; or Branden Ritchie, Senior-level Attorney, USPTO, at branden.ritchie@uspto.gov or 571–272–9300.

SUPPLEMENTARY INFORMATION: On April 11, 2023, the USPTO published a **Federal Register** Notice titled “Trademarks for Humanity Awards Competition Program,” announcing a pilot awards program to promote and incentivize the use of trademarks in connection with the provision of goods and services that address humanitarian issues. See 88 FR 21650. The USPTO is

now extending the application submission period until September 15, 2023, to ensure that stakeholders have a sufficient opportunity to submit applications.

All other information and instructions to applicants provided in the April 11, 2023, notice remain unchanged. Any applications received after the close of the previous deadline of July 14, 2023, and before the publication date of this notice will be treated as timely and given full consideration.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–15566 Filed 7–21–23; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Wednesday, July 26, 2023.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (“Commission” or “CFTC”) will hold this meeting to consider the following matters:

- *Final Rule:* Reporting and Information Requirements for Derivatives Clearing Organizations;
- *Proposed Rule:* Swap Confirmation Requirements for Swap Execution Facilities;
- *Proposed Rule:* Amendments to Provisions Common to Registered Entities; and
- *Proposed Rule:* Amendments to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (Seeded Funds and Money Market Funds).

The agenda for this meeting will be available to the public and posted on the Commission’s website at <https://www.cftc.gov>. Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission’s website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission’s website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: July 19, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–15649 Filed 7–20–23; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0138]

Agency Information Collection Activities; Comment Request; Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings in Accordance With Part C; Report on Infants and Toddlers Exiting Part C

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 22, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0138. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Bae, (202) 987-1557.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings in Accordance with Part C; Report on Infants and Toddlers Exiting Part C.

OMB Control Number: 1820-0557.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 6,363.

Abstract: This is a request for revision of the approved Information Collection 1820-0557—Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings Where Early Intervention Services are Provided to Children With Disabilities and Their Families in Accordance to Part C; Report on Infants and Toddlers Exiting Part C Section 618 of the Individuals with Disabilities Education Act (IDEA), Public Law 108-446, directs the Secretary of Education to obtain data on:

(1) the number and percentage of infants and toddlers with disabilities, by race, ethnicity, and gender, who are receiving early intervention services; (2) the number and percentage of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in Section 632), and who are receiving early intervention services under Part C; and (3) the number and percentage of children with disabilities, by race, ethnicity, and gender, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons. The specific legislative authority for these data collections may be found in Section 618(a)(1)(B), Section 618(a)(1)(C), Section 618(a)(2) and Section 618(a)(3). The purposes of such data are: (1) to assess the progress, impact, and effectiveness of State and local efforts to implement the legislation and (2) to provide Congress, the public, and Federal, State, and local educational agencies with relevant information. OSEP also uses these data for monitoring activities, planning purposes, congressional reporting, and disseminating data to individuals and groups.

Dated: July 18, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-15564 Filed 7-21-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0140]

Agency Information Collection Activities; Comment Request; High School and Beyond 2022 (HS&B:22) First Follow-Up Field Test Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 22, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please

use <http://www.regulations.gov> by searching the Docket ID number ED-2023-SCC-0140. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245-6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: High School and Beyond 2022 (HS&B:22) First Follow-up Field Test Data Collection.

OMB Control Number: 1850-0944.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 8,361.

Total Estimated Number of Annual Burden Hours: 4,072.

Abstract: The High School and Beyond Longitudinal Study of 2022 (HS&B:22) is the sixth in a series of longitudinal studies at the high school level conducted by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education. HS&B:22 is following a nationally representative sample of ninth grade students from the start of high school in the fall of 2022 to the spring of 2026 when most will be in twelfth grade. The sample will be freshened in 2026 to create a nationally representative sample of twelfth-grade students. A high school transcript collection and additional follow-up data collections beyond high school are also planned.

A field test was conducted in fall 2019 and the first follow-up field test (F1FT) is planned for spring 2024 in preparation for the spring 2026 first follow-up full-scale study (F1FS). This submission is to request approval to conduct the HS&B:22 F1FT collection in the spring of 2024. OMB provided approval for F1FT sampling, tracking, and recruitment in March 2021 (OMB# 1850-0944 v.9).

Part A of this submission presents information on the basic design of HS&B:22. Part B discusses the statistical methods employed. Part C presents justification for the questionnaire content. Appendix A provides the communication materials to be used during state, school district, school, student, and parent F1FT recruitment and data collection activities. Appendix B provides the first follow-up field test data collection instruments.

Dated: July 19, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-15637 Filed 7-21-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0139]

Agency Information Collection Activities; Comment Request; Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 22, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2023-SCC-0139. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377-4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden.

It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations.

OMB Control Number: 1845-0084.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 233,844.

Total Estimated Number of Annual Burden Hours: 37,175.

Abstract: The College Cost Reduction and Access Act (the CCRAA), Public Law 110-84, established the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program under Part A of the Higher Education Act of 1965, as amended (the HEA). The regulations for the TEACH Grant Program are in 34 CFR 686. The following sections of the TEACH Grant regulations are included in this information collection: 686.4, 686.11, 686.32, and 686.34. This is a request for an extension of the existing burden hours in OMB Control Number 1845-0084. The regulations in 686.4 require an institution that ceases to participate or becomes ineligible to participate in the TEACH Grant program during an award year to report to the Department of Education (the Department) within 45 days after the effective date of the loss of eligibility. The regulations in 686.11 establish that in addition to meeting the student eligibility requirements, in order to receive a TEACH Grant the applicant must submit the designated application, sign a TEACH Grant agreement to serve or repay (this burden is captured under OMB Control Number 1845-0083), and enroll in a TEACH Grant eligible institution. The

regulations in 686.32 require an institution to provide initial, subsequent, and exit counseling to each TEACH Grant recipient and maintain documentation substantiating the counseling requirements. The regulations in 686.34 require the institution to promptly provide written notification to a student requesting repayment of any overpayment that the institution does not have responsibility to repay. The regulations also require that the institution refer the student to the Department if the student does not take positive action to promptly resolve the TEACH Grant overpayment. In addition, in 686.34 there is conversion counseling requirements for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.

Dated: July 18, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-15567 Filed 7-21-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment: Bonneville Power Administration Provider of Choice Draft Policy

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of provider of choice draft policy and opportunity for public comment.

SUMMARY: As part of its Provider of Choice effort, BPA is publishing a draft policy that describes the agency's long-term power sales marketing approach for the period following the expiration of existing long-term power sales contracts on September 30, 2028. The draft policy describes the agency's products and service offerings for this next contract period and how the agency proposes to distribute the costs and benefits from its system of federal resources, which includes the Federal Columbia River Power System, the Columbia Generating Station, as well as non-federal resources and short-term purchases of power from the spot market. BPA expects to release the final policy and record of decision in early calendar year 2024, once all public comments have been reviewed. Following finalization of the policy, BPA will undertake a follow-on process

to implement the policy through negotiation and development of contracts with the goal to offer and execute new long-term contracts by late 2025. Bonneville will use the time between contract signing and the start of power deliveries on October 1, 2028, to ready systems to ensure a smooth transition between contracts.

DATES: Public comments will be accepted through October 13, 2023. BPA will hold a public meeting to present the draft policy on July 26, 2023, and a public meeting to answer clarifying questions on August 1, 2023.

ADDRESSES: Written comments must be received by October 13, 2023 to be considered in the final policy and Administrator's Record of Decision (ROD). Comments can be submitted online at <https://publiccomments.bpa.gov/> or mailed to: BPA, P.O. Box 14428, Portland, OR 97293-4428. Please call BPA at 1-800-622-4519 if you are experiencing technical difficulties uploading your comment or attachments.

FOR FURTHER INFORMATION CONTACT:

Summer Goodwin, DKS-7, BPA Communications, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll-free at 1-800-622-4519; or by email to ssgoodwin@bpa.gov.

Responsible Official: Kim Thompson, Vice President for Northwest Requirements Marketing is the official responsible for the development of Provider of Choice policies and contracts.

The full text of the draft policy and additional information can be found at the Provider of Choice website: <https://www.bpa.gov/energy-and-services/power/provider-of-choice> Public meeting information can be found on the BPA Event Calendar: Event Calendar—Bonneville Power Administration ([bpa.gov](https://www.bpa.gov)).

Signing Authority: This document of the Department of Energy was signed on July 5, 2023, by John Hairston, Administrator and Chief Executive Officer of the Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by the Department of Energy. For administrative purposes only, and in compliance with requirements of the Office of the **Federal Register**, the undersigned Department of Energy **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 July 19, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-15606 Filed 7-21-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15313-000]

Lock 9 Hydro Partners, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 26, 2023, Lock 9 Hydro Partners, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Kentucky River, in Jessamine and Madison Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Valley View Hydroelectric Project would consist of the following: (1) an existing 242-foot-long, 35-foot-high concrete lock and dam; (2) an existing 18.9-mile-long, 343-acre reservoir having a total capacity of 6,550-acre-feet; (3) a proposed 28.33-foot-wide, 52-foot-long, 48.8-foot-high powerhouse built into the abandoned lock containing six Voith Stream Diver submersible turbine/generating units for a total installed capacity of 3.012 megawatts; (4) a proposed 20-foot-wide, 42-foot-long control building on the adjacent shore; and (5) a proposed 2,000-foot-long, 12.47 kilovolt transmission line which interconnects to a Blue Grass Energy Cooperative distribution line. The project is estimated to generate an average of 14,000 megawatt-hours annually. The existing lock and dam are owned by the Kentucky River Authority.

Applicant Contact: David Brown Kinloch, Appalachian Hydro Associates, 414 S Wenzel Street, Louisville, KY 40204; Phone: (502) 589-0975, or by email at kyhydropower@gmail.com.

FERC Contact: Prabharanjani Madduri; phone: (202) 502-8017, or by email at prabharanjani.madduri@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission'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.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-15313-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's website at <https://elibrary.ferc.gov/eLibrary/search>. Enter the docket number (P-15313) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 18, 2023.
Debbie-Anne A. Reese,
Deputy Secretary.
 [FR Doc. 2023-15603 Filed 7-21-23; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23-108-000
Applicants: Enfinity Global, Inc., American Falls Solar, LLC, American Falls Solar II, LLC, CSOLAR IV South, LLC, CSOLAR IV West, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Enfinity Global, Inc., et al.

Filed Date: 7/14/23.
Accession Number: 20230714-5232.
Comment Date: 5 p.m. ET 8/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19-59-001.
Applicants: Blue Cloud Wind Energy, LLC

Description: Notice of Non-Material Change in Status of Blue Cloud Wind Energy, LLC.

Filed Date: 7/14/23.
Accession Number: 20230714-5230
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER22-2359-001.
Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Order 881 & 881-A Compliance Filing to be effective 12/31/9998.

Filed Date: 7/18/23.
Accession Number: 20230718-5066.
Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: ER23-425-003.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Amended WMPA, SA No. 6062; Queue No. AG1-253; Docket No. ER23-425 to be effective 1/16/2023.

Filed Date: 6/2/23.
Accession Number: 20230602-5219.
Comment Date: 5 p.m. ET 7/24/23.

Docket Numbers: ER23-1718-000.
Applicants: Pacific Gas and Electric Company.

Description: Refund Report: CCSF Refund Report for missed unmetered Points (WDT SA 275) ER23-1718 to be effective N/A.

Filed Date: 7/18/23.

Accession Number: 20230718-5117.
Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: ER23-1734-000; ER23-1733-000.

Applicants: SFE Energy Massachusetts, Inc., SFE Energy, Inc.
Description: Refund Report of SFE Energy, Inc., et al.

Filed Date: 7/17/23.
Accession Number: 20230717-5222.
Comment Date: 5 p.m. ET 8/7/23.

Docket Numbers: ER23-2419-000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6992; Queue No. AF2-361 to be effective 6/15/2023.

Filed Date: 7/17/23.
Accession Number: 20230717-5136.
Comment Date: 5 p.m. ET 8/7/23.

Docket Numbers: ER23-2420-000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original IISA, SA No. 6979 and ICSEA, SA No. 6986; Queue No. AG1-153 to be effective 6/16/2023.

Filed Date: 7/17/23.
Accession Number: 20230717-5161.
Comment Date: 5 p.m. ET 8/7/23.

Docket Numbers: ER23-2421-000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement Number 6983; Queue No. AF1-153 to be effective 9/18/2023.

Filed Date: 7/17/23.
Accession Number: 20230717-5172
Comment Date: 5 p.m. ET 8/7/23.

Docket Numbers: ER23-2422-000.
Applicants: Arizona Public Service Company.

Description: Petition for Waiver of Arizona Public Service Company.

Filed Date: 7/14/23.
Accession Number: 20230714-5236.
Comment Date: 5 p.m. ET 8/4/23.

Docket Numbers: ER23-2423-000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023-07-18 SA 4124 NIPSCO-Malden Solar GIA (J1447) to be effective 9/17/2023.

Filed Date: 7/18/23.
Accession Number: 20230718-5047.
Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: ER23-2424-000.
Applicants: Duke Energy Progress, LLC.

Description: Tariff Amendment: DEP-DEP-Notice of Termination SA-419 to be effective 9/16/2023.

Filed Date: 7/18/23.
Accession Number: 20230718-5091.

Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: ER23–2425–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Virginia Electric and Power Company submits tariff filing per 35.13(a)(2)(iii): VEPCO submits one WDSA, SA No. 6997 to be effective 6/26/2023.

Filed Date: 7/18/23.

Accession Number: 20230718–5092.

Comment Date: 5 p.m. ET 8/8/23.

Docket Numbers: ER23–2426–000.

Applicants: Pattern Energy Management Services LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff with Waiver Requests to be effective 7/19/2023.

Filed Date: 7/18/23.

Accession Number: 20230718–5095.

Comment Date: 5 p.m. ET 8/8/23.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA04–2–002.

Applicants: MORENCI WATER AND ELECTRIC CO.

Description: Amendment to Application for Disclaimer of Jurisdiction and Waiver of the Reciprocity Requirement under Order Nos. 888 and 889 for The Morenci Water Electric Company.

Filed Date: 7/14/23.

Accession Number: 20230714–5227.

Comment Date: 5 p.m. ET 8/4/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR22–4–003.

Applicants: North American Electric Reliability Corporation.

Description: Request of the North American Electric Reliability Corporation to expend funds from the Assessment Stabilization Reserve to fund the Inter-Regional Transfer Capability Study.

Filed Date: 7/14/23.

Accession Number: 20230714–5231.

Comment Date: 5 p.m. ET 7/24/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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: July 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–15601 Filed 7–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–507–000]

Equitrans, L.P.; Notice of Application and Establishing Intervention Deadline

Take notice that on June 30, 2023, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed an application under sections 7(b) and 7(c), of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization for its Swarts and Hunters Cave Well Replacement Project (Project). The Project consists of: (i) abandonment by sale of injection/withdrawal wells in the existing Hunters Cave Storage Field; (ii) construction of two horizontal wells: one in the Hunters Cave Field and one in the Swarts Complex to replace the capacity and capabilities of the storage fields; (iii) acquiring pipelines to serve as well lines; and (iv) selling base gas. The Hunter's Cave Field and Swarts Complex are located in Greene County, Pennsylvania. The Project will allow CONSOL Pennsylvania Coal Company LLC to proceed with planned mining activities while preserving Equitrans' ability to satisfy its contractual obligations to its Mainline storage customers. Equitrans estimates the total

cost of the Project to be \$7,295,312 and proposes to use the applicable Mainline Storage System rates as the maximum recourse rates for service on the Project and to roll-in the costs of the Project into its general system rates, all as more fully set forth in the application which is on file with the Commission and open for 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, (866) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Matthew Eggerding, Deputy General Counsel, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317 by phone at (412) 553–5786, or by email at Meeggerding@equitransmidstream.com.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

Equitrans' application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from PADEP—Southwest Regional Office, Oil & Gas. The request

¹ 18 CFR (Code of Federal Regulations) 157.9.

for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 8, 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.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before August 8, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23-507-000 in your submission.

(1) 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;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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 "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23-507-000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses,

municipalities, and other entities,⁶ 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 Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is August 8, 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 the 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>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23-507-000 in your submission.

(1) You may file your motion to intervene 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 "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23-507-000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

The Commission encourages electronic filing of motions to intervene (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 at: Matthew Eggerding, Deputy General Counsel, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317 or at Meeggerding@equitransmidstream.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. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ 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.¹¹ 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.

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.

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

Intervention Deadline: 5:00 p.m. Eastern Time on August 8, 2023.

Dated: July 18, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-15605 Filed 7-21-23; 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 and Oil Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP23-903-001.

Applicants: White River Hub, LLC.

Description: Tariff Amendment: Errata and Amended Filing to be effective 8/17/2023.

Filed Date: 7/18/23.

Accession Number: 20230718-5020.

Comment Date: 5 p.m. ET 7/31/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

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: July 18, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-15602 Filed 7-21-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed

on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the

last three digits, in the docket number field to access the document. For assistance, please contact FERC Online

Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket Nos.	File date	Presenter or requester
<i>Prohibited:</i>		
1. CP21-57-000, CP16-10-000, CP19-477-000	7-18-2023	FERC Staff. ¹
2. CP21-57-000, CP16-10-000, CP19-477-000	7-18-2023	FERC Staff. ²
<i>Exempt:</i>		
1. P-2100-000	7-12-2023	City Council of the City of Oroville, CA.
2. ER21-2818-000	7-13-2023	U.S. Congressman Ken Buck.
3. P-2100-000	7-14-2023	The State Water Contractors.

¹ Emailed comments dated 7/17/23 from Darcy Gentner.

² Emailed comments dated 7/17/23 from William Limpert.

Dated: July 18, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-15600 Filed 7-21-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-501-000]

Port Arthur LNG, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Port Arthur Liquefied Natural Gas Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Port Arthur LNG, LLC's (PALNG) Amendment (Amendment). If authorized, the Amendment would allow 24-hour-per day construction activities, increase in the total workforce to construct the project, and increase the parking available at the approved liquefied natural gas (LNG) terminal from what was previously authorized in the final Environmental Impact Statement for the Port Arthur Liquefaction Project in Jefferson County, Texas (Docket No. CP17-20-000), which the Commission authorized on April 18, 2019. This request is only regarding the facilities described in CP17-20-000. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may

have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on 8/17/2023. Comments may be submitted in writing. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 21, 2023, you will need to file those comments in Docket No. CP23-501-000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this

proposed project and encourage them to comment on their areas of concern.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (www.ferc.gov) under the link to *FERC Online*. Using *eComment* is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also located on the Commission's website (www.ferc.gov) under the link to *FERC Online*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. 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; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23-501-000) on your letter. 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.

Additionally, the Commission offers a free service called *eSubscription* which makes it easy to stay informed of all

issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Summary of the Proposed Amendment

As part of the Amendment, PALNG proposes to: (1) extend the work hours from 7 a.m. to 10 p.m. to 24-hours-per-day until completion of the facilities described in CP17-20-000; (2) increase the workforce from 3,000 to 6,000 workers during peak construction; and (3) increase the onsite terminal parking from 500 to 1,000 parking spaces.

PALNG indicates that this Amendment would maintain a development schedule that maximizes construction efficiency while minimizing the duration of environmental and community disturbance in the vicinity of the approved terminal and meet the approved terminal construction schedule.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

The Amendment request does not involve the construction of any new facilities nor any additional land disturbance at the Port Arthur LNG Terminal site. The additional 500 parking spaces would be within the previously authorized terminal site.

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the proposed Amendment under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomic;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed Amendment or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed Amendment. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). If eSubscribed, you will receive instant

² For instructions on connecting to eLibrary, refer to the last page of this notice.

email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

⁴ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP23–501–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached “Mailing List Update Form” (appendix 2).

Additional Information

Additional information about the project is 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. Click on the eLibrary link, click on “General Search” and enter the docket number in the “Docket Number” field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission’s calendar located at <https://www.ferc.gov/news-events/events/events> along with other related information.

Dated: July 18, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–15604 Filed 7–21–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11169–01–OA]

Public Meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board

(SAB) Staff Office is announcing a public meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel. The purpose of the meeting is to review and discuss the Panel’s draft report on the EPA’s EJScreen mapping and screening tool.

DATES:

Public meeting: The Science Advisory Board EJScreen Review Panel will meet on August 14, 2023, from 12 p.m. to 4 p.m. Eastern Time.

Comments: See the section titled “Procedures for providing public input” under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The August 14, 2023, meeting will be conducted virtually. Please refer to the SAB website at <https://sab.epa.gov> for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this document may contact Dr. Zaida Figueroa, Designated Federal Officer (DFO), by telephone at (202) 566–2643 or via email at figueroa.zaida@epa.gov. General information about the SAB, as well as any updates concerning the meeting announced in this document, can be found on the SAB website at <https://sab.epa.gov>.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board EJScreen Review Panel will hold a public meeting to review and discuss the Panel’s draft report on the EPA’s EJScreen mapping and screening tool.

Availability of meeting materials: All meeting materials, including the agenda, will be available on the SAB web page at <https://sab.epa.gov>.

Procedures for providing public input: Public comment for consideration by EPA’s federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the

process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee’s charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above in **FOR FURTHER INFORMATION CONTACT**, by August 10, 2023, to be placed on the list of registered speakers.

Written statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by August 10, 2023, for consideration at the August 14, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its website. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–15623 Filed 7–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OPP-2023-0067; FRL-10578-06-OCSPP]****Pesticide Product Registration; Receipt of Applications for New Uses June 2023****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before August 23, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0067, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Madison Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-1400, email address: BPPDFRNotices@epa.gov; or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-2427, email address: RDNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this action apply to me?**

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is

not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

EPA Registration Numbers: 241-245 and 241-418. *Docket ID number:* EPA-HQ-OPP-2023-0308. *Applicant:* BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Pendimethalin. *Product type:* Herbicide. *Proposed use:* Tropical and subtropical fruit, Medium to large fruit, edible peel subgroup 23B. *Contact:* RD.

EPA Registration Number: 55146-162. *Docket ID number:* EPA-HQ-OPP-2023-0293. *Applicant:* Nufarm Americas Inc., AGT Division, 11901 S Austin Avenue, Alsip, IL 60803. *Active ingredient:* Cis-Jasmone at 0.88%.

Product type: Nematicide. *Proposed use:* Commercial use for seed treatment and in-furrow on crops. *Contact:* BPPD.

EPA Registration Number: 55146-163. *Docket ID number:* EPA-HQ-OPP-2023-0293. *Applicant:* Nufarm Americas Inc., AGT Division, 11901 S Austin Avenue, Alsip, IL 60803. *Active ingredient:* Cis-Jasmone at 93.0%. *Product type:* Nematicide. *Proposed use:* For formulation into commercial seed treatment. *Contact:* BPPD.

EPA Registration Numbers: 59639-185 and 59639-211. *Docket ID number:* EPA-HQ-OPP-2023-0259. *Applicant:* Valent U.S.A. LLC, 4600 Norris Canyon Rd., San Ramon, CA 94583. *Active ingredient:* Ethaboxam. *Product type:* Fungicide. *Proposed use:* Leaf petiole vegetable subgroup 22B (greenhouse use only). *Contact:* RD.

File Symbol: 87895-O. *Docket ID number:* EPA-HQ-OPP-2022-0709. *Applicant:* AgLogic Chemical, LLC., 121 Estes Dr., Ste. 101, Chapel Hill, NC 27514. *Active ingredient:* Aldicarb. *Product type:* Insecticide. *Proposed use:* Oranges and grapefruit in nine counties in Florida. *Contact:* RD.

EPA Registration Number: 87895-2. *Docket ID number:* EPA-HQ-OPP-2022-0709. *Applicant:* AgLogic Chemical, LLC., 121 Estes Dr., Ste. 101, Chapel Hill, NC 27514. *Active ingredient:* Aldicarb. *Product type:* Insecticide. *Proposed use:* Oranges and grapefruit in nine counties in Florida. *Contact:* RD.

EPA Registration Number: 94485-4. *Docket ID number:* EPA-HQ-OPP-2023-0324. *Applicant:* Plant Health Intermediate Inc. DBA DPH Biologicals, 1550 East Old 210 Highway, Liberty, MO 64068. *Active ingredient:* *Bacillus amyloliquefaciens* strain ENV503. *Product type:* Fungicide. *Proposed use:* For use on turf and professional landscape in residential areas. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 18, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023-15629 Filed 7-21-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2021-0562; FRL-11038-01-ORD]

Availability of the Draft IRIS Toxicological Review of Perfluorohexane Sulfonate (PFHxS) and Related Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period associated with release of the draft IRIS Toxicological Review of Perfluorohexane Sulfonate (PFHxS) and Related Salts. The draft assessment was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD). EPA is releasing this draft IRIS assessment for public comment in advance of a contractor-led peer review. Public comments received will be provided to the external peer reviewers. ERG, a contractor to EPA, will convene a public meeting to discuss the draft report during Step 4 of the IRIS Process. The external peer reviewers will consider public comments submitted in response to this notice and those provided at the public meeting when reviewing this assessment. EPA will consider all comments received when revising the assessment post-peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent Agency policy or views.

DATES: The 60-day public comment period begins July 24, 2023 and ends September 22, 2023. Comments must be received on or before September 22, 2023.

ADDRESSES: The draft IRIS Toxicological Review of Perfluorohexane Sulfonate (PFHxS) and Related Salts will be available via the internet on the IRIS website at <https://www.epa.gov/iris/iris-recent-additions> and in the public docket at <http://www.regulations.gov>, Docket ID No. EPA-HQ-ORD-2021-0562.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202-566-1752; facsimile: 202-566-9744; or email: Docket_ORD@epa.gov.

For technical information on the draft IRIS Toxicological Review of

Perfluorohexane Sulfonate (PFHxS) and Related Salts, contact the IRIS Hotline; email: IRIS_HOTLINE@epa.gov. The IRIS Program will provide updates through the IRIS website (<https://www.epa.gov/iris>) and via EPA's IRIS listserv. To register for the IRIS listserv, visit the IRIS website (<https://www.epa.gov/iris>) or visit <https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect>.

For questions about the peer review, please contact: Laurie Waite, ERG, by email at peerreview@erg.com (subject line: EPA PFAS assessments peer review); or by phone: (781) 674-7362.

SUPPLEMENTARY INFORMATION:**How To Submit Technical Comments to the Docket at <https://www.regulations.gov>**

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2021-0562 for the Perfluorohexane Sulfonate (PFHxS) and Related Salts IRIS Assessment, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- Email: Docket_ORD@epa.gov.

- Fax: 202-566-9744.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202-566-1752.

For information on visiting the EPA Docket Center Public Reading Room, visit <https://www.epa.gov/dockets>. The telephone number for the Public Reading Room is 202-566-1744. The public can submit comments via www.Regulations.gov or email.

Instructions: Direct your comments to docket number EPA-HQ-ORD-2021-0562 for Perfluorohexane Sulfonate (PFHxS) and Related Salts IRIS Assessment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at www.regulations.gov, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through www.regulations.gov or email that you consider to be CBI or otherwise

protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2023-15613 Filed 7-21-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2017-0300; FRL-11162-01-OW]

Proposed Information Collection Request; Comment Request; Information Collection Request for Lead and Copper Rule Revisions (LCRR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Information Collection

Request for Lead and Copper Rule Revisions (LCRR)” (EPA ICR No. 2606.03, OMB Control No. 2040–0297) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the LCRR ICR with additional information on the potential burden that may result from respondents (public water systems, primacy agencies, and EPA) consulting EPA’s recommendations in “Guidance for Developing and Maintaining a Service Line Inventory” (August 2022, EPA 816–B–22–001) (referred to as Service Line (SL) Inventory Guidance) when seeking to comply with the requirements of the LCRR. 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. While this ICR covers a period of time following the LCRR compliance date, October 16, 2024, EPA intends to revise many parts of the LCRR through the Lead and Copper Rule Improvements (LCRI) prior to that compliance date. EPA intends to promulgate LCRI by October 16, 2024. EPA intends to issue an ICR that would revise the information collection to reflect the requirements under LCRI when it proposes and promulgates the LCRI.

DATES: Comments must be submitted on or before September 22, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2017–0300, online using www.regulations.gov (our preferred method), by email to LCRR@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Amina Grant, Standards and Risk Management Division, Office of Water, Environmental Protection Agency, Mail Code 4607M, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–7683; email address: Grant.Amina@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents that explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov, Docket ID No. EPA–HQ–OW–2017–0300, or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. EPA is also requesting comment on the potential burden and costs associated with the non-binding voluntary recommendations in EPA’s “Guidance for Developing and Maintaining a Service Line Inventory,” or SL Inventory Guidance, and the inventory templates provided in Appendix A of the guidance document. In addition, EPA is requesting comment on the recommendations in the SL Inventory Guidance about how to implement the LCRR requirement that public water systems (PWS) internally track address the locations of each service line. EPA will consider the comments received and amend the ICR, as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: On January 15, 2021, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (FR) the “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions” (LCRR) (86 FR 4198). In a subsequent action on June 16, 2021,

EPA published the “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates” (86 FR 31939), which set the new effective date for the LCRR as December 16, 2021, and the compliance date as October 16, 2024. Office of Management and Budget (OMB) approved the initial “Information Collection Request for Lead and Copper Rule Revisions (LCRR)” on July 25, 2022, and set the renewal date as December 31, 2023. Therefore, this ICR renewal characterizes the incremental impacts of the LCRR in terms of the burden and costs for the three years after December 31, 2023 (January 1, 2024, through December 31, 2026). Also, this ICR modifies the extension to the ICR titled, “Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules” (80 FR 78224, December 16, 2015, OMB control number 2040–0204), which estimates the burden and costs associated with the previous Lead and Copper Rule (LCR) as well as other rules.

In addition to the renewal of the “Information Collection Request for Lead and Copper Rule Revisions (LCRR),” this ICR includes information on the potential burden that may result from respondents (public water systems, primacy agencies, and EPA) that choose to follow recommendations included in EPA’s “Guidance for Developing and Maintaining a Service Line Inventory” (August 2022, EPA 816–B–22–001) when seeking to comply with the inventory requirements of the LCRR over the same three-year period of January 1, 2024 to December 31, 2026. While this ICR covers a period of time following the LCRR compliance date, EPA intends to revise the LCRR prior to the compliance date. EPA intends to promulgate the Lead and Copper Rule Improvements (LCRI) by October 16, 2024 and revise many rule areas of the LCRR. The following summary of the LCRR and the estimated burden and costs associated with this ICR renewal for the LCRR describe what would happen without promulgation of the LCRI and is provided for the reader to understand the information that would be collected if the LCRI is not promulgated. However, EPA intends to promulgate the LCRI. At that time, EPA also intends to issue a new ICR that would describe and assess the revised burden and costs to reflect the LCRI when EPA proposes and promulgates the LCRI.

The LCRR revised the previous version of this National Primary Drinking Water Regulation and requires community and non-transient non-

community water systems to optimize corrosion control and, under specified conditions, install source water treatment, conduct public education, and replace lead service lines (LSLs) in the distribution system. The LCRR also expands public education requirements for lead, requires greater public access to information on lead, and further emphasizes lead reduction for sensitive subpopulations by requiring additional lead in drinking water testing at schools and child care facilities. The LCRR is designed to identify and reduce lead exposure at systems with elevated lead concentrations in their drinking water by establishing a lead trigger level (TL) of 0.010 milligrams per liter (mg/L) in addition to the lead action level (AL) of 0.015 mg/L that was established under the previous rule (a system's lead concentration is measured as the 90th percentile water lead level derived from a set of samples collected at consumers taps during each monitoring period). See the LCRR final rule **Federal Register** for detailed information on the specific regulatory requirements (86 FR 4198, January 15, 2021).

Water systems required to comply with the regulation include Federal, State, Tribal, and local governmental entities as well as private entities. States (and Tribes) that have been granted primary enforcement authority (*i.e.*, primacy) for the LCR are responsible for overseeing rule implementation by systems within their jurisdiction. In instances where a State or Tribe does not have primacy, the EPA Region is the primacy agency. Systems demonstrate compliance through reporting the analytical results of collected samples, LSL statistics (both the number of LSLs present in a system and the number of LSLs replaced following a TLE or ALE), and other information to the primacy agency. Systems use this data to demonstrate compliance, assess treatment options, operate and maintain installed treatment, and communicate water quality information to consumers served by the system. Primacy agencies use the data to determine compliance, designate treatment to be installed, and set enforceable operating parameters. Primacy agencies are also required to report a subset of the data to EPA, which uses this information to protect public health by ensuring compliance with the LCR, measuring progress toward meeting the LCR's goals, and evaluating the appropriateness of State and Tribal implementation activities. The information reported by primacy agencies to EPA can be found in the Safe Drinking Water Information System (SDWIS).

In 2024, the first year of the LCRR ICR renewal period, which includes the October 16, 2024 LCRR compliance date, PWSs should still be engaged in the regulatory startup activities identified in the original "Information Collection Request for Lead and Copper Rule Revisions (LCRR)." These activities include reading and understanding the LCRR, assigning personnel and resources for rule implementation, attending training and receiving technical assistance from the State, developing initial LSL inventories and submitting demonstrations for systems that do not have lead, galvanized requiring replacement (GRR), and unknown service lines, and conferring with primacy agencies on initial planning for lead service line replacement (LSLR) and preparation of an LSLR plan when lead, GRR, and unknown service lines are present. During this same period, primacy agencies will conduct startup activities that include adopting the rule and developing a program to implement it, modifying their data systems, providing system staff with training and technical assistance, providing internal staff with training for implementation, assisting with initial LSL inventories and reviewing initial inventories, reviewing demonstrations of no LSLs, GRRs, and unknown lines from systems, and conferring with systems on initial planning for LSLR and reviewing the LSLR plan.

Following the LCRR compliance date, both systems and primacy agencies must work to implement several ongoing and additional regulatory requirements. The resultant ICR related burden and costs associated with these implementation activities are estimated in years 2025 and 2026 of this ICR renewal. The LCRR ICR water system activities occurring in years 2025 and 2026 include ongoing rule implementation and administration, lead and copper tap monitoring, corrosion control treatment (CCT), find-and-fix, water quality parameter monitoring, source water monitoring, LSL inventory updates, LSLR, small system point-of-use (POU) treatment as a compliance alternative,¹ lead public

education and outreach, public notification, and lead in drinking water testing programs at schools and child care facilities.² During this same period, the burden and cost to primacy agencies stems from their review and oversight of the activities associated with each of the PWS requirements outlined above as well as training staff and managing data systems. See the LCRR final rule **Federal Register** publication for detailed information on the specific regulatory requirements to occur in the years 2024, 2025, and 2026 (86 FR 4198, January 15, 2021). However, note that EPA intends to revise many of the parts of LCRR through LCRI prior to the October 16, 2024, compliance date, including a future ICR associated with the LCRI.

In this ICR, EPA is also assessing the potential burden and cost to public water systems, primacy agencies, and EPA that choose to follow the non-binding recommendations made by EPA in its "Guidance for Developing and Maintaining a Service Line Inventory" (August 2022, EPA 816-B-22-001), when seeking to comply with the inventory requirements of the LCRR over the same three-year period (January 1, 2024 through December 31, 2026).³

The purpose of the SL Inventory Guidance is to assist water systems as they develop and maintain their service line inventories and to provide primacy agencies with needed information for oversight and reporting to EPA. The guidance covers the lifecycle of the inventory, including inventory creation, material investigations, system reporting, primacy agency review, public accessibility of service line information, and service line consumer notification. In addition, the guidance provides best practices, case studies, and templates related to topics, such as the classification of service line materials; best practices for service line material investigations; inventory form and format; inventory accessibility; tools to support inventory development and data tracking; and ways to prioritize service line investigations.

More specifically, in this ICR, EPA assessed the potential incremental

alternative compliance options (LSLR, CCT, and POU).

² Note the degree of burden and cost associated with the majority of these activities is dependent on sampled water lead levels at individual systems.

³ The SL Inventory Guidance document is not a regulation itself nor does it change or substitute for the relevant provisions and requirements in the Safe Drinking Water Act and LCRR. Thus, it does not impose legally binding requirements on EPA, primacy agencies, or the regulated community. The document does not confer legal rights or impose legal obligations on EPA, primacy agencies, the regulated community, or any member of the public.

¹ The replacement of lead bearing plumbing compliance option for small system flexibility is not costed out in this ICR or the *Economic Analysis for the Final Lead and Copper Rule Revisions*. EPA lacks the system characteristic data that would allow the Agency to determine a small system's cost for replacement of lead-bearing plumbing materials because of the significant variability among systems and the plumbing materials in the buildings they serve. EPA assumes a system would only select the replacement of lead-bearing plumbing materials compliance option if it cost less than the three other

burden and cost associated with the general recommendations for PWSs to: create an initial inventory that is as thorough as possible; provide, in the publicly accessible inventory, location identifiers for all service lines that are sufficiently detailed to allow the identification of a specific service line; expand inventories to include service line subclassifications, other plumbing components such as lead connectors, and other details such as source of information, pipe diameter, and installation date; conduct interviews with experienced staff and plumbers to help focus the inventory effort and locate system records; interview neighboring water systems about regional construction practices; consider inventory practices as something that can be worked into the day-to-day activities of the system rather than treated as an independent effort; consider developing or modifying SOPs to document how they will collect service line information during normal operations and update their inventories; partner with plumbers and other third parties to obtain information on service line materials; document the records they reviewed (including information from past reviews) as a best practice and include the source of the material classification in their inventory; and continue to gather information on service line materials after the lines have been classified and assess the accuracy of historical records.

The ICR also assesses the potential burden and cost impacts of the SL Inventory Guidance recommendations associated with the LCRR requirement to update the inventory.⁴ The guidance recommends that PWSs begin engaging customers and conducting proactive, on-site service line material investigations as soon as possible to improve their inventory, verify existing records, and reduce the number of unknowns. The service line investigative techniques discussed in the SL Inventory Guidance include visual observation, water quality sampling, predictive modeling, and excavation.

A third category of potential burden and costs that could result from PWSs choosing to implement the guidance recommendations are those associated with public accessibility of the inventory. In the guidance, EPA recommends that systems select the best method for sharing the inventory data with the public given their data sharing

infrastructure, technological capabilities, and staff limitations. Online systems could share data in the form of interactive maps or downloadable spreadsheets on the system's website or through other cloud-based sharing apps or FTP/SFTP servers. For PWSs that do not have an online system to disseminate inventory data, EPA recommends that these PWSs consider developing such a system. Alternatively, in the guidance, EPA suggests that information can be shared in a tabular data format in preexisting utility mailings or newsletters.

Appendix A of the SL Inventory Guidance also provides templates to assist primacy agencies and PWSs to standardize and potentially simplify the inventory development and update process.⁵ For detailed information on the SL Inventory Guidance recommendations and templates, see <https://www.epa.gov/ground-water-and-drinking-water/revise-lead-and-copper-rule>.

Form Numbers: None.

Respondents/affected entities: Data associated with this ICR are collected and maintained by PWS and State, Territorial, Tribal, and Federal governments. Respondents include:

- Owners/operators of PWSs, who must report to their primacy agency.
- Primacy agencies, and the EPA Regions that act as primacy agencies for States, Territories, and Tribal lands that do not have primacy.

The North American Industry Classification System (NAICS) code for privately owned PWSs is 22131. The NAICS codes for State agencies that include drinking water programs are 92411 (Administration of Air and Water Resources and Solid Waste Management Programs) or 92312 (Administration of Public Health Programs). Ancillary systems (systems where providing water is ancillary to a primary business, e.g., mobile home parks) cannot be categorized in a single NAICS code. For ancillary systems, the NAICS code is that of the primary establishment or industry.

Respondent's obligation to respond: This collection has both mandatory and voluntary components. The mandatory data collection is associated with the regulatory requirements of the LCRR. The authority for this collection is derived from different parts of SDWA, including the definition for a "primary drinking water regulation" under section 1401(1)(D) of SDWA, which

requires that a "primary drinking water regulation means a regulation" that "contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels [or treatment techniques promulgated in lieu of a maximum contaminant level]; including accepted methods for quality control and testing procedures to [e]nsure compliance with such levels and to [e]nsure proper operation and maintenance of the system" Furthermore, section 1445(a)(1)(A) of SDWA requires that "[e]very person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter" In addition, section 1413(a)(3) of SDWA requires primacy agencies to "keep such records and make such reports . . . as the Administrator may require by regulation."

A portion of the estimated burden and costs associated with this ICR come from activities PWSs and primacy agencies may implement based on the non-binding recommendations, provided in EPA's SL Inventory Guidance, on the development and maintenance for the LCRR-required initial LSL inventory and subsequent updates to that inventory. Based on the recommendations and best practices included in the SL Inventory Guidance, EPA anticipates that PWSs that choose to implement some or all of the recommendations and best practices may achieve benefits, such as having a more accurate service line inventory that helps facilitate LCRR compliance, improving LSLR program efficiency and transparency, providing greater public health protection, potentially assisting in obtaining external funds for inventory development and LSLR, improving asset management, and providing potential cost savings. A more robust inventory that uses these recommendations may provide primacy agencies with more accurate information for oversight and reporting.

Estimated number of respondents: The total number of respondents for this ICR is 67,712. Fifty-six of these respondents are primacy agencies and the remaining 67,656 respondents are water systems.

Frequency of response: The estimated total net average annual number of

⁴ The LCRR requires submission of the updated version of the inventory on the same schedule as a system's tap sampling monitoring, but no more frequently than annually (40 CFR 141.90(e)(3)).

⁵ See EPA's website at <https://www.epa.gov/ground-water-and-drinking-water/revise-lead-and-copper-rule> for a downloadable, spreadsheet version of the template that contains forms and additional sheets for inventory tracking.

responses is 56,055,890 (55,356,286 system responses plus 699,604 primacy agency responses).

Total estimated burden: The total net annual respondent burden associated with this ICR is estimated to be 9,660,286 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: The total net annual costs are estimated to be \$641,162,423 per year.

Changes in Estimates: There is an increase between 25,592,837 and 25,809,781 hours⁶ in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is primarily due to the differing ICR burden estimation windows. The previous ICR covered the first three years after the promulgation of the LCRR when PWSs and primacy agencies should be engaged in the regulatory startup/implementation activities identified in the original "Information Collection Request for Lead and Copper Rule Revisions (LCRR)" or the currently approved ICR. These activities include reading and understanding the LCRR, assigning personnel and resources for rule implementation, attending training and receiving technical assistance from the State, developing initial LSL inventories and submitting demonstrations that systems only have non-lead service lines (where applicable), and conferring with primacy agencies on initial planning for LSLR and preparing an LSLR plan when LSLs are present. During this same period, primacy agencies should be conducting startup activities that include adopting the rule and developing a program to implement it, modifying their data systems, providing system staff with training and technical assistance, providing internal staff with training for implementation, assisting with initial LSL inventories and reviewing initial inventories, reviewing demonstrations of only non-lead service lines from systems, and conferring with systems on initial planning for LSLR and reviewing the LSLR plan. This proposed ICR covers these same

activities from the currently approved ICR in the first year of this ICR renewal period (2024), but in the next two years (2025 and 2026) of the ICR, both systems and primacy agencies must work to implement a number of ongoing and additional regulatory requirements including ongoing rule implementation and administration, lead and copper tap monitoring, corrosion control treatment, find-and-fix, water quality parameter monitoring, source water monitoring, LSL inventory updates, LSL replacement, small system POU treatment as a compliance alternative, lead public education and outreach, public notification, and lead in drinking water testing programs at schools and child care facilities. During this same period, the burden and cost to primacy agencies stems from their review and oversight activities associated with this larger set of the PWS requirements for 2025 and 2026. A relatively small increase in burden is associated with systems and primacy agencies voluntarily following recommendations associated with EPA's SL Inventory Guidance. Approximately 3 million hours of the total burden increase is attributable to inventory guidance activities not already covered by the original LCRR impact analysis.

Jennifer McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2023-15616 Filed 7-21-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064-0176; -0184]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the

existing information collections described below (OMB Control No. 3064-0176; -0184). The notices of the proposed renewal for these information collections were previously published in the **Federal Register** on June 1, 2023, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before August 23, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Manny Cabeza (202-898-3767), Regulatory Counsel, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Manny Cabeza, Regulatory Counsel, 202-898-3767, mcabeza@fdic.gov, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. **Title:** Reverse Mortgage Products.

OMB Number: 3064-0176.

Forms: None.

Affected Public: Insured state nonmember banks and state savings associations making reverse mortgage.

Burden Estimate:

⁶ The currently approved ICR provided a total burden range of 3,171,076 to 3,388,020 hours. The current analysis provides only a single high-end estimate of 28,980,857 hours.

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0176]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Reverse Mortgage Products—Implementation, 12 CFR 365 (Mandatory).	Recordkeeping	1	1	40:00	40
2. Reverse Mortgage Products—Ongoing, 12 CFR 365 (Mandatory).	Recordkeeping	30	1	08:00	240
Total Annual Burden (Hours) .....	.....	.....	.....	.....	280

Source: FDIC.

General Description of Collection:
Respondents must prepare and provide certain disclosures to consumers (e.g., that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a

consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit). There is no change in the substance or methodology of this information collection.

2. *Title:* Volcker Rule Restrictions on Proprietary Trading and Relationships

with Hedge Funds and Private Equity Funds.

OMB Number: 3064–0184.

Forms: None.

Affected Public: Private Sector; Insured state nonmember banks and state savings associations.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED IMPLEMENTATION/SET-UP ANNUAL BURDEN
[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Reporting (On occasion).	1	1	00:15	0
2. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Reporting (Quarterly)	1	1	125:00	125
3. Section 351.20(i)—Notice and Response (Voluntary).	Reporting (On occasion).	1	1	20:00	20
4. Section 351.3(d)(3)—Purchase and sale of securities in Accordance with liquidity management plans (Mandatory).	Recordkeeping (On occasion).	1	1	3:00	3
5. Section 351.4(b)(3)(i)(A)—Trading Desk Documentation (Mandatory).	Recordkeeping (On occasion).	1	1	2:00	2
6. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Recordkeeping (On occasion).	1	1	00:15	0
7. Section 351.5(c)—Hedging Instruments Documentation (Mandatory).	Recordkeeping (On occasion).	1	1	80:00	80
8. Section 351.10(c)(18)(ii)(C)(1)—Customer facilitation vehicles (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10
9. Section 351.11(a)(2)—Documentation on advisory or related services to customers (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10
10. Section 351.20(b)—Compliance Program for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	795:00	795
11. Section 351.20(c)—CEO attestation for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (Annual)	1	1	300:00	300
12. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	10:00	10
13. Section 351.20(e)—Additional documentation for covered funds for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	200:00	200
14. Section 351.20(f)(1)—Simplified compliance program for Covered Banks with no trading assets or liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	8:00	8
15. Section 351.20(f)(2)—Simplified compliance program for Covered Banks with moderate trading assets and liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	100:00	100

TABLE 1—SUMMARY OF ESTIMATED IMPLEMENTATION/SET-UP ANNUAL BURDEN—Continued
[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
16. Section 351.11(a)(8)(i)—Offerings disclosures (Mandatory).	Third-party Disclosure (On Occasion).	1	1	00:30	1
Estimated Implementation Annual Burden (Hours).	.....	.....	.....	.....	1,664

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

TABLE 2—SUMMARY OF ESTIMATED ONGOING ANNUAL BURDEN
[OMB No. 3064–0184]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Reporting (On occasion).	7	20	00:15	35
2. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Reporting (Quarterly)	2	4	41:00	328
3. Section 351.20(i)—Notice and Response (Voluntary).	Reporting (On occasion).	7	1	20:00	140
4. Section 351.3(d)(3)—Purchase and sale of securities in Accordance with liquidity management plans (Mandatory).	Recordkeeping (On occasion).	7	1	1:00	7
5. Section 351.4(b)(3)(i)(A)—Trading Desk Documentation (Mandatory).	Recordkeeping (On occasion).	7	4	2:00	56
6. Section 351.4(c)(3)(i)—Limit Breaches and Increases (Mandatory).	Recordkeeping (On occasion).	7	40	00:15	70
7. Section 351.5(c)—Hedging Instruments Documentation (Mandatory).	Recordkeeping (On occasion).	2	1	80:00	160
8. Section 351.10(c)(18)(ii)(C)(1)—Customer facilitation vehicles (Mandatory).	Recordkeeping (On occasion).	7	1	10:00	70
9. Section 351.11(a)(2)—Documentation on advisory or related services to customers (Mandatory).	Recordkeeping (On occasion).	7	1	10:00	70
10. Section 351.20(b)—Compliance Program for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	265:00	530
11. Section 351.20(c)—CEO attestation for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (Annual)	2	1	100:00	200
12. Section 351.20(d)—Requirements under Appendix A for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	10:00	20
13. Section 351.20(e)—Additional documentation for covered funds for Covered Banks with Significant Trading Assets & Liabilities (Mandatory).	Recordkeeping (On occasion).	2	1	200:00	400
14. Section 351.20(f)(1)—Simplified compliance program for Covered Banks with no trading assets or liabilities (Mandatory).	Recordkeeping (On occasion).	1	1	8:00	8
15. Section 351.20(f)(2)—Simplified compliance program for Covered Banks with moderate trading assets and liabilities (Mandatory).	Recordkeeping (On occasion).	5	1	40:00	200
16. Section 351.11(a)(8)(i)—Offerings disclosures (Mandatory).	Third-party Disclosure (On Occasion).	7	26	00:30	91
Estimated Ongoing Annual Burden (Hours) ..	.....	.....	.....	.....	2,385

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

OMB No. 3064-0184 Total Estimated Annual Burden (Hours): 4,049.

General Description of Collection: Section 13 of the Bank Holding Company Act of 1956 (section 13) contains certain restrictions on the ability of a banking entity to engage in proprietary trading and to have certain interests in, or relationships with, a hedge fund or private equity fund. The FDIC's regulations at 12 CFR part 351 (part 351) implement section 13 with respect to FDIC-supervised insured depository institutions (IDIs). The requirements in part 351 do not apply to FDIC-supervised IDIs that have, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, that are five percent or less of total consolidated assets.¹ Part 351 contains provisions that constitute information collections (ICs) under the Paperwork Reduction Act corresponding to policies, rules, and regulations regarding periodic reporting requirements, documentation of trading activities and compliance programs, and various other recordkeeping and disclosure requirements for FDIC-supervised IDIs that are subject to the requirements of part 351 (covered bank).

There is no change in the substance or methodology of this information collection. The estimated annual burden for this information collection is 4,049 hours. This is an increase of 856 hours from the total estimated annual burden of 3,193 hours submitted in 2020. As was the case in 2020, the FDIC assumes that all covered banks have completed the implementation portions of this information collection. Thus, the current estimated annual implementation burden is identical to the estimated annual implementation burden in 2020 (1,664 hours).

The increase in burden is driven entirely by the increase in the total annual ongoing burden which is now estimated to be 2,385 hours, an increase of 856 hours from the estimated annual burden used in 2020 (1,529 hours). Specifically, the number of covered banks considered to have "significant" trading assets and liabilities has increased from one in 2020 to two in the current estimate. Generally, the ICs that apply only to these covered banks—such as those under §§ 351.20(a)—

351.20(e)—have the highest estimated time per response, and an increase in the number of respondents will lead to a correspondingly large increase in the total estimated annual burden. This increase is attenuated by a decrease in the total number of covered banks with "moderate" or "significant" trading assets and liabilities from ten in the 2020 ICR to seven in this ICR, which has led to a corresponding decrease in the total estimated annual burden for those line items that apply to all covered banks with "moderate" or "significant" trading assets and liabilities. The total estimated annual hourly burden for both implementation and ongoing compliance is shown in Tables 1 and 2 above.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated: July 18, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023-15565 Filed 7-21-23; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064-0143; -0204]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064-0143 and -0204).

DATES: Comments must be submitted on or before September 22, 2023.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Manny Cabeza (202-898-3767), Regulatory Counsel, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Manny Cabeza, Regulatory Counsel, 202-898-3767, mcabeza@fdic.gov, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. **Title:** Forms Relating to Processing Deposit Insurance Claims.

OMB Number: 3064-0143.

Affected Public: Private sector individuals and entities maintaining deposits at insured depository institutions.

Burden Estimate:

¹ 12 CFR 351.2(r)(2).

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064-0143]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. 7200/04—Declaration for Government Deposit (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
2. 7200/05—Declaration for Revocable Living Trust (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
3. 7200/06—Declaration of Independent Activity (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
4. 7200/07—Declaration of Independent Activity for Unincorporated Association (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
5. 7200/08—Declaration for Joint Ownership Deposit (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
6. 7200/09—Declaration for Testamentary Deposit (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
7. 7200/10—Declaration for Defined Contribution Plan (Required to obtain benefit).	Reporting (On occasion).	1	1	01:00	1
8. 7200/11—Declaration for IRA/KEOGH Deposit (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
9. 7200/12—Declaration for Defined Benefit Plan (Required to obtain benefit).	Reporting (On occasion).	1	1	01:00	1
10. 7200/13—Declaration for Custodian Deposit (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
11. 7200/14—Declaration for Health and Welfare Plan (Required to obtain benefit).	Reporting (On occasion).	1	1	01:00	1
12. 7200/15—Declaration for Plan and Trust (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
13. 7200/18—Declaration for Irrevocable Trust (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
14. 7200/24—Claimant Verification (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
15. 7200/26—Depositor Interview (Required to obtain benefit).	Reporting (On occasion).	1	1	00:30	1
16. Deposit Broker Submission Checklist (Required to obtain benefit).	Reporting (On occasion).	1	1	00:05	0
17. Electronic file on customers, "Broker Input File Requirements" (Required to obtain benefit).	Reporting (On occasion).	1	1	00:45	1
18. Exhibit A, Affidavit of Agency Account form (Required to obtain benefit).	Reporting (On occasion).	1	1	05:00	5
19. Exhibit B, The standard agency agreement, or the non-standard agency agreement (Required to obtain benefit).	Reporting (On occasion).	1	1	00:10	0
Total Annual Burden (Hours)					21:00

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

This calculation method results in the rounding down to zero hours of very small values such as those shown in ICs 16 and 19.

General Description of Collection:

When an insured depository institution (IDI) is closed by its primary regulatory authority, the FDIC has the responsibility to pay the insured deposits pursuant to section 11(a) and (f) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a) and (f); and the FDIC's regulations, "Deposit Insurance Coverage," 12 CFR part 330, and "Recordkeeping for Timely Deposit Insurance Determination," 12 CFR part 370. In the event that the requisite information is not available in a failed IDI's records, the FDIC will utilize these

forms, declarations and affidavits to request the necessary information from a depositor. The forms are used to facilitate the FDIC's deposit insurance determinations in the event of the failure of an insured depository institution. It includes 19 information collection (IC) line items, including 15 that apply to both depositors and their agents (e.g. deposit brokers) and four intended for use by agents alone.

There is no change in the substance or methodology of this information collection. The change in burden is due to the decline in estimated burden hours

from 590 to 21 hours. The decline in estimated hours is driven by the decline in deposit insurance determinations and associated valid form submissions in the 2018–2022 period.

2. *Title:* Margin and Capital Requirements for Swap Entities [Interagency] IFR.

OMB Number: 3064–0204.

Forms: None.

Affected Public: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap

dealer, major swap participant, security based swap dealer, or major security based swap participant.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064-0204]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. § 349.2 Definition of "Eligible Master Netting Agreement," paragraphs (4)(i) and (ii)	Recordkeeping (Annual)	1	1	5:00	5
§ 349.8(g) Documentation § 349.10 Documentation of Margin Matters (Mandatory).					
2. § 349.7(c) Custody Agreement (Mandatory)	Recordkeeping (Annual)	1	1	100:00	100
3. § 349.8(c) and (d) Initial Margin Model (Mandatory).	Reporting (On occasion).	1	1	240:00	240
4. § 349.8(f)(3) Initial Margin Modeling Report (Mandatory).	Reporting (On occasion).	1	1	50:00	50
5. § 349.8(h) Escalation Procedures (Mandatory)	Recordkeeping (Annual)	1	1	20:00	20
6. § 349.9(e) Requests for Determinations (Required to Obtain Benefits).	Reporting (On Occasion).	1	1	10:00	10
7. Documentation, 12 CFR 349.8(g) (Mandatory)	Recordkeeping (Annual)	1	1	80:00	80
Total Annual Burden (Hours): .....	.....	.....	.....	.....	505

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

General Description of Collection: The regulations at part 349 subpart A impose reporting and recordkeeping requirements, as defined by the PRA, on any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap entity (covered swap entity). As such, the FDIC must periodically obtain approval from the Office of Management and Budget (OMB) for these collections of information (ICs) with respect to covered swap entities. The OMB approves these ICs through OMB No. 3064-0204, and last approved the ICR on September 8, 2020 (2020 ICR). OMB No. 3064-0204 is set to expire on September 30, 2023. The 2020 ICR contained eleven ICs comprising 1,261 estimated annual responses for an estimated annual burden of 1,740 hours.

There is no change in the substance or methodology of this information collection. The change in burden is due to the decline in estimated burden hours from 1,760 to 505 hours. The decline in estimated hours is driven primarily from a reduction in the number of ICs relative to the 2020 ICR. The ICs from the 2020 ICR that were not included in this renewal had an estimated 1,253 annual responses and an estimated 1,295 annual burden hours.

Request for Comment

Comments are invited on: (a) whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated July 18, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023-15563 Filed 7-21-23; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than August 21, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001. Comments

can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Cosperity Bancorp, Inc., Lee's Summit, Missouri*; to become a mutual bank holding company through the acquisition of First Federal Bank of Kansas City, Lee's Summit, Missouri, in connection with the conversion of First Federal Bank of Kansas City from mutual to stock form.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-15547 Filed 7-21-23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than August 7, 2023.

A. *Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198-0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Daniel Plate, Houston, Texas*; to join the Plate/Juelfs/Forbes Control Group, a group acting in concert, by acquiring voting shares of Banner County Ban Corporation, and thereby

indirectly acquiring voting shares of Banner Capital Bank, both of Harrisburg, Nebraska.

2. *Dallen Juelfs, Lisco, Nebraska, and Lorenda Forbes, Beaver City, Nebraska*; to become members of the Plate/Juelfs/Forbes Control Group, a group acting in concert, by acquiring voting shares of Banner County Ban Corporation, and thereby indirectly acquiring voting shares of Banner Capital Bank, both of Harrisburg, Nebraska. Additionally, Dallen Juelfs and Lorenda Forbes, to become trustees of The Banner County Ban Corp Employee Stock Ownership Plan and Trust, Harrisburg, Nebraska, and thereby indirectly acquire voting shares of Banner County Ban Corporation and its subsidiary, Banner Capital Bank.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-15548 Filed 7-21-23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 1:00 p.m. on Thursday, July 27, 2023.

PLACE: Martin Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW, Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's website. You do not need to register to view the webcast of the meeting. A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's website at www.federalreserve.gov.

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202-452-2474 or you may register online. You may pre-register until close of business on July 26, 2023. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please email media@frb.gov for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202-452-3982. For the hearing impaired only, please use the Telecommunication

Device for the Deaf (TDD) on 202-263-4869.

PRIVACY ACT NOTICE: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS-32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed rules to implement the Basel III endgame agreement for large banks and adjustments to the surcharge for U.S. global systemically important banks.

Notes: 1. The documents will be made available to attendees on the day of the meeting in paper. The documentation will not be available on the Board's website until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's website <http://www.federalreserve.gov/aboutthefed/boardmeetings/>.

FOR QUESTIONS PLEASE CONTACT: Public Affairs Office at media@frb.gov.

SUPPLEMENTARY INFORMATION: You may access the Board's website at www.federalreserve.gov for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–15657 Filed 7–20–23; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 23, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291; Comments can also be sent electronically to MA@mpls.frb.org:

1. *Independent Bancshares, Inc., Excelsior, Minnesota, through its subsidiary, Quoin Bancshares, Inc., Clarkfield, Minnesota*; to acquire Quoin Financial Bank, Miller, South Dakota. As a result of this acquisition, Quoin Bancshares, Inc., would become a bank holding company.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–15636 Filed 7–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Building and Sustaining the Child Care and Early Education Workforce (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Planning, Research, and Evaluation (OPRE) at the U.S. Department of Health and Human Services is proposing to collect information to examine a promising strategy to support the child care and early education (CCEE) workforce in Colorado as part of the Building and Sustaining the CCEE Workforce BASE project. This project aims to build evidence about workforce development strategies designed to promote, retain, and advance the CCEE workforce by improving the economic well-being of CCEE workers.

DATES: *Comments due within 30 days of publication.* Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. You can also obtain copies of the proposed collection of information by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: As part of the BASE project, OPRE is evaluating the implementation, impacts, and costs of two initiatives designed to improve the wages and economic well-being of the CCEE workforce in Colorado. Colorado Department of Early Childhood (CDEC) is implementing two initiatives to improve the compensation and economic well-being of the CCEE workforce: (1) eligible CCEE center-based settings are randomly selected through a lottery process, and (2) eligible home-based CCEE settings receive additional funding and supports. OPRE proposes to collect survey, interview, and cost data to understand: (a) the implementation and costs of the initiatives, (b) the effects of the initiative for teachers in center-based CCEE settings, and (c) the experiences of directors and teachers in center-based CCEE settings and owners and caregivers in home-based CCEE settings with the initiatives. The study will include CCEE workers who are offered the initiatives and those who are not, as assigned through CDEC's lottery, and key informants who are involved in the design and implementation of CDEC's initiatives. The effectiveness of the initiative will be determined by differences between members of the intervention and control groups for hypothesized outcomes in center-based CCEE settings. The experiences of directors/owners, teachers, and caregivers in center-based and home-based CCEE settings with the initiatives will be explored with qualitative and descriptive analyses. OPRE and Colorado are collaborating to evaluate the two initiatives. Colorado will collect baseline survey data and share it with OPRE. OPRE will collect follow-up surveys and interviews. Study participants will complete follow-up surveys approximately 9 and 18 months after the initiatives begin to understand how strategies that aim to improve compensation might improve outcomes such as workforce recruitment, retention, and economic and psychological well-being, as well as to capture contextual information about CCEE settings' working conditions and job demands and supports. Interviews will be conducted approximately 6 to 9 months after the initiatives began with center-based teachers/home-based caregivers and center-based directors/home-based owners to capture their experiences with the initiatives, perceptions, attitudes, beliefs about the initiatives, and how these experiences may shape the viability and implementation of the initiatives. Interviews with key informants at state-

level implementing agencies will collect qualitative data to understand contextual factors and the impetus behind the design and implementation of the initiatives. Finally, cost workbooks completed by center-based CCEE setting administrators will collect cost data to assess the costs associated

with implementing the initiative. This information collection will support ACF and the CCEE field in understanding whether workforce support strategies that increase compensation affect the retention and well-being of the CCEE workforce. This information will help to inform federal, state, and local

initiatives to build and retain a qualified CCEE workforce.

Respondents: CCEE center-based directors, administrators, teachers; CCEE home-based owners and caregivers; CCEE key informants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
1. Follow-up center director survey	75	2	0.75	113	75
2. Follow-up lead and assistant teacher survey	1,000	2	0.75	1,500	1,000
3. Follow-up home-based owner and caregiver survey	95	2	0.75	143	95
4. One-on-one center director interview	15	1	1	15	10
5. One-on-one lead and assistant teacher interview	25	1	1	25	17
6. One-on-one home-based owner and caregiver interview	25	1	1.5	38	25
7. One-on-one key informant interview	5	1	1	5	3
8. Center-based setting costs workbook	16	1	5	80	53

Estimated Total Annual Burden Hours: 1,278.

Authority: Head Start Act 640 [42 U.S.C. 9835] and 649 [42 U.S.C. 9844]; appropriated by the Consolidated Appropriations Act of 2022. Head Start Act as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110 134).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023-15555 Filed 7-21-23; 8:45 am]

BILLING CODE 4184-22-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ORR-3 and ORR-4 Report Forms for the Unaccompanied Refugee Minors Program (OMB #0970-0034)

AGENCY: Office of Refugee Resettlement, Administration for Children and

Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the ORR-3 and ORR-4 Report Forms for the Unaccompanied Refugee Minors Program (OMB#: 0970-0034, expiration 02/29/2024). There are no changes requested to the report forms, but ORR proposes minor revisions to the form instructions to improve clarity, including additional guidance for providers on how to assess youth functioning.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all

requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR-3 Report is submitted within 30 days of the minor's initial placement in the state, within 60 days of a reportable change in the minor's case (e.g., change in legal responsibility, change in foster home placement, change in immigration data), and within 60 days of termination from the program. The ORR-4 Report is submitted every 12 months beginning on the first anniversary of the initial placement date, to record outcomes of the minor's progress.

Respondents: Unaccompanied Refugee Minors (URM) State Agencies, URM Provider Agencies, and youth participants.

Annual Burden Estimates

URM STATE AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR-3 URM Placement Report	15	432	0.25	1,620	540
ORR-4 URM Outcomes Report	15	282	0.50	2,115	705

Estimated Total Annual Burden Hours (URM State Agencies): 1,245.

URM PROVIDER AGENCIES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR-3 URM Placement Report	24	270	0.50	3,240	1,080
ORR-4 URM Outcomes Report	24	162	1.0	3,888	1,296

Estimated Total Annual Burden Hours (URM Provider Agencies): 2,376.

YOUTH PARTICIPANTS

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR-4 URM Outcomes Report	1032	3	0.50	1,548	516

Estimated Total Annual Burden Hours (Youth Participants): 516.

Total Estimated Annual Burden Hours: 4,137.

Comments: The Department specifically requests comments 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; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522(d).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023-15556 Filed 7-21-23; 8:45 am]

BILLING CODE 4184-89-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-2873]

Public Meeting and Listening Session for Developing the Food and Drug Administration's Center for Tobacco Products' Strategic Plan; Request for Comments

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notification of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or

we) is announcing the following virtual listening session entitled "Public Meeting and Listening Session for Developing FDA's Center for Tobacco Products' Strategic Plan." The purpose of the listening session is to obtain feedback on the proposed strategic goals that are being used to develop FDA's Center for Tobacco Products' (CTP) comprehensive Strategic Plan. FDA will provide information on the proposed goals and provide the public an opportunity to provide open public comment.

DATES: The virtual listening session will be held on August 22, 2023, beginning at 10 a.m. Eastern Time. Additional details, such as the time of the listening session and registration information, is available at: <https://www.fda.gov/tobacco-products/ctp-newsroom/listening-session-developing-fdas-center-tobacco-products-strategic-plan-08222023>. All requests to make open public comment must be received by August 14, 2023, at 11:59 p.m. Eastern Time. Either electronic or written comments on this listening session must be submitted to the docket by August 29, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The listening session will be held virtually and more information will be posted here: <https://www.fda.gov/tobacco-products/ctp-newsroom/listening-session-developing-fdas-center-tobacco-products-strategic-plan-08222023>.

You may submit written comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 29, 2023. Comments received by mail/hand

delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–N–2873. Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the dockets to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: May Nelson, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 877–287–1373, CTPRegulations@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In September 2022, per the request of the FDA Commissioner, Dr. Robert Califf, an independent expert panel facilitated by the Reagan-Udall Foundation began an operational evaluation of CTP. The evaluation’s goal was to help ensure that CTP has the tools to address today’s challenges as it works to prevent tobacco use among youth and to reduce tobacco-attributable death and disease. The final report was issued on December 19, 2022, and included 15 recommendations across a number of areas.

One recommendation stated: “To address today’s challenges and position itself for the future, CTP must pivot from a reactive mode to a proactive mode. CTP must invest the time, now, with staff and public input, to create and implement a strategic plan that identifies CTP’s strategic objectives and plots an operational roadmap of the steps CTP will take over the next five years to achieve those objectives.”

In response, CTP has initiated the development of a 5-year Strategic Plan to advance its mission. As part of an iterative, Center-wide process, CTP has developed five proposed goal areas that have been shaped by staff and leaders across the Center. These goal areas are intended to be interconnected with four proposed cross-cutting themes: health equity, science, transparency, and stakeholder engagement. The Center intends to publish its Strategic Plan by the end of 2023.

To gain additional perspectives as CTP develops its Strategic Plan, the Center seeks public comments on these proposed goal areas or on any other areas that CTP should consider that might not be encapsulated by these proposed goal areas. CTP asks that comments be forward-looking, constructive, and concise in addressing the following questions:

1. What key features, activities, or initiatives would you like CTP to consider as related to any of these proposed goal areas? For example, in the area of regulations and guidance documents, we would be interested in your feedback on specific regulations and guidance documents FDA should pursue and how they should be prioritized.
2. What are measurable short- and long-term outcomes for the proposed goal areas over the next 2 to 5 years?
3. What are three specific actions CTP could take in the next 5 years that would have the most impact in significantly reducing tobacco-related death and disease?

4. Are there any important features, activities, or initiatives not encapsulated by these proposed goal areas that you believe CTP should consider as part of its Strategic Plan?

Proposed goal areas are as follows:

1. **Develop, Advance, and Communicate Comprehensive and Impactful Tobacco Regulations and Guidance.** This goal includes activities related to the development and implementation of CTP’s regulatory and policy agenda; the articulation and publication of clear and comprehensive public policy statements; and efforts to advance health equity.
2. **Ensure Timely, Clear, and Consistent Product Application Review to Protect Public Health.** This goal includes activities related to work processes such as optimizing the efficiency, consistency, and effectiveness of the product application review process; enhancing public understanding of regulatory requirements through transparency and stakeholder engagement efforts; and ensuring that the review process is supported by a strong regulatory science program.
3. **Ensure Compliance of Regulated Industry and Tobacco Products Utilizing All Available Tools, Including Robust Enforcement Actions.** This goal includes pursuing enforcement actions to reduce violations; enhancing collaborations with federal and state agencies on tobacco enforcement efforts; and prioritizing agile market intelligence and surveillance to facilitate awareness of and effective responses to the evolving tobacco landscape.
4. **Improve Public Health by Enhancing Knowledge and Understanding of CTP Tobacco Product Regulation and the Risks Associated with Tobacco Product Use.** This goal includes timely, clear, and accessible health communications and education to diverse public audiences, including those to discourage youth initiation, encourage cessation, and to inform adults who smoke about the relative risks of tobacco products.
5. **Advance Operational Excellence.** This goal includes prioritization of workforce growth, engagement, and retention and CTP’s commitment to diversity, equity, inclusion, and accessibility; modernizing business processes to enhance information management and programmatic efficacy; and seeking and applying needed resources to support CTP’s full portfolio of regulatory activities.

II. Topics for Discussion at the Listening Session

The listening session will provide the public an opportunity to provide open public comment on the proposed goal areas and help inform development of the final Strategic Plan. After introductions, FDA will begin the listening session with an overview of the development of CTP's Strategic Plan and subsequent proposed goal areas. Then, the registered speakers will have approximately 4 minutes each to share their comments on any topics related to the proposed goal areas.

III. Participating in the Listening Session

Registration: To register to attend the free listening session, please visit the following website: <https://www.fda.gov/tobacco-products/ctp-newsroom/listening-session-developing-fdas-center-tobacco-products-strategic-plan-08222023>. Registration information will be posted soon.

Live closed captioning will be provided during the listening session. Additional information on requests for special accommodations due to a disability will be provided during registration.

Requests to Provide Open Public Comment: During online registration you may indicate if you wish to make open public comments during the listening session. All requests to make open public comment must be received by August 14, 2023, at 11:59 p.m. Eastern Time. We will do our best to accommodate requests to make public comments. We are seeking to have a broad representation of ideas and perspectives presented at the meeting. During the listening session, FDA is especially interested to hear from those individuals or communities who may be less likely or less able to provide written comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comments and request time for a joint presentation. FDA will allow registered speakers 4 minutes to provide their open public comments and will notify all registrants of their approximate time ahead of the listening session if they are selected to make public comment. FDA will not accept presentation materials for the listening session. Instead, any materials can be submitted to the respective docket noted in the "Docket" section of this document before the end of the comment period.

Transcript: Please be advised that as soon as the transcript of the listening session is available, it will be accessible at <https://www.regulations.gov>. It may

be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript and recording will also be available on the internet at <https://www.fda.gov/tobacco-products/ctp-newsroom/listening-session-developing-fdas-center-tobacco-products-strategic-plan-08222023>.

Dated: July 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-15558 Filed 7-21-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Evaluation of Programs Supporting the Mental Health of the Health Professions Workforce, OMB No. 0915-xxxx-New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than August 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 594-4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evaluation of Programs Supporting the Mental Health of the Health Professions Workforce, OMB No. 0915-xxxx-New.

Abstract: The Public Health Service Act and the American Rescue Plan Act of 2021 authorized three programs administered by HRSA: (1) the Health and Public Safety Workforce Resiliency Training Program (the Training Program); (2) the Promoting Resilience and Mental Health among Health Professional Workforce Program (the Workforce Program); and (3) the Health and Public Safety Workforce Resiliency Technical Assistance Center (the Technical Assistance Center). The Training Program funds resilience training activities for the health workforce in rural and underserved communities. The Workforce Program supports organizations' programs or protocols that foster resilience and wellness among the health workforce in these communities. The Technical Assistance Center provides tailored training and technical assistance to Training Program and Workforce Program awardees. The purpose of the planned evaluation is to assess the three programs with respect to their goals of promoting resiliency and mental health in the health workforce. Data collection efforts will inform HRSA leadership about the progress, costs and benefits, and impact of these efforts to support the delivery of health care in the United States.

Methods of Collection

Quantitative and qualitative de-identified data will be collected from awardees and their health care workforce. Each instrument will be administered twice over the 4-year evaluation period; once mid-way through the project period and once at the end of the project period. There will also be a one-time comparison group survey. To achieve the evaluation, the study will use the following quantitative data collection instruments:

The Healthcare Workforce Survey is a web-based survey intended to collect data on the impact and implementation of the Training Program and the Workforce Program from individuals in both programs' target populations. Respondents will only be asked questions that are relevant to their experience. The Survey includes questions about before and after program participation to assess self-reported change.

The Fielding Tracker is an Excel-based tool that Workforce Program and Training Program awardees will help populate with information on how they

distributed the Healthcare Workforce Survey (e.g., type and frequency of email communications sent to the target populations of grant-funded activities, number of individuals emailed, number of undeliverable emails received, and demographic information). It will also gather aggregated demographic information on the target population required for a non-response bias analysis (this information is not reported to HRSA elsewhere).

The Awardee Training and Services Report is an Excel-based tool that will be used to clarify how evaluators can refer to each activity Training Program and the Workforce Program awardees implemented on the Healthcare Workforce Survey so that respondents will recognize the activities. The Awardee Training and Services Report will also request key descriptive information for each activity. Each report will include pre-populated activities or training programs that have been reported to HRSA to reduce burden on the Training Program and Workforce Program awardees, while confirming, revising, or adding details, as needed.

The Health and Public Safety Workforce Resiliency Training Program Comparison Group Survey is a web-based survey intended to assess key outcomes among those in the health workforce who did not have access to Training Program-funded activities. A third-party vendor will provide the health workforce sample. Eligibility for this survey will be assessed using a brief web-based Screener. The purpose of the screener is to identify respondents with similar characteristics as the Training Program participants.

The Awardee Survey about the Technical Assistance Center is a web-based survey intended to assess the Training Program and the Workforce Program awardees' experiences with and perceptions of the impact from technical assistance provided by the Technical Assistance Center. In addition, the Awardee Survey is

designed to gather details about program implementation to inform future programming. The Awardee Cost Workbook is an Excel-based tool that will be used to conduct a cost-benefit analysis. It will be pre-populated with existing data for the Training Program and the Workforce Program awardees to verify and update as needed.

The Awardee Interview Guide and Organizational Assessment Interview Protocol are qualitative data collection instruments the evaluation team will use as semi-structured interview guides to understand the awardees' perspectives on challenges, lessons learned, and organizational change. The Organizational Assessment interviews will be conducted with the Workforce Program awardees, given the grant program's unique focus on organizational change. Questions will be tailored depending on the role of the interviewee, which could include the awardee project director, the manager, an external partner, and up to three workforce team members.

A 60-day notice was published in the **Federal Register** on May 5, 2023, vol. 88, No. 87; pp. 29137–38. There were no public comments.

Need and Proposed Use of the Information: The information collected for this evaluation will enable a comprehensive evaluation of these important HRSA-funded programs to promote resiliency and improve mental health in the health workforce. The proposed data collection efforts are critical to understanding program outcomes and will inform leadership on program progress and inform future programming. Data collection will assist in the development of actionable strategies and methodologies to inform future programs, investment strategies, and ongoing workforce resiliency policy development. Data collection will align with parallel efforts across HRSA, providing previously un-collected or un-verified information critical to understanding factors related to the success of current HRSA programs. All

instruments have been designed to leverage and not duplicate annual performance reporting requirements and data collected by the Technical Assistance Center.

Likely Respondents: For the Healthcare Workforce Survey, all individuals in the target population of the Training Program and Workforce Programs will be invited to complete the survey. For the Training Program Comparison Group Survey, the following types of professionals across the four census regions will be targeted: nurses, physicians, physician assistants, behavioral health providers, nursing students, medical school students and residents, and clinical social work or psychology students. For the Awardee Interviews and Awardee Training and Services Reports Form, the Training Program, Workforce Program, and Technical Assistance Center awardees will be invited to participate. For the Awardee Survey about the Technical Assistance Center, the Fielding Tracker, and the Awardee Cost-Workbook, the Training Program and Workforce Program awardees will be asked to participate. For the Organizational Assessment Interviews, multiple types of staff at each Workforce Program awardee organization will be targeted.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Healthcare workforce survey	29,359	1	29,359	0.25	7,340
The Training Program Comparison Group Screener	180,000	1	180,000	0.05	9,000
The Training Program Comparison Group Survey	2,600	1	2,600	0.17	442
The Training Program Awardee Cost Workbook	34	1	34	6.00	204
Awardee Interview Guide	44	1	44	1.50	66
Awardee Training and Services Report	44	1	44	1.00	44
Fielding Tracker	44	1	44	4.00	176
The Workforce Program Awardee Cost Workbook	10	1	10	6.00	60

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
The Workforce Program Organizational Assessment Interview Protocol	50	1	50	1.00	50
Awardee Survey about the Technical Assistance Center ...	44	1	44	1.00	44
Total	212,229	10	212,229	20.97	17,426

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–15599 Filed 7–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Development of Medical Countermeasures for Biodefense and Emerging Infectious Diseases, Research Area 002—Development of Therapeutic Candidates for Biodefense, Antimicrobial Resistant (AMR) Infections and Emerging Infectious Diseases.

Date: August 22–23, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20852 240–669–2075, richard.kostriken@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; NIAID 2023 DMID Omnibus BAA (HHS–NIH–NIAID–BAA2023–1), Research Area 002—Development of Therapeutic Candidates for Biodefense, Antimicrobial Resistant (AMR) Infections and Emerging Infectious Diseases (N01).

Date: August 30–31, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20852 240–669–2075 richard.kostriken@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15607 Filed 7–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–171: NIDDK Central Repository Non-Renewable Sample Access (X01).

Date: August 21, 2023.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room 7349, Bethesda, MD 20892–2542, (301) 594–8894, begumn@nidddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–15568 Filed 7–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22-069: High Impact Interdisciplinary Science in NIDDK Research Areas (RC2).

Date: September 21, 2023.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room 7349, Bethesda, MD 20892-2542, (301) 594-8894, begumn@nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-15576 Filed 7-21-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Pathway to Independence Award (Parent K99/R00 Independent Clinical Trial Not Allowed);

Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grant (Parent T32).

Date: August 18, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Virtual Meeting).

Contact Person: J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20852, 240-669-5045. sundstromj@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: July 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-15608 Filed 7-21-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel; Stimulating Access to Research in Residency (StARR) (R38 Independent Clinical Trial Not Allowed).

Date: August 14, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21B, Rockville, MD 20852, (240) 669-5035 robert.unfer@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-15609 Filed 7-21-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Institute on Aging Special Emphasis Panel; Aging Bone/Muscle—II.

Date: August 22, 2023.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, Bethesda, MD 20892, (301) 496-9667, prasadnb@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-15570 Filed 7-21-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Aging; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Phenserine Tartrate ECRT Clinical Trial TEP.

Date: August 9, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jais Mariel, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Ave., RM: 2E400, Bethesda, MD 20814, (301) 594-2614, mariel.jais@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-15577 Filed 7-21-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R1-ES-2023-N056;
FXES11130100000-234-FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 23, 2023.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant's name and application number (e.g., Dana Ross, ES001705):

- *Email:* permitsR1ES@fws.gov.
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232-4181.

FOR FURTHER INFORMATION CONTACT:

Karen Colson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231-6283 (telephone); permitsR1ES@fws.gov (email). 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, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES799558	Idaho Power Company, Boise, Idaho	Banbury Springs limpet (<i>Idaholanx fresti</i>) and the Snake River physa snail (<i>Physella natricina</i>).	Idaho	Harass by survey, capture, collect, captively propagate, and release.	Renew.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES48278D	Archipelago Research and Conservation, Kalaheo, Hawaii.	'Alae 'ula, or Hawaiian common gallinule (<i>Gallinula galeata sandvicensis</i>); 'Alae ke'oke'o, or Hawaiian coot (<i>Fulica alai</i>); Ae'o, or Hawaiian stilt (<i>Himantopus mexicanus knudseni</i>); Koloa maoli (koloa); or Hawaiian duck (<i>Anas wyvilliana</i>).	Hawaii	Harass by survey, monitor, handle, band, salvage, and autopsy.	Amend.
ES45531B	State of Hawaii, Division of Forestry and Wildlife, Honolulu, Hawaii.	'Alalā (<i>Corvus hawaiiensis</i>)	Hawaii	Harass by handle, band, release, and if needed, recapture.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative 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.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Acting Assistant Regional Director for Ecological Services, Pacific Region.

[FR Doc. 2023–15550 Filed 7–21–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2023–N051;
FXES11130300000–234–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the ESA. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 23, 2023.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., ESXXXXXX; see table in

SUPPLEMENTARY INFORMATION:

- *Email (preferred method):* permitsR3ES@fws.gov. Please refer to the respective application number (e.g., Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT:

Nathan Rathbun, 612–713–5343 (phone); permitsR3ES@fws.gov (email). 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, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and

threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES88224B	Joe Snavelly, Chambersburg, PA.	Add new species—round hickorynut (<i>Obovaria subrotunda</i>), longsolid (<i>Fusconaia subrotunda</i>), and James spinymussel (<i>Pleurobema collina</i>)—to existing authorized 15 freshwater mussel species.	CT, IA, IL, IN, KY, MA, MD, MI, MN, MO, NH, NJ, NY, OH, PA, VA, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	Amend.
ES07730A	RES-Kentucky, Louisville, KY.	Add new species—round hickorynut (<i>Obovaria subrotunda</i>) and longsolid (<i>Fusconaia subrotunda</i>)—to existing authorized 29 freshwater mussel species.	IA, IL, IN, KY, MN, MO, OH, PA, TN, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	Amend.
ES73584A	Illinois Natural History Survey, Champaign, IL.	Fifteen freshwater mussel species.	Add new locations—MO, IN—to existing authorized locations: IL.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	Amend.
TE98111A	Ohio Department of Transportation, Columbus, OH.	Add new species—round hickorynut (<i>Obovaria subrotunda</i>) and longsolid (<i>Fusconaia subrotunda</i>)—to existing 10 freshwater mussel species.	OH	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release.	Renew and Amend.
ESPER0007017	Elisabeth Hollinden, Columbus, OH.	Add new species—longsolid (<i>Fusconaia subrotunda</i>), round hickorynut (<i>Obovaria subrotunda</i>), James spinymussel (<i>Parvaspina collina</i>), spectaclecase (<i>Cumberlandia monodonta</i>), Higgins' eye (<i>Lampsilis higginsii</i>)—to existing authorized 10 freshwater mussel species.	Add new locations—AR, IL, IN, IA, KY, LA, MI, MN, MO, MS, NY, NC, OK, TN, WV, WI—to existing authorized locations: OH.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add new activities—relocate—to existing authorized activities: Capture, handle, release, relocate under special circumstances.	Amend.
PER2872883	Jeff Huebschman, Platteville, WI.	Northern long-eared bat (<i>Myotis septentrionalis</i>).	WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release.	New.
PER2885463	Kyle Jansky, Columbia, MO.	Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>M. grisescens</i>), northern long-eared bat (<i>M. septentrionalis</i>).	AL, AR, CT, DC, DE, GA, IA, IL, IN, KS, KY, LA, ME, MD, MA, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, sample, attach radio transmitters, release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative 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. Moreover, 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.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice,

we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2023–15553 Filed 7–21–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R3-ES-2023-N047;
FXES11130300000-234-FF03E00000]

**Endangered and Threatened Species;
Receipt of Recovery Permit
Applications**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of receipt of permit
applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the ESA. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 23, 2023.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., ESXXXXXX; see table in

SUPPLEMENTARY INFORMATION):

• *Email (preferred method):* permitsR3ES@fws.gov. Please refer to the respective application number (e.g.,

Application No. ESXXXXXX) in the subject line of your email message.

• *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.

FOR FURTHER INFORMATION CONTACT:

Nathan Rathbun, 612-713-5343 (phone); permitsR3ES@fws.gov (email). 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, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et*

seq.), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for
Review and Comment**

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES02344A	Mainstream Commercial Divers, Inc., Murray, KY.	Add new species—round hickorynut (<i>Obovaria subrotunda</i>) and longsolid (<i>Fusconaia subrotunda</i>)—to existing authorized species: 26 freshwater mussel species.	Add new locations—KS, NE, OK, SD—to existing authorized locations: AL, AR, FL, GA, IN, IL, IA, KY, LA, MI, MN, MO, MS, OH, PA, TN, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	Amend.
PER2549878	Morgan E. Christman, Columbus, OH.	Rusty patched bumble bee (<i>Bombus affinis</i>).	IA, IL, IN, MI, OH, WI ...	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, temporary hold, release, collect bio-samples.	New.
PER1462021	Keystone Ecological Services, LLC, Wellsboro, PA.	Northern long-eared bat (<i>Myotis septentrionalis</i>), Indiana bat (<i>M. sodalis</i>), Virginia big-eared bat (<i>Corynorhinus townsendii virginianus</i>).	Add new locations—CT, NJ, TX, WY—to existing authorized locations: DE, DC, IA, KY, LA, MA, MD, ME, MI, MN, MT, NC, ND, NE, NH, NY, OH, PA, RI, SC, SD, TN, VA, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, identify, band, attach radio transmitters, collect non-intrusive measurements, release.	Amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES06801A	Pittsburgh Wildlife & Environmental, Inc., McDonald, PA.	Add new species—tri-colored bat (<i>Perimyotis subflavus</i>) and Virginia big-eared bat (<i>Corynorhinus townsendii virginianus</i>)—to existing authorized species: gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>M. sodalis</i>) and northern long-eared bat (<i>M. septentrionalis</i>).	Add new locations—CT, DE, ME, MD, MA, MN, MT, NH, RI, TX, VT, WY—to existing authorized locations: AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MO, MS, NE, NJ, NY, NC, ND, OK, OH, PA, SC, SD TN, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, band, attach radio transmitters, enter hibernacula, release.	Amend.
ES26855C	Jeanette Bailey, Deerfield, IL.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>M. sodalis</i>) and northern long-eared bat (<i>M. septentrionalis</i>).	IL, IA, IN, MI, MN, MO, OH, WI, AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add new activity—Attach radio transmitters—to existing authorized activities: Capture, handle, release.	Renew/Amend.

Public Availability of Comments

Written comments we receive become part of the administrative 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. Moreover, 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.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, USFWS Region 3.

[FR Doc. 2023–15552 Filed 7–21–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1216]

Bulk Manufacturer of Controlled Substances Application: Veranova, L.P.; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice; correction.

SUMMARY: The Drug Enforcement Administration (DEA) published a document in the **Federal Register** on June 12, 2023, concerning a notice of application for bulk manufacturer of Controlled Substances. As that document indicated the registrant's wrong state in the address.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 12, 2023, in FR Doc. 2023–12433 (88 FR 38099), on page 1, under **SUPPLEMENTARY INFORMATION** correct the registrant's address to read 25 Patton Road, Pharmaceutical Service, Devens, Massachusetts 01434–3803.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–15615 Filed 7–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Brock Maslonka*, Case No. 2:20–cv–304–SAB, (E.D. Wash.),

was lodged with the United States District Court for the Eastern District of Washington on July 14, 2023.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Brock Maslonka, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas, perform mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty days from the date of publication of this Notice. Please address comments to Gus Maxwell by mail at United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Denver Place Building, 999 18th Street, Suite 370—South Terrace, Denver, CO 80202, or by email at pubcomment_edns.enrd@usdoj.gov, and refer to *United States v. Brock Maslonka*, DJ #90–5–1–1–21697.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Washington, Thomas S. Foley United States Courthouse, 920 West Riverside Avenue, Room 840, Spokane, WA 99201. In addition, the proposed Consent Decree may be examined

electronically at <https://www.justice.gov/enrd/consent-decrees>.

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2023-15622 Filed 7-21-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0116]

Proposed Extension of Information Collection; Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls.

DATES: All comments must be received on or before September 22, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2023-xxxx.

- *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Before visiting MSHA in person, call

202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). This not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) (Pub. L. 91-173, as amended by Pub. L. 95-164), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition to prevent electrocutions, mine fires, and mine explosions. MSHA regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. The regulations also contain recordkeeping requirements that help operators in implementing an effective maintenance program.

(a) Examinations of Electric Equipment

• Underground Coal Mines

(1) 30 CFR 75.512 requires that all electric equipment be frequently examined, tested, and maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected and that a record of such examinations be kept. 30 CFR

75.512-2 specifies that required examinations and tests be made at least weekly.

(2) 30 CFR 75.703-3(d)(11) requires that all grounding diodes be tested, examined, and maintained as electric equipment and records of these activities be kept in accordance with the provisions of 30 CFR 75.512.

• Surface Coal Mines and Surface Work Areas of Underground Coal Mines

(3) 30 CFR 77.502 requires that electric equipment be frequently examined, tested, and maintained by a qualified person to ensure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected and that a record of such examinations be kept. 30 CFR 77.502-2 requires these examinations and tests at least monthly.

(b) Examinations of High-Voltage Circuit Breakers

• Underground Coal Mines

(1) 30 CFR 75.800 requires that circuit breakers protecting high-voltage circuits, which enter the underground area of a coal mine, be properly tested and maintained as prescribed by the Secretary. Such breakers must be equipped with devices to provide protection against under-voltage grounded phase, short circuit, and overcurrent. 30 CFR 75.800-3 requires that such circuit breakers be tested and examined at least once each month. Tests must include: (1) Breaking continuity of the ground check conductor, where ground check monitoring is used; and (2) Actuating at least two (2) of the auxiliary protective relays. Examination must include visual observation of all components of the circuit breaker and its auxiliary devices, and such repairs or adjustments as are indicated by such tests and examinations shall be carried out immediately. 30 CFR 75.800-4 requires that a record of the examinations and tests be made. These records must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. These records shall be retained at a surface location at the mine for at least one year and shall be made available to authorized representatives of the Secretary, the representative of miners, and other interested persons.

(2) 30 CFR 75.820 requires persons to lock-out and tag disconnecting devices when working on circuits and

equipment associated with high-voltage longwalls.

(3) 30 CFR 75.821(a) requires testing and examination of each unit of high-voltage longwall equipment and circuits to determine that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are being properly maintained to prevent fire, electrical shock, ignition, or operational hazards. These tests and examinations, including the activation of the ground-fault test circuit, are required once every seven days. 30 CFR 75.821(b) requires that each ground-wire monitor and associated circuits be examined and tested at least once every 30 days. 30 CFR 75.821(d) requires that, at the completion of examinations and tests, the person making the examinations and tests must certify that they have been conducted. In addition, a record must be made of any unsafe condition found and any corrective action taken. These certifications and records must be kept at least 1 year.

- Surface Coal Mines and Surface Work Areas of Underground Coal Mines

(4) 30 CFR 77.800 requires that circuit breakers protecting high-voltage portable or mobile equipment be properly tested and maintained. 30 CFR 77.800–1 requires that such circuit breakers be tested and examined at least once each month by a person qualified as provided in 77.103. Tests must include: (1) Breaking continuity of the ground check conductor where ground check monitoring is used; and (2) Actuating any of the auxiliary protective relays. Examination must include visual observation of all components of the circuit breaker and its auxiliary devices, and such repairs or adjustments as are indicated by such tests and examinations shall be carried out immediately. 30 CFR 77.800–2 requires a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits. Such record must be kept in a book approved by the Secretary.

(c) Examinations of Low- and Medium-Voltage Circuits

- Underground Coal Mines

(1) 30 CFR 75.900 requires that circuit breakers protecting low- and medium-voltage power circuits serving three-phase alternating-current equipment be properly tested and maintained. 30 CFR 75.900–3 requires that such circuit breakers be tested and examined at least once each month by a person qualified as provided in 75.153. 30 CFR 75.900–4 requires the operator of any coal mine shall maintain a written record of each

test, examination, repair, or adjustment of all circuit breakers protecting low- and medium-voltage circuits serving three-phase alternating current equipment used in the mine. Such record shall be kept in a book approved by the Secretary.

- Surface Coal Mines and Surface Work Areas of Underground Coal Mines

(2) 30 CFR 77.900 requires that circuit breakers protecting low- and medium-voltage circuits which supply power to portable or mobile three-phase alternating-current equipment be properly tested and maintained. 30 CFR 77.900–1 requires that such circuit breakers be tested and examined at least once each month by a person qualified as provided in 77.103. 30 CFR 77.900–2 requires that a record of the examinations and tests be made.

(d) Tests and Calibrations of Automatic Circuit Interrupting Devices

30 CFR 75.1001–1(b) requires that automatic circuit interrupting devices that protect trolley wires and trolley feeder wires be tested and calibrated at intervals not to exceed 6 months. An authorized representative of the Secretary may require additional testing or calibration of these devices. 30 CFR 75.1001–1(c) requires that a record of the tests and calibrations be kept.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions

the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0116.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 755.

Number of Annual Responses: 359,146.

Frequency: On occasion.

Annual Burden Hours: 67,313 hours.

Annual Respondent or Recordkeeper Cost: \$0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,
Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–15583 Filed 7–21–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****[OMB Control No. 1219–0133]****Proposed Extension of Information Collection; Hazard Communication****AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Hazard Communication.

DATES: All comments must be received on or before September 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2023–0038.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 U.S.C. 811(a)(7) requires, in part, that mandatory standards prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions for safe use or exposure.

MSHA’s hazardous communications (HazCom) standards in 30 CFR 47 require mine operators to evaluate the hazards of chemicals they produce or use and to provide information to miners concerning chemical hazards by means of a written HazCom program including a list of all hazardous chemicals known at the mine, labeling containers of hazardous chemicals, providing access to Material Safety Data Sheets (MSDS) and administering initial miner training.

(1) HazCom Program

(a) 30 CFR 47.31(a) requires each operator to develop and implement a written HazCom program. 30 CFR 47.32(a) requires the program to include hazard determination, labels and other forms of warning, and MSDSs. 30 CFR 47.32(b) provides a list or other record identifying all hazardous chemicals known to be at the mine. The list must use a chemical identity that permits cross-referencing between the list, a chemical’s label, and its MSDS; and be compiled for the whole mine or by individual work areas.

(b) 30 CFR 47.31(b) requires each operator to maintain a written HazCom program for as long as a hazardous chemical is known to be at the mine.

(c) 30 CFR 47.31(c) requires each operator to share relevant HazCom information with other on-site operators whose miners can be affected. 30 CFR 47.32(c) provides the methods for information sharing.

(d) 30 CFR 47.32(a)(4) requires miner training for the HazCom program.

(2) Container Labels and Other Forms of Warning

(a) 30 CFR 47.41(a) requires each operator to ensure that each container of a hazardous chemical has a label. If a container is tagged or marked with the appropriate information, it is labeled. 30 CFR 47.42 specifies the label contents as: be prominently displayed, legible, accurate, and in English; display appropriate hazard warnings; use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical’s label, and its MSDS; and include on labels for customers, the name and address of the operator or another responsible party who can provide additional information about the hazardous chemical.

(b) 30 CFR 47.41(b) requires that for each hazardous chemical produced at the mine, the operator must prepare a container label and update this label with any significant, new information about the chemical’s hazards within 3 months of becoming aware of this information.

(c) 30 CFR 47.41(c) requires that for each hazardous chemical brought to the mine, the operator must replace an outdated label when a revised label is received from the chemical’s manufacturer or supplier. The operator is not responsible for an inaccurate label obtained from the chemical’s manufacturer or supplier.

(d) 30 CFR 47.43 allows each operator to use signs, placards, process sheets, batch tickets, operating procedures, or other label alternatives for individual, stationary process containers provided that the alternative identifies the container to which it applies, communicates the same information as required on the label, and is readily available throughout each work shift to miners in the work area.

(3) Material Safety Data Sheets (MSDS)

(a) 30 CFR 47.51 requires each operator to have an MSDS for each hazardous chemical which they produce or use. The MSDS may be in any medium, such as paper or electronic, that does not restrict availability. 30 CFR 47.52 specifies the contents of MSDS to be legible, accurate, and in English; use a chemical identity that permits cross-referencing between the list of hazardous chemicals, the chemical’s label, and its MSDS; and contain information, or indicate if no information is available, for the categories listed in 30 CFR Table 47.52(c).

(b) 30 CFR 47.51(a) requires that the operator to prepare and update an MSDS for a hazardous chemical produced at the mine.

(c) 30 CFR 47.51(b) requires that the operator to develop an MSDS for each hazardous chemical brought to the mine, based on the MSDS received from the chemical manufacture or supplier.

(d) If the mine produces or uses hazardous waste, 30 CFR 47.53 requires each operator to provide potentially exposed miners and designated representatives access to available information for the hazardous waste that identifies its hazardous chemical components, describes its physical or health hazards, or specifies appropriate protective measures.

(e) Although the operator is not responsible for an inaccurate MSDS obtained from the chemical's manufacturer, supplier, or other source, 30 CFR 47.51(c) requires each operator to replace an outdated MSDS upon receipt of an updated revision and obtain an accurate MSDS as soon as possible after becoming aware of an inaccuracy.

(f) 30 CFR 47.54 requires each mine operator to make MSDSs accessible to miners during work shift at each work area or an alternative location.

(g) 30 CFR 47.55 requires each operator to retain its MSDS for as long as the hazardous chemical is known to be at the mine and notify miners at least 3 months before disposing of the MSDS.

(4) Making HazCom Information Available

(a) Upon request, 30 CFR 47.71 requires each operator to provide access to all HazCom materials required in Part 47 to miners and designated representatives, except trade secrets hazardous material as provided in 30 CFR 47.81 through 47.87.

(b) 30 CFR 47.72 requires that the operator to provide the first copy and each revision of the HazCom material without cost, and at non-discriminatory and reasonable fees for a subsequent copy.

(c) For a hazardous chemical produced at the mine, 30 CFR 47.73 requires each operator to provide customers, upon request, with the chemical's label or a copy of the label information, and the chemical's MSDS.

(5) Trade Secret Hazardous Chemical

(a) 30 CFR 47.81 allows each operator to withhold the identity of a trade secret chemical, including the name and other specific identification, from the written list of hazardous chemicals, the label, and the MSDS, provided that the operator can support the claim that the chemical's identity is a trade secret, identifies the chemical in a way that it can be referred to without disclosing the secret, indicates in the MSDS that the

chemical's identity is withheld as a trade secret, and discloses in the MSDS information on the properties and effects of the hazardous chemical. The operator must make the chemical's identity available to miners, designated representatives, and health professionals in accordance with the provisions of this subpart.

(b) 30 CFR 47.82 requires the operator to disclose to MSHA any information that is required for operators related to trade secret hazardous chemicals. The operator is required to make a trade secret claim, no later than at the time the information is provided to MSHA for the Agency to determine the trade secret status and implement the necessary protection.

(c) 30 CFR 47.83 requires upon request, the operator to immediately disclose the identity of a trade secret chemical to the treating health professional in the case of a medical emergency or first-aid treatment. The operator may require a written statement of need and confidentiality agreement as soon as circumstances permit.

(d) Upon request, the operator must disclose the identity of a trade secret chemical in a non-emergency situation to an exposed miner, the miner's designated representative, or a health professional under conditions listed in 30 CFR 47.84.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Hazard Communication. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that

should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at DOL-MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Hazard Communication. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0133.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 15,021.

Frequency: On occasion.

Number of Annual Responses: 621,433.

Annual Burden Hours: 146,902 hours.

Annual Respondent or Recordkeeper Cost: \$55,254.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023-15582 Filed 7-21-23; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration**

[OMB Control No. 1219-0097]

Proposed Extension of Information Collection; Rock Burst Control Plan, (Pertains to Underground Metal/Nonmetal Mines)**AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for the Rock Burst Control Plan, (Pertains to Underground Metal/Nonmetal Mines).

DATES: All comments must be received on or before September 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2023-0025.

- *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov

(email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) (Pub. L. 91-173, as amended by Pub. L. 95-164), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 CFR 57.3461 requires operators of underground metal and nonmetal mines which have experienced a rock burst to report to the nearest MSHA office of each rock burst within 24 hours. These mine operators are also required to develop and implement a rock burst control plan within 90 days after a rock burst has been experienced. Plans are required to include: (1) mining and operating procedures designed to reduce the occurrence of rock bursts; (2) monitoring procedures where detection methods are used; and (3) other measures to minimize exposure of persons to areas prone to rock bursts. Plans are also required to be updated as conditions warrant and are to be made available to MSHA inspectors and to miners or their representatives. The standard does not require that all underground metal and nonmetal mines develop these preventative measures, but it does require that all mines with a rock burst history develop and implement a rock burst control plan.

Rock bursts pose a serious threat to the safety of miners in the area affected by the burst. These bursts may reasonably be expected to result in the entrapment of miners, serious physical harm, and death. Recent mining technology utilizes scientific methods of monitoring rock stresses which allows for the prediction of an oncoming burst. These predictions can be used by the mine operator to move miners to safer locations and to identify areas which need relief drilling.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Rock Burst Control Plan, (Pertains to Underground Metal/

Nonmetal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Rock Burst Control Plan, (Pertains to Underground Metal/Nonmetal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0097.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 1.
Frequency: On occasion.
Number of Annual Responses: 1.
Annual Burden Hours: 12 hours.
Annual Respondent or Recordkeeper
Cost: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,
Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–15591 Filed 7–21–23; 8:45 am]

BILLING CODE 4510–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–110; MC2023–187 and CP2023–191]

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:* July 26, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2022–110; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 20, Filed Under Seal; *Filing Acceptance Date:* July 18, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 26, 2023.

2. *Docket No(s):* MC2023–187 and CP2023–191; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 22 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 18, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 26, 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**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–15618 Filed 7–21–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International 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 Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 24, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 21 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–186 and CP2023–190.

Tram T. Pham,
Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–15549 Filed 7–21–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International 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 Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the

Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 24, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 22 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–187 and CP2023–191.

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–15571 Filed 7–21–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, July 26, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at www.sec.gov.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934.

2. The Commission will consider whether to propose new and amended rules under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 relating to conflicts of interest associated with broker-dealers' and investment advisers' use of predictive data analytics in connection with certain investor interactions.

3. The Commission will consider whether to propose amendments to the exemption for internet advisers from the prohibition against registration under the Investment Advisers Act of 1940.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 19, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–15664 Filed 7–20–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–XXX, OMB Control No. 3235–XXXX]

Proposed Collection; Comment Request: Rule 15c6–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information provided for in Rule 15c6–2 (17 CFR. 240.15c6–2) under the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a *et seq.*). The Commission will submit the collection of information to the Office of Management and Budget (“OMB”) for approval. The title of the information collection is “Rule 15c6–2.” An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Rule 15c6–2 was adopted as part of the final rules to shorten the standard settlement cycle for securities transactions from two business days after the transaction date to one business day following the transaction date. The compliance date for adopted Rule 15c6–2 is May 28, 2024. Certain provisions of Rule 15c6–2 contain “collection of information” requirements within the meaning of the PRA.¹ The requirements for this collection of information is mandatory for any broker or dealer (“broker-dealer”) engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of

§ 240.15c6–1(a) to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.²

Specifically, for a broker-dealer that determines to establish, maintain, and enforce written policies and procedures pursuant to Rule 15c6–2(a), Rule 15c6–2(b) requires that such policies and procedures must be reasonably designed to (1) identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

The purpose of the collection under Rule 15c6–2 is to ensure that parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer's investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date.

² See 17 CFR 240.15c6–2; Exchange Act Release No. 96930 (Feb. 15, 2023) 88 FR 13872 (Mar. 6, 2023) (“Rule 15c6–2 Adopting Release”); see also Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (“Rule 15c6–2 Proposing Release”).

¹ See 44 U.S.C. 3501 *et seq.*

The respondents to the collection of information are broker-dealers that are parties to institutional trades. As of December 31, 2021, 3,508 broker-dealers were registered with the Commission.³ Of those, approximately 143 broker-dealers are participants of the Depository Trust Company (“DTC”),⁴ a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as “clearing brokers” within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (“DVP”) and receipt-versus-payment (“RVP”) methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is the only clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6–2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (*i.e.*, clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (“FINRA”), the Commission estimates that approximately 268 additional broker-dealers may serve institutional customers.⁵ Accordingly, the Commission estimates that

approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.

Rule 15c6–2 will impose both initial and ongoing burdens. The extent to which a respondent will incur a burden to comply with the collection of information under Rule 15c6–2 will depend on the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be used to comply with the rule and how any existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions, and the securities industry considers achieving “same-day affirmation” an industry best practice. Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours⁶ to create policies and procedures required under the rule, and that the internal cost (or monetized value of the hour burden) of this one-time burden per broker-dealer would be \$88,880.⁷

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on a respondent broker-dealer of 480 hours,⁸ and an internal

cost (or monetized value of the hour burden) per broker-dealer of \$172,416.⁹ The total industry internal cost is estimated to be approximately \$107M.¹⁰

Rule 15c6–2 imposes a recordkeeping requirement on broker-dealers to maintain policies and procedures consistent with the rule. Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6–2, a broker-dealer can request confidential treatment of the information. If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.

Pursuant to Exchange Act Rule 17a–4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.¹¹

Pursuant to 17 CFR 240.17a–4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.¹²

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

⁹ This figure was calculated as follows: (Assistant General Counsel at \$543/hour × 48 hours = \$26,064) + (Compliance Attorney at \$426/hour × 192 hours = \$81,792) + (Senior Risk Management Specialist at \$417/hour × 48 hours = \$20,016) + (Risk Management Specialist at \$232/hour × 192 hours = \$44,544) = \$172,416 × 411 respondents = \$70,862,976.

¹⁰ This figure was calculated as follows: \$36,529,680 (industry one-time burden) + \$70,862,976 (industry ongoing burden) = \$107,392,656.

¹¹ 17 CFR 240.17a–4(b)(7). The title of the information collection for 17 CFR 240.17a–4 is “Records to be Preserved by Broker-Dealers” (OMB Control No. 3235–0279).

¹² 17 CFR 240.17a–4(e)(7).

³ This estimate is derived from FOCUS Report data as of December 31, 2021.

⁴ See DTCC, DTC Member Directories, <https://www.dtcc.com/client-center/dtc-directories> (last updated July 1, 2023).

⁵ Specifically, statistics compiled by FINRA suggest that approximately 256 small firms and 12 medium-sized firms in the “Trading and Execution” category perform “Institutional Brokerage.” FINRA, 2022 FINRA Industry Snapshot 33, 34 (2022), <https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf>.

⁶ This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

⁷ This figure was calculated as follows: (Assistant General Counsel at \$543/hour × 20 hours = \$10,860) + (Compliance Attorney at \$426/hour × 120 hours = \$51,120) + (Senior Risk Management Specialist at \$417/hour × 20 hours = \$8,340) + (Risk Management Specialist at \$232/hour × 80 hours = \$18,560) = \$88,880 × 411 respondents = \$36,529,680.

⁸ This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance

information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing by September 22, 2023.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 18, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-15573 Filed 7-21-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 27, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: July 20, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023-15696 Filed 7-20-23; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34962; File No. 812-15181]

KKR Real Estate Select Trust Inc., et al.

July 18, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: KKR Real Estate Select Trust Inc., KKR Registered Advisor LLC, Kohlberg Kravis Roberts & Co. L.P., KKR Real Estate Finance Manager LLC, KREST Operating Partnership L.P., KKR Asia Property Partners SCSp, KKR Property Partners Americas L.P., KKR Property Partners Americas (EEA) SCSp, KKR Property Partners Europe (EUR) SCSp, KKR Property Partners Europe GER (EUR) SCSp, KKR Real Estate Partners Americas II L.P., KKR Real Estate Partners Americas II SBS L.P., KKR Real Estate Partners Americas III SCSp, KKR Real Estate Partners

Americas IV SCSp, KKR Real Estate Partners Europe II (USD) SCSp, KKR Real Estate Partners Europe II (EUR) SCSp, KKR Real Estate Partners Europe III (USD) SCSp, KKR Real Estate Partners Europe III (EUR) SCSp, KKR Asia Real Estate Partners SCSp, KKR Asia Real Estate Partners II SCSp, KKR Real Estate Finance Trust Inc., KKR Real Estate Stabilized Credit Partners L.P.; KKR Real Estate Credit Opportunity Partners II L.P., KKR Real Estate Credit Opportunity Partners II (Offshore) L.P., KKR Real Estate Credit Opportunity Partners III L.P., KKR Opportunistic Real Estate Credit Fund II L.P., KKR Opportunistic Real Estate Credit Fund II SCSp, MCS Corporate Lending LLC, and Merchant Capital Solutions LLC.

FILING DATES: The application was filed on November 27, 2020, and amended on February 16, 2021, August 12, 2022, January 13, 2023, and June 5, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on August 14, 2023 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: compliance@kk.com, rajib.chanda@stblaw.com, stblaw.com, bwells@stblaw.com and nathan.somogie@stblaw.com.

FOR FURTHER INFORMATION CONTACT:

Barbara T. Heussler, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fourth amended and restated application, dated June 5, 2023, which may be obtained via the Commission's website by searching for

the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-15561 Filed 7-21-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97936; File No. SR-GEMX-2023-08]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 15 (Risk Protections) To Adopt an Active Quote Protection

July 18, 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 July 5, 2023, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 15 (Risk Protections) to adopt an active quote protection.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt an active risk counter functionality called active quote protection ("Active Quote Protection") in Options 3, Section 15. The Exchange intends to introduce the foregoing changes with its upcoming technology migration to enhanced Nasdaq, Inc. ("Nasdaq") functionality, and intends to begin implementation prior to December 29, 2023.³ The Exchange has announced the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.⁴

The Exchange proposes to offer an optional active risk counter functionality called Active Quote Protection, which will be available to Market Makers as an alternative to existing passive risk counter functionality described in Options 3, Section 15(a)(3)(B) (*i.e.*, "Automated Quotation Adjustments").⁵ The proposed Active Quote Protection functionality will be similar to existing active risk counter functionality on another options exchange, which currently allows exchange users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.⁶

³ See Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR-GEMX-2023-04) (delaying the implementation of all GEMX technology migration rule filings).

⁴ See Options Trader Alert #2023-4 at <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2023-4>.

⁵ As described below, the Exchange will specifically define this passive risk counter functionality as "Rapid Fire" within this Rule.

⁶ See MEMX LLC ("MEMX") Rule 21.16(b) (Active Risk Counter). See also Securities Exchange Act Release No. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR-MEMX-2022-10). Similar to the proposed Active Quote Protection, the active risk counter on MEMX is voluntary and offers a way for users to proactively manage their risk. The MEMX risk protection, however, allows the user to actively manage all the risk limits specified in MEMX's rule (*e.g.*, executed contracts, notional value, etc.) whereas the Exchange's proposal would allow Market Makers to actively

Today, the Exchange requires Market Makers to configure risk exposure thresholds based on various metrics for each options class, including percentage of executed quotes ("Percentage Threshold"), total number of executed contracts ("Volume Threshold"), absolute value of the difference between long and short positions ("Delta Threshold"), and absolute value of the difference between contracts bought and contracts sold ("Vega Threshold") (collectively, "Thresholds").⁷ As set forth in Options 3, Section 15(a)(3)(B)(i), the System tracks each Threshold with a corresponding risk counter over a Market Maker-specified rolling time period not to exceed 30 seconds. Furthermore, Section 15(a)(3)(B)(i) and (ii) describes that when a risk counter exceeds the corresponding Threshold during the specified time period, the System would automatically remove the Market Maker's quotes in all series of the applicable options class (each, a "Purge Event"). As a result of a Purge Event, the corresponding risk counter and Threshold would reset upon such removal. The Exchange also notes that pursuant to Section 15(a)(3)(B)(iii) today, the Thresholds and risk counters can be completely reset if the Market Maker specifically requests the System to remove quotes in all series of an options class. This risk protection is passive in that the risk counters wait to reset until the expiry of a specified time period, a Purge Event, or when the Market Maker otherwise sends a specific instruction to the Exchange to remove quotes to completely reset the counters.

The Exchange now proposes to introduce a new risk protection called Active Quote Protection that would enable Market Makers to actively manage their executed contract limit ("Contract Limit") by sending an electronic instruction to the Exchange to decrement their executed contract limit counter ("Limit Counter") by a specified amount at any time, rather than waiting until the expiry of a defined time period, when the risk limit is exceeded (like a Purge Event), or when the Market Maker otherwise sends a specific instruction to purge quotes to completely reset the risk counter. The Contract Limit, as set by the Market Maker, would apply for the duration of the trading day. Once the Market

manage executed contracts only, as discussed later in this filing. In addition, the Exchange's proposal will only apply to quotes whereas MEMX's functionality applies to both orders and quotes.

⁷ The Thresholds are described in detail in Options 3, Section 15(a)(3)(B)(i)(a)-(d). If a Market Maker does not provide a parameter for each Threshold, the Exchange will apply default parameters announced to Members.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Maker's Limit Counter exceeds the Contract Limit set by the Market Maker, the System would automatically remove quotes in all series of the applicable options class submitted through the Exchange's Specialized Quote Feed protocol,⁸ identical to how the quote removal mechanism works for a Purge Event today.⁹ Today, Purge Events are triggered under the existing Automated Quotation Adjustments on the first execution that exceeds the applicable Threshold. Once an execution occurs, the System checks all Thresholds to see if they have been exceeded. If exceeded, the Market Maker's quote would be purged pursuant to Options 3, Section 15(a)(3)(B)(iii). In order to remain consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹⁰ prior to the time the applicable Threshold is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed their pre-set Percentage Threshold, Volume Threshold, Delta Threshold, or Vega Threshold.¹¹

Under Active Quote Protection, the System would similarly handle the Market Maker's quote in that the quote could be filled one execution over the Contract Limit before the Market Maker's remaining quotes are cancelled by the System in order to be consistent with the firm quote obligations under Rule 602 of Regulation NMS. Specifically, the Exchange notes that any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹² prior to the time the Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed the Contract Limit.¹³

⁸ Specialized Quote Feed or "SQF" is an interface that only Market Makers may use to submit quotes to the Exchange. See Supplementary Material .03(c) to Options 3, Section 7.

⁹ See Options 3, Section 15(a)(3)(B)(ii) (renumbered as Section 15(a)(3)(B)(iii) under this proposal, as noted below).

¹⁰ The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

¹¹ See current Options 3, Section 15(a)(3)(B)(ii)(b). The Exchange will renumber this as Section 15(a)(3)(B)(iii)(b) and clarify this provision in the manner described later in this filing.

¹² See *supra* note 10.

¹³ For both the current Automated Quotation Adjustments and proposed Active Quote Protection, the System will execute marketable interest up to the size of the Market Maker's quote, but cannot guarantee interest will be fully executed, as is the

Additionally, under Active Quote Protection, Market Makers will be able to submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero.¹⁴ Market Makers that elect to use the proposed Active Quote Protection on a badge¹⁵ will not be able to use the existing Threshold risk protections described above on the same badge (*i.e.*, the active and passive risk counter functionality would be mutually exclusive per badge) given that it would be unnecessarily complex to implement from a technology standpoint. Market Makers may be associated with multiple badges today, so if they want to use both risk protections for their activity on the Exchange, they will be able to set either the active or passive risk counter functionality on each one.

To effectuate the foregoing changes, the Exchange proposes to set forth the new risk protection in subparagraph (B)(ii) of Options 3, Section 15(a)(3), as follows:¹⁶

In lieu of Rapid Fire, a Market Maker may provide an executed contract limit ("Contract Limit") that, if exceeded, the System will automatically remove the Market Maker's quotes in all series of an options class submitted through SQF. The System will apply the Contract Limit for the duration of the trading day. For each class of options, the System will maintain an active limit counter that will track the current number of contracts executed through the Market Maker's quotes ("Limit Counter"). If the Limit Counter exceeds the Contract Limit established by the Market Maker, the System will automatically remove the Market Maker's quotes as described in Section 15(a)(3)(B)(iii). Market Makers may submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero, including to re-enter the System as described in Section 15(a)(3)(B)(v). For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker's badge.

case with any execution in the Exchange's order book. There is always the possibility that the Market Maker's quote size (and/or Market Maker's quote plus other interest on the order book) may not be sufficient volume to fill the incoming interest.

¹⁴ As discussed later in this filing, in order to re-enter the System after their quotes are purged pursuant to the Active Quote Protection, Market Makers will need to submit the same request to fully decrement their Limit Counter to zero.

¹⁵ A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

¹⁶ As a result, the Exchange will also renumber existing subparagraphs (B)(ii)–(vi) as proposed subparagraphs (B)(iii)–(vii).

As described above, once the Limit Counter exceeds the Contract Limit set by the Market Maker under the proposed Active Quote Protection, the System would automatically remove quotes in the same manner as currently specified for a Purge Event in proposed subparagraph (B)(iii) of Options 3, Section 15(a)(3). Accordingly, the Exchange proposes to add Active Quote Protection's Contract Limit throughout this Rule. Specifically, proposed subparagraph (B)(iii) will provide that the System will automatically remove quotes in all series of an options class when the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected series when the above thresholds have been exceeded. Proposed subparagraph (B)(iii)(a) will provide that the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, and Contract Limit are considered independently of each other.

Further, as discussed above, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹⁷ prior to the time the applicable Threshold or Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, even if such execution would cause the Market Maker to exceed any of their pre-set risk limits with respect to any of the foregoing risk parameters. The Exchange notes that the current related Rule in sub-paragraph (B)(ii)(b)(3) only mentions that quotes will execute up to the Market Maker's size, and is silent on marketable orders. In addition, the current Rule does not specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote. As such, the Exchange proposes to add this specificity in proposed sub-paragraph (B)(iii)(b)(3) to better describe how the System operates today for Automated Quotation Adjustments and how the System will operate for proposed Active Quote Protection. In particular, subparagraph (B)(iii)(b)(3) will provide:

The System will execute any marketable orders or quotes that are executable against a Market Maker's quote and received prior to the time the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit is triggered up to the size of the Market Maker's quote, even if such execution results in executions in excess of the Market Maker's applicable Threshold or Contract Limit with respect to any parameter.

¹⁷ See *supra* note 10.

In addition, when the System removes quotes as a result of exceeding the Contract Limit under Active Quote Protection, the Exchange proposes to require the Market Maker to submit a request to re-enter the System. This request will be the same type of message as the request described in proposed subparagraph (B)(ii) where the Market Maker must request to fully decrement their Limit Counter back to zero in order to re-enter the System. This requirement will be added in proposed subparagraph (B)(v) of Options 3, Section 15(a)(3), and will be similar to how the existing quote purge mechanism works for the Thresholds today, except the Market Maker needs to send a separate message (*i.e.*, a re-entry indicator) to re-enter the System when their quotes are purged as a result of exceeding any of the existing Thresholds.

Similar to how default parameters are currently applied for each of the existing Thresholds described above, the Exchange proposes to apply a default parameter for the Active Quote Protection Contract Limit (which would be announced to Members) if the Market Maker opting to use Active Quote Protection does not provide a Contract Limit at the outset.¹⁸ Accordingly, proposed subparagraph (B)(vi) will provide that if a Market Maker does not provide a parameter for each of the automated quotation removal protections described in (B)(i)(a)–(d) and (B)(ii) above, the Exchange will apply default parameters, which are announced to Members.

The Exchange also proposes that the new Active Quote Protection would leverage the existing market-wide speed bump (“MWSB”) functionality currently set forth in Options 3, Section 15(a)(3)(B)(vi) (renumbered as Section 15(a)(3)(B)(vii) under this proposal). Today, MWSB is a risk protection offered alongside the current Automated Quotation Adjustments and triggers when, during a time period established by the Market Maker, the total number of Purge Events exceeds a market-wide parameter provided to the Exchange by the Market Maker.¹⁹ When MWSB is triggered, the Exchange automatically purges the Market Maker’s quotes in all classes, and the Market Maker must request re-entry to the System by contacting the Exchange’s Operations Department. Today, MWSB is meant to provide Market Makers with protection from the risk of multiple executions

across multiple series of an option or across multiple options. This risk protection recognizes that risk to Market Makers is not limited to a single series in an option or even to all series in an option; Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. MWSB is therefore intended to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange believes that tracking the number of Active Quote Protection Purge Events for a Market Maker against its MWSB market-wide parameter would be similarly useful for managing market risk.

To that end, the Exchange proposes to update MWSB to add purge events under Active Quote Protection to the MWSB counter such that Active Quote Protection purge events and Purge Events under the current Automated Quotation Adjustments will be aggregated together as counting toward the specified market-wide parameter. Accordingly, the Exchange proposes to add references to the Active Quote Protection rule (*i.e.*, proposed subparagraph (B)(ii) of Options 3, Section 15(a)(3)) throughout the MWSB rule in proposed subparagraph (B)(vii), specifically:

In addition to the automated quotation removal protections described in (B)(i)(a)–(d) and (B)(ii) above, a Market Maker must provide a market wide parameter by which the Exchange will automatically remove a Market Maker’s quotes in all classes when, during a time period established by the Market Maker, the total number of quote removal events specified in (B)(i)(a)–(d) and (B)(ii) exceeds the market wide parameter provided to the Exchange by the Market Maker. Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE. Market Makers must request the Exchange enable re-entry by contacting the Exchange’s Operations Department.

The following example illustrates the proposed behavior of the Active Quote Protection risk protection:

Market Maker AAPL

Contract Limit: 100.

- Market Maker trades a transaction for 10 contracts in AAPL; Limit Counter goes from 0 to 10.

- Market Maker sends a request to decrement its Limit Counter in AAPL for 10 contracts; Limit Counter goes from 10 to 0.

- Market Maker trades a transaction for 20 contracts in AAPL; Limit Counter goes from 0 to 20.

- Market Maker trades a transaction for 50 contracts in AAPL; Limit Counter goes from 20 to 70.

- Market Maker sends a request to decrement its Limit Counter in AAPL for 20 contracts; Limit Counter goes from 70 to 50.

- Market Maker trades a transaction for 60 contracts in AAPL; Limit Counter goes from 50 to 110 and all Market Maker quotes in AAPL are automatically purged after the execution because the Limit Counter exceeded the Market Maker’s Contract Limit of 100 executed contracts.

- At this point, the Market Maker must send a request to fully decrement its Limit Counter in AAPL back to zero in order to begin quoting again.

The following example illustrates how MWSB will work with the proposed Active Quote Protection functionality:

- Assume Market Maker in AAPL and SPY has Automated Quotation Adjustments set for AAPL and Active QP set for SPY.

- Market Maker sets its MWSB market-wide parameter so that it is triggered at 25 purge events within a 20 second time period.

- On a given trading day, if an Active Quote Protection Purge Event is triggered 15 times in SPY and an Automated Quotation Adjustment Purge Event is triggered 10 times in AAPL, all within 20 seconds, then the Exchange will automatically remove all of the Market Maker’s quotes AAPL and SPY.

Technical Amendments

The Exchange proposes a few technical, non-substantive amendments in Options 3, Section 15(a)(3)(B). With the addition of the new Active Quote Protection rule in proposed subparagraph (B)(ii), the Exchange proposes to renumber existing subparagraphs (B)(ii)–(vi) as proposed subparagraphs (B)(iii)–(vii) and make related changes to update existing cross-cites within Section 15(a)(3)(B). The Exchange also proposes to title subparagraph (B)(i) as “Rapid Fire” and subparagraph (B)(vii) as “Market-Wide Speed Bump” to more clearly identify which rules apply to which risk protections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

¹⁸ The Exchange will initially set the default Contract Limit at 100 contracts.

¹⁹ Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE.

of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed Active Quote Protection risk protection is consistent with the Act because it will enhance the risk protection tools available to Market Makers by introducing a new method of establishing and monitoring for risk parameters that will be offered as an alternative to existing Rapid Fire risk parameters, thereby supporting a Market Maker's ability to manage their risk on the Exchange, and also providing them with flexibility to use additional tools to manage risk. As noted above, while the passive (Rapid Fire) and active (Active QP) risk counter functionality will be mutually exclusive on each badge, Market Makers will still be able to use both to cover their activity on the Exchange by getting multiple badges and setting each risk counter by badge. The Exchange believes that offering more risk management tools to Market Makers would mitigate their exposure to excessive risk. The Exchange further believes that having the new Active Quote Protection functionality leverage the existing MWSB functionality will similarly support a Market Maker's ability to manage their risk on the Exchange by including Active Quote Protection purge events to the MWSB counter. As noted above, the risk to Market Makers is not limited to a single series in an option or even multiple series in an option as Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. Today, MWSB is designed to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange therefore believes that tracking the number of Active Quote Protection purge events for a Market Maker against its MWSB market-wide parameter would be

similarly useful for managing market risk so that they can provide deep and liquid markets to the benefit of all investors. Ultimately, the Exchange believes that providing Market Makers with additional tools in the manner described above to manage their risk parameters serves to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because Market Makers will be better able to manage risks with these tools.

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

The Exchange further represents that its proposal will continue to operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable interest that is executable against a Market Maker's quotes that are received²² by the Exchange prior to the time this functionality is triggered will be automatically executed at the price up to the Market Maker's size, regardless of whether such execution results in executions in excess of the Market Maker's pre-set Contract Limit.²³ As discussed above, this is also in line with how current Rapid Fire operates today. The Exchange believes that the proposed changes in proposed subparagraph (B)(iii)(b) to specify that this Rule will apply to marketable orders and quotes (currently silent on marketable orders), and to specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote, will promote clarity in how the System currently operates for Rapid Fire and will operate for Active Quote Protection.

As noted above, the proposed Active Quote Protection functionality is similar to existing active risk counter functionality on another options exchange, which currently allows users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is reached or the user otherwise sends a specific instruction to the exchange to

completely reset the counting program.²⁴

Technical Amendments

The Exchange believes that the technical amendments in Options 3, Section 15(a)(3)(B) described above are consistent with the Act because they will promote clarity in the rules and make the Rulebook easier to navigate for market participants by updating rule numbering and existing cross-cites as described above. Furthermore, the Exchange also believes that adding the defined terms for Rapid Fire and MWSB in the rule text will promote clarity so that Members can more easily locate the relevant functionalities in the Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed Active Quote Protection functionality will impose any undue burden on intra-market competition as it is aimed at mitigating exposure to excessive risk when trading on the Exchange. While the Exchange will offer the proposed functionality to Market Makers only, the proposed risk protection is intended to provide Market Makers with an additional tool to manage their risk parameters in a manner they deem appropriate. As such, the Exchange believes that the proposed functionality may facilitate Market Makers' provision of liquidity on the Exchange, thereby benefitting all market participants through additional execution opportunities at potentially improved prices.

The Exchange also believes that its Active Quote Protection proposal does not impose an undue burden on inter-market competition as the proposed risk protection is similar to an existing risk protection on MEMX²⁵ as described above, and any options market could adopt similar rules.

Lastly, the Exchange does not believe that the proposed technical amendments in Options 3, Section 15(a)(3)(B) will impose an undue burden on competition as these are non-substantive changes to promote clarity in the rules and make the Rulebook easier to navigate for market participants.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² See *supra* note 10.

²³ See proposed subparagraph (B)(iii)(b) of Options 3, Section 15(a)(3).

²⁴ See *supra* note 6.

²⁵ See *supra* note 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act²⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2023-08 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-GEMX-2023-08. 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-GEMX-2023-08 and should be submitted on or before August 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-15569 Filed 7-21-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97939; File No. SR-NASDAQ-2023-020]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program

July 18, 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 July 6, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Supplementary Material .01 to General 4, Rule 1240 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program ("MQP").

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and 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

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

under the rules of the self-regulatory organizations (“SROs”). The CE Program for registered persons of Exchange members is codified under General 4, Rule 1240.³

The Exchange proposes to amend Supplementary Material .01 to General 4, Rule 1240 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule). This proposal is based on a rule change recently submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”), and is intended to align the Exchange’s continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.⁴ The Exchange is proposing to adopt such changes substantially in the same form as proposed by FINRA.

On September 21, 2021, the Commission approved a proposed rule change to amend FINRA Rules 1210 (Registration Requirements) and 1240 (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.⁵

Prior to the MQP, individuals whose registrations as representatives or principals that 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.⁶ 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 Supplementary Material .01 to General 4, Rule 1240, 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 March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under General 4, Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, “Look-Back Individuals”).⁷

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.⁸

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 also 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 requalify by examination or having to obtain an examination waiver).

⁷ 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. The Exchange stopped accepting new participants for the FSAWP beginning on March 15, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

to communication and operational issues.⁹ 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, the Exchange is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.¹⁰ 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, 2024.¹¹

The Exchange believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program’s launch.¹² The Exchange believes that greater public awareness of the MQP, coupled with a six-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

⁹ 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.

¹⁰ 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 March 15, 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.

¹¹ 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.

¹² 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>.

³ See also General 4, Rule 1210.07 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

⁴ See Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005) (“FINRA Rule Change”).

⁵ See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). Other exchanges, including Nasdaq, subsequently filed copycat rule filings to align their continuing education rules with those of FINRA. See Securities Exchange Act Release No. 94400 (March 11, 2022), 87 FR 15286 (March 17, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2022–021).

⁶ 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

through a manner to be determined by FINRA.¹³ The Exchange 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.¹⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹⁵ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange 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. The Exchange 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 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASDAQ has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ 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)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ 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. NASDAQ 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. NASDAQ 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, NASDAQ 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.²¹

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)²² 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:

²¹ 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).

²² 15 U.S.C. 78s(b)(2)(B).

¹³ 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.

¹⁴ 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.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2023-020 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2023-020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-NASDAQ-2023-020 and should be submitted on or before August 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-15578 Filed 7-21-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97938; File No. SR-NYSEAMER-2023-35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change for New Rule 971.1NYP

July 18, 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 July 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, 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 new Rule 971.1NYP regarding its Customer Best Execution ("CUBE") Auction to reflect the implementation of the Exchange's Pillar trading technology on its options market and to modify Rule 971.1NY. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange plans to transition its options trading platform to its Pillar technology platform. The Exchange's affiliated options exchange, NYSE Arca, Inc. ("NYSE Arca" or "Arca Options") is currently operating on Pillar, as are the Exchange's cash equity markets and those of its national securities exchange affiliates' cash equity markets.³ For this transition, the Exchange proposes to use the same Pillar technology already in operation on Arca Options.⁴ In doing so, the Exchange will be able to offer not only common specifications for connecting to both of its equity and options markets, but also common trading functions across the Exchange and its affiliated options exchange, NYSE Arca Options.

The Exchange plans to roll out the new technology platform over a period of time based on a range of underlying symbols beginning on October 23, 2023.⁵ As was the case for Arca Options when it transitioned to Pillar, the Exchange will announce by Trader Update when underlying symbols will be transitioning to the Pillar trading platform. With this transition, certain rules would continue to be applicable to options symbols trading on the current trading platform but would not be applicable to options symbols that have transitioned to trading on Pillar.

In this regard, the Exchange recently adopted new rules to reflect the priority, ranking, and allocation of single-leg interest on Pillar, including Rule 964NYP ("Pillar Rule 964NYP")⁶ and

³ Together with NYSE American LLC, the Exchange's national securities exchange affiliates' cash equity markets include: the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc.

⁴ See Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (SR-NYSEArca-2021-47) (the "Arca Options Approval Order").

⁵ See Trader Update, January 30, 2023 (announcing Pillar Migration Launch date of October 23, 2023, for the Exchange), available here: <https://www.nyse.com/trader-update/history#110000530919>. The Exchange would not begin to migrate underlying symbols to the Pillar platform until all Pillar-related rule filings (*i.e.*, with a "P" modifier) are either approved or operative, as applicable.

⁶ See Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations) and 964.2NYP (Participation Entitlement of Specialists and e-Specialists) (collectively, the "American Pillar Priority Rules"). See also Securities Exchange Act Release No. 97297 (April 13, 2023), 88 FR 24225 (April 19, 2023) (SR-NYSEArca-2023-16) (adopting the American Pillar

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 17 CFR 200.30-3(a)(12).

has adopted a new rule regarding the trading of Complex Orders on Pillar.⁷ In addition, the Exchange has submitted a filing to adopt new rules for the operation of order types, Market Maker quotations, opening auctions, and risk controls on the Pillar platform.⁸

On Pillar, and as discussed in detail herein, the Exchange will continue to conduct CUBE Auctions consistent with current functionality. However, proposed Rule 971.1NYP (the “Rule”) regarding its CUBE Auction (the “CUBE Auction”; “CUBE”; or the “Auction”) would incorporate the Exchange’s priority and allocation scheme per Pillar Rule 964NYP, which includes Pillar concepts and terminology, and would also include enhancements to CUBE that will be available on the Pillar trading platform. The proposed enhancements would align the operation of the CUBE Auction with similar price-improvement mechanisms already available on other options exchanges.⁹ As such, this proposal is competitive insofar as the proposed Pillar-related enhancements to CUBE are currently available on other options exchanges.

The Exchange believes the proposed Rule for CUBE Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for CUBE Orders of all sizes in a competitive auction process, which may lead to enhanced liquidity and tighter markets.¹⁰

Priority Rules on an immediately effective basis, which rules utilize Pillar concepts and incorporate the Exchange’s current Customer priority and pro rata allocation model) (the “American Pillar Priority Filing”). The American Pillar Priority Rules (like proposed Rule 971.1NYP) will not be implemented until all other Pillar-related rule filings are either effective or approved, as applicable. *See id.*

⁷ See Securities Exchange Act Release No. 97739 (June 15, 2023), 88 FR 40893 (June 22, 2023) (SR–NYSEAMER–2023–17) (order approving new Rule 980NYP (Complex Order Trading)).

⁸ See SR–NYSEAMER–2023–34 (proposing, on an immediately effective basis, new Rules 900.3NYP (Orders and Modifiers), 925.1NYP (Market Maker Quotations), 928NYP (Pre-Trade and Activity-Based Risk Controls), 928.1NYP (Price Reasonability Checks—Orders and Quotes), and 952NYP (Auction Process)).

⁹ See, e.g., Cboe Exchange, Inc. (“Cboe”) Rule 5.37 (describing Automated Improvement Mechanism (“AIM”), which is an electronic price improvement auction for paired orders); Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 21.19 (same); Nasdaq ISE, LLC (“Nasdaq ISE”), Options 3, Section 13 (describing Price Improvement Mechanism for Crossing Transactions, which is an electronic price improvement auction for paired orders).

¹⁰ An ATP Holder is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. *See* Rule 900.2NY. An ATP is an American Trading Permit issued by the Exchange for effecting approved

Proposed Use of “P” Modifier

As proposed, and consistent with the American Pillar Priority Filing, the proposed Rule would have the same number as the current CUBE rule, but with the modifier “P” appended to the rule number.¹¹ As such, except Rule 971.1NY (Single-Leg Electronic Cross Transactions) would continue to apply to CUBE Auctions in symbols traded on the Exchange’s current system.¹²

Proposed Rule 971.1NYP, however, would govern CUBE Auctions for symbols that have migrated to the Pillar trading platform.¹³ To make clear this distinction, the Exchange proposes to add a preamble to current Rule 971.1NY (Single-Leg Electronic Cross Transactions) specifying that it would not be applicable to trading on Pillar, *i.e.*, once the migration to Pillar is complete, the current CUBE rule will not apply to CUBE Auctions.¹⁴

As with the Pillar Priority Rules, the Exchange will not implement proposed Rule 971.1NYP until all other Pillar-related rule filings (*i.e.*, with a “P” modifier) are either approved or operative, as applicable, and the Exchange announces the rollout of underlying symbols to Pillar by Trader Update.

Overview of the CUBE Auctions

Rule 971.1NY describes the CUBE Auction, which is an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange.¹⁵ The CUBE Auction is designed to provide price improvement for “CUBE Orders” (described below) of any size.

To commence an Auction, an ATP Holder (“Initiating Participant”) may

securities transactions on the Exchange’s Trading Facilities. *See id.*

¹¹ See American Pillar Priority Filing (adopting, among other rules, Pillar Rule 964NYP, which will replace and supersede current Rule 964NY when the Exchange migrates to Pillar and describing that any Exchange rule with a “P” modifier will be applicable to options trading in symbols that have migrated to Pillar).

¹² The Exchange notes that it proposes one clarifying change to current Rule 971.1NY (regarding rejection of certain CUBE Orders submitted near the end of the trading day). *See supra* note 61.

¹³ The Exchange believes that using the “P” modifier to demarcate rules that apply solely to trading on the Pillar platform adds clarity, transparency, and internal consistency to Exchange rules. *See id.* *See also* Arca Pillar Approval Order.

¹⁴ See proposed Rule 971.1NYP (with new preamble specifying that it would not be applicable to trading on Pillar). Following the completed migration to Pillar, the Exchange will file a rule proposal to delete rules that are no longer operative because they apply only to trading on the Exchange’s current system (including current Rule 971.1NY).

¹⁵ *See generally* Rule 971.1NY (Single-Leg Electronic Cross Transactions).

electronically submit for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (“CUBE Order”).¹⁶ The Initiating Participant must agree to guarantee the execution of the CUBE Order by submitting a contra-side order representing principal interest or interest it has solicited to trade with the CUBE Order (the “Contra Order”) at a specified stop price or by utilizing auto-match or auto-match limit.¹⁷

Subject to specified exceptions, a CUBE Order to buy (sell) may execute at prices equal to or between the “initiating price” as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound of permissible executions.¹⁸ The current CUBE rule provides that the range of permissible executions depends on whether a CUBE Order is for fewer than 50 contracts¹⁹ or for 50 or more contracts.²⁰ Further, to initiate an Auction, a CUBE Order must meet requirements related to its minimum size, price, and time of submission and acceptance of a CUBE Order is also dependent upon market conditions when submitted.²¹

When the Exchange receives a valid CUBE Order for auction processing, a Request for Responses (“RFR”) detailing the series, the side of the market, the size of the CUBE Order, and the initiating price of the CUBE Order is sent to all ATP Holders that subscribe to receive RFR messages.²² RFR Responses marked as GTX Orders may be submitted to trade with a CUBE Order, provided that such orders specify their price, size and side of the market.²³ Only one Auction in a given series may be conducted at a time.²⁴ The Response Time Interval for a CUBE Auction is a random period of time within parameters designated by the Exchange, which time period shall be no less than 100 milliseconds and no more than 1 second, unless the Auction

¹⁶ See Rule 971.1NY(a).

¹⁷ See Rule 971.1NY(c)(1)(A)–(C).

¹⁸ See Rule 971.1NY(b), (b)(1).

¹⁹ See Rule 971.1NY(b)(1)(B) (providing that if a CUBE Order to buy (sell) is for fewer than 50 contracts, the initiating price shall be the lower (higher) of the CUBE Order’s limit price, the NBO (NBB), or the BO minus one cent (BB plus one cent) and the lower (upper) bound of executions shall be the higher (lower) of the NBB (NBO) or the BB plus one cent (BO minus one cent)).

²⁰ See Rule 971.1NY(b)(1)(A) (providing that if a CUBE Order to buy (sell) is for 50 contracts or more and there is Customer interest in the Consolidated Book at the BB (BO), the lower (upper) bound of executions is the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO)).

²¹ See Rule 971.1NY(b)(2)–(10).

²² See Rule 971.1NY(c)(2)(A).

²³ See Rule 971.1NY(c)(2)(C)(i).

²⁴ See Rule 971.1NY(c).

is concluded early.²⁵ A CUBE Auction may end early if, during the Auction, the Exchange receives interest that would otherwise disrupt the priority of interest in the Consolidated Book.²⁶

At the conclusion of the Auction, including if the Auction ends early, the Exchange evaluates the interest received during the auction and allocates the CUBE Order (in whole or in part) with price improving interest, and/or, absent sufficient improving interest, with the Contra Order.²⁷ The Contra Order may be entitled to a participation guarantee of up to 40% (or 50% if there is only one RFR Response) depending on the CUBE Order contracts remaining after executing with price improving interest.²⁸ CUBE Order allocations are applied in accordance with the Exchange's Customer priority scheme and size pro rata allocation algorithm.²⁹

Summary of Proposed Enhancements to CUBE

The Exchange is not proposing fundamentally different functionality for CUBE Auctions on Pillar. Instead, the Exchange proposes discrete enhancements to the CUBE Auction that are designed to both improve the operation of the CUBE and as noted herein to bring CUBE functionality in alignment with price-improving mechanisms available on other marketplaces. Specifically, and as described in detail below, the Exchange proposes to enhance the CUBE Auction on Pillar as follows:

- **Uniform Pricing Standard.** Adopt one uniform range of permissible executions for CUBE Orders by applying the current pricing requirements set forth in Rule 971.1NY(b)(1)(A) to CUBE Orders of any size. The Exchange, however, would continue to require price improvement to CUBE Orders for fewer than 50 contracts that are submitted when the market is one cent wide (\$0.01). As proposed, the Exchange would also continue to reject (as it does today) smaller-sized CUBE Orders in penny-wide markets if there is same-side (as CUBE Order) displayed Customer interest in the Consolidated Book at the NBBO.³⁰

- **Response Time Interval.** Modify the Response Time Interval for a CUBE Auction to be for a set duration as opposed to the random duration that currently applies to Auctions.

- **GTx Order Handling.** Update GTx Order functionality to reflect handling on Pillar, including how such orders will be prioritized per Pillar Rule 964NYP(e), that such orders may include a specific CUBE "AuctionID", and that such order will cancel (rather than continue to trade) after executing with the CUBE Order to the extent possible.

- **Single Early End Scenario.** Reduce the number of "early conclusion events" based on trading interest that arrives during the Auction to the single scenario set forth in current Rule 971.1NY(c)(4)(D) and described herein.³¹ This proposed change does not impact nor alter the (existing and proposed) requirement that a CUBE Auction end early if there is a trading halt in the affected series, which early termination reason is distinct from ending an Auction early based on incoming options trading interest.³²

- **Surrender Quantity.** Enable Contra Orders that guarantee CUBE Orders with a stop price the option of requesting to receive a lesser participation guarantee than the standard 40% (i.e., the Surrender Quantity).

- **Concurrent Auctions.** Permit multiple CUBE Auctions in the same series to occur at the same time and specify how such Auctions are processed and, to correspond with this functionality change, add "AuctionID" functionality to allow auction responses (i.e., GTx Orders) to specify the CUBE Order with which it would like to trade.

- **CUBE Order Allocation.** Update Auction functionality to reflect the allocation of CUBE Orders against RFR Responses in alignment with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).

In addition to the foregoing enhancements, the proposed Rule includes descriptions of existing CUBE functionality that will persist on Pillar. However, the Exchange proposes to streamline, clarify, or relocate certain of these descriptions (as indicated herein)

to make the proposed Rule more succinct and easier to understand. The Exchange also proposes to replace all instances of "shall" with "will," which is a stylistic preference that has no substantive impact on the proposed Auction functionality.³³

Proposed Rule 971.1NYP: CUBE Auctions on Pillar

As discussed herein, the Exchange is not proposing to change the core functionality of CUBE Auctions. Thus, unless otherwise stated herein, CUBE Auctions on Pillar will function in a manner identical with current CUBE functionality per current Rule 971.1NY.

Initiating and Pricing of CUBE Auctions

The proposed Rule would begin by describing the general requirements for initiating a CUBE Auction, which requirements mirror current functionality unless otherwise specified.

Proposed Rule 971.1NYP(a) and (a)(1) describe functionality identical to Rule 971.1NY(a).

- Proposed Rule 971.1NYP(a) is identical to Rule 971.1NY(a) insofar as it would provide that a "CUBE Order" is a Limit Order submitted electronically by an ATP Holder (the "Initiating Participant") into the CUBE Auction, which CUBE Order the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or any other entity. The last sentence of proposed Rule 971.1NYP(a) is identical to Rule 971.1NY(b)(8) and would provide that the minimum size requirement for a CUBE Order is one contract.³⁴

- Proposed Rule 971.1NYP(a)(1) is identical to Rule 971.1NY(a) insofar as it would provide that the Initiating Participant would guarantee the execution of the CUBE Order by submitting a contra-side order ("Contra Order") representing principal interest or non-Customer interest it has solicited to trade solely with the CUBE Order at a specified price ("stop price") or by utilizing auto-match or auto-match limit features (as described in proposed paragraph (b)(1) of the Rule), which interest would not be displayed.³⁵

³³ Compare Rules 971.1NY(a) and (b) (which use "shall") with proposed Rules 971.1NYP(a)(1) and (2), respectively (which use "will").

³⁴ The Exchange has relocated this text to the beginning of the Rule (as opposed to where this provision resides (in current Rule 971.1NY(b)(8))) because the Exchange believes that the minimum size of a CUBE Order is fundamental and thus is logically included at the outset of the Rule.

³⁵ The Exchange notes that the internal cross-reference in the proposed Rule has been updated and expanded to include descriptions of each of the stop price, auto-match, and auto-match limit price, which difference from the current CUBE rule is not material because it does not impact functionality.

²⁵ See Rule 971.1NY(c)(2)(B).

²⁶ See Rule 971.1NY(c)(4)(A)–(F) (providing the scenarios that would result in the early end of a CUBE Auction).

²⁷ See generally Rule 971.1NY(c)(5).

²⁸ See Rules 971.1NY(c)(5)(B)(i)(b), (ii)(b), (iii)(b) (specifically regarding guaranteed participation of the Contra Order).

²⁹ See, e.g., Rules 971.1NY(c)(5)(B)(i)(b), (ii)(b), (iii)(b) (citing the size pro rata algorithm set forth in Rule 964NY(b)(3)).

³⁰ See proposed Rule 971.1NYP(b)(5). See also Securities Exchange Act Release No. 79830 (January 18, 2017), 82 FR 8465, at 8466 (January 25, 2017)

(SR–NYSEMKT–2016–12) (order approving proposal to make permanent the aspects of the CUBE Auction that were subject to a pilot, provided the Exchange continued to guarantee price improvement to CUBE Orders for fewer than 50 contracts in a penny-wide NBBO market) (order approving CUBE pilot on permanent basis for smaller-sized orders) ("SEC Approval of CUBE Pilot").

³¹ Rule 971.1NY(c)(4)(A)–(F) sets forth the current early end scenarios.

³² See proposed Rule 971.1NYP(c)(2). See also Rule 971.1NY(c)(3).

○ Proposed Rule 971.1NYP(a)(1)(A) is identical to Rule 971.1NY(b)(7) and would provide that CUBE Orders may be entered in one cent (\$0.01) increments regardless of the MPV of the series involved and that Contra Orders likewise may be priced in one cent increments when specifying the stop price or the auto-match limit price as described in proposed paragraphs (b)(1)(A) and (b)(1)(C) of this Rule (discussed below).³⁶

Proposed Rule 971.1NYP(a)(2) describes functionality identical to Rule 971.1NY(b).

• Proposed Rule 971.1NYP(a)(2) is identical to Rule 971.1NY(b) insofar as it would provide that for purposes of determining whether a CUBE Order is eligible to initiate an Auction, references to the NBBO or Exchange BBO refer to the quoted market at the time the Auction is initiated and that the time at which the CUBE Auction is initiated is considered the time of the CUBE Order execution and that orders executed in the Auction qualify as exceptions to Trade-Through Liability, pursuant to Rule 991NY(b)(5) and (9). However, unlike the current rule, the proposed Rule would use shorthand to refer to the NBBO and Exchange BBO, which terms are defined in Rule 900.2NY.³⁷

Consistent with current functionality, a CUBE Auction on Pillar would begin with an “initiating price” and, at the conclusion of the Auction, the CUBE Order would be eligible to execute at multiple prices within a permissible “range of executions.”³⁸ On Pillar, however, the Exchange proposes to adopt a uniform pricing standard for all CUBE Orders rather than have two separate standards based on the size of

a CUBE Order.³⁹ As proposed, the Exchange would streamline CUBE functionality by applying the pricing parameter set forth in Rule 971.1NY(b)(1)(A) to establish the initiating price and “permissible range of executions” for a CUBE Order, but would eliminate the CUBE Order’s size requirement.⁴⁰

• Proposed Rule 971.1NYP(a)(3) would provide that—subject to proposed Rule 971.1NYP(b)(5) (as described below), the initiating price for any-sized CUBE Order to buy (sell) would be the lower (higher) of the CUBE Order’s limit price or the NBO (NBB), which parameters are identical to the current initiating price requirements for CUBE Orders of 50 or more contracts per Rule 971.1NY(a).⁴¹

• Proposed Rule 971.1NYP(a)(4) would provide that the range of permissible executions for any-sized CUBE Order would be as set forth below and would note that this range of permissible executions may be adjusted based on certain updates to the Exchange BBO during an Auction per proposed Rule 971.1NYP(a)(4)(A) (described below).

The “range of permissible executions” of a CUBE Order to buy (sell) includes prices equal to or between the initiating price as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound, provided that if there is Customer interest in the Consolidated Book at the Exchange BB (BO), the lower (upper) bound of executions will be the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO).⁴²

³⁹ See Rules 971.1NY(b)(1)(A) and (B) (providing pricing requirements for a CUBE Order for 50 contracts or more and for a CUBE Order for fewer than 50 contracts, respectively).

⁴⁰ The Exchange notes that current Rule 971.1NY(b)(1)(B), which will not apply to CUBE Auctions on Pillar, requires that a CUBE Order for fewer than 50 contracts must be priced at least one cent (\$0.01) better than any displayed interest on the Exchange’s Consolidated Book. As discussed, *supra*, the Exchange would continue to protect displayed Customer interest at the BBO for smaller-sized CUBE Orders. See proposed Rules 971.1NYP(a)(3) (carving out the exception to the initiating price parameters for CUBE Orders submitted in a penny-wide market) and (b)(5) (describing the handling of CUBE Orders submitted in a penny-wide market).

⁴¹ Compare proposed Rule 971.1NYP(a)(3) with Rule 971.1NY(a) (providing that, for CUBE Orders for 50 or more contracts, the “initiating price” for a CUBE Order to buy (sell) will be the lower (higher) of the CUBE Order’s limit price or the NBO (NBB), except as provided in (proposed) paragraph (b)(5) of this Rule).

⁴² Compare proposed Rule 971.1NYP(a)(4) with Rule 971.1NY(b)(1) and (b)(1)(A) (providing that a CUBE Order to buy (sell) for 50 contracts or more may execute at prices equal to or between the initiating price as the upper (lower) bound and the NBB (NBO) as the lower (upper) bound, provided

○ Proposed Rule 971.1NYP(a)(4)(A) would provide that the Exchange would adjust the range of permissible executions of a CUBE Order to buy (sell) in accordance with updates to the Exchange BB (BO) during the Auction, provided that such Exchange BB (BO) updates do not cross the upper (lower) bound of permissible executions.⁴³ This proposed feature is consistent with current functionality but differs in that the proposed Rule states definitively when updates to the BBO during an Auction would impact the range of executions (rather than refer to BBO updates that might result in the early end of an Auction).⁴⁴ The Exchange believes this distinction is immaterial as it has no impact on functionality. In fact, the Exchange believes this proposed change would remove superfluous (potentially confusing) language and, as such, would add clarity and transparency to Exchange rules making them easier to navigate and understand.

○ Proposed Rule 971.1NYP(a)(4)(B) is identical to current Rule 971.1NY(b)(3) and would require that CUBE Orders, once accepted, would never execute outside the range of permissible executions, and would never trade through their own limit price; further, the proposed Rule would provide that unrelated quotes and orders that participate in the Auction will never trade through their own limit price.⁴⁵ In the current rule, the foregoing provision is included with circumstances under which CUBE Orders are rejected. Because this proposed text relates to the range of permissible executions for accepted CUBE Orders (*i.e.*, not rejected), the Exchange believes the proposed placement of this provision would add clarity to the proposed Rule and would make it easier to navigate and understand. Other than the location of the proposed text, proposed Rule

that if there is Customer interest in the Consolidated Book at the BB (BO), the lower (upper) bound of executions is the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO)).

⁴³ See proposed Rule 971.1NYP(a)(4)(A).

⁴⁴ See Rule 971.1NY(b)(1)(C) (providing that “[i]f the BBO on the same side as the CUBE Order updates during the Auction, the range of permissible executions will adjust in accordance with the updated BBO, unless the incoming same-side interest that would update the BBO would cause the Auction to conclude early pursuant to paragraph (c)(4)(D) of this Rule.”).

⁴⁵ See proposed Rule 971.1NYP(a)(4)(B). See Rule 971.1NY(b)(3) (“CUBE Orders, once accepted, will never execute outside the range of permissible executions and will never trade through their own limit price. Unrelated quotes and orders that participate in the Auction will never trade through their own limit price.”).

³⁶ The Exchange notes that the internal cross-reference in the proposed Rule has been updated and expanded to include descriptions of each of the stop price, auto-match, and auto-match limit price, which difference from the current CUBE rule is not material because it does not impact functionality. The Exchange has relocated this text to the beginning of the Rule (as opposed to where this provision resides (in current Rule 971.1NY(b)(7)) because the Exchange believes that the permissible MPV for CUBE Orders and certain Contra Orders is fundamental and thus is logically included at the outset of the Rule.

³⁷ Compare proposed Rule 971.1NYP(a)(2) (referring to the “NBBO” and “Exchange BBO”) with Rules 971.1NY(b) (providing that “[f]or purposes of determining whether a CUBE Order is eligible to initiate an Auction, references to the National Best Bid or Offer (‘NBBO’) or Exchange Best Bid or Offer (‘BBO’) refer to the quoted market at the time the Auction is initiated”); 971.1NY(a) (referring to “the National Best Offer (‘NBO’) (National Best Bid (‘NBB’)”).

³⁸ See, e.g., Rule 971.1NY(a) (providing, in relevant part, that the “Auction begins with an ‘initiating price’,” and that, “[a]t the conclusion of the Auction, the CUBE Order may execute at multiple prices within a permissible range . . .”).

971.1NYP(a)(4)(B) is identical to current Rule 971.1NY(b)(3).

The Exchange notes that, on Pillar, current Rule 971.1NY(b)(1)(D), which provides that if there is a Marketable Order to sell (buy) that is being collared, the displayed price of the collared order minus (plus) one Trading Collar shall be considered the BO (BB) when determining the range of permissible executions,” would no longer apply.⁴⁶ The Exchange is modifying how it handles Market Orders on Pillar as well as the operation of the Trading Collar. As a result, neither current Rule 967NY (Price Protection—Orders) nor the Trading Collar functionality described therein will apply on Pillar and will instead be replaced by a modified Trading Collar.⁴⁷

Although all CUBE Orders would be subject to the above-described single pricing parameter, the Exchange would continue to require price improvement for CUBE Orders for fewer than 50 contracts in tight (*i.e.*, penny-wide) markets.⁴⁸

- Proposed Rule 971.1NYP(b)(5) would provide that CUBE Orders for fewer than 50 contracts would be rejected when the NBBO is one cent (\$0.01) wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent) and there is no displayed Customer interest in the Consolidated Book at the NBB (NBO).⁴⁹

The proposed change is identical to current Rule 971.1NY(b)(6)(A) insofar as it would require price improvement for CUBE Orders of fewer than 50 contracts

when the NBBO has a bid/offer spread of one cent (\$0.01). However, unlike the current rule, rather than reject CUBE Orders for fewer than 50 contracts when the BBO has a bid/offer spread of one cent (\$0.01),⁵⁰ the Exchange would only reject such orders when the Exchange is setting the NBBO (*i.e.*, BBO = NBBO) and there is same-side (CUBE side) displayed Customer interest on the NBBO. The Exchange proposes to reject such smaller-sized CUBE Orders to avoid non-Customer interest trading ahead of displayed Customer interest.⁵¹

This proposed change is substantially the same as current Rule 971.1NY(b)(6)(B), except that rather than reject all smaller-sized CUBE Orders when the BBO is one cent (\$0.01) wide, the Exchange would only reject such orders to protect displayed Customer interest.⁵² This proposed functionality is not new and is consistent with the Exchange’s current handling for such smaller-sized CUBE Orders in penny-wide NBBO markets as well as with the handling of smaller-sized paired agency orders on other options exchanges.⁵³

CUBE Eligibility Requirements

On Pillar, the Exchange would continue to allow all options traded on the Exchange to be eligible to participate in a CUBE Auction.⁵⁴ Further, as proposed, the Exchange would continue to reject CUBE Orders (together with Contra Orders) under the following circumstances, each of which are identical to the reasons for rejection of

such orders per current Rule 971.1NY(b)(2), (b)(4), and (b)(10), respectively, as described below.⁵⁵

- Proposed Rule 971.1NYP(b)(2) is identical to Rule 971.1NY(b)(2) and would provide that CUBE Orders to buy (sell) with a limit price below (above) the lower (upper) bound of executions specified in proposed Rule 971.1NYP(a)(4) (described above) would not be eligible to initiate an Auction and would be rejected, along with the Contra Order.⁵⁶

- Proposed Rule 971.1NYP(b)(3) is identical to Rule 971.1NY(b)(4) and would provide that CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Contra Order.

- Proposed Rule 971.1NYP(b)(7) is identical to Rule 971.1NY(b)(10) and would provide that CUBE Orders submitted during a trading halt are not eligible to initiate an Auction and would be rejected, along with the Contra Order.

In addition, the proposed Rule would continue to reject CUBE Orders (together with Contra Orders) under the following circumstances, which differ slightly from the current rule as follows.⁵⁷

- Proposed Rule 971.1NYP(b)(4) would reject CUBE Orders submitted when there is insufficient time in the trading session to conduct an Auction. However, whereas the current rule provides that CUBE Orders are rejected if submitted during “the final second of the trading session,” the proposed Rule would provide that CUBE Orders would be rejected if submitted “when there is insufficient time for an Auction to run the full duration of the Response Time Interval.”⁵⁸ The Exchange believes that the proposed change would better account for the fact that a CUBE Auction may last for as little as 100 milliseconds—well below the permitted maximum of one second as stated in the

⁴⁶ See Rule 971.1NY(b)(1)(D) (providing that “[i]f there is a Marketable Order to sell (buy) that has been displayed pursuant to Rule 967NY(a)(4)(A), the displayed price of the collared order minus (plus) one Trading Collar shall be considered the BO (BB) when determining the range of permissible executions”).

⁴⁷ The Exchange has submitted a separate rule filing to adopt Trading Collar functionality for trading on Pillar, which functionality is described in proposed Rule 900.3NYP(a)(4) (the “Pillar Trading Collar Filing”). See NYSEAmex-2023-11P. The functionality described in the Pillar Trading Collar Filing is identical to the functionality described in Arca Options Rule 6.62P-O(a)(4).

⁴⁸ The Exchange notes that current Rule 971.1NY(b)(1)(B), which will not apply to CUBE Auctions on Pillar, requires that CUBE Order is for fewer than 50 contracts must be priced at least one cent (\$0.01) better than any displayed interest on the Exchange’s Consolidated Book. As discussed herein, the Exchange would continue to protect displayed Customer interest at the BBO for smaller-sized CUBE Orders in penny-wide markets. See proposed Rule 971.1NYP(b)(5).

⁴⁹ See Rule 971.1NY(b)(6)(B) (providing, in relevant part, that CUBE Orders for fewer than 50 contracts will be rejected, among other reasons, when the NBBO is \$0.01 wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent)).

⁵⁰ See Rule 971.1NY(b)(6)(A) (providing, in relevant part, that CUBE Orders for fewer than 50 contracts will be rejected when the BBO is \$0.01 wide).

⁵¹ See proposed Rule 971.1NYP(b)(5).

⁵² See proposed Rule 971.1NYP(b)(5) (“CUBE Orders for fewer than 50 contracts will be rejected when the NBBO is one cent (\$0.01) wide, unless the Initiating Participant guarantees the execution of the CUBE Order to buy (sell) at a price that is equal to the NBO minus one cent (NBB plus one cent) and there is no Customer interest in the Consolidated Book at the NBB (NBO)).”).

⁵³ See, *e.g.*, Cboe Rule 5.37(b)(1)(A) (providing that, *when the NBBO width is one penny (\$0.01)*, and the agency order is for less than 50 contracts, the stop price must be “at least one minimum increment better than the then-current NBO (NBB) or the Agency Order’s limit price (if the order is a limit order), whichever is better”; Cboe EDGX Rule 21.19 (b)(1)(A) (same); Nasdaq ISE, Options 3 Section 13(b)(1) (providing that, *when the NBBO width is one penny (\$0.01)*, and the agency order is for less than 50 contracts, “the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order).

⁵⁴ See proposed Rule 971.1NYP(b) (CUBE Auction Eligibility Requirements), which is identical to the first sentence of current Rule 971.1NY(b).

⁵⁵ See *infra* regarding for discussion of the proposed Rules 971.1NYP(a), (a)(1)(A) and (a)(4)(B) as compared to their identical counterparts in current Rules 971.1NY(b)(3), (b)(7), and (b)(8) which proposed provisions have been relocated to earlier in the Rule.

⁵⁶ The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality. See proposed Rule 971.1NYP(b)(2).

⁵⁷ See *infra* for discussion of proposed Rule 971.1NYP(b)(5) as compared with current Rule 971.1NY(b)(6) (regarding requiring price improvement for CUBE Orders for fewer than 50 contracts under certain circumstances in a penny-wide market).

⁵⁸ Compare proposed Rule 971.1NYP(b)(4) with Rule 971.1NY(b)(5).

current rule.⁵⁹ The Exchange also proposes to remove the superfluous reference to “in the affected series,” which would streamline the proposed Rule text.⁶⁰ The Exchange proposes to make the same change to current Rule 971.1NY(b)(5).⁶¹ The Exchange believes that this proposed change (to the current rule and proposed Rule) would add clarity, transparency, and internal consistency to Exchange rules regarding when CUBE Orders may be rejected—particularly to market participants submitting CUBE Orders late in the trading day.⁶²

- Proposed Rule 971.1NYP(b)(6) would provide that the Exchange would reject CUBE Orders submitted when the NBBO is crossed.⁶³

- However, unlike the current rule, the Exchange would no longer reject CUBE Orders when the NBBO is locked.⁶⁴ The Exchange believes this more permissive standard, which is the same on other options exchanges, would allow more CUBE Auctions to occur on Pillar, thus increasing trading opportunities.⁶⁵

Finally, on Pillar, the Exchange proposes to allow CUBE Orders in the same series as orders exposed pursuant to Rule 994NY (Broadcast Order

Liquidity Delivery Mechanism) (or “BOLD”) to occur simultaneously. This would be new on Pillar as current functionality limitations dictate that CUBE Orders in the same series as orders exposed by BOLD are rejected.⁶⁶ As such, the proposed Rule would not include information contained in current Commentary .04 to Rule 971.1NY. The Exchange believes this proposed enhancement to CUBE Auction functionality—that the Pillar platform will accommodate both such orders in the same series at the same time—would allow more CUBE Orders to be accepted, which improved opportunities for price improvement benefits all market participants.⁶⁷

On Pillar, the Exchange proposes to continue to allow Initiating Participants to guarantee the CUBE Order with a specified stop price or by utilizing auto match or auto-match limit.⁶⁸

Proposed Rule 971.1NYP(b)(1)(A), like current Rule 971.1NY(c)(1)(A), would describe the requirements for a “stop price,” which are identical to current Rule 971.1NY(c)(1)(A), except as noted below.

- Proposed Rule 971.1NYP(b)(1)(A) would describe the “stop price,” except that unlike the current rule but consistent with current functionality, the proposed Rule would explicitly state that the stop price is “the price at which the Initiating Participant guarantees the CUBE Order”, which stop price “must be executable against the initiating price of the Auction.”⁶⁹ The Exchange believes that specifying that the stop price must be “executable” against the initiating price is a more succinct way of stating the (current rule) requirement that such stop price must be “equal to or below (above) the initiating price of the Auction” for a CUBE Order to buy (sell).⁷⁰ The Exchange believes that this proposed distinction is immaterial because the functional requirement set

forth in the proposed Rule is the same the current requirement albeit stated differently.

- Proposed Rule 971.1NYP(b)(1)(A) would also provide that (identical to current Rule 971.1NY(c)(1)(A)):

- The stop price for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions would be repriced to the lower (upper) bound; and

- If the stop price specified for a CUBE Order to buy (sell) is above (below) the initiating price, such stop price would render such CUBE Order ineligible to initiate an Auction and both the CUBE Order and the Contra Order would be rejected.

Proposed Rule 971.1NYP(b)(1)(B) is identical to Rule 971.1NY(c)(1)(B) and would provide that when an Initiating Participant utilizes “auto match” for a CUBE Order to buy (sell) the Contra Order would automatically match the price and size of all RFR Responses that are lower (higher) than the initiating price and within the range of permissible executions.

Proposed Rule 971.1NYP(b)(1)(C), like current Rule 971.1NY(c)(1)(C), would describe the requirements for an “auto-match limit price,” which are identical to current Rule 971.1NY(c)(1)(C), except as noted below.

- Proposed Rule 971.1NYP(b)(1)(C) would describe the “auto-match limit price,” except that unlike the current rule but consistent with current functionality, the proposed Rule would explicitly state that the auto-match limit price is “the best price at which the Initiating Participant is willing to trade with the CUBE Order,” which auto-match limit price “must be executable against the initiating price of the Auction.”⁷¹

- Proposed Rule 971.1NYP(b)(1)(C), like the current rule, would provide:

- That the Contra Order for a CUBE Order to buy (sell) would automatically match the price and size of all RFR Responses that are priced lower (higher) than the initiating price down (up) to the auto-match limit price;⁷² and

⁷¹ See proposed Rule 971.1NYP(b)(1)(C). The proposed description would align with the description of an auto-match limit price for a Complex CUBE Auction. See, e.g., Rule 971.2NY(b)(1)(B) (describing the auto-match limit price as the most aggressive price (*i.e.*, best price) at which the Initiating Participant guarantees is willing to trade with the CUBE Order, which auto-match limit price “must be executable against the initiating price of the Auction.”).

⁷² The Exchange notes that the proposed Rule explains the same concept but uses slightly different wording than is used in the current rule. See Rule 971.1NY(c)(1)(C) (“For a CUBE Order to

⁵⁹ See, e.g., Rule 971.1NY(c)(2)(B) (providing in relevant part, that “[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second.”). See also proposed Rule 971.1NYP(c)(1)(B) (which provides identical parameters), as discussed *supra*.

⁶⁰ See proposed Rule 971.1NY(b)(4). The Exchange notes that this proposed change is applicable to all CUBE Auctions—whether conducted on Pillar or not. Compare proposed Rule 971.1NYP(b)(4) (“CUBE Orders submitted when there is insufficient time for an Auction to run the full duration of the Response Time Interval are not eligible to initiate an Auction and shall be rejected, along with the Contra Order”) with current Rule 971.1NY(b)(5) (“CUBE Orders submitted during the final second of the trading session in the affected series are not eligible to initiate an Auction and shall be rejected, along with the Contra Order.”).

⁶¹ See proposed Rule 971.1NY(b)(5).

⁶² See *supra* for discussion of proposed Rule 971.1NYP(b)(5) as compared with current Rule 971.1NY(b)(6) (regarding requiring price improvement for CUBE Orders for fewer than 50 contracts under certain circumstances in a penny-wide market).

⁶³ See proposed Rule 971.1NYP(b)(6).

⁶⁴ Compare proposed Rule 971.1NYP(b)(6) (“[i]f CUBE Order is submitted when the NBBO is crossed, it will be rejected”) with Rule 971.1NY(b)(9) (“[i]f the NBBO is locked or crossed when a CUBE Order is submitted, it will be rejected.”). The Exchange notes that proposed Rule reorganizes this proposed provision to more clearly convey the concept that, on Pillar, CUBE Orders submitted when the NBBO is crossed would be rejected.

⁶⁵ See, e.g., Cboe Rule 5.37(a)(7) (providing that, “[t]he Initiating TPH may not submit an Agency Order [to Cboe’s AIM] if the NBBO is crossed”); Cboe EDGX Rule 21.19(a)(7) (providing that, “[a]n Initiating Member may not submit an Agency Order [to Cboe EDGX’s AIM] if the NBBO is crossed”).

⁶⁶ See Rule 971.1NY, Commentary .04 (providing that “[a] CUBE Order will be rejected if it is in the same series as an order exposed pursuant to Rule 994NY (Broadcast Order Liquidity Delivery Mechanism).”).

⁶⁷ Consistent with the proposed functionality, the Exchange would no longer end a CUBE Auction early upon receipt of an order exposed in the BOLD mechanism that is in the same series as the CUBE Order per Rule 971.1NY(c)(4)(F). See discussion, *infra*, regarding proposed Rule 971.1NYP(c)(3) (Early Conclusion of Auction).

⁶⁸ See proposed Rule 971.1NYP(b)(1), which is identical to the first sentence of Rule 971.1NY(c)(1).

⁶⁹ See proposed Rule 971.1NYP(b)(1)(A). The proposed description would align with the description of a stop price for a Complex CUBE Auction. See, e.g., Rule 971.2NY(b)(1)(A) (describing the stop price as “the price at which the Initiating Participant guarantees the Complex CUBE Order”, which stop price “must be executable against the initiating price of the Auction”).

⁷⁰ See Rule 971.1NY(c)(1)(A).

○ That an auto-match limit price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions would be repriced to the lower (upper) bound.

• Further, the last sentence of proposed Rule 971.1NYP(b)(1)(C) is new and would provide that an auto-match limit price specified for a CUBE Order to buy (sell) that is above (below) the initiating price would not be eligible to initiate an Auction and both the CUBE Order and the Contra Order would be rejected. The Exchange notes that this proposed functionality (to reject the CUBE) based on the auto-match limit price would align with how the Exchange currently rejects and proposes to reject a CUBE based on the stop price—per Rule 971.1NY(c)(1)(A)) and proposed Rule 971.1NYP(b)(1)(A)), respectively. As such, the Exchange believes that this proposed change would add clarity, transparency, and internal consistency to Exchange rules.

CUBE Auction Process: Request for Responses and Response Time Interval

On Pillar, the Exchange proposes to utilize the same process for announcing a CUBE Auction and soliciting trading interest to potentially interact with the CUBE Order.

• Proposed Rule 971.1NYP(c) is identical to the latter portion of the first sentence of Rule 971.1NY(c) and would provide that once an Auction has commenced, the CUBE Order (as well as the Contra Order) may not be cancelled or modified.

• Proposed Rule 971.1NYP(c)(1)(A) is identical to Rule 971.1NY(c)(2)(A) and would provide that upon receipt of a CUBE Order, the Exchange would send a “Request for Responses” or “RFR” to all ATP Holders who subscribe to receive RFR messages, which RFR would identify the series, the side and size of the CUBE Order, as well as the initiating price. On Pillar, however, the RFR would also include an AuctionID that would identify each CUBE Auction, which would be a new feature.⁷³ The Exchange notes that other options exchanges likewise include an AuctionID on the request for response to the price improvement auction and this proposed change is therefore not new or novel.⁷⁴

buy (sell), the Initiating Participant may specify an “auto-match limit price” that is equal to or below (above) the initiating price of the Auction, and the Contra Order may trade with the CUBE Order at prices that are lower (higher) than the initiating price down (up) to the auto-match limit price.”).

⁷³ See proposed Rule 971.1NYP(c)(1)(A).

⁷⁴ See, e.g., Cboe Rule 5.37(c)(2) (providing that each “AIM Auction Notification Message” will include an “AuctionID”).

• Proposed Rule 971.1NYP(c)(1)(B) is identical to Rule 971.1NY(c)(2)(B) insofar as it provides that the “Response Time Interval” would refer to the time period during which responses to the RFR may be entered, which period would be no less than 100 milliseconds and no more than one (1) second. Currently, the RTI lasts for “a random period of time within parameters determined by the Exchange and announced by Trader Update.”⁷⁵ Rather than a random period of time, the Exchange proposes that on Pillar, the Response Time Interval would instead be a set duration of time.⁷⁶ This proposed functionality of a fixed duration for a price improvement auction is identical to functionality available on other options exchanges.⁷⁷

Proposed Rule 971.1NYP(c)(1)(C) is identical to Rule 971.1NY(c)(2)(C) insofar as it would provide that any ATP Holder may respond to the RFR, provided such response is properly marked specifying the price, size and side of the market (“RFR Response”).⁷⁸ The proposed Rule would also provide that, consistent with current functionality (although not explicitly stated), any RFR Response to a CUBE Order to buy (sell) priced below (above) the lower (upper) bound of executions would be repriced to the lower (upper) bound of executions and is eligible to trade in the Auction at such price.⁷⁹

RFR Responses: GTX Orders

On Pillar, the Exchange would continue to accept GTX Orders as RFR Responses and would continue to impose the following identical requirements for such orders to be eligible to trade in the CUBE Auction.

⁷⁵ See Rule 971.1NY(c)(2)(B). See Trader Update, January 27, 2022 (announcing that, beginning February 28, 2022, the randomized timer would have a minimum of 100 milliseconds and a maximum of 105 milliseconds), available at, <https://www.nyse.com/trader-update/history#110000409951>.

⁷⁶ See Rule 971.1NYP(c)(1)(B).

⁷⁷ See, e.g., Nasdaq ISE, Options 3 Section 13(c)(1) (providing that, Nasdaq ISE will designate via an Options Trader Alert an “Exposure Period” of no less than 100 milliseconds and no more than 1 second). See also Cboe Rule 5.37(c)(3) (providing that the “AIM Auction period” is a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than 3 seconds).

⁷⁸ The Exchange notes that the proposed Rule includes the non-substantive change to add “the” before the word “price,” which would add clarity and transparency to Exchange rules.

⁷⁹ See proposed Rule 971.1NYP(c)(1)(C). The proposed Rule would align the Exchange’s treatment of RFR Responses to Complex CUBE Orders. See, e.g., Rule 971.2NY(c)(1)(C) (providing, in relevant part, that any RFR Response that crosses the same-side CUBE BBO will be eligible to trade in the Complex CUBE Auction at a price that locks the same-side CUBE BBO).

• Proposed Rule 971.1NYP(c)(1)(C)(i), like the current rule, would provide that ATP Holders may respond to RFRs with GTX Orders, which are non-routable orders that have a time-in-force contingency for the Response Time Interval and which orders must specify price, size and side of the market.⁸⁰

• Proposed Rule 971.1NYP(c)(1)(C)(i)(a), like the current rule, would provide that GTX Orders would not be displayed on the Consolidated Book and would not be disseminated to any participants.⁸¹

• Proposed Rule 971.1NYP(c)(1)(C)(i)(b), like the current rule, would provide that the minimum price increment for GTX Orders would be one cent (\$0.01), regardless of the MPV for the series involved in the Auction.⁸²

• Proposed Rule 971.1NYP(c)(1)(C)(i)(d), like the current rule, would provide that GTX Orders may be cancelled or modified.⁸³

• Proposed Rule 971.1NYP(c)(1)(C)(i)(f), like the current rule, would provide that GTX Orders priced below (above) the lower (upper) bound of executions for a CUBE Order to buy (sell) would be repriced to the lower (upper) bound of permissible executions per proposed Rule 971.1NYP(a)(4) (described above).⁸⁴

In addition to continuing the foregoing requirements for GTX Orders, the Exchange proposes to modify or clarify the operation of GTX Orders on Pillar as follows.⁸⁵

• The Exchange proposes new functionality on Pillar that would permit senders of GTX Orders the option to include an AuctionID to signify the CUBE Order with which

⁸⁰ Compare proposed Rule 971.1NYP(c)(1)(C)(i) with Rule 971.1NY(c)(2)(C)(i).

⁸¹ Compare proposed Rule 971.1NYP(c)(1)(C)(i)(a) with Rule 971.1NY(c)(2)(C)(i)(a).

⁸² Compare proposed Rule 971.1NYP(c)(1)(C)(i)(b) with Rule 971.1NY(c)(2)(C)(i)(b).

⁸³ Compare proposed Rule 971.1NYP(c)(1)(C)(i)(d) with Rule 971.1NY(c)(2)(C)(i)(d).

⁸⁴ Compare proposed Rule 971.1NYP(c)(1)(C)(i)(f) with Rule 971.1NY(c)(2)(C)(i)(f). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality.

⁸⁵ The Exchange does not propose to specify in the proposed Rule that “GTX Orders with a size greater than the size of the CUBE Order will be capped at the size of the CUBE Order,” as set forth in current Rule 971.1NY(c)(2)(C)(i)(c). Instead, consistent with Pillar Rule 964NYP and as discussed below, the only non-Customer GTX Orders would be capped for purposes of pro rata allocation, whereas Customer GTX Orders would trade with the CUBE Order based on time. See proposed Rule 971.1NYP(c)(4)(B), as discussed *infra*.

such GTX Order would like to trade.⁸⁶ The Exchange believes that this proposed functionality, which is also available on other options exchanges, would allow market participants to have more control over their trading interest and may result in improved competition for price improvement in each Auction.⁸⁷

- The Exchange proposes to describe how GTX Orders will be treated on Pillar consistent with new Pillar Rule 964NYP (described in detail below).⁸⁸ In short, on Pillar, options trading interest is prioritized and allocated in one of three categories: Priority 1—Market Orders; Priority 2—Display Orders; and Priority 3—Non-Display Orders.⁸⁹ The proposed Rule would provide that, although such orders are not disseminated or displayed (as described above), for purposes of trading and allocation with the CUBE Order, GTX Orders would be ranked and prioritized as Priority 2—Display Orders per Pillar Rule 964NYP(e).⁹⁰ The Exchange believes that this proposed change would add clarity, transparency and internal consistency to Exchange rules and would make clear to market participants responding to CUBE Auctions with GTX Orders how such interest will be prioritized on Pillar.

- The Exchange also proposes to modify the operation of GTX Orders on Pillar by restricting the interest with which such orders may trade. Currently, the second sentence of Rule 971.1NY(c)(2)(C)(i)(a) provides that a GTX Order that is not fully executed as provided for in current Rule 971.1NY(c)(4) and (c)(5)—which

paragraphs permit GTX Orders to execute with other interest available at the conclusion of the Auction once such orders have executed with the CUBE Order to the extent possible—before cancelling.⁹¹ On Pillar, the Exchange proposes that GTX Orders, which are submitted for the purpose of participating in a CUBE Auction, would execute solely with the CUBE Order to the extent possible and then cancel.⁹² On Pillar, and contrary to existing functionality, a GTX Order would not execute with any non-CUBE Order Auction interest before cancelling.

- The Exchange also proposes to modify the circumstances under which a GTX Order would be rejected. Currently, Rule 971.1NY(c)(2)(C)(i)(e) provides that GTX Orders on the same side as the CUBE Order would be rejected. On Pillar, the Exchange proposes that GTX Orders would be rejected if such GTX Order is priced higher (lower) than the initiating price of a CUBE Order to buy (sell) or if such GTX Order is submitted when there is no contra-side CUBE Auction being conducted.⁹³ Because, as discussed *infra*, on Pillar, the Exchange would allow more than one Auction in a given series to occur at once—which simultaneous Auctions could be on both sides of the market, the Exchange does not propose to reject GTX Orders submitted on the same side of a CUBE Order (as it does today) but would instead expand this rejection reason to any time there is no contra-side CUBE Auction occurring when the GTX Order is submitted.⁹⁴ The Exchange believes this proposed change would provide increased opportunities to solicit price-improving auction interest.

RFR Responses: Unrelated Quotes and Orders

Consistent with current functionality, the Exchange proposes to treat as RFR Responses certain quotes or orders that are eligible to trade in a CUBE Auction, which treatment is identical to current Rule 971.1NY(c)(2)(C)(ii)(a)–(c).

- Proposed Rule 971.1NYP(c)(1)(C)(ii) would provide that the Exchange will

treat as RFR Responses quotes and orders that are on the opposite side of the market in the same series as the CUBE Order that are not marked GTX, that are received during the Response Time Interval or resting in the Consolidated Book when the Auction commences, and that are eligible to participate within the range of permissible executions specified for the Auction pursuant to proposed paragraph (a)(4) of this Rule.⁹⁵

- Proposed Rule 971.1NYP(c)(1)(C)(ii)(a) would provide that quotes and orders received during the Response Time Interval that are not marketable against the NBBO and are not marked GTX would be posted to the Consolidated Book.⁹⁶ The Exchange proposes to qualify this provision by noting that an order that included instructions to cancel (*i.e.*, an IOC), for example, would be processed accordingly and would not post to the Consolidated Book.⁹⁷ The Exchange believes that this proposed clarification would add clarity, transparency, and internal consistency to Exchange rules.

- Proposed Rule 971.1NYP(c)(1)(C)(ii)(b) would provide that quotes and orders received during the Response Time Interval that are on the same side as the CUBE Order to buy (sell) and are priced higher (lower) than the initiating price that would post to the Consolidated Book will result in an early conclusion of the Auction pursuant to proposed paragraph (c)(3) of this Rule as discussed below.⁹⁸

- Proposed Rule 971.1NYP(c)(1)(C)(ii)(c) would provide that quotes and orders that are not marked GTX must be priced in the MPV for the series in the Auction and any such quotes or non-GTX orders submitted with a one cent MPV when the series has either \$0.05 or \$0.10 MPV would be rejected as invalid.⁹⁹

⁸⁶ See proposed Rule 971.1NYP(c)(1)(C)(i) (providing in relevant part that “GTX Orders may include an AuctionID to respond to a specific CUBE Auction.”). Should the GTX Order include an apparently erroneous AuctionID (*e.g.*, a GTX Order to buy includes an AuctionID for a CUBE Order to buy), the Exchange would reject such GTX Order even if there are other CUBE Auctions (*e.g.*, on the contra-side with a different AuctionID) with which that GTX Order could have traded.

⁸⁷ See, *e.g.*, Cboe Rule 5.37(c)(5) (providing that the “AIM Auction Responses” may include, among other things, “the AuctionID”).

⁸⁸ See discussion of Pillar Rule 964NYP, *infra*. See also American Pillar Priority Filing (describing the Pillar Priority Rules, which govern priority and allocation rule for options trading on Pillar).

⁸⁹ See Pillar Rule 964NYP(e) (providing that “[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer” and that “[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.”).

⁹⁰ See proposed Rule 971.1NY(c)(1)(C)(i)(a) (“GTX Orders will not be displayed or disseminated to any participants. For purposes of trading and allocation with the CUBE Order, GTX Orders will be ranked and prioritized with same-priced Limit Orders as Priority 2—Display Orders, per [Pillar] Rule 964NYP(e).”).

⁹¹ See also Rule 971.1NY(c)(3), (c)(4), and (c)(5) (providing that GTX Orders may be eligible to trade with Auction interest (other than the CUBE Order) before cancelling).

⁹² See proposed Rule 971.1NYP(c)(1)(C)(i)(c).

⁹³ See proposed Rule 971.1NYP(c)(1)(C)(i)(e).

⁹⁴ See *id.* See also Rule 971.1NY(c)(2)(C)(i)(e) (“GTX Orders on the same side of the market as the CUBE Order shall be rejected.”). The Exchange notes that it will reject a GTX Order that includes an AuctionID for a CUBE Order that is on the same side of the market as such GTX Order even if there are contra-side CUBE Auctions (with a different AuctionID) with which that GTX Order could have traded.

⁹⁵ Compare proposed Rule 971.1NYP(c)(1)(C)(ii) with Rule 971.1NYP(c)(2)(C)(ii). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality.

⁹⁶ Compare proposed Rule 971.1NYP(c)(1)(C)(ii)(a) with Rule 971.1NYP(c)(2)(C)(ii)(a).

⁹⁷ See Rule 971.1NYP(c)(2)(C)(ii)(a).

⁹⁸ Compare proposed Rule 971.1NYP(c)(1)(C)(ii)(b) with Rule 971.1NY(c)(2)(C)(ii)(b). The Exchange notes that the proposed Rule differs from the current rule in that it includes an updated cross-reference to the permissible range of executions, which difference is immaterial because it does not impact functionality.

⁹⁹ Compare proposed Rule 971.1NYP(c)(1)(C)(ii)(c) with Rule 971.1NYP(c)(2)(C)(ii)(c). The Exchange notes that the proposed Rule differs from the current rule in that it includes reference to “five cents” and “ten

Concurrent CUBE Auctions ¹⁰⁰

The Exchange proposes to enhance functionality on Pillar by allowing more than one CUBE Auction in the same series to run concurrently.¹⁰¹ The Exchange proposes that if there are multiple CUBE Auctions in a series that are running concurrently, such Auctions would conclude sequentially, based on the time each CUBE Auction was initiated, unless an Auction concludes early, per proposed paragraph (c)(3) of this Rule (discussed below).¹⁰² As further proposed, at the time each CUBE Auction concludes, the CUBE Order would be allocated against all eligible RFR Responses available at the time of conclusion.¹⁰³ In the event there are multiple Auctions underway that are each terminated early, such Auctions would be processed sequentially based on the time each CUBE Auction was initiated.¹⁰⁴ The Exchange believes that this proposed functionality would allow more CUBE Auctions in the same series to be conducted, thereby increasing opportunities for price improvement on the Exchange to the benefit of all market participants.

In addition, as discussed below, the proposal to add concurrent auctions would also prevent the early end of a CUBE Auction in progress when the Exchange receives a new CUBE Order in the same series.¹⁰⁵ By eliminating this early end scenario, the Exchange would increase the likelihood that an Auction may run for the full Response Time Interval thus affording more time and opportunity for the arrival of price-improving interest to the benefit of investors. The Exchange notes that allowing more than one price improvement auction at a time in the

same series for paired agency orders of 50 or more contracts is not new or novel and is current functionality on other options exchanges.¹⁰⁶

The proposal to allow simultaneous Auctions in the same series for CUBE Orders of fewer than 50 contracts would benefit investors because it would afford smaller-sized CUBE Orders increased opportunity to solicit price-improving auction interest—including because receipt of a new CUBE Order would no longer cause the Auction in progress to end early.¹⁰⁷ The Exchange further believes that this proposed change would provide additional benefits to Customers, as smaller-sized CUBE Orders tend to represent retail interest, and could improve the Customer experience on the Exchange by increased trading opportunities in the CUBE Auction. As discussed above, the Exchange would continue to protect smaller-sized CUBE Orders in penny-wide markets by requiring the maximum available price improvement for such orders (*i.e.*, one cent) and rejecting such orders in penny-wide markets when price improvement is not possible. These protections would remain when the proposed concurrent Auctions are occurring.¹⁰⁸ Thus, the Exchange believes this proposed change should allow the Exchange to better compete for auction-related order flow that may lead to an increase in Exchange volume, while continuing to ensure that displayed Customer interest on the Consolidated Book is protected, to the benefit of all market participants.

The Exchange believes that the Pillar trading platform has sufficient capacity to process a large volume of concurrent Auctions for CUBE Orders of any size,

including for CUBE Orders of fewer than 50 contracts.

Conclusion of Auction

As is the case today, on Pillar, a CUBE Auction would conclude at the end of the Response Time Interval, unless there is a trading halt in the affected series or if the CUBE Auction ends pursuant to proposed paragraph (c)(3) of this Rule (discussed below).¹⁰⁹ As further proposed, at the conclusion of the Auction, including if there is a trading halt in the affected series, the CUBE Order would execute pursuant to proposed paragraph (c)(4) of this Rule (discussed below).¹¹⁰ The Exchange also proposes that, after the conclusion of the Auction, the residual RFR Responses (excluding GTX Orders) would be processed in accordance with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).¹¹¹ This proposed rule is consistent with current CUBE functionality, except that current Rule 964NY would no longer govern priority and allocation of any portion of RFR Responses (not marked GTX) that remain after any execution with the CUBE Order.¹¹²

Early Conclusion of Auction

On Pillar, the Exchange proposes to reduce the number of scenarios that would cause a CUBE to end early (*i.e.*, before the end of the Response Time Interval) based on trading interest that arrives during the Auction. Currently, there are six scenarios that would cause an Auction to end early.¹¹³ On Pillar, the Exchange proposes that only one such “early end” scenario would apply. As proposed, and consistent with Rule 971.1NY (c)(4)(D), a CUBE Auction would conclude early if, during the Auction, the Exchange receives an unrelated non-marketable order or quote on the same-side of the market as the CUBE Order to buy (sell) that would adjust the lower (upper) bound of the range of permissible executions to be higher (lower) than the initiating

cents” immediately before each numerical indication of the applicable MPV, which modification the Exchange believes is immaterial as it would not alter functionality but would instead add clarity, transparency, and internal consistency to Exchange rules.

¹⁰⁰ The Exchange notes that the proposal to allow multiple single-leg CUBE Auctions to run concurrently on Pillar is distinct from the current (and proposed) functionality that permits a single-leg Auction in an option series to run concurrent with a Complex CUBE Auction in the same series. See Commentary .01 to Rule 971.1NY and proposed Commentary .01 to Rule 971.1NYP (discussed below).

¹⁰¹ See proposed Rule 971.1NYP(c). See Rule 971.1NY(c) (providing that “[o]nly one Auction may be conducted at a time in any given series.”).

¹⁰² As discussed *infra*, a CUBE Auction may conclude early (*i.e.*, before the end of the Response Time Interval) because of certain trading interest that arrives during the Auction or in the event of a trading halt in the underlying security while the Auction is in progress. See proposed Rule 971.1NYP(c)(2).

¹⁰³ See proposed Rule 971.1NYP(c)(2).

¹⁰⁴ See *id.*

¹⁰⁵ See Rule 971.1NY(c)(4)(A).

¹⁰⁶ See, e.g., Cboe Rule 5.37(c)(1) (providing that multiple price-improvement auctions in the same series for agency orders of 50 contracts or more can run concurrently and will be processed sequentially, including if all such auctions are ended early and providing that if only one such auction ends early it will be allocated when it ends); EDGX Rule 21.19(c)(1) (same). The Exchange does not propose to limit the concurrent auction functionality to CUBE Orders of 50 or more and would allow concurrent auctions for CUBE Orders of any size (*i.e.*, including for CUBE Orders for fewer than 50 contracts). The Exchange believes this extension of this concurrent auction

functionality to smaller-sized CUBE Orders is non-controversial because it should not raise any issues that differ from those previously considered when other options exchanges adopted this functionality for larger-sized agency orders submitted to price improvement auctions.

¹⁰⁷ See, e.g., proposed Rule 971.1NYP(c)(3) (setting forth the sole early end scenario on Pillar).

¹⁰⁸ See, e.g., proposed Rule 971.1NYP(b)(5). See also SEC Approval of CUBE Pilot (focusing solely on guaranteeing price improvement to CUBE Orders for fewer than 50 contracts and making no mention of restriction on concurrent auctions for such smaller-sized CUBE Orders).

¹⁰⁹ See proposed Rule 971.1NYP(c)(2), which is identical to current Rule 971.1NYP(c)(3), except for the updated cross-reference to the early conclusion section of the proposed Rule.

¹¹⁰ See proposed Rule 971.1NYP(c)(2), which is identical to current Rule 971.1NYP(c)(3), except for the updated cross-reference to the order allocation section of the proposed Rule.

¹¹¹ See proposed Rule 971.1NYP(c)(2).

¹¹² See Rule 971.1NY(c)(5)(C) (“After the CUBE Order has been executed, any remaining RFR Responses not marked GTX will be processed in accordance with Rule 964NY Order Display and Priority.”).

¹¹³ See Rule 971.1NY(c)(4)(A)-(F). See proposed Rule 971.1NYP(c)(3) (which early end scenario is the same as set forth in current Rule 971.1NY(c)(4)(D), as discussed *infra*).

price.”¹¹⁴ In addition to being consistent with current functionality, this early end scenario is consistent with functionality available on other options exchanges.¹¹⁵

On Pillar, unlike per the current rule, the following scenarios would not cause the early end of a CUBE Auction.

- First, because the Exchange proposes to allow concurrent auctions (as previously discussed), the Exchange would no longer end a CUBE Auction early based on the arrival of a new CUBE Order.¹¹⁶

- Second, because the Exchange proposes to allow CUBE Auctions in the same series as orders exposed in the BOLD mechanism (as discussed, *supra*), there is no reason to end an Auction early based on the arrival of such exposed order.¹¹⁷

- In addition, the Exchange would not end an Auction early based upon interest that arrives during the Auction (on either side of the market) that is marketable against the RFR Responses, the NBBO or BBO (if not routable).¹¹⁸ The Exchange believes that such interest should trade against interest in the Consolidated Book to the extent possible and, if any size of the incoming interest remains at the conclusion of the Auction, such contra-side interest may be eligible to trade with the CUBE Order. This proposed handling is consistent with functionality available on other options exchanges.¹¹⁹

- The Exchange likewise will no longer end a CUBE Auction based on the arrival of AON Orders because the Exchange believes that AON Orders

should trade against interest in the Consolidated Book to the extent possible and, if the AON Order is still on the Consolidated Book at the conclusion of the Auction, such contra-side AON Order may be eligible to trade with the CUBE Order.¹²⁰

The Exchange believes that, on Pillar, allowing an Auction to continue uninterrupted in the above-referenced circumstances would result in fewer CUBE Auctions ending early and, as such, would provide more opportunities for price improvement to the benefit of all market participants.

CUBE Order Allocation on Pillar

The Exchange proposes to modify how a CUBE Order is allocated at the end of the Auction to conform with new Pillar Rule 964NYP (described below).

Current Rule 971.1NY(c)(5) describes CUBE Order allocation. Specifically, at the conclusion of the Auction, any RFR Responses (including GTX Orders)¹²¹ that are larger than the CUBE Order will be capped at the CUBE Order size for purposes of size pro rata allocation of the CUBE Order per Rule 964NY(b)(3)¹²² and that, at each price level, displayed Customer orders have first priority to trade with the CUBE Order per pursuant to Rule 964NY(c)(2)(A).¹²³ Further, Rule 971.1NY(c)(5)(B) provides that, after executing against displayed Customer orders at a price, the CUBE Order will be allocated among the RFR Responses and the Contra Order, which allocation may vary depending on whether the Contra Order guaranteed the CUBE Order using a single-stop price, auto-match, or auto-match limit.¹²⁴

As noted above, CUBE Orders currently trade in accordance with Rule 964NY—the Exchange’s pre-Pillar priority and allocation rule. Specifically, on the Exchange, at a price, displayed interest is ranked ahead of non-displayed interest with priority afforded to Customer interest over displayed non-Customer interest; following all displayed interest at a

price, followed by same-priced non-displayed interest, which interest is ranked solely in time priority with no preference given to non-displayed Customer interest.¹²⁵

On Pillar, orders and quotes will be ranked, prioritized, and executed based on new Pillar Rule 964NYP, which aligns with the Exchange’s current ranking and priority scheme. Pillar Rule 964NYP(e) provides that “[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer” and that “[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.”¹²⁶ The three categories are: Priority 1—Market Order, Priority 2—Display Orders and Priority 3—Non-Display Orders (the “Pillar Priority categories”).¹²⁷ Thus, on Pillar, Customer orders in each priority category will have first priority to trade ahead of same-priced non-Customer interest in that priority category until all interest in that Pillar Priority category is exhausted—and, if there is more than one Customer in that category at the same price, the Customer first in time has priority.¹²⁸ Furthermore, as is the case today, the Exchange would allocate same-priced, non-Customer interest that is displayed in the Consolidated Book on a size pro rata basis.¹²⁹ Finally, on Pillar (and unlike current pre-Pillar Rule 964NY), at a price, non-displayed Customer orders will trade in time priority before same-priced non-displayed, non-Customer interest, which also trades in time.¹³⁰

The Exchange proposes that CUBE Auctions on Pillar would follow the priority, ranking, and allocation model set forth in the above-described Pillar Rule 964NYP. As proposed, Rule 971.1NY(c)(4) would provide that, at each price, CUBE Orders would be

¹¹⁴ See proposed Rule 971.1NYP(c)(3). The Exchange notes that this early end scenario covers instances in which the entire size of the incoming interest is non-marketable on arrival as well as instances where a portion of the incoming interest is marketable, and trades on arrival, but the untraded balance is non-marketable. In both instances, the non-marketable interest would post to the Consolidated Book thereby adjusting the range of permissible executions.

¹¹⁵ See, e.g., Rule 971.1NY (c)(4)(D), Nasdaq ISE, Options 3 Section 13(c)(5)(i) (providing that an auction would end early “any time the Exchange best bid or offer improves beyond the price of the Crossing Transaction on the same side of the market as the Agency Order”).

¹¹⁶ See Rule 971.1NY(c)(4)(A). See proposed Rule 971.1NYP(c) (providing for concurrent CUBE Auctions at the same time in the same series).

¹¹⁷ See Rule 971.1NY(c)(4)(F). As discussed, *supra*, on Pillar, the Exchange would no longer reject (as it does today) a CUBE Order in the same series as an order exposed by the BOLD Mechanism.

¹¹⁸ See Rule 971.1NY(c)(4)(B)–(C).

¹¹⁹ See, e.g., Cboe 5.37(d)(2) and Nasdaq ISE, Options 3 Section 13(d)(4) (likewise providing that market or marketable interest on the opposite-side of the agency order would not cause the early end of an auction, would execute with interest outside of the auction and, if size remained, potentially could receive an allocation against auction interest).

¹²⁰ See Rule 971.1NY(c)(4)(E).

¹²¹ See Rule 971.1NY(c)(2)(C)(i)(c) (“GTX Orders with a size greater than the size of the CUBE Order will be capped at the size of the CUBE Order.”). On, Pillar, however, only non-Customer GTX Orders would be capped at the CUBE Order size for purposes of size pro rata allocation whereas Customer GTX Orders would trade with the CUBE Order based on time. See, e.g., proposed Rules 971.1NYP(c)(4)(B), as discussed, *infra*.

¹²² Rule 964NY(b)(3) describes the Exchange’s pro rata allocation formula, which same formula is described in Pillar Rule 964NYP(i).

¹²³ Rule 964NY(c)(2)(A) provides an “inbound order will first be matched against all available displayed Customer interest in the Consolidated Book.”

¹²⁴ See Rule 971.1NY(c)(5)(B)(i)–(iii).

¹²⁵ See Rule 964NY(b), (c). See also American Pillar Priority Filing (describing priority and allocation per Rule 964NYP).

¹²⁶ See Pillar Rule 964NYP(e) (Priority Categories).

¹²⁷ See Pillar Rule 964NYP(e)(1)–(3) (setting forth Pillar Priority Categories).

¹²⁸ See Pillar Rule 964NYP(e), (j). For example, same-priced interest ranked Priority 1—Market Orders will afford Customer orders at a price first priority, followed by same-priced non-Customer interest. Customer interest ranked Priority 2 and Priority 3 are likewise afforded first priority at a price.

¹²⁹ See Pillar Rule 964NYP(i) (Size Pro Rata Allocation) (setting forth Pillar pro rata allocation formula). The Exchange notes that the Pillar pro rata allocation formula is identical to that set forth in current Rule 964NY(b)(3) (Size Pro Rata Allocation).

¹³⁰ See Pillar Rule 964NYP(j)(6)–(7).

allocated consistent with Pillar Rule 964NYP as follows.

- First priority to execute with the CUBE Order is given to Customer RFR Responses, followed by same-priced non-Customer RFR Responses ranked Priority 1—Market Orders (each, “Priority 1 Interest”);
- Next priority to execute with the CUBE Order is given to Customer RFR Responses ranked Priority 2—Display Orders (“Priority 2 Customer Interest”), followed by same-priced non-Customer RFR Responses ranked Priority 2—Display Orders; and
- Third priority to execute with the CUBE Order is afforded to Customer RFR Responses followed by same-priced non-Customer RFR Responses ranked Priority 3—Non-Display.¹³¹

The Exchange believes the proposal to align CUBE Order allocation with Pillar Rule 964NYP(j) would add clarity, transparency, and internal consistency to Exchange rules. By following Pillar Rule 964NYP(j), the Exchange notes that, at a price, non-Customer Priority 1 interest would execute ahead of same-priced Customer Priority 2 Interest.¹³² In addition, as discussed further below, before the Contra Order will receive its guaranteed allocation, the CUBE Order would first trade, at a price, with all Priority 1 Interest and with Priority 2 Customer Interest to ensure the priority of Customer interest is consistent with the Exchange’s Customer priority model.

Proposed Rule 971.1NYP(c)(4)(B) (Allocation) would provide that RFR Responses would be allocated based on time or per pro rata allocation. Specifically, RFR Responses of Customers ranked Priority 1 and 2, as well as all RFR Responses ranked Priority 3, would trade with the CUBE Order based on time per Pillar Rule 964NYP(j).¹³³ And, RFR Responses of

non-Customers ranked Priority 1 and Priority 2 would be capped at the CUBE Order size for purposes of size pro rata allocation per Pillar Rule 964NYP(i).¹³⁴ The Exchange notes that this proposed functionality is consistent with current Auction functionality, except that on Pillar, Customer RFR Responses would be allocated based on time (and no longer on a size pro rata basis), which handling would align the allocation of CUBE Orders with the Exchange’s Customer priority model.¹³⁵

Proposed Rule 971.1NYP(c)(4)(C) (Surrender Quantity) would be new functionality and would provide that an Initiating Participant that guarantees a CUBE Order with a stop price (per proposed Rule 971.1NYP(b)(1)(A))¹³⁶ has the option of designating a “Surrender Quantity” and receiving some percentage less than the 40% participation guarantee. As proposed, if the Initiating Participant elects a Surrender Quantity, and there is sufficient contra-side interest equal to or better than the stop price to satisfy the CUBE Order, the CUBE Order executes against the Contra Order up to the amount of its Surrender Quantity.¹³⁷ Absent sufficient size of contra-side interest equal to or better than the stop price, the Contra Order would trade with the balance of the CUBE Order at the stop price regardless of its Surrender Quantity, which functionality is consistent with current Contra Order behavior.¹³⁸ Finally, as proposed, Surrender Quantity information is not disseminated to other market participants and may not be modified after it is submitted. The Exchange notes that the concept of “Surrender Quantity” is available on other options exchanges and is therefore not new or novel.¹³⁹ The Exchange believes that

providing Initiating Participants the option to designate a Surrender Quantity in CUBE Auctions on Pillar would enhance functionality by affording flexibility and discretion to the Contra Order while providing additional opportunities for RFR Responses to interact with the CUBE Order. In addition, the proposed enhancement to add the option of electing a Surrender Quantity would be a competitive change and would make the Exchange a more attractive venue to send (auction-related) order flow.

Proposed Rule 971.1NYP(c)(4)(D) (RFR Responses and Contra Order Allocation) would provide that, at a price, RFR Responses are allocated in accordance with proposed paragraphs (c)(4)(A) (Customer Priority) and (c)(4)(B) (Time or Size Pro Rata Allocation) and that any allocation to the Contra Order would depend upon the method by which the CUBE Order was guaranteed.¹⁴⁰

- *Stop Price.*¹⁴¹ Consistent with current functionality, a CUBE Order to buy (sell), that is guaranteed by a stop price would execute first with RFR Responses priced below (above) the stop price, beginning with the lowest (highest) price within the range of permissible executions.¹⁴²

- Next, any remaining contracts of the CUBE Order would execute at the stop price, first with all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with new Pillar Rule 964NYP(j).¹⁴³

- Then, at the stop price, the Contra Order would receive an allocation of the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size

“surrender” a percentage of its 40% guaranteed participation, ranging from 0% to 39%); Nasdaq ISE (providing that the initiating participant may be entitled to its 40% participation guarantee “or such lower percentage requested by the Member”); Cboe Rule 5.37(e)(5) (allowing initiating participants that guarantee a paired order with a single-price submission, to elect to have “last priority” to trade against the agency order and will only trade with the agency order after such order has traded with all other contra-side interest at prices equal to or better than the guaranteed stop price; and further providing that “last priority” information is not available to other market participants and, once submitted, may not be modified); Cboe EDGX Rule 21.19(e)(5) (same).

¹⁴⁰ Consistent with proposed Rule 971.1NYP(c)(1)(C)(i)(c), and in contrast to current Rule 971.1NY(c)(5)(B)(i)–(iii), the proposed CUBE Order allocation section would not reference GTX Orders, as such orders would execute solely with the CUBE Order or cancel.

¹⁴¹ See proposed Rule 971.1NYP(b)(1)(A) (describing stop price requirements).

¹⁴² See proposed Rule 971.1NYP(c)(4)(D)(i)(a). See also Rule 971.1NY(c)(5)(B)(i)(a).

¹⁴³ See proposed Rule 971.1NYP(c)(4)(D)(i)(b). See also Rule 971.1NY(c)(5)(B)(i)(b).

¹³¹ See Rule 971.1NYP(c)(4)(A) (Customer Priority).

¹³² As discussed in the American Pillar Priority Filing, non-Customer interest ranked Priority 1 would consist of Market Orders that are ranked and displayed at the Trading Collar price, which orders would be cancelled if held more than 500 milliseconds without trading, per proposed Rule 900.3NYP(a)(4)(D). See American Pillar Priority Filing. See also the Pillar Trading Collar Filing (NYSEAmer–2023–11P). The proposed Trading Collar functionality would operate in the same manner as per Arca Options Rule 6.62P–O(a)(4)(D) (Application of the Trading Collar, which provides that “[i]f an order to buy (sell) would trade or route above (below) the Trading Collar or would have its working price repriced to a Trading Collar that is below (above) its limit price, the order will be added to the Consolidated Book at the Trading Collar for 500 milliseconds and if not traded within that period, will be cancelled” even if repriced or routed and, if routed, any returned portion will likewise be cancelled). See *id.*

¹³³ See proposed Rule 971.1NYP(c)(4)(B)(i) (Time).

¹³⁴ See proposed Rule 971.1NYP(c)(4)(B)(ii) (Size Pro Rata). The size pro rata formula set forth in Pillar Rule 964NYP(i) is identical to the size pro rata formula set forth in Rule 964NY(b)(3). See American Pillar Priority Filing.

¹³⁵ See, e.g., Pillar Rule 964NYP(j). Because the proposed Rule details at the outset of the order allocation section how both Customer and non-Customer RFR Responses would be processed (*i.e.*, in time or on a pro rata allocation basis), the Exchange believes it is not necessary to repeat this (now superfluous) information throughout proposed Rule 971.1NYP(c)(4) (Allocation of CUBE Orders). See, e.g., Rules 971.1NY(c)(5)(C), (c)(5)(B)(i)(b), (c)(5)(B)(ii)(b), and (c)(5)(B)(iii)(b) (repeating in each rule provision how RFR Responses would be allocated).

¹³⁶ See proposed Rule 971.1NYP(b)(1)(A) (describing single stop price).

¹³⁷ See proposed Rule 971.1NYP(c)(4)(C).

¹³⁸ See Rule 971.1NY(c)(5)(B)(i) (allocation to Contra Order that guaranteed a CUBE Order by single stop price).

¹³⁹ See, e.g., NASDAQ BX, Inc., Options 3, Section 13 (ii)(A)(1) (providing that an initiating participant utilizing a single stop price may opt to

or one contract if there is only one RFR Response), or the Surrender Quantity, if one has been specified. Then, any remaining CUBE Order contracts would be allocated first among remaining RFR Responses at the stop price. If all RFR Responses are filled, any remaining CUBE Order contracts would be allocated to the Contra Order. This proposed handling is consistent with current functionality except that it includes reference to the new option of designating a “Surrender Quantity.”¹⁴⁴

○ Finally, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the stop price.¹⁴⁵

• *Auto-Match.*¹⁴⁶ Consistent with current functionality, if a CUBE Order to buy (sell) is guaranteed by auto-match, the Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses at each price level starting with the lowest (highest) price at which an execution against an RFR Response occurs within the range of permissible executions, until a price point is reached where the balance of the CUBE Order can be fully executed. (the “clean-up price”).¹⁴⁷ Also consistent with current functionality, if the Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.¹⁴⁸

○ As proposed, at the clean-up price, any remaining contracts of the CUBE Order would execute against all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with proposed new Pillar Rule 964NYP(j).¹⁴⁹

○ Next, consistent with current functionality, the Contra Order would receive additional contracts required to achieve an allocation equal to the greater of 40% of the original CUBE

Order size or one contract (or the greater of 50% of the original CUBE Order size or one contract if there is only one RFR Response); if there are other RFR Responses at the clean-up price, the remaining CUBE Order contracts would be allocated first among RFR Responses; and once all RFR Responses are filled at the clean-up price, any remaining CUBE Order contracts would be allocated to the Contra Order at the initiating price.¹⁵⁰

○ Finally, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the initiating price, which is identical to current functionality.¹⁵¹

• *Auto-Match Limit.*¹⁵² Consistent with current functionality, a CUBE Order to buy (sell), that is guaranteed by auto-match limit would execute first with RFR Responses at each price level priced below (above) the auto-match limit price within the range of permissible executions, beginning with the lowest (highest) price.¹⁵³

○ Next, consistent with current functionality, the CUBE Order would be allocated to RFR Responses at a price equal to the price of the Contra Order's auto-match limit price, and if volume remains, to prices higher (lower) than the auto-match limit price; at each price level equal to or higher (lower) than the auto-match limit price, the Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses; and, if the Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.¹⁵⁴

○ As proposed, at the clean-up price, any remaining contracts of the CUBE Order will execute against all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with proposed new Rule 964NYP(j).¹⁵⁵

○ Next, and consistent with current functionality, the Contra Order would receive additional contracts required to achieve an allocation of the greater of 40% of the original CUBE Order size or one contract (or the greater of 50% of the original CUBE Order size or one contract if there is only one RFR

Response); if there are other RFR Responses at the clean-up price the remaining CUBE Order contracts would be allocated first to RFR Responses; and any remaining CUBE Order contracts would be allocated to the Contra Order at the initiating price.¹⁵⁶

○ Finally, consistent with current functionality, if there are no RFR Responses, the CUBE Order would execute against the Contra Order at the initiating price.¹⁵⁷

Commentary to Proposed Rule 971.1NYP for CUBE Auctions on Pillar

The Exchange proposes to adopt Commentaries .01 through .04 to the proposed Rule, which are identical to current Commentaries .01 through .03 and .05 to Rule 971.1NY, respectively, as discussed below (each a “proposed Commentary” or a “current Commentary”).¹⁵⁸

Proposed Commentary .01 is identical to current Commentary .01 and would describe “Concurrent Single-Leg and Complex CUBE Auctions involving the same option series.” As proposed, and identical to current functionality, the Exchange would allow the simultaneous conduct of a (single-leg) CUBE Auction for a given series at the same time as a Complex CUBE Auction for a Complex Order that includes the same option series.¹⁵⁹ Also, identical to current functionality, to the extent there are concurrent CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced.¹⁶⁰ Finally, identical to current functionality, at the time each CUBE Auction concludes, including when it concludes early, it will be

¹⁵⁶ See proposed Rule 971.1NYP(c)(4)(D)(iii)(c). See also Rule 971.1NY(c)(5)(B)(iii)(b).

¹⁵⁷ See proposed Rule 971.1NYP(c)(4)(D)(iii)(d). See also Rule 971.1NY(c)(5)(B)(iii)(c). The proposed Rule would not specify that “[a] single RFR Response will not be allocated a number of contracts that is greater than its size,” as set forth in Rule 971.1NY(c)(5)(D), because such handling is consistent with standard processing and its inclusion in the proposed Rule would be unnecessary and may lead to potential confusion.

¹⁵⁸ As discussed, *infra*, the proposed Rule does not include the functionality set forth in current Commentary .04 to Rule 971.1NY because, on Pillar, the Exchange would allow both a CUBE Order and an order exposed via the BOLD mechanism in same series to occur simultaneously.

¹⁵⁹ See proposed Rule 971.1NYP, Commentary .01. See also Rule 971.2NYP, Commentary .01 (same). The Exchange plans to submit a separate rule filing to adopt proposed Rule 971.2NYP (Complex Electronic Cross Transactions), which proposed rule would include the proposed (and current) Commentary .01. As noted, *supra*, current (and proposed) Commentary .01 describes functionality that is distinct from the proposal to allow multiple single-leg CUBE Auctions to run concurrently on Pillar.

¹⁶⁰ See *id.*

¹⁴⁴ See *id.*

¹⁴⁵ See proposed Rule 971.1NYP(c)(4)(D)(i)(c). See also Rule 971.1NY(c)(5)(B)(i)(c) (providing that “[i]f there are no RFR Responses, the CUBE Order shall execute against the Contra Order at the higher (lower) of the stop price or the lower (upper) bound of the range of permissible executions”). Unlike the current rule, the proposed Rule would not include language regarding the CUBE Order executing at a price other than the stop price because the proposed (and current) Rule provides that a stop price for a CUBE order to buy (sell) will be repriced to the lower (upper) bound of permissible executions if such stop price is below (above) the lower (upper) bound of the range of permissible executions. See proposed Rule 971.1NY(b)(1)(A); Rule 971.1NY(c)(1)(A).

¹⁴⁶ See proposed Rule 971.1NYP(b)(1)(B) (describing auto-match feature).

¹⁴⁷ See proposed Rule 971.1NYP(c)(4)(D)(ii)(a). See also Rule 971.1NY(c)(5)(B)(ii)(a).

¹⁴⁸ See proposed Rule 971.1NYP(c)(4)(D)(ii)(a). See also Rule 971.1NY(c)(5)(B)(ii)(b).

¹⁴⁹ See proposed Rule 971.1NYP(c)(4)(D)(ii)(b). See also Rule 971.1NY(c)(5)(B)(ii)(b).

¹⁵⁰ See *id.*

¹⁵¹ See proposed Rule 971.1NYP(c)(4)(D)(ii)(c). See also Rule 971.1NY(c)(5)(B)(iii)(c).

¹⁵² See proposed Rule 971.1NYP(b)(1)(C) (describing auto-match limit price requirements).

¹⁵³ See proposed Rule 971.1NYP(c)(4)(D)(iii)(a). See also Rule 971.1NY(c)(5)(B)(iii)(a).

¹⁵⁴ See proposed Rule 971.1NYP(c)(4)(D)(iii)(b). See also Rule 971.1NY(c)(5)(B)(iii)(b).

¹⁵⁵ See proposed Rule 971.1NYP(c)(4)(D)(iii)(c). See also Rule 971.1NY(c)(5)(B)(iii)(b).

¹ See *id.*

processed pursuant to Rule 971.1NYP(c)(4) or Rule 971.2NYP(c)(4) as applicable.¹⁶¹

Proposed Commentary .02(a)–(d) is identical to current Commentary .02(a)–(d) and would provide that the following conduct will be considered conduct inconsistent with just and equitable principles of trade:

- An ATP Holder entering RFR Responses to a CUBE Auction for which the ATP Holder is the Initiating Participant;

- Engaging in a pattern and practice of trading or quoting activity for the purpose of causing a CUBE Auction to conclude before the end of the Response Time Interval;

- An Initiating Participant that breaks up an agency order into separate CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in paragraph (c)(4) of this Rule;¹⁶² and

- Engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the CUBE Order.

Proposed Commentary .03 is identical to current Commentary .03 and would provide that CUBE executions would always be reported to OPRA as “stopped” trades.

Proposed Commentary .04 describes functionality for AON CUBE Orders that is identical to current Commentary .05 and would provide that, except as provided in proposed Commentary .04, an AON CUBE auction will be subject to the provisions of proposed Rule 971.1NYP.¹⁶³

- Proposed Commentary .04 (like current Commentary .05) would provide that a CUBE Order of at least 500 contracts can be designated as AON (an

“AON CUBE Order”) and unlike non-AON CUBE Orders, such AON CUBE Orders may only be guaranteed by a specified stop price.

- Proposed Commentary .04 would differ from current Commentary .05 to make clear that the (new) option for certain Initiating Participants to designate a Surrender Quantity would not be available for Contra Orders to an AON CUBE Order. This proposed text is not included in current Commentary .05 because the option to designate a Surrender Quantity is not available today and is an enhanced feature that would only be available for certain non-AON CUBE Auctions on Pillar.¹⁶⁴

Proposed Commentary .04(a)–(d), is identical to current Commentary .05(a)–(d) and would provide the following.

- An AON CUBE Order to buy (sell) will execute in full with the Contra Order at the single stop price even if there is non-Customer interest priced higher (lower) than the stop price that, either on its own or when aggregated with other non-Customer RFR Responses at the stop price or better, is insufficient to satisfy the full quantity of the AON CUBE Order;

- The Contra Order will not receive any allocation and will be cancelled if (i) RFR Responses to sell (buy) at prices lower (higher) than the stop price can satisfy the full quantity of the AON CUBE Order or (ii) there is Customer interest to sell (buy) at the stop price or better than on its own, or when aggregated with RFR Responses to sell (buy) at the stop price or prices lower (higher) than the stop price, can satisfy the full quantity of the AON CUBE Order. In either such case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B) of this Rule, as applicable;¹⁶⁵

- The AON CUBE Order and Contra Order will both be cancelled if there is Customer interest to sell (buy) at the stop price or better and such interest, either on its own or when aggregated with RFR Responses to sell (buy) at the stop price or at prices lower (higher) than the stop price, is insufficient to

satisfy the full quantity of the AON CUBE Order; and

- Prior to entering an agency order on behalf of a Customer into the CUBE Auction as an AON CUBE Order, Initiating Participants must deliver to the Customer a written notification informing the Customer that such order may be executed using the CUBE Auction. Such written notification must disclose the terms and conditions contained in this Commentary .04 and must be in a form approved by the Exchange.¹⁶⁶

* * * * *

As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, notwithstanding the timing of the effectiveness of this proposed rule change, the Exchange will announce by Trader Update when rules with a “P” modifier will become operative and for which symbols. The Exchange believes that keeping existing rules on the rulebook pending the full migration of Pillar will reduce confusion because it will ensure that the rules governing trading on the Exchange will continue to be available pending the full migration to Pillar.

Implementation

As noted immediately above, the Exchange will not implement proposed Rule 971.1NYP until all other Pillar-related rule filings (*i.e.*, proposed rules with a “P” modifier) are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

First, to the extent that the proposed Rule contains provisions that are identical (or substantively identical) to current Rule 971.1NY, the Exchange believes the Rule would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed Rule includes

¹⁶¹ See *id.* The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.*, change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality. As noted above, the Exchange plans to submit a separate rule filing to adopt Complex CUBE Auctions on Pillar, which current Rule 971.2NY and soon-to-be proposed Rule 971.2NYP, will set forth order allocation in proposed paragraph (c)(4).

¹⁶² The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.*, change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality.

¹⁶³ The Exchange proposes the non-substantive change to re-number this provision (from current Commentary .05 to proposed Commentary .04) and also proposes to re-locate to the beginning of the proposed Rule text that appears at the bottom of the current rule.

¹⁶⁴ See proposed Rule 971.1NYP, Commentary .04 (providing, in relevant part that “a Contra Order that guarantees an AON CUBE Order is not eligible to designate a Surrender Quantity of its guaranteed participation.”). See, *e.g.*, proposed Rule 971.1NYP(c)(4)(C) (describing the proposed option of designating a Surrender Quantity for non-AON CUBE Orders that are guaranteed by a stop price).

¹⁶⁵ The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.*, change reference to paragraph (c)(5) of current Rule 971.1NY to paragraph (c)(4) of the proposed Rule, which difference from the current CUBE rule is not material because it does not impact functionality).

¹⁶⁶ See proposed Rule 971.1NYP, Commentary .04.

streamlined, and in some cases reorganized, descriptions of already-approved (pre-Pillar) Auction functionality in a manner that adds clarity, transparency, and internal consistency to Exchange rules.¹⁶⁷

Next, to the extent that the proposed Rule includes enhancements to the CUBE, the Exchange believes that the proposed Rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed enhancements to Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for CUBE Orders of all sizes in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

In particular, the proposed rule change to adopt a single pricing parameter for CUBE Orders of any size (except when the NBBO width is one penny) would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would streamline and simplify current CUBE Auction functionality making it easier for market participants to navigate and comprehend.¹⁶⁸ In addition, the Exchange's rules regarding CUBE Auctions would continue to require price improvement for CUBE Orders for fewer than 50 contracts submitted in a penny-wide market and rejecting such orders when the Exchange is setting the NBBO (*i.e.*, BBO = NBBO) and there is displayed Customer interest at the BBO. The proposed pricing requirements providing whether a CUBE Auction is initiated (including when the NBBO is one cent wide or when the NBBO is crossed) are consistent with the Exchange's current requirements and with the requirements of other options exchanges that offer price improvement mechanisms.¹⁶⁹

The Exchange believes that the proposal to reject CUBE Orders that are submitted when there is not enough time for a CUBE Auction to run the full

duration of the Response Time Interval would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would make clear that CUBE Orders that cannot be exposed to solicit price-improving interest for the full Response Time Interval would not be accepted by the Exchange. Moreover, the proposal to modify the Response Time Interval to be a set duration as opposed to a random duration would be a competitive change and would align the Exchange's rules with other options exchanges that include this feature.¹⁷⁰

The Exchange believes that the proposal to accept CUBE Orders in the same series as orders being exposed in the BOLD mechanism would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would allow more CUBE Orders to be accepted, which would in turn promote increased opportunities for price improvement. This proposed change is not currently available (because of system limitations) but would be available on Pillar to the benefit of all market participants because of increased trading opportunities through the BOLD mechanism as well as through the acceptance of more CUBE Orders (submitted when certain orders are being exposed via BOLD).

The proposed rule changes to enhance the Auction process on Pillar by allowing concurrent auctions, adding the associated "AuctionID" feature, and permitting Initiating Participants to designate a Surrender Quantity would remove impediments to and perfect the mechanisms of a free and open market and a national market system for several reasons. First, the proposed changes would not only allow more CUBE Auctions to occur on the Exchange but would also allow more targeted participation in CUBE Auctions with the new AuctionID feature available for GTX Orders. Market participants that respond to CUBE Auctions with GTX Orders would be able to direct their trading interest to a specific Auction (which functionality is also offered on other options exchanges) thus increasing determinism.¹⁷¹ That said, the AuctionID functionality would be optional and a GTX Order sent without an AuctionID would respond to the

Auction that began closest in time to the submission of the GTX Order.

The proposal to permit concurrent auctions in the same series for CUBE Orders of 50 or more contracts would benefit investors because it would allow more CUBE Auctions to run the full duration of the Response Time Interval, thus affording more time and opportunity for the arrival of price-improving interest. Moreover, permitting concurrent auctions for larger-sized agency orders (analogous to CUBE Orders of 50 or more contracts), which is not new or novel functionality and has been in place on other options exchanges for several years, would be a competitive change.¹⁷²

The proposal to permit concurrent auctions in the same series for CUBE Orders of fewer than 50 contracts would remove impediments to and perfect the mechanisms of a free and open market because it would extend concurrent auction functionality to smaller-sized CUBE Orders. The Exchange also believes this proposed change is non-controversial because it should not raise any issues that differ from those previously considered when other options exchanges adopted this functionality for larger-sized agency orders submitted to price improvement auctions. The proposal would benefit investors because it would afford smaller-sized CUBE Orders increased opportunity to solicit price-improving auction interest—including because receipt of a new CUBE Order would no longer cause the Auction in progress to end early. The Exchange further believes that this proposed change would provide additional benefits to Customers, as smaller-sized CUBE Orders tend to represent retail interest and could improve the Customer experience on the Exchange by increasing trading opportunities in the CUBE Auction. Notwithstanding the proposal to allow concurrent auctions for smaller-sized CUBE Orders, the Exchange would continue to protect Customer interest on the Consolidated Book by requiring price improvement over the BBO to initiate an Auction for smaller-sized CUBE Orders and rejecting such orders in penny-wide markets when price improvement is not possible.

The Exchange believes this proposed new functionality to allow concurrent auctions for CUBE Orders of any size should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit all market participants. In addition, this

¹⁶⁷ See, e.g., proposed Rules 971.1NYP(b)(1)(A)–(C) (describing stop price, auto match, and auto-match limit price); (b)(2), (3), (6), (7), and (9) (regarding eligibility of CUBE Orders submitted to the Auction); (c)(1) (regarding RFRs and RFR Responses) and (c)(2) (regarding conclusion of CUBE Auction).

¹⁶⁸ See, e.g., proposed Rules 971.1NYP(a)(3), (a)(4) and (a)(1)(A).

¹⁶⁹ See, e.g., Rule 971.1NYP(b)(1)(A), proposed Rule 971.1NYP(b)(5)–(b)(6), & note 54, *supra* (regarding pricing requirements utilized on Cboe, Cboe EDGX, and Nasdaq ISE to initiate an analogous price improvement auctions).

¹⁷⁰ See, e.g., notes 61, 76–77, *supra*.

¹⁷¹ See, e.g., notes 74 & 87, *supra*.

¹⁷² See, e.g., note 106, *supra*.

proposed change may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that permit overlapping price improvement auctions, while continuing to ensure that displayed Customer interest on the Consolidated Book is protected. The proposed enhancement to allow concurrent auctions for CUBE Orders of any size would be a competitive change and would make the Exchange a more attractive venue for auction-related order flow.

As noted above, the Exchange believes that the Pillar trading platform has sufficient capacity to process a large volume of concurrent Auctions for CUBE Orders of any size, including for CUBE Orders of fewer than 50 contracts.

The proposed changes to streamline early end scenarios for CUBE Auctions would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would increase the opportunity for each CUBE Auction to run the full length of the (fixed duration) RTI, which should increase opportunities for price improvement. In addition, this proposed change should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit all market participants. The Exchange notes that the proposed functionality would simplify the operation of CUBE Auctions in a manner that is consistent with other options exchanges' price improvement mechanisms.¹⁷³

The proposal to provide the option of designating a Surrender Quantity would remove impediments to and perfect the mechanisms of a free and open market because it would afford more discretion and flexibility to the Contra Order and may result in increased CUBE Auction volume on the Exchange. Moreover, this proposed enhancement is competitive as it would allow the Exchange to compete on more equal footing with other options exchanges that offer this feature in their price improvement auctions.¹⁷⁴

The proposed rule changes to modify the handling and operation of GTX Orders on Pillar per proposed Rule 971.1NYP(c)(1)(C)(a), (c) (*i.e.*, that such orders will execute with the CUBE Order to the extent possible and then cancel) and to clarify that GTX Orders, although not displayed or disseminated, are ranked and prioritized with same-priced Limit Orders as Priority 2—

Display Orders on Pillar (consistent with proposed new Rule 964NYP) would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because such changes would make clear to market participants responding to CUBE Auctions with GTX Orders how such interest would be prioritized and handled on Pillar, thus adding clarity, transparency, and internal consistency to Exchange rules.

The proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed CUBE Order allocation is consistent with current functionality, including that the Contra Order may be allocated a limited percentage of the CUBE Order ahead of certain other same-priced RFR Responses, except that the proposed rule would align with Pillar Rule 964NYP as described herein. Consistent with current functionality, the Exchange believes that the Contra Order, having guaranteed the execution of the CUBE Order, should be entitled to a certain level of participation in the Auction, assuming CUBE Order contracts remain after executing with contra-side interest prioritized ahead of the Contra Order. In addition, this alignment of CUBE Order functionality with Pillar Rule 964NYP would add clarity, transparency, and internal consistency to Exchange rules to the benefit of investors.

The proposed rule change to specify that the Surrender Quantity option is not available for Contra Orders to AON CUBE Orders would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because such rule text would not alter the functionality of AON CUBE Orders on Pillar but would instead add clarity, transparency, and internal consistency to Exchange rules.

Further, the proposed rule change would promote a fair and orderly market and national market system, because, as noted herein, the proposed enhancements to CUBE Auctions on Pillar are the same as those offered on other options exchanges that have price improvement mechanisms, except as noted herein.

The Exchange believes the proposed rule change is not unfairly discriminatory because the proposed handling of CUBE Auctions on Pillar would be the same for similarly-situated ATP Holders but (as is the case today) would vary for those ATP Holders

submitting interest on behalf of Customers versus ATP Holders submitting interest on behalf of non-Customers. As is the case today, all ATP Holders would continue to have an equal opportunity to receive the broadcast and respond with their best prices during the auction. The proposal to continue to afford Customer interest first priority within each Pillar Priority category is consistent with the Exchange's Customer-centric trading model and would benefit investors by attracting more (Customer) order flow to the Exchange which would result in increased liquidity.

In sum, the Exchange believes this proposal may lead to an increase in Exchange volume and should allow the Exchange to better compete against other options markets that already offer the enhanced functionality proposed herein. In particular, the Exchange believes that its proposal would allow the Exchange to better compete for auction order flow, while providing an opportunity for price improvement on CUBE Orders of any size. In addition, the proposed functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

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 transition to Pillar would promote competition among options exchanges by offering a low-latency, deterministic trading platform. The proposed rule changes would support that inter-market competition by allowing the Exchange to offer additional functionality to its ATP Holders, thereby potentially attracting additional order flow to the Exchange. The Exchange does not believe that the proposed rule changes would impact intra-market competition as the proposed rule changes would be applicable to all similarly-situated ATP Holders and reflects the Exchange's existing priority model.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes this proposed rule change would promote fair competition among the options exchanges and establish more uniform functionality across the various price improvement

¹⁷³ See, e.g., note 115, *supra*.

¹⁷⁴ See, e.g., note 140, *supra*.

auctions offered by other options exchanges. As noted herein, several of the proposed enhancements to the Auction—*i.e.*, concurrent auctions for larger-sized agency orders, inclusion of an AuctionID on Request for Responses and the option to include an AuctionID on GTX Orders, a fixed duration during which auction responses are submitted, and the ability to designate an optional Surrender Quantity—are currently offered on other options exchanges and the addition of these features would make the Exchange a more competitive venue for price improvement auctions. The proposed functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other options markets that already offer similar price improvement mechanisms and for this reason the proposal does not create an undue burden on intermarket competition. By contrast, not having the proposed functionality places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

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 Act¹⁷⁵ and Rule 19b-4(f)(6) thereunder.¹⁷⁶ 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)¹⁷⁷ 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-2023-35 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-2023-35. 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 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-2023-35 and should be submitted on or before August 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷⁸

Sherry R. Haywood,

Assistant Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2023-0002-N-23]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of withdrawal; reissuance of information collection; request for comment.

SUMMARY: On July 5, 2023, FRA published a 30-day notice of information collection; request for comment in the **Federal Register**. FR Doc. 2023-08413. Due to technical issues as the result of which FRA did not receive two timely-filed comment letters until after the comment period closed, FRA is withdrawing the July 5, 2023, notice of information collection; request for comment and re-issuing the 30-day notice to address the two additional comments. Accordingly, this notice supersedes the July 5, 2023, notice.

DATES: Interested persons are invited to submit comments on or before August 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609-1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email:

¹⁷⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷⁶ 17 CFR 240.19b-4(f)(6).

¹⁷⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁷⁸ 17 CFR 200.30-3(a)(12).

joanne.swafford@dot.gov or telephone: (757) 897-9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 21, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking Office of Management and Budget (OMB) approval. See 88 FR 24657. On July 5, 2023, FRA published a 30-day notice in the **Federal Register**, 88 FR 42999. Due to technical issues in which FRA did not receive two timely-filed comment letters until after the comment period closed, FRA is withdrawing the July 5, 2023, notice of information collection; request for comment and re-issuing it to address the two additional comment letters.¹ In addition, FRA has made adjustments to the total number of responses and burden hours in the PRA table that was previously published in the 60-day notice. At this time, FRA is forwarding the ICR to OMB for review and comment.²

In a letter dated June 20, 2023, The President of the Transportation Trades Department, AFL-CIO (TTD), expressed strong support for this ICR. TTD noted that FRA's proposed collection of information concerning train lengths, in feet, and number of crew members aboard a controlling locomotive involved in an accident at the time of such accident would bring FRA into compliance with the mandate in the Infrastructure Investment and Jobs Act (IIJA). TTD requests that FRA amend Form FRA F 6180.54 by adding this information on a permanent basis and by incorporating it into a location on the form. Additionally, TTD recommends that FRA take the additional step of collecting information about train weight distribution, number of buffer cars between cars containing hazardous

materials, crew member locations, presence of distributed power units, and synchronous or asynchronous operating modes.

FRA is taking TTD's suggestions under advisement and may incorporate some or all of the suggested information at a future date. Additionally, FRA is reviewing and considering updates to the data collected on the Form FRA F 6180.54, and TTD's suggestions will be considered for inclusion in a future version of the form.

In a comment letter dated June 20, 2023, the Association of American Railroads (AAR) raised several concerns. AAR asserts that FRA uses an artificially low monetary reporting threshold and its failure to incorporate the latest data decreases the utility of the reporting process. While FRA appreciates AAR's concern, this comment does not fall within the scope of the current ICR concerning the proposed paperwork burdens associated with accident/incident reporting and recordkeeping and thus, will not be addressed here.

AAR also asserts that FRA underestimates the amount of time required to gather information on crew size and train length because railroads, at a minimum, need to run separate reports and conduct searches to find this information. In response to AAR's feedback, FRA reviewed the estimate for the average time each railroad will need to provide information on crew size and train length in Special Study Blocks 49a and 49b. FRA disagrees with AAR's conclusion that railroads need more time to collect this information because the reporting data is readily available to railroads at the onset of the accident. Accordingly, FRA's estimate for the average time per response and the resulting estimated paperwork burden will remain unchanged.

AAR also notes that the IIJA limits the time period for the information collection to four years as opposed to FRA's proposed five years. After further consideration, FRA is revising its collection plan and proposes to collect this information for a projected four-year period in conformance with the time period set out by the IIJA. However, as FRA noted in response to TTD's suggestion of a permanent collection, FRA is reviewing and considering updates to the data collected on the FRA F 6180.54 form.

AAR also requests that FRA clarify reporting requirements for Special Study Blocks 49a and 49b and notes that in the *FRA Guide for Preparing Accident/Incident Reports*, Special Study Block 49a is currently used to report the type of track an accident

occurred on and in Special Study Block 49b, FRA has instructed railroads to provide information related to the number of cars carrying crude oil. In response to this feedback, FRA will modify the instructions for the Special Study Blocks on its website. Additionally, updates to the *FRA Guide for Preparing Accident/Incident Reports* are in progress.

AAR's final assertion is that FRA's delayed action undermines its existing train crew size rulemaking activities. While FRA appreciates this feedback, it does not fall within the scope of the current ICR concerning the paperwork burdens associated with accident/incident reporting and recordkeeping and thus, will not be addressed here.

The Chief Economist of the Bureau of Economic Analysis (BEA) sent an electronic letter dated May 30, 2023, expressing BEA's strong support for FRA's continued collection of data on the Accident/Incident Reporting and Recordkeeping forms. The Chief Economist noted that the data collected on these forms are crucial to key components of BEA's economic analyses and requested that FRA keep BEA informed of any modifications to these forms.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. This ICR responds to the information collection mandate in section 22421(b) of the IIJA and also provides routine updates to 49 CFR part 225's overall ICR renewal.

OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being

¹ On July 5, 2023, FRA published a 30-day notice, 88 FR 42999, that discussed and responded to one comment letter, 88 FR 24657. FRA was made aware of two additional, timely-filed comment letters that were received after the close of the 60-day comment period. FRA is withdrawing and re-issuing the 30-day notice to summarize and incorporate the two comment letters. For completeness, FRA will also re-print its summary and response to the third comment letter discussed in the July 5, 2023, notice.

² Once alerted to the fact that FRA received two additional comment letters and that FRA planned to withdraw and re-issue a 30-day notice, DOT did not certify or forward the supporting materials for OMB review.

collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130-0500.

Abstract: The railroad accident/incident reporting regulations in 49 CFR part 225 require railroads to submit reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. As the reporting requirements and the information needed regarding each category of accident/incident are

unique, a different form is used for each category.

In response to the mandate in IIJA section 22421,³ FRA intends to utilize Form FRA F 6180.54 Special Study Blocks 49a and 49b to collect the following information for a projected four-year period: (1) the length of the involved trains, in feet, and (2) the number of crew members who were aboard a controlling locomotive involved in an accident at the time of such accident. This modification produces a minimal additional burden with respect to what is already being reported, as FRA estimates that the utilization of the Special Study Blocks will require an additional 2 minutes to complete, for a total average burden time of approximately 2 hours and 2 minutes per form, adding an additional 57 hours to the overall collection request.

Additionally, in this 30-day notice, FRA adjusts its estimated paperwork

burden for the total number of responses and total burden hours to correct two calculation errors. Specifically, FRA updates the total number of responses from 85,570 to 88,176 and the total numbers of burden hours from 30,283 to 30,284 hours.

Specifically, under § 225.19(d), FRA expects submissions will decrease significantly from 11,636 hours to 7,040 hours due to a reduction in the number of injuries reported in the last two years. There is no change in the method of collection; this is a routine update for this 3-year ICR renewal period.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses

Form(s): FRA F 6180.54; .55; .55a; .56; .57; .78; .81; .97; .98; .107; .150.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) ⁴
225.6(a)—Consolidated reporting—Request to FRA by parent corporation to treat its commonly controlled carriers as a single railroad carrier for purposes of this part.	784 railroads	0.33 requests	40.00 hours	13.20	\$1,028.41
—(b) Written agreement by parent corporation with FRA on specific subsidiaries included in its railroad system.	The burden for this requirement is included in § 225.6(a).				
—(c) Notification by parent corporation regarding any change in the subsidiaries making up its railroad system and amended written agreement with FRA.	The burden for this requirement is included in § 225.6(a).				
225.9—Telephonic reports of certain accidents/incidents and other events.	784 railroads	2,589.00 phone reports.	15.00 minutes	647.25	50,427.25
225.11—Reporting of accidents/incidents—Form FRA F 6180.54 (IIJA created an additional burden of 2 minutes to what is already being reported.).	784 railroads	1,699.00 forms	2 hours + 2 minutes.	3,454.63	269,150.22
225.12(a)—Rail equipment accident/incident reports alleging human factor as cause—Form FRA F 6180.81.	784 railroads	732.00 forms	15.00 minutes	183.00	14,257.53
—(b) Part I Form FRA F 6180.78 (Notices)	784 railroads	800 notices + 800 notice copies + 3,200 copies + 10 copies.	10 minutes + 3 minutes.	333.83	26,008.70
—(c) Joint operations	784 railroads	73.00 reports	20.00 minutes	24.00	1,869.84
—(d) Late identification	784 railroads	20 attachments + 20 notices.	10.00 minutes	6.67	519.66
—(g) Employee statement supplementing railroad accident report (Part II Form FRA 6180.78).	Railroad employees.	60.00 statements	1.50 hours	90.00	7,011.90
—(g)(3) Employee confidential letter	Railroad employees.	5.00 letters	2.00 hours	10.00	779.10
225.13(A)—Late reports—RR discovery of improperly omitted report of accident/incident.	784 railroads	50.00 late reports	2.00 hours	100.00	7,791.00
—(B) RR late/amended report of accident/incident based on employee statement supplementing RR accident report.	784 railroads	20 amended reports + 30 copies.	1 hour + 3 minutes	21.50	1,675.07
225.18(a)—RR narrative report of possible alcohol/drug involvement in accident/incident.	784 railroads	12.00 reports	15.00 minutes	3.00	233.73
—(b) Reports required by § 219.209(b) appended to rail equipment accident/incident report.	784 railroads	5.00 reports	30.00 minutes	2.50	194.78
225.19(a)—Rail-highway grade crossing accident/incident report—Form FRA F 6180.57.	784 railroads	2,161.50 forms	2.00 hours	4,323.00	336,804.93

³ Specifically, IIJA section 22421(b) requires FRA to update Special Study Block 49 on Form FRA F 6180.54, for a period of four years, to collect information on: (1) the number of cars and length

of trains involved in an accident/incident; and (2) the number of crew members who were aboard a controlling locomotive involved in an accident at the time of such accident. Railroads are already

required to report the number of cars in the consist of a train involved in an accident on Form FRA F 6180.54, Field 35.

REPORTING BURDEN—Continued

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) ⁴
—(d) Death, injury, or occupational illness (Form FRA F 6180.55a).	784 railroads	7,040.00 forms	1.00 hour	7,040.00	548,486.40
225.21—Railroad injury and illness summary—Form FRA F 6180.55.	784 railroads	9,408.00 forms	10.00 minutes	1,568.00	122,162.88
225.21—Annual railroad report of employee hours and casualties, by state—Form FRA F 6180.56.	784 railroads	784.00 forms	15.00 minutes	196.00	15,270.36
225.21/25—Railroad employee injury and/or illness record—Form FRA F 6180.98.	784 railroads	4,000.00 forms	1.00 hour	4,000.00	311,640.00
—Copies of forms to employees	784 railroads	3.60 form copies	2.00 minutes	0.12	9.35
225.21—Initial rail equipment accident/incident record—Form FRA F 6180.97.	784 railroads	10,194.00 forms	30.00 minutes	5,097.00	397,107.27
—Completion of Form FRA F 6180.97 because of rail equipment involvement.	FRA anticipates zero railroad submissions during this 3-year ICR period.				
—Alternative record for illnesses claimed to be work related—Form FRA F 6180.107.	784 railroads	150.00 forms	75.00 minutes	187.50	14,608.13
—Highway User Statement—RR cover letter and Form FRA F 6180.150 sent out to potentially injured travelers involved in a highway-rail grade crossing accident/incident.	784 railroads	721.00 letters/forms	50.00 minutes	600.83	46,810.67
—Form FRA F 6180.150 completed by highway user and sent back to railroad.	117 injured individuals.	117.00 forms	45.00 minutes	87.75	6,836.60
225.25(h)—Posting of monthly summary	784 railroads	9,408.00 lists	5.00 minutes	784.00	61,081.44
225.27(a)(1)—Retention of records	784 railroads	7,500.00 records	2.00 minutes	250.00	19,477.50
—Record of Form FRA F 6180.107s	The estimated paperwork burden for this requirement is included in 225.21 (Alternative record for illnesses claimed to be work related).				
—Record of Monthly Lists	784 railroads	9,408.00 records	2.00 minutes	313.60	24,432.58
(a)(2)—Record of Form FRA F 6180.97	784 railroads	10,194.00 records	2.00 minutes	339.80	26,473.82
—Record of employee human factor attachments	784 railroads	1,464.00 records	2.00 minutes	48.80	3,802.01
225.33—Internal Control Plans—Amendments	784 railroads	10.00 amendments	6.00 hours	60.00	4,674.60
225.35—Access to records and reports	784 railroads	784.00 lists	20.00 minutes	261.33	20,360.22
225.37(a)—Optical media transfer of reports, updates, and amendments.	FRA anticipates zero submissions during this 3-year ICR period.				
(c)(2)—Electronic submission of reports, updates, and amendments.	784 railroads	4,704.00 submissions	3.00 minutes	235.20	18,324.43
Totals ⁵	784 railroads	88,176 responses	N/A	30,284	2,359,310

Total Estimated Annual Responses: 88,176.

Total Estimated Annual Burden: 30,284 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$2,359,310.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Allison Ishihara Fultz,
Chief Counsel.

[FR Doc. 2023–15626 Filed 7–21–23; 8:45 am]

BILLING CODE 4910–06–P

⁴ The dollar equivalent cost is derived from the 2021 Surface Transportation Board Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75 percent overhead charge.

⁵ Totals may not add due to rounding.

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Privacy Act of 1974; Matching Program

AGENCY: Bureau of the Fiscal Service, Department of the Treasury.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Bureau of the Fiscal Service, Do Not Pay (DNP) Computer Matching Program.

DATES: Comments on this matching notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comments are received during the period allowed for comment, the new agreement will be effective August 23, 2023, provided it is

a minimum of 30 days after the publication date.

Beginning and ending dates: The matches are conducted on an ongoing basis in accordance with the terms of the DNP Computer Matching Agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 36 months period, (approximately July 24, 2023, to July 23, 2026). Ninety days prior to expiration of the agreement, the parties to the agreement may request a three-year extension in accordance with 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Comments may be sent by email to David.Ambrose@fiscal.treasury.gov or by mail to the Bureau of the Fiscal Service, Information and Security Services; ATTN: David J. Ambrose, Chief Security Officer/Chief Privacy Officer, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785.

FOR FURTHER INFORMATION CONTACT:

General questions may be sent to Bureau of the Fiscal Service; Privacy, Information and Security Services; ATTN: David Ambrose, Chief Security Officer/Chief Privacy Officer, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785. Telephone: 202-874-6488.

SUPPLEMENTARY INFORMATION: Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Participating Agencies

Washington State Health Care Authority (HCA) is the recipient agency, and the Department of the Treasury, Bureau of the Fiscal Service is the source agency.

Authority for Conducting the Matching Program

The statutory authorities for the matching program are Payment Integrity Information Act of 2019 (31 U.S.C. 3351 *et seq.*) (PIIA), Office of Management and Budget (OMB) Memorandums M-21-19 Transmittal of Appendix C to OMB Circular A-123 Requirements for Payment Integrity Improvement (March 5, 2021), OMB Memorandum M-18-20 Transmittal of Appendix C to OMB Circular A-123 (June 26, 2018); Requirements for Payment Integrity Improvement (June 16, 2018), and 5 U.S.C. 552a. Presidential Memorandum on Enhancing Payment Accuracy through a “Do Not Pay List” (June 18, 2010). Executive Order 13520 “Reducing Improper Payments and Eliminating Waste in Federal Program” (November 20, 2009).

Purpose(s)

The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interests of the subjects of the match. Information is disclosed by the Bureau of the Fiscal Service, DNP only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Categories of Individuals

Individuals applying for or receiving benefits under state administered programs.

Categories Of Records

The categories of records used in the matching program are identifying data,

and payment eligibility status data. HCA will provide Fiscal Service with the following information for matching against Treasury’s Working System: Business Name, Person First Name, Person Middle Name, Person Last Name, Address—if available, City Name, State Code, Person Date of Birth, Vendor/Payee Phone Number, Vendor/Payee Email Address.

Fiscal Service will return match results to HCA containing the following data elements: SSN, EIN, TIN, Full Name, General, Specialty, Exclusion Program, Exclusion Description, Exclusion Date, Birth Date, National Provider Identifier (NPI), Waiver Date, Waiver State, Address, City, State, Zip, Country Code.

System(s) of Records

The Department of the Treasury, Bureau of the Fiscal Service .017—Do Not Pay Payment Verification Records, 85 FR 11776 at 11803 (Feb. 27, 2020), through the DNP Computer Matching Program.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2023-15610 Filed 7-21-23; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2420; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; Assistant Director for Licensing, tel.: 202-622-2480; or Assistant Director for Regulatory Affairs, tel.: 202-622-4855.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On July 11, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individual

1. VULIN, Aleksandar, Serbia; DOB 02 Oct 1972; POB Novi Sad, Serbia; nationality Serbia; citizen Serbia; Gender Male (individual) [BALKANS-EO14033].

Designated pursuant to section 1(a)(v) of Executive Order 14033 of June 8, 2021, “Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans” (E.O. 14033), 86 FR 31079 (June 10, 2021), 3 CFR 2021 Comp., p. 591, for being responsible for or complicit in, or to have directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

Dated: July 11, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023-15572 Filed 7-21-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

Proposed Collection; Comment Request for U.S. Employment Tax Returns and Related Forms; CT-1, CT-1X, CT-2, SS-8, SS-8 (PR), W-2, W-2 AS, W-2 C, W-2 GU, W-2 VI, W-3, W-3 (PR), W-3 C, W-3 C (PR), W-3 SS, 940, 940 (PR), 940 SCH A, 940 SCH A (PR), 940 SCH R, 941, 941 (PR), 941 SCH B, 941 SCH B (PR), 941 SCH D, 941 SCH R, 941 SS, 941 X, 941 X (PR), 943, 943 (PR), 943 A, 943 A (PR), 943 SCH R, 943 X, 943 X (PR), 944, 944 X, 945, 945 A, 945 X, 2032, 2678, 8027, 8027 T, 8453 EMP, 8850, 8879 EMP, 8922, 8952, and 8974

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). The IRS is soliciting comments on U.S. Employment Tax Returns and related Forms.

DATES: Written comments should be received on or before September 22, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email pra.comments@irs.gov. Include 1545-0029 or U.S. Employment Tax Returns and Related Forms.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at (202) 317-5751, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Change in PRA Approval of Forms Used by Employers

Under the PRA, OMB assigns a control number to each “collection of information” that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed

in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB’s database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading “Updated Burden Estimate Methodology,” the IRS’s currently accepted burden estimate methodology is based on taxpayers’ tax reporting experience taking into account, among other things, the forms and schedules used by those taxpayers and the recordkeeping and other activities needed to complete those forms. The transition of the employer-related reporting burden represents the IRS’s continued effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the Federal tax system. While the improved methodology provides a more accurate and comprehensive description of employer reporting burden, it will not provide burden estimates on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form, line-by-line basis was an appropriate methodology. Employer-related returns are increasingly being prepared using software or with preparer assistance. In this current reporting environment, in which many taxpayers’ activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate method of estimating taxpayer burden. The currently accepted methodology, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 51 forms and 38 regulations used by employers pertaining to their employment-related reporting requirements. These include Forms CT-1, CT-1X, CT-2, SS-8, SS-8 (PR), W-2, W-2 AS, W-2 C, W-2 GU, W-2 VI, W-3, W-3 (PR), W-3 C, W-3 C (PR), W-3 SS, 940, 940 (PR), 940 SCH A, 940 SCH A (PR), 940 SCH R, 941, 941 (PR), 941 SCH B, 941 SCH B (PR), 941 SCH D, 941 SCH R, 941 SS, 941 X, 941

X (PR), 943, 943 (PR), 943 A, 943 A (PR), 943 SCH R, 943 X, 943 X (PR), 944, 944 X, 945, 945 A, 945 X, 2032, 2678, 8027, 8027 T, 8453 EMP, 8850, 8879 EMP, 8922, 8952, and 8974, and their schedules, and all the forms employers attach to employment-related tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates.

The currently accepted methodology estimates the aggregate burden imposed on employers, based upon their reporting-related characteristics and activities. IRS therefore will seek OMB approval of all 51 employer-related tax forms as a single “collection of information.” The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545-0029, which is currently assigned to Form 941. OMB Control Number 1545-0029 will be displayed on all employer tax forms and related information collections. As a result of this change, burden estimates for employers will now be displayed differently in PRA Notices on tax forms and other information collections, and in **Federal Register** notices. This new way of displaying burden is presented below under the heading “Proposed PRA Submission to OMB.”

Updated Burden Estimate Methodology

The updated burden estimate methodology revises the estimates of the levels of burden experienced by employers when complying with their Federal reporting requirements pertaining to employment related taxes. It replaces the earlier burden estimate methodology developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the burden estimates. The new methodology provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new burden estimate methodology also represents a substantial step forward in the IRS’s ability to assess likely impacts of administrative and legislative changes on employers.

The updated burden estimate methodology focuses on the characteristics and activities of employers rather than solely focusing on the forms they file. Key determinants of taxpayer burden in the model are the number of employees, employee turnover, level of compensation, economic activity associated with

employment related credits, and frequency of filing. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs. The previous estimates primarily focused on the number of line items of each tax form. The changes between the old and new burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of imposed burden. It is important to note that the difference between the legacy and revised estimates do not reflect any change in the actual burden imposed by taxpayers.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with their Federal tax reporting responsibilities. As has been done for individual taxpayer burden since 2005, business entity burden since 2014, and tax-exempt organization burden since 2018 both the time expended and the out-of-pocket costs for employers are estimated. The burden estimation methodology relies on surveys that gather data about time and out-of-pocket costs that employers spend on pre-filing and filing activities. The methodology establishes econometric relationships between tax return characteristics and reported compliance costs. The methodology controls for the substitution of time and money by monetizing time and reporting total compliance costs in dollars. This methodology better reflects taxpayer compliance burden, because in a world

of electronic tax preparation, time and out-of-pocket costs are governed by the information required rather than the form on which it is ultimately reported. Importantly, even where various employers complete the same tax form lines, the new methodology differentiates the cost incurred to complete those forms based on characteristics of those employers. Key employer characteristics that serve as coefficients in the employer reporting burden model are:

- Number of employees
- Employee turnover
- Level of compensation
- Economic activity associated with employment related credits and/or benefits
- Frequency of filing
- Type of primary form filed

The new burden estimate methodology uses the following classifications of employers:

STRATA

Primary form	Number of W2s filed	Percent of forms W-2 with reported benefits	Reported tips
Form 941	1 to 4	None	ANY.
	5 to 19	None	ANY.
	20 to 99	None	NO.
	100 to 299	None	NO.
	300 to 999	None	NO.
	Over 1000	None	NO.
	1 to 19	Less Than 10%	NO.
	20 to 99	Less Than 10%	NO.
	100 to 299	Less Than 10%	NO.
	300 to 999	Less Than 10%	NO.
	Over 1000	Less Than 10%	NO.
	1 to 19	Greater Than 10%	NO.
	20 to 99	Greater Than 10%	NO.
	100 to 299	Greater Than 10%	NO.
	300 to 999	Greater Than 10%	NO.
	Over 1000	Greater Than 10%	NO.
	1 to 19	ANY	YES.
	20 to 99	ANY	YES.
	100 to 299	ANY	YES.
	300 to 999	ANY	YES.
Form 944	Over 1000	ANY	YES.
Form 943	ANY	ANY	ANY.
	ANY	ANY	ANY

Proposed PRA Submission to OMB

Title: U.S. Employment Tax Returns and related Forms.

OMB Number: 1545-0029.

Form Numbers: CT-1, CT-1X, CT-2, SS-8, SS-8 (PR), W-2, W-2 AS, W-2 C, W-2 GU, W-2 VI, W-3, W-3 (PR), W-3 C, W-3 C (PR), W-3 SS, 940, 940 (PR), 940 SCH A, 940 SCH A (PR), 940 SCH R, 941, 941 (PR), 941 SCH B, 941 SCH B (PR), 941 SCH D, 941 SCH R, 941 SS, 941 X, 941 X (PR), 943, 943 (PR), 943 A, 943 A (PR), 943 SCH R, 943 X, 943 X (PR), 944, 944 X, 945, 945 A, 945 X,

2032, 2678, 8027, 8027 T, 8453 EMP, 8850, 8879 EMP, 8922, 8952, and 8974.

Abstract: These forms are used by employers to report their employment tax related activity. The data is used to verify that the items reported on the forms are correct.

Current Actions: The burden estimation methodology for employment tax is being transitioned from the legacy ADL model to the Taxpayer Burden Model. The changes discussed above result in a burden hour estimate of 456,000,000 hours, a decrease in total estimated time burden

of 492,967,465 hours. The newly reported total out-of-pocket costs is \$18,910,000,000 and total monetized burden is \$33,540,000,000. The change related to the transition of the burden estimate from the legacy Arthur D. Little Model methodology to the RAAS Taxpayer Burden Model, is a one-time change. In addition, changes are being made to the form to be current with enacted legislation.

Type of Review: Revision of currently approved collections.

Affected Public: Employers.

Estimated Number of Respondents:
7,128,000.
Total Estimated Time: 456,000,000
hours.
Estimated Time per Respondent:
approximately 64 hours.

Total Estimated Out-of-Pocket Costs:
\$18,910,000,000.
Estimated Out-of-Pocket Cost per
FY2020 Respondent: \$2,653.
Total Estimated Monetized Burden:
\$33,540,000,000.

Estimated Monetized Burden per
FY2020. Respondent: \$4,705.

FISCAL YEAR (FY) 2023 BURDEN TOTAL ESTIMATES FOR EMPLOYMENT TAX FORMS, SCHEDULES, AND REGULATIONS
[FY2023]

	FY20	Program change due to adjustment	Program change due to new legislation	Program change due to agency	FY23
Responses per year	* 339,405,986	(332,277,986)	0	0	** 7,128,000
Burden in Hours	948,967,465	(492,967,465)	0	0	456,000,000
Time Burden in Monetized Hours	\$0	\$146,265,62000	0	0	\$146,265,62000
Out-of-Pocket Costs	\$0	\$18,910,000,000	0	0	\$18,910,000,000
Total Monetized Burden*	\$0	\$33,540,000,000	0	0	\$33,540,000,000

Source: IRS:RAAS:KDA (04-15-23).

* FY20 responses per year is count of all forms and schedules filed under legacy A.D. Little burden estimate methodology.

** FY23 responses per year is count of all employers under taxpayer-centric RAAS burden estimate methodology. This approach is also used for OMB 1545-0074 individuals, 1545-0123 (business entities), and 1545-0047 (tax-exempt) organizations.

*** Total monetized burden = Monetized hours + Out-of-pocket costs.

Note: Reported time and cost burdens are national averages and do not necessarily reflect a "typical" case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2023.

Kerry Dennis,
Tax Analyst.

Appendix A

Form	Title/description	OMB No.
CT-1	Employer's Annual Railroad Retirement Tax Return	1545-0001
CT-1X	Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund	1545-0001
CT-2	Employee Representative's Quarterly Railroad Tax Return	1545-0002
SS-8	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding	1545-0004
SS-8 (PR)	Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax (Puerto Rican Version).	1545-0004
W-2	Wage and Tax Statement	1545-0008
W-2 AS	American Samoa Wage and Tax Statement	1545-0008
W-2 C	Corrected Wage and Tax Statement	1545-0008
W-2 GU	Guam Wage and Tax Statement	1545-0008
W-2 VI	U.S. Virgin Islands Wage and Tax Statement	1545-0008
W-3	Transmittal of Wage and Tax Statements	1545-0008
W-3 (PR)	Transmittal of Withholding Statements (Puerto Rican Version)	1545-0008
W-3 C	Transmittal of Corrected Wage and Tax Statements	1545-0008
W-3 C (PR)	Transmittal of Corrected Wage and Tax Statements (Puerto Rican Version)	1545-0008
W-3 SS	Transmittal of Wage and Tax Statements	1545-0008
940	Employer's Annual Federal Unemployment (FUTA) Tax Return	1545-0028
940 (PR)	Employer's Annual Federal Unemployment (FUTA) Tax Return (Puerto Rican Version)	1545-0028
940 SCH A	Multi-State Employer and Credit Reduction Information	1545-0028
940 SCH A (PR)	Multi-State Employer and Credit Reduction Information (Puerto Rican Version)	1545-0028
940 SCH R	Allocation Schedule for Aggregate Form 940 Filers	1545-0028
941	Employer's Quarterly Federal Tax Return	* 1545-0029
941 (PR)	Employer's Quarterly Federal Tax Return	* 1545-0029
941 SCH B	Report of Tax Liability for Semiweekly Schedule Depositors	* 1545-0029
941 SCH B (PR)	Supplemental Record of Federal Tax Liability (Puerto Rican Version)	* 1545-0029
941 SCH D	Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations	* 1545-0029
941 SCH R	Reconciliation for Aggregate Form 941 Filers	* 1545-0029
941 SS	Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the U.S. Virgin Islands).	* 1545-0029
941 X	Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund	* 1545-0029
941 X (PR)	Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund (Puerto Rico Version)	* 1545-0029
943	Employer's Annual Tax Return for Agricultural Employees	1545-0035

Form	Title/description	OMB No.
943 (PR)	Employer's Annual Tax Return for Agricultural Employees (Puerto Rican Version)	1545-0035
943 A	Agricultural Employer's Record of Federal Tax Liability	1545-0035
943 A (PR)	Agricultural Employer's Record of Federal Tax Liability (Puerto Rican Version)	1545-0035
943 R	Allocation Schedule for Aggregate Form 943 Filers	1545-0035
943 X	Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund	1545-0035
943 X (PR)	Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund	1545-0035
944	Employer's ANNUAL Federal Tax Return	1545-2007
944 X	Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund	1545-2007
945	Annual Return of Withheld Federal Income Tax	1545-1430
945 A	Annual Record of Federal Tax Liability	1545-1430
945 X	Adjusted ANNUAL Return of Withheld Federal Income Tax or Claim for Refund	1545-1430
2032	Contract Coverage Under Title II of the Social Security Act	1545-0137
2678	Employer/Payer Appointment of Agent	1545-0748
8027	Employer's Annual Information Return of Tip Income and Allocated Tips	1545-0714
8027 T	Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips	1545-0714
8453 EMP	Employment Tax Declaration for an IRS e-file Return	1545-0967
8850	Pre-Screening Notice and Certification Request for the Work Opportunity Credit	1545-1500
8879 EMP	IRS e-file Signature Authorization for Forms 940, 940-PR, 941, 941-PR, 941-SS, 943, 943-PR, 944, and 945	1545-0967
8922	Third-Party Sick Pay Recap	* 1545-0123
8952	Application for Voluntary Classification Settlement Program (VCSP)	1545-2215
8974	Qualified Small Business Payroll Tax Credit for Increasing Research Activities	1545-0029

* 1545-0123 will not be discontinued. It is the Business collection and 8922 will be included in both the Business collection and the Employment Tax collection.

* 1545-0029 will not be discontinued it will be the number assigned to all Forms within the employment tax collection.

Appendix B

Guidance title/description	OMB No.
26 CFR 31.6001-1 Records in general; 26 CFR 31.6001-2 Additional Records under FICA; 26 CFR 31.6001-3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001-5 Additional records	1545-0798
Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry to Employment Tax	1545-1529
Reg-111583-07 (TD 9405) (Final)—Employment Tax Adjustments; REG-130074-11—Rules Relating to Additional Medicare Tax	1545-2097

[FR Doc. 2023-15598 Filed 7-21-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Departmental Offices (DO) Information Collection Request

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on revisions to an existing information collection, as required by the Paperwork Reduction Act of 1995. The Office of the Fiscal Assistant Secretary, within the Department of the Treasury, is soliciting comments concerning the application, reports, and recordkeeping for the Direct Component and the Centers of Excellence Research Grants Programs under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf

Coast States Act of 2012 (RESTORE Act). The information collection for which comments are solicited are already a part of the approved collection for RESTORE Act grants, including the two BABAA Waiver Request Forms, which implement the Build America, Buy America Act ("BABAA").

DATES: Written comments must be received on or before August 23, 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.

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Application, Reports, and Recordkeeping for the Direct

Component and the Centers of Excellence Research Grants Program under the RESTORE Act.

OMB Control Number: 1505-0250.

Type of Review: Revision of a currently approved collection.

Description: The Department of the Treasury administers the Direct Component and the Centers of Excellence Research Grants Program authorized under the RESTORE Act. Treasury awards grants for these two programs from proceeds in connection with administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act relating to the Deepwater Horizon Oil Spill and deposited into the Gulf Coast Restoration Trust Fund. Direct Component grants are awarded to the States of Alabama, Louisiana, Mississippi, and Texas, and 23 Florida counties and 20 Louisiana parishes. Centers of Excellence grants are awarded to the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The information collection for both programs identifies the eligible recipients; describes proposed activities; determines an appropriate amount of funding; ensures compliance with the RESTORE Act, Treasury's regulations, and Federal laws and policies on grants;

tracks grantee progress; and reports on the effectiveness of the programs.

Section 70914(a) of BABAA prohibits Direct Component recipients (and subrecipients, as applicable) from using RESTORE Act funds to purchase foreign-sourced iron, steel, manufactured products, or construction materials unless Treasury approves a waiver pursuant to section 70914(b) of BABAA. On January 13, 2023, Treasury received emergency clearance from OMB to update the approved collection and add two new forms for recipients to submit requests to waive the new domestic preference requirements under BABAA. Treasury requested an emergency clearance for the forms to be completed by January 13, 2022, which was the expiration date of Treasury OGCR's six-month general applicability public interest adjustment period waiver and therefore was the effective date of BABAA requirements for RESTORE Act Direct Component program. The Agency was delayed in requesting the clearance from OIRA because the required waiver information

that must be collected by agencies for cross-posting waivers to the GSA-managed Made in America Office (MIAO) website was finalized on December 8, 2022. Posting waivers on the centralized waiver transparency website is a requirement for federal agencies to be compliant with the implementation of BABAA. Treasury now seeks clearance through the normal 60-day public comment process for clearance under the Paperwork Reduction Act of the updated information collection as required by 5 CFR 1320.8(d).

Treasury has also made substantive changes to the Multiyear Implementation Plan Narrative Form through a consolidation of application questions to reduce requests for duplicative information and revised the requirements of the Milestones and Measures Application Form, Milestones Report and Status of Performance Report that reduces the burden on the applicant to demonstrate progress made to achieve the scope of work. No other

changes to the information collection are proposed by Treasury at this time.

The revised application forms and supplemental information may be obtained on Treasury's RESTORE Act website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act>.

Form Number: None.

Affected Public: State and Local Governments.

Estimated Number of Respondents: 52.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 563

Estimated Time per Response: 11.3 hours.

Estimated Total Annual Burden Hours: 6,340.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023-15617 Filed 7-21-23; 8:45 am]

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Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, et al.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180

[BLM_HQ_FRN_MO4500172196]

RIN 1004–AE80

Fluid Mineral Leases and Leasing Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing to revise the BLM's oil and gas leasing regulations. Among other things, the proposed rule would reflect provisions of the Inflation Reduction Act pertaining to royalty rates, rentals, and minimum bids, and would update the bonding requirements for leasing, development, and production. The proposed rule would also improve the BLM's leasing process to ensure proper stewardship of public lands and resources and would revise some operating requirements.

DATES: Send your comments on this proposed rule to the BLM on or before September 22, 2023. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

Information Collection Requirements: This proposed rule includes revised and new information-collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information-collection requirements, please note that those comments should be sent directly to OMB. OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information-collection revisions is best assured of being given full consideration if the OMB receives it by September 19, 2023.

ADDRESSES: Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: 1004–AE80. *Federal eRulemaking Portal:* <https://www.regulations.gov>. In the Search-box, enter “RIN 1004–AE80” and click the “Search” button. Follow the instructions at this website.

For Comments on Information—Collection Activities

Information-Collection Requirements: Written comments and suggestions on the information-collection requirements should be submitted by the date specified earlier in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this specific information-collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

If you submit comments on these information-collection burdens, you should provide the BLM with a copy at one of the addresses shown earlier in this section so that we can summarize all written comments and address them in the final rulemaking. Please indicate “Attention: Paperwork Reduction Act Comments (RIN 1004–AE80).” Comments not pertaining to the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB.

FOR FURTHER INFORMATION CONTACT:

Peter Cowan, Senior Mineral Leasing Specialist, telephone: (720) 838–1641 or email: picowan@blm.gov, for information regarding the substance of this proposed rule or Matt Warren, Acting Division Chief for the Division of Fluid Minerals, telephone: (505) 216–8832, or email: mwarren@blm.gov, for information about the BLM's fluid minerals program. For questions relating to regulatory process issues, contact Faith Bremner at email: fbremner@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Warren. 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:

- I. List of Acronyms
- II. Executive Summary
- III. Public Comment Procedures
- IV. Background
- V. Discussion of the Proposed Rule
- VI. Overview of Modifications
- VII. Procedural Matters

I. List of Acronyms

ANWR = Arctic National Wildlife Refuge
BLM = Bureau of Land Management
CA = Communization Agreement
CD = Certificate of Deposit
CFIUS = Committee on Foreign Investment in the United States

CFR = Code of Federal Regulations
DOI = Department of the Interior
E.O. = Executive Order
EOI = Expression of Interest
EPAct = Energy Policy Act of 2005
FLPMA = Federal Land Policy and Management Act
FOOGLRA = Federal Onshore Oil and Gas Leasing Reform Act of 1987
GAO = Government Accountability Office
IBLA = Interior Board of Land Appeals
IIJA = Infrastructure Investment and Jobs Act of 2021
IRA = Inflation Reduction Act of 2022
LOC = Letter of Credit
MLA = Mineral Leasing Act of 1920, as amended (MLA is also referred to as “Act” in the regulations.)
MLAAL = Mineral Leasing Act for Acquired Lands of 1947, as amended
MLRS = Mineral and Land Records System
NEPA = National Environmental Policy Act
NFLSS = National Fluids Lease Sale System
NPR-A = National Petroleum Reserve—Alaska
OIG = Office of the Inspector General
OMB = Office of Management and Budget
ONRR = Office of Natural Resources Revenue
OPM = Office of Personnel Management
PRA = Paperwork Reduction Act
RIA = Regulatory Impact Analysis
ROW = Right-of-way
SBA = Small Business Administration
SO = Secretarial Order
SME = Subject matter expert
U.S.C. = United States Code
USFS = United States Forest Service

II. Executive Summary

This proposed rule aims to enhance the administration of oil and gas-related activities on America's public lands and reflects provisions in recently enacted laws that modify aspects of the Federal onshore oil and gas program. Specifically, the proposed rule would implement changes pertaining to royalty rates, rentals, and minimum bids for BLM-issued oil and gas leases and would update the bonding requirements for leasing, development, and production. The BLM has not comprehensively updated the Federal onshore oil and gas program's regulatory framework since 1988. As a result, many of the program's regulatory requirements are outdated, do not adequately protect the fiscal interests of the American public, and do not promote leasing practices that are consistent with diligent development requirements and multiple-use and sustained-yield principles. This proposed rule seeks to update the existing regulations accordingly.

The Secretary of the Interior manages a Federal onshore oil and gas program pursuant to the requirements of various statutes, including the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*) (FLPMA), the Mineral Leasing Act of

1920, as amended (30 U.S.C. 181 *et seq.*) (MLA), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351 *et seq.*) (MLAAL), as well as the recently enacted Inflation Reduction Act (IRA) of 2022 and Infrastructure Investment and Jobs Act (IIJA) of 2021. Under FLPMA, the BLM manages approximately 245 million acres of public lands and approximately 700 million acres of federally owned subsurface minerals “on the basis of multiple use and sustained yield,” which requires the BLM to achieve “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources.” The BLM is required to avoid “permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” Oil and gas-related activities are one of the multiple land uses that FLPMA authorizes and which the BLM administers in accordance with the MLA and MLAAL. Both of those Acts govern the leasing of public lands to explore for and develop petroleum, natural gas, coal, and other hydrocarbons, amongst other mineral deposits.

Over the past 2 years, Congress has modified certain aspects of the Federal onshore oil and gas program through the IRA and IIJA. In the IRA, Congress updated the onshore oil and gas program’s fiscal terms and established a new leasing scheme for Federal lands. In the IIJA, Congress directed the BLM to proactively “reduce the inventory of idled wells on Federal land.” Idled wells can cause a wide range of impacts on public lands, waters, wildlife, and nearby communities. There are currently thousands of idled wells on Federal lands, many of which have not produced oil or gas in years. The BLM intends to address the IRA and IIJA in this rulemaking.

Prior to the enactment of the IRA and IIJA, the Government Accountability Office (GAO) and the Department of the Interior’s (DOI) Office of the Inspector General (OIG) reviewed and audited the BLM’s Federal onshore oil and gas program to identify problematic areas in this program and recommended actions to address them. As part of the GAO’s and OIG’s respective audits, they highlighted weaknesses in the onshore program’s fiscal framework and recommended that the BLM take steps to ensure that the American public receives a fair return from oil and gas

activities on public lands. The DOI and the BLM concurred with these recommendations in the *Report on the Federal Oil and Gas Leasing Program* issued in November 2021. Accordingly, the BLM is proposing to adjust its oil and gas bonding requirements, including by increasing minimum bond amounts for the first time in decades. The BLM believes that doing so, along with other proposed changes, would help ensure that reclamation costs reside primarily with oil and gas lessees, operating rights owners, and operators and not the American public. In the same vein, the BLM is proposing to adjust its cost recovery mechanisms so that project applicants provide a more appropriate share of up-front costs. Finally, the BLM is proposing several changes to encourage diligent development of leased lands and to direct leasing to areas with fewer multiple-use conflicts and a greater likelihood of achieving responsible development.

III. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery, or through <https://www.regulations.gov> (see the **ADDRESSES** section). Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the address listed under “**ADDRESSES: Mail, personal or messenger delivery**” during regular hours (7:45 a.m. to 4:15 p.m. Eastern Time), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we

cannot guarantee that we will be able to do so.

As explained later, this proposed rule includes revisions to information collection requirements that must be approved by the OMB. If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **ADDRESSES** section. The OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by September 19, 2023.

IV. Background

The BLM is undertaking this rulemaking for two primary reasons: (1) to reflect provisions in recently enacted laws that modify aspects of the Federal onshore oil and gas program; and (2) to enhance the administration of the onshore program, consistent with the BLM’s multiple-use and sustained-yield mission. As documented in a DOI report released in November 2021,¹ and in numerous reports from the GAO and DOI’s OIG,² the onshore program, historically, has failed to provide the Federal Government with a fair return; exposed the Federal Government to significant reclamation-related liabilities; lacked adequate cost recovery mechanisms; and encouraged speculative leasing and wasteful development practices. Through this rulemaking, the BLM intends to adopt new procedures and requirements to address those issues.

The Secretary of the Interior manages Federal oil and gas resources pursuant to the MLA, MLAAL, and other statutes pertaining to specific categories of lands. The MLA and MLAAL prescribe

¹ DOI, “Report on the Federal Oil and Gas Leasing Program” (Nov. 2021).

² See, e.g., OIG, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior” (Nov. 2022); GAO, “OIL AND GAS LEASING—BLM Should Update Its Guidance and Review Its Fees” (Nov. 2021); GAO, “OIL AND GAS—Onshore Competitive and Noncompetitive Lease Revenues” (Nov. 2020); GAO, “FEDERAL ENERGY DEVELOPMENT—Challenges to Ensuring a Fair Return for Federal Energy Resources” (Sept. 2019); GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019); GAO, “OIL AND GAS LEASE MANAGEMENT—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures” (June 2018); OIG, “Bureau of Land Management’s Idle Well Program” (Jan. 2018).

the minimum bid amounts, minimum rental rates, and minimum percentage of royalty reserved to the United States under onshore oil and gas leases on most Federal lands. The BLM is the agency within DOI responsible for regulating onshore leasing activities for federally managed lands and the subsurface mineral estate. The BLM regulations governing onshore oil and gas leasing activities are set out in 43 CFR parts 3000 and 3100. Aside from updating certain application fees for consistency, the BLM is not proposing in this rule to revise the regulations at 43 CFR part 3130, which govern oil and gas activity in the National Petroleum Reserve—Alaska.

In 1976, FLPMA established particular land and resource management authorities for the BLM, emphasizing multiple use, sustained yield, and environmental protection as the guiding principles for public land management. FLPMA directs the BLM to manage some areas for conservation, to consider the best use of public lands in a broader context than just economic return, and to take action necessary to prevent unnecessary or undue degradation of the lands.

Today, Federal onshore oil and gas production accounts for approximately 10 percent of domestically produced oil and 8 percent of domestically produced natural gas. As of the end of Fiscal Year (FY) 2022, the BLM managed 34,409 Federal oil and gas leases covering 23.7 million acres with nearly 89,350 wells that are capable of production. Of the more than 23 million onshore acres under lease today, over 11 million (approximately 48 percent) of those acres are non-producing.

A. Addressing Recently Enacted Laws Concerning the Federal Onshore Oil and Gas Program

Over the past 2 years, Congress has enacted two laws—the IRA (Pub. L. 117–169) and the IJA (Pub. L. 117–58)—that modify the Federal onshore oil and gas program’s statutory framework. Through this rulemaking, the BLM will incorporate the provisions that are contained in these Acts into its oil and gas regulations.

1. Inflation Reduction Act

In August 2022, Congress passed the IRA, two sections of which the BLM intends to implement, in part, through this rulemaking: (1) Section 50262—Mineral Leasing Act Modernization; and (2) Section 50265—Ensuring Energy Security.

Section 50262—Mineral Leasing Act Modernization

In IRA section 50262, Congress modernized the onshore oil and gas program’s fiscal terms. Over the past decade, the GAO and OIG have repeatedly raised concerns about the fiscal soundness of the onshore program.³ Furthermore, in 2011, the GAO added the “Management of Federal Oil and Gas Resources” to its list of “high-risk” Federal programs after determining that DOI “does not have reasonable assurance that it is collecting its share of revenue from oil and gas produced on Federal lands.”⁴ “High-risk” programs are “vulnerable to waste, fraud, abuse, or mismanagement, or in need of transformation.” GAO reaffirmed this “high-risk” determination in 2021 and specifically recommended that DOI “needs to commit to developing policies that consistently lead towards improvements in . . . ensuring the government receives a fair return.”⁵

The IRA addressed some of the GAO and OIG’s concerns by increasing the onshore program’s statutory royalty rate, minimum rental rates, and minimum lease bid, and establishing a new fee on expressions of interest (EOI). The BLM proposes to incorporate these statutory changes into its oil and gas regulations.

Section 50265—Ensuring Energy Security

In section 50265 of the IRA, Congress enacted new oil and gas leasing terms for Federal lands. Under these terms, the BLM “may not issue a right-of-way for wind or solar energy development on Federal land” unless it has: (1) held an onshore oil and gas lease sale during the 120-day period ending on the date of the issuance of the right-of-way; and (2) “the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way . . . is not less than the lesser of . . . 2,000,000 acres[] and 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period. . . .”

³ See, e.g., OIG, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior” (Nov. 2022); GAO, “FEDERAL ENERGY DEVELOPMENT—Challenges to Ensuring a Fair Return for Federal Energy Resources” (Sept. 2019).

⁴ GAO, “HIGH-RISK SERIES—An Update” (Feb. 2011).

⁵ GAO, “HIGH-RISK SERIES—Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas” (Mar. 2021).

2. Infrastructure Investment and Jobs Act

In November 2021, Congress passed the IJA, which amended section 349 of the Energy Policy Act of 2005 (EPAAct) (Pub. L. 109–58). Section 349 of EPAAct directs the BLM to “establish a program . . . to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on land administered by the land management agencies within the Department of the Interior and the Department of Agriculture.” Section 349 defines an “idled well” as “a well . . . [that] has been nonoperational for at least 7 years” and has “no anticipated beneficial use.”

Since EPAAct’s passage in 2005, the BLM has gained additional information, experience, and insights into its efforts to inventory and manage idled wells. In 2018, the OIG issued a report finding that “[i]dled wells pose notable financial risk to the U.S. Government and the taxpayer, as idle wells can fall into disrepair creating environmental, safety, and public health hazards. In addition, idle wells pose a risk of becoming orphaned, thus creating an undue financial burden on the taxpayer to pay for plugging and reclaiming. Idle wells have the potential to cost taxpayers millions of dollars if not properly reviewed and managed.”⁶ The OIG also identified “various program management issues,” including a “lack of an accurate inventory of idle wells” and “unreliable data in managing idle wells,” “that have contributed to BLM’s inability to reduce its idle well numbers.” To address these issues, the OIG recommended that the BLM strengthen its procedures for monitoring and tracking idled wells.

The GAO also addressed the idled well program in a pair of reports issued in May 2018 and September 2019.⁷ In these reports, the GAO stated that the BLM has “few policy tools to manage shut-in wells,” which represent a “large portion” of wells that become idled and orphaned.⁸ The GAO also identified nearly 2,300 idled wells “at increased risk of becoming orphaned because they have not produced since June 2008 and have not been reclaimed.” The bonds for “a majority of these at-risk wells” were “too low to cover” their anticipated reclamation costs, which,

⁶ OIG, “Bureau of Land Management’s Idle Well Program” (Jan. 2018).

⁷ GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019); GAO, “OIL AND GAS WELLS—Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities” (May 2018).

⁸ See § 3160.0–5 for a proposed definition of shut-in well.

according to the GAO, may exceed \$330 million.

In the IJA, Congress provided the BLM with additional direction concerning the idled well program. Specifically, the IJA requires the BLM to “periodically review” and proactively “reduce the inventory of idled wells on Federal land.” The IJA also reduces the nonoperational period after which a well is considered idled from 7 to 4 years. In light of these statutory directives, as well as the recommendations from the OIG and GAO, the BLM is proposing to adopt additional requirements for operators of nonoperational wells (specifically, shut-in and temporarily abandoned wells). The BLM believes that these requirements would help the BLM reduce its inventory of idled wells through improved identification, tracking, and proactive management.

B. Enhancing the Administration and Functioning of the Federal Onshore Oil and Gas Program

In addition to addressing recent Congressional directives, the BLM is undertaking this rulemaking for the purpose of adopting new procedures and requirements that would enhance the administration of the Federal onshore oil and gas program, consistent with the BLM’s multiple use and sustained yield mission. The BLM has not updated its oil and gas regulations comprehensively since 1988 and believes that changes are needed to reduce taxpayer exposure to reclamation-related liabilities; provide adequate cost recovery mechanisms; direct oil and gas leasing to appropriate locations; and encourage diligent development by parties that are responsible and qualified to conduct such development.

1. Reducing Taxpayer Exposure to Reclamation-Related Liabilities

The MLA requires the BLM to “establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease” (see 30 U.S.C. 226(g)). The MLA further requires the BLM to include in oil and gas leases “such provisions as [it] deem[s] necessary . . . for the protection of the interests of the United States . . . and for the

safeguarding of the public welfare” (see 30 U.S.C. 187). To comply with these statutory requirements, the BLM is proposing to update its bonding framework for the first time in over 60 years and adopt additional changes to limit the reclamation-related liabilities of the Federal Government.

The BLM’s current minimum bond amounts are outdated, expose the Federal Government to significant financial risks in the event of bankruptcies, and delay “complete and timely” reclamation and restoration of lease tracts, which can cause or exacerbate a range of environmental issues, including methane leaks, surface and groundwater contamination, interference with agricultural activities, and degraded wildlife habitat.⁹ The BLM has not increased its minimum bond amounts, which are currently \$10,000 for individual lease bonds, \$25,000 for statewide bonds, and \$150,000 for nationwide bonds, since 1951 (statewide and nationwide bonds) and 1960 (individual lease bonds). Accounting for inflation, the 2022 equivalents of those bond amounts are \$100,105, \$281,399, and \$1,688,394 respectively. (See <https://www.usinflationcalculator.com/>). Consequently, the BLM’s current bonding requirements “may not create an incentive for operators to promptly reclaim wells after operations cease because it costs more to reclaim the wells than the operator could collect from its bond.”⁹ According to the BLM’s internal estimates, plugging costs alone typically range from \$35,000 to \$200,000 per well.

In addition to increasing minimum bond amounts, the BLM is proposing other measures to protect taxpayers from reclamation-related liabilities. These include enhanced oversight of idled wells, as discussed previously. The BLM also intends to streamline the process for adding noncompliant entities to its list of entities and their officers that may not receive new leases under section 17(g) of the MLA, 30 U.S.C. 226(g).

2. Providing Adequate Cost Recovery Mechanisms

As explained in greater detail in the Discussion of the Proposed Rule, the BLM is proposing to revise the onshore program’s cost recovery mechanisms. The BLM is doing so to ensure that the program’s application fees reflect actual processing costs. In 2021, the GAO released a report on the BLM’s fee

structure for the onshore oil and gas program, which stated that the “BLM does not have assurance that its current application fees reflect changes in conditions because its biennial fee review does not examine all the costs BLM intended to recover through its application fees.”¹⁰ The BLM concurred with that finding, and, in conjunction with this rulemaking, evaluated those costs, which informed the proposed adjustments to the onshore program’s application fees.

3. Directing Oil and Gas Leasing to Appropriate Locations

To assist with the consideration and selection of lease sale parcels, the BLM intends to incorporate preference criteria into its oil and gas regulations. Historically, the BLM has not employed nationwide criteria to inform its selection of sale parcels. The BLM has invested a considerable amount of time and resources on evaluating parcels that the public does not purchase and that lessees do not develop. Between 2013 and 2022, the BLM offered approximately 40.3 million acres and leased approximately 9.5 million acres from competitive lease sales.¹¹ Even when parcels sell at or above the minimum bid, they are rarely developed or generate royalties for the Federal Government. The GAO found that only about 7 percent of the leases reviewed produced oil and gas in the primary term of the lease.¹² The BLM believes that by directing Federal oil and gas leasing towards areas that are more likely to produce, it can appropriately utilize the BLM’s time and resources. When new technology becomes available, the BLM would reevaluate development potential in light of that technology, which could change the identified areas that are more likely to produce.

The lack of preference criteria to aid in the selection of sale parcels also leads to conflict when leases are offered in areas with sensitive cultural, wildlife, and recreation resources. By directing leasing toward areas that do not have such resources, the BLM believes it can proactively avoid some of these conflicts. Additionally, the BLM believes that this approach would provide stakeholders with greater certainty, as it would be understood at the outset of the leasing process that the

¹⁰ GAO, “OIL AND GAS LEASING—BLM Should Update Its Guidance and Review Its Fees” (Nov. 2021).

¹¹ BLM Public Lands Statistics, Table 11, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

¹² GAO, “OIL AND GAS—Onshore Competitive and Noncompetitive Lease Revenues” (Nov. 2020).

⁹ GAO, “OIL AND GAS—Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells” (Sept. 2019).

preference criteria would guide the BLM's decision-making.

While the proposed rule text sets out a number of criteria to aid the BLM in selecting parcels for potential inclusion in lease sales, the analysis of the impacts of leasing these parcels would also address the potential impacts of direct, indirect, and cumulative greenhouse gas emissions from leasing in accordance with the National Environmental Policy Act (NEPA) and applicable legal precedent. While the preference criteria will also affect the environmental consequences of proposed leasing, the BLM requests comment on whether the preference criteria or other portions of this proposed rule should be expanded, or new provisions added, to discuss analysis of greenhouse gas emissions and related decision-making based on the analysis.

4. Encouraging Diligent Development of Federal Oil and Gas Leased Resources

The BLM has added provisions to the proposed rule that would incentivize diligent development of leased resources by responsible and qualified parties. When oil and gas leases are not diligently developed, as required by the MLA and expressly stated in the BLM's oil and gas lease form,¹³ there can be significant opportunity costs. For example, the BLM expends time and resources processing and administering lease suspensions and drilling permit extensions that often do not lead to development.¹⁴ Additionally, leases that are not diligently developed can limit the BLM's ability to manage public lands for other uses and resources and fulfill its multiple-use and sustained-yield missions. For these reasons, the BLM is proposing to limit the use of lease suspensions and drilling permit extensions, and, prior to issuing or approving the transfer of leases, strengthen its oversight of whether the potential transferees are responsible and qualified to pursue development.

V. Discussion of the Proposed Rule

A. Summary

The proposed modifications to parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180 are described in detail in the following section-by-section discussion. In

addition, minor non-substantive changes, which do not warrant detailed discussion, are also proposed throughout the rule. For example, the rule proposes to change "the Bureau" to "the BLM," change "Service" to "ONRR," spell out single-digit numbers, and change the question-and-answer formatting to be consistent with other regulations that appear in the CFR. Throughout the proposed rule, the existing term "shall" has been replaced with the words "must," "will," or "may," as appropriate, to reduce confusion. The proposed rule would update all time frames to specify either business or calendar days in order to reduce confusion.

In addition, all sections in the parts that are being revised and replaced would be redesignated to remove the hyphens from the existing section numbers to comply with the Office of the Federal Register's updated style requirements. For example, § 3000.0–5 would be redesignated to § 3000.5. Removing the hyphens would require the BLM to redesignate some of the existing section numbers with decimals by adding more place values to them, which would allow the BLM to subsequently delineate the different sections. For example, § 3000.1 would be redesignated as § 3000.10, § 3000.2 would be redesignated as § 3000.20, and so on. This redesignation would be carried throughout the proposed rule, even in sections that are not otherwise being updated. Finally, the BLM would remove the regulatory section numbers for headings that have no text associated with them. These are referred to as "undesignated center headings" and serve as section guideposts in the regulations.

Each section of each subpart, and each provision within those sections, is separate and severable from the other sections and provisions. If any provision of this rule is stayed or determined to be invalid or unenforceable, that provision shall be severable from the rest of the rule and not affect any remaining provisions. The remaining provisions would remain in force. This rule should be construed to continue to give the maximum effect to each provision as permitted by law.

B. Section-by-Section Discussion

The following discussion addresses the proposed changes to the existing regulations. If a provision is not specifically discussed in this section-by-section analysis, then the provision would be essentially the same as the existing regulation, except for the minor non-substantive changes discussed previously.

1. Section-by-Section Discussion for Changes to 43 CFR Subpart 3000

The proposed rule would add a new section to the existing subpart 3000 regulations and revise five section headings. The goal of the revisions is to replace the existing question-and-answer formats and use more commonly used terms, consistent with other changes made throughout this rule.

Section 3000.5 Definitions

The BLM is proposing to alphabetize the definitions in this section.

The proposed rule would add a definition for "acreage for which expressions of interest have been submitted" to refer to acreage that is identified in an expression of interest received by BLM, that has not been proposed for leasing in any pending sale or other expression of interest pending BLM disposition, and for which BLM may lawfully issue an oil and gas lease. This definition and the below definition of "acres offered for lease" are intended to clarify the means by which BLM will internally track its leasing progress for purposes of the Inflation Reduction Act, as further specified in new § 3120.42.

The proposed rule would add a definition for "acres offered for lease" to mean all acres that BLM has offered for oil and gas lease, regardless of whether those acres are acreage for which expressions of interest have been submitted.

The proposed rule would update the definition for "Act" to include the acronym MLA for the Mineral Leasing Act of 1920, as this acronym would appear in the proposed regulatory text.

The proposed rule would replace the term "Service" in this section with "ONRR" because the relevant functions of the prior Minerals Management Service (also referred to throughout the existing regulations as "Service") are now performed by the ONRR. The proposed rule would likewise change the term "Service" to "ONRR" wherever it appears in the parts 3000 and 3100 regulations.

The proposed rule would add a definition for "Person" to unify the terms "person" and "entity." The proposed definition would define "person" to mean any individual or entity, such as a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

The proposed rule would modify the existing definition for "Proper BLM office" to remove the reference to the BLM Alaska State Office. The definition of this term would continue to refer the reader to § 1821.10, which contains the

¹³ BLM Form 3100–11, "Offer to Lease and Lease for Oil and Gas," available at https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf.

¹⁴ GAO, "OIL AND GAS LEASE MANAGEMENT—BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures" (June 2018).

location information for all BLM state offices.

A new definition for “Properly filed” would be added to proposed § 3000.5 to correspond to the use of the term in § 3000.60. The new definition would describe “Properly filed” as a document or form submitted to the appropriate office with all necessary information and payments, as provided in 43 CFR subpart 1822.

The proposed rule would modify the existing definition for “Surface managing agency” to ensure that the definition includes other agencies within the DOI with which the BLM must coordinate, in addition to non-DOI agencies that have management responsibility for the surface resources that overlay federally owned minerals. The revised definition would replace the phrase “any Federal agency outside of the Department of the Interior with jurisdiction over the surface overlying federally owned minerals” with “any Federal agency, other than the BLM, having management responsibility for the surface resources that overlay federally owned minerals.”

Section 3000.20 False Statements

The purpose of this section is to inform the public that submitting false or fraudulent statements to the agency is a crime punishable by imprisonment or a fine, or both. The proposed rule would remove the references to specific imprisonment times and fine amounts for violations provided in 18 U.S.C. 1001. The purpose of this change is to ensure that this regulation does not become inaccurate or obsolete if the penalty provisions in 18 U.S.C. 1001 are updated. The penalties are already referenced at 18 U.S.C. 1001, which is cited in the BLM’s regulation.

Section 3000.40 Appeals

A BLM decision is subject to appeal to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR part 4, when a decision accomplishes, authorizes, or prohibits some action. See *International Petroleum*, 190 IBLA 130, 134–35 (2017). The BLM will identify the applicable authority under which it made its decision. Actions under certain sections of BLM’s oil and gas leasing regulations, for example the BLM’s filing fees, are not subject to appeal, because such actions are authorized pursuant to a previous notice-and-comment process. The proposed rule would add a reference to § 3000.120 to clarify that point, consistent with existing language found under § 3000.12(b), which states the amount of a fixed fee is not an agency decision

subject to appeal under § 3000.40 and part 4. The BLM also proposes to also add a reference to proposed § 3000.130, which includes a similar paragraph stating the financial terms for new leases are not subject to appeal. The proposed rule would update an existing CFR reference from § 3101.7–3(b) to § 3101.53(b). This change reflects the proposed redesignation changes to the process for oil and gas lease issuances under § 3101. The proposed rule would remove a reference to § 3120.1–3, as the title and language in that section are proposed to change from “protests and appeals” to “protest” only. (See the discussion on the proposed § 3120 later in this preamble.)

Section 3000.50 Limitations On Time To Institute Suit To Challenge a Decision of the Secretary

The proposed rule would update the word “contesting” in this section to the more commonly used term “challenging” to provide clarity.

Section 3000.60 Filing of Documents

This section describes how to file documents with the BLM. The proposed rule would update this section to enable the BLM to accept electronically filed documents. The provision would still allow the use of hard-copy mailing services. In addition, this section would update the reference to § 1821.2 to the correct citation of subpart 1822.

Section 3000.90 Enforcement Actions Under 30 U.S.C. 195

This section explains that the U.S. Department of Justice is the agency responsible for enforcement actions described in section 41 of the MLA. The proposed rule would update the title and language in this section to cite 30 U.S.C. 195. The U.S. Code reference is more informative than the current reference to “provisions of section 41 of the Act.” The proposed rule would add language from 30 U.S.C. 195 to make this provision more informative.

Section 3000.100 Fees in General

The proposed rule would rename this section from “What do I need to know about fees in general?” to “Fees in general.”

Section 3000.110 Processing Fees on a Case-by-Case Basis

The proposed rule would rename this section from “When and how does BLM charge me processing fees on a case-by-case basis?” to “Processing fees on a case-by-case basis.” In addition, the BLM proposes to add “and in accordance with all other applicable laws and regulations” into paragraph

(b)(1) to avoid implying that an applicant may prepare or assist in the preparation of certain NEPA documents that, under CEQ regulations, are to be prepared solely by the applicable agency.

Section 3000.120 Fee Schedule for Fixed Fees

Consistent with the IRA, the BLM has implemented a nonrefundable filing fee of \$5 per acre, or fraction thereof, for EOIs. This fee is not considered a cost-recovery fee, and the monies collected are transferred to the Treasury as miscellaneous receipts (see 30 U.S.C. 191).

The proposed rule would update the existing fee for name changes, corporate mergers, or transfers to heirs and devisees to include corporate dissolutions and sheriff’s deeds. The BLM accepts corporate dissolutions and sheriff’s deeds to recognize the change in the ownership of interest in a lease per existing policy at H–3106–1, *Transfers by Assignment, Sublease or Otherwise*. The BLM processes these types of changes in the same manner as name changes, corporate mergers or transfers to heirs and devisees. Thus, these changes should also require a fixed filing fee.

The BLM is also proposing to adjust the existing oil and gas filing fees for competitive lease applications, leasing under rights-of ways, class I lease reinstatements, and geophysical exploration permits. When these fees were initially set in 2005, the BLM explained that it reserved the right to amend the fees in future rulemakings to reflect new data or other evidence that the fees did not accurately reflect reasonable costs (70 FR 41532 (July 19, 2005)). The GAO has since found that the BLM has not reviewed its application fees in response to changing conditions. See GAO–22–103968, *Oil and Gas Leasing: BLM Should Update Its Guidance and Review Its Fees*. The BLM concurred with GAO’s findings because the cost to the BLM of its oil and gas leasing process has changed since 2005. For example, the BLM moved to online auctions in 2016, and it no longer expends resources on holding auctions because the winning bidders pay the auction company directly for auction expenses. Previously, a portion of the competitive leasing application fees was intended to recover the BLM’s costs for holding in-person auctions. Conversely, the BLM proposes to include the cost related to complying with the NEPA in the filing fee for a competitive lease application; that causes an increase to the filing fee. To reflect the cost changes, the BLM is

proposing to amend the fee for the following document filings or actions: competitive leasing application fee, leasing under rights-of ways, class I lease reinstatements, and geophysical exploration permits.

The BLM is proposing to include new fixed filing fees for the following Federal oil and gas actions to reimburse the BLM for its reasonable processing costs: designation of successor operator; unit agreement applications; subsurface storage agreement applications; unit agreement expansion applications; and formal lease nominations. The BLM considered proposing new fixed filing fees for Federal communitization agreements (CA), Federal participating area applications, and royalty rate reduction applications, but it ultimately declined to propose these fees due to the low value and the public benefit related to these items. Royalty rate reductions occur at the end of a lease's life and allow the operator to continue producing from the property based on reduced royalties. This gives the American public the benefit of additional production and Federal revenue without additional surface disturbance or environmental impact.

The BLM considered both case-by-case and fixed filing fees for the new fees proposed in this rule. Historically, the BLM has determined costs on a case-by-case basis for types of documents where the costs may differ significantly

in each case. In this proposal, the BLM has opted to institute fixed filing fees for designation of successor operator; unit agreement applications; subsurface storage agreement applications; unit agreement expansion applications; and a formal lease nomination fee because charging processing costs on a case-by-case basis would be time consuming and would not be the most efficient use of BLM resources. Collecting cost data on a case-by-case basis for each document to be processed adds to the processing costs. The BLM decided that, for the oil and gas documents at issue, it would likely be more efficient and sufficiently reliable to set a fixed fee based on average costs and indexed to inflation. In addition, applicants benefit from knowing fees in advance.

To determine the new oil and gas fixed filing fees, the BLM followed the same method it used in 2005 to set the current fixed fees: using a weighted average rather than a simple average to determine the processing cost for each type of document. This method gives greater weight to the processing cost data from state offices with a heavy workload and, thus, more expertise in processing a particular type of document. The BLM's fluid minerals program identified the processing steps and then asked the state office subject matter experts (SMEs) to identify the appropriate job position, salary level,

and time required for particular steps specified by the BLM handbooks. The fluid minerals program considered changes to the processing of each type of document since the handbooks were last updated. The BLM then calculated a direct cost for each process and adjusted to 2021 salary rates without a locality factor. The BLM's fluid minerals program spot-checked the data and sent each state office a summary of the cost data that the office had previously submitted for these types of documents, along with the BLM-wide weighted average cost for each. State offices were asked to review the cost data and report whether that data, adjusted to current filing fee amounts, remained reasonable. They were also asked to re-estimate costs if the state office found the re-examined adjusted cost data to be inaccurate. A re-examination verified that the BLM's data continued to be valid and ensured that figures, which varied significantly among offices, had not been submitted in error.

Processing Steps for the Fixed Fees

The BLM reviewed the changes in processing steps due to changes in the law, regulations, and policy to determine how processing the different fixed fee applications have changed since the BLM established the fixed filing fee in 2005. The following table summarizes the results of this review.

Document/action	Current processing steps	Added processing steps	Removed processing steps
Formal lease nomination *	Validating data received; Sorting parcels (developing parcel configuration/ acreage); Preparing stipulations; Preparing sale notices.		
Competitive lease application	Preparing sale notices; Noting land status records; Preparing and conducting sale auctions; Preparing lease decisions; Entering and transmitting data updates.	Adjudicating high bids; Conducting environmental reviews.	Sorting parcels (developing parcel configuration/acreage); Preparing sale notices; Preparing and conducting sale auctions; Entering data updates.
Leasing under right-of-way	Receiving, validating, and entering data; Examining land status; Sorting parcels (developing parcel configuration/acreage); Preparing stipulations; Preparing sale notices; Noting land status records; Preparing and conducting sale auctions; Preparing lease decisions; Entering and transmitting data updates.	Adjudicating the application and preparing the notice/invitation to bid; Conducting environmental review.	Sorting parcels (developing parcel configuration/acreage); Preparing sale notices; Preparing and conducting sale auctions; Entering data updates.
Lease consolidation	Receiving, validating, and entering data; Examining requests, lease term conditions, and production; Preparing new leases and decisions; Entering and transmitting updates.		
Assignment and transfer of record title or operating rights.	Receiving, validating, and entering data; Examining assignment and transfer forms; Reviewing leases and bonds; Approving, entering, and transmitting updates.		
Overriding royalty transfer, payment out of production.	Receiving, validating, and entering data.		

Document/action	Current processing steps	Added processing steps	Removed processing steps
Name change, corporate merger, sheriff's deed, corporate dissolution, or transfer to heir/devisee.	Receiving, validating, and entering data; Examining requests; Determining successors-in-interest or other special requirements; Reviewing leases and bonds; Preparing decisions; Entering and transmitting updates.		
Lease reinstatement, Class I	Receiving, validating, and entering data; Examining eligibility; Preparing decisions; Entering and transmitting updates.	Conducting environmental review.	
Geophysical exploration permit application.	Nominal filing fee for Alaska only	For all states—Receiving, validating, and entering data; Examining land status; Conducting environmental review; Preparing notices/decisions; Entering data updates.	
Final application for Federal unit approval, Federal unit agreement expansion, Federal subsurface gas storage application*.	Receiving, validating, and entering data; Technical review; Determine commitment status; Preparing notices/decisions; Entering data updates.		
Designation of successor operator for Federal agreements*.	Receiving, validating, and entering data; Technical review; Preparing notices/decisions; Entering and transmitting data updates.		

* New proposed fixed filing fee.

The fixed fee for lease renewals would be removed, as there are no longer any leases eligible for renewal. Under the MLA, any lease renewal issued on or after November 15, 1990, “continue[s] for twenty years and so long thereafter as oil and gas is produced in paying quantities.” 30 U.S.C. 188(f)(3). If a lease renewed on or after November 15, 1990, fails to produce oil and gas in paying quantities at the end of its renewal term, the lease expires with no further option of renewal.

The current \$500 fee for Class II lease reinstatements is located at existing 43 CFR 3108.2–3(b)(3)(vi). The BLM considered moving the existing fee to 43 CFR 3000.120 for inclusion alongside the fixed filing fees, increasing the fee to reflect the processing costs, and then adjusting the fee annually for inflation. However, the MLA, at 30 U.S.C. 188(e), specifically states for Class II lease reinstatements that “[t]he lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed \$500.” Accordingly, the BLM proposes to leave the administrative fee of \$500 in its current location at 43 CFR 3108.23(b)(3)(vi).

FLPMA Factors and Processing Fees

Section 304(b) of FLPMA lists six factors, commonly known as the “FLPMA reasonableness factors,” that the BLM must consider when deciding the amount of a reasonable processing fee. Those factors are:

(1) The BLM’s actual costs to process a document not including management overhead, *i.e.*, the processing time spent by the BLM State Directors, Deputy

State Directors, and other management staff. Actual costs include (but are not limited to) time spent at the state and field office levels by SMEs who work on a specific authorization, such as a lease, and funds spent on environmental reviews, technical reviews, and analyses.

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks.

(3) The efficiency with which the BLM processes a document, *i.e.*, minimizing of waste by carefully managing agency expenses and time.

(4) Whether any of the BLM’s processing costs, for actions such as studies or data collection, benefit the general public or the Federal Government, rather than just the applicant alone.

(5) Whether the project provides any significantly tangible improvement, such as a road, or other direct service to the public. Occasionally, a negative factor, such as an adverse impact on wildlife, habitats, or surface drainage, may prevent an improvement from qualifying as a public service. Data collection that the BLM requires of an applicant for monitoring an activity is not a public service.

(6) Other relevant factors.

The BLM considered each of the FLPMA reasonableness factors for each type of document for which the BLM is proposing to adjust the existing fee or add a new fixed fee. The BLM first estimated the actual cost to process a type of document. When estimating the processing costs, the BLM determined a range based on the range of costs provided by the BLM State Offices. The BLM then considered each of the other

FLPMA factors to determine if they warranted setting the fee at less than actual cost. If so, the BLM then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fee at less than actual cost. Lastly, the BLM decided the amount of the fee, which cannot be more than the processing cost. For all of the fees in this proposal, this method resulted in fees set at the lower end of the BLM’s processing cost.

Actual Costs

Actual costs are the sum of both direct and indirect costs. Direct costs include such things as labor, material, and equipment. The BLM estimated the direct costs by reaching out to each BLM state office and requesting an estimate of the processing time for each application based on the steps detailed in the previous table. Then using the average hourly wage, the BLM calculated the direct cost for the BLM to process the application. Indirect costs include items such as rent and overhead, excluding State Director and management overhead. For an example of how the BLM would determine the sum of direct and indirect costs, assume the measured direct cost of processing a document is \$200. To estimate the indirect cost for processing that document, the BLM uses a ratio that it calculates annually. Annually, the BLM calculates the indirect cost rate, which is assessed on these fixed filing fees. Indirect costs are the overhead costs, which remain after direct costs have been computed, and may include utilities, telecommunications, information

technology, space rental, and other administrative support functions. Currently that ratio is 10 to 2, or 20 percent, meaning for every \$10 of direct costs there would be \$2 of indirect costs. The BLM would estimate the indirect cost using the ratio and direct cost figures. In this example, since the direct cost was \$200 and the ratio is 10 to 2, the indirect cost is \$40. The BLM then would add the direct and indirect cost figures to arrive at the actual cost figure of \$240 to process the document. This method is generally accepted in the private and public sectors.

Monetary Value of the Right or Privilege

Historically, the BLM concluded that its processing costs to prepare parcels for lease sale benefit three classes of beneficiaries: the party who requests that the parcel be included in the sale, all parties who bid on the parcel, and the successful bidder. The party who requests that a parcel be included in a lease sale benefits by influencing the selection of parcels offered. The BLM considered this benefit to be greatly outweighed by the benefit to the successful bidder who ultimately obtains the lease and can develop the minerals on the parcel. Similarly, while all bidders receive the benefit of being considered for a lease, the BLM considered this benefit to be greatly outweighed by the benefits to the successful bidder who obtains the lease. With respect to the new proposed fees for agreements, the operator benefits through economic gain if and when drilling activity occurs and through development of the lease. In addition, any benefit to the general public that would accrue from increased oil and gas availability or lower prices is considered too speculative and indirect to warrant consideration.

Monetary Value to the Applicant

The BLM did not attempt to calculate the monetary benefit to each applicant because those values are not always knowable to the BLM, and it would be inefficient to attempt to calculate them for each application or submission.

Monetary Value of the Right or Privilege Granted

To gauge the monetary value, the BLM considered the monetary value of similar rights or privileges granted to applicants historically. The BLM reviewed each type of document and compared the proposed filing fee for a given type of document with our professional judgment of the historical values of similar rights or privileges the BLM has granted. In each case, the BLM believes the value of the right or

privilege is so much greater than the processing cost that a fee based on the average actual cost would not significantly affect the applicant's proposed action. This is not surprising considering that the costs pertain to documents related to the commercial development of minerals. The BLM did not reduce any fees because of this factor.

Monetary Value Change

The BLM bases its decision about the monetary value of the benefit to the applicant on the value at the time the applicant submits its application. All leases have relatively large monetary value before exploration compared with the proposed fees. The basic value of the opportunity provided by a lease to explore for minerals is shown by the willingness of applicants to pay large sums before exploration for bonus bids, for lease transfers, and for exploration activities such as drilling. Because the monetary value of the right sought in a lease is much greater than the cost of processing the lease, the BLM considers it reasonable to charge a fee equal to processing costs for all lease applications.

The Efficiency Factor

The BLM's fluid minerals program asked the state office's SMEs to provide a minimum, maximum, and average time spent on each application process. Some SMEs stated that their estimated range depended on the experience of the staff. The estimates from less experienced staff increased the amounts for the average and the high estimate for processing costs. In addition, some state offices receive fewer applications than compared with other state offices. This can increase the processing time spent for researching and processing applications when they are not frequently received in a particular office. Therefore, the BLM chose to use the lowest estimate for time spent on processing applications to create the weighted average so that applicants are not penalized for understaffed offices or offices with fewer seasoned employees.

The BLM ensured that the field offices efficiently process the documents for which fees are charged. For all of the new and existing fees, the BLM based the processing procedures on standardized steps as outlined in the BLM Handbooks and Instruction Memoranda in order to eliminate duplication and extraneous procedures. The BLM developed these detailed and measurable processing steps to be efficient.

The Public Benefit Factor

Possible public benefits from the BLM processing activities, such as studies or data collection, are also difficult to measure. For example, studies related to document processing often provide information about an area's natural resources. This is sometimes a public benefit, but the value of the information, or whether there will be a benefit at all, is not predictable. The BLM concluded that document processing for types of fixed fee documents in this rulemaking does not usually produce studies or data that significantly benefits the public. In addition, the BLM determined that for each type of document in this rulemaking, the monetary value to the applicant outweighs the possible benefit of such studies to the public. The BLM analysts used their knowledge of the historical values of such cases to make these determinations. The BLM has, therefore, decided that this factor does not warrant setting any fee in this rulemaking at less than its actual processing cost.

The Public Service Factor

A project's service to the public concerns whether the applicant's project itself, as opposed to the BLM's processing of the related documents, provides some significant direct service or benefit to the general public. FLPMA refers to this as public service. Examples include improvements, such as roads, trails, or recreation facilities. Occasionally, a negative factor, such as an adverse impact on wildlife, habitats, or surface drainage, may prevent the BLM from regarding an improvement as a public service.

The BLM reviewed exploration data shared with the government to consider whether it constitutes a public service. Applicants for geophysical exploration for the oil and gas program in Alaska are required to share with the government the mineral resource data they derive from exploration. However, that information likely would not be made public. Moreover, if the information is valuable for mineral development, the BLM expects the findings would result in oil and gas leases in that area. In that case, the monetary value of the information to the permittee would outweigh its value to the public. The BLM considered that even information that is not valuable to the permit holder for mineral development might still provide some geological or geophysical information of value to the government, which the BLM could sometimes use for some types of resource management, such as land classifications. However, because there is very little information

obtained in this way and because its use is unpredictable, the potential benefits of the information to the public are too small to warrant an adjustment to the proposed fee. Finally, the operator may consider geophysical information indicating low-development potential valuable because the identification of low-development potential helps the operator avoid unprofitable

development; therefore, the value to the operator outweighs any public benefit.

The projects with a proposed fixed fee do not generally provide a public service. Large projects could include road construction, but such roads are rarely open to the public or built to public safety standards. In addition, they eventually must be removed. Consequently, for fixed fee documents,

the likelihood of providing such a public service is too remote and speculative to warrant charging a fee less than actual costs.

Other Factors

The BLM did not find other factors that made it reasonable to adjust fees in this proposed rulemaking.

New Proposed Oil and Gas Fixed Fees

TABLE 1—CATEGORY: FIXED FEES

[Note that fees will be adjusted annually for inflation according to the IPD–GDP and posted on the BLM's website. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fee
Oil and Gas (parts 3100, 3110, 3120, 3130, 3150, 3160 and 3180)		
Formal lease nomination	\$0	\$125
Expression of Interest fee per acre, or fraction thereof	0	5
Competitive lease application	185	3,100
Leasing under right-of-way	475	660
Leases consolidation	525	525
Assignment and transfer of record title or operating rights	105	105
Overriding royalty transfer, payment out of production	15	15
Name change, corporate merger, sheriff's deed, corporate dissolution, or transfer to heir/devisee	250	250
Lease reinstatement, Class I	90	1,260
Geophysical exploration permit application—all states	^a 30	^b 1,150
Renewal of exploration permit—Alaska	30	30
Final application for Federal unit agreement approval, Federal unit agreement expansion, Federal subsurface gas storage application	0	1,200
Designation of successor operator for Federal agreements	0	120

^a Alaska only.

^b All states.

We have rounded estimated fees down or up to the nearest \$5.00, for ease of payment and administration. This is consistent with general business practices.

Annual Inflation Adjustments

The BLM is also proposing to cease publishing the annual fee adjustments in the **Federal Register** and the CFR. The BLM would instead post the updated table on the BLM's web page with the historical fees posted in the same location. Revised fees would be effective each year on October 1. The BLM is requesting comments on this process change.

Annual inflation adjustments would be calculated based on the percentage change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) for the 1-year period between the fourth quarters of the previous 2 years, consistent with the 2005 Cost Recovery Rule. For example, the FY 2022 fees were set based on the change in the IPD–GDP from the fourth quarter of 2020 to the fourth quarter of 2021. The BLM would then multiply the current fee amounts by that multiplier to obtain the adjusted fee amounts. The resulting amounts would be rounded to the nearest \$5 at the end of the calculation

process for ease of payment and administration. This is consistent with general business practices.

Existing Applications

The BLM would not charge a new fixed fee under this rule for processing a document that the BLM received before the effective date of the rule. Documents submitted before the effective date of the final rule will be processed with the appropriate fees under the regulations existing as of the submittal date.

Section 3000.130 Fiscal Terms of New Leases

The BLM is proposing a new provision consisting of a table outlining the fiscal terms for new leases. Under the existing regulations, various subparts describe the base rental rate for leases. Likewise, various subparts describe the minimum bonus bids for competitive leases. In this rule, the BLM proposes to conform its regulations to the IRA by increasing the minimum bids and base rental rates. The BLM proposes to identify these rates in a new section and table so the rates can be regularly adjusted for inflation. The IRA precludes the adjustment of these fiscal terms until after August 16, 2032. Each

of the various sections would now refer to this new section, rather than itemizing the relevant fees. The BLM proposes to include a paragraph (b) to state that these rates are not subject to appeal, since these base rates would be applied through the publication of a final rule in the **Federal Register**.

Consistent with 43 CFR 3000.120, the BLM is also proposing to no longer publish the annual fee adjustments in the **Federal Register** and the CFR. The BLM would instead post the updated table on the BLM's website before October 1 of each year. Revised fees would be effective each year on October 1. The BLM is requesting comments on this process change.

Annual inflation adjustments would be calculated based on the percentage change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) for the 1-year period between the fourth quarters of the previous 2 years, consistent with the 2005 Cost Recovery Rule. For example, the FY 2022 fees were set based on the change in the IPD–GDP from the fourth quarter of 2020 to the fourth quarter of 2021. The BLM would then multiply the current fee amounts by that multiplier to obtain the adjusted fee amounts. The resulting amounts would be rounded to the

nearest \$5 at the end of the calculation process for ease of payment and administration. This is consistent with general business practices.

2. Section-by-Section Discussion for Changes to 43 CFR Subpart 3100

The proposed rule does not make any revisions to the section headings in the existing subpart 3100 regulations.

Section 3100.3 Authority

The purpose of this section is to describe lands that are subject to leasing. The proposed changes to this section were made to provide clarity and to conform the regulations to various other laws. This proposed section would remove the reference to the National Petroleum Reserve—Alaska (NPR—A) from the exceptions listed under both Public Domain and Acquired lands to reduce confusion. The NPR—A is appropriately listed under 43 CFR 3100.3(c) and would remain as lands that are subject to leasing under the Department of the Interior Appropriations Act, FY 1981 (42 U.S.C. 6508). These lands are subject to leasing under the regulations found under 43 CFR part 3130.

The proposed rule updates the exceptions for lands within the National Wilderness Preservation System to cite to 16 U.S.C. 1133. The proposed reference to the United States Code is more informative than the current reference to “section 4(d)(3) of the Wilderness Act.”

This proposed section would also add lands within Wild and Scenic Rivers to the exceptions listed under both Public Domain and Acquired lands. Subject to valid existing rights, the Wild and Scenic Rivers Act (16 U.S.C. 1280) withdraws from leasing lands within designated Wild and Scenic Rivers that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river.

This proposed rule would move the reference to lands within wildlife refuges in existing 43 CFR 3101.5–1 to the exceptions listed under both Public Domain and Acquired lands in the proposed redesignated 43 CFR 3100.3. This change would not impose new requirements. The proposed rule would remove the reference to noncompetitive lease offers, consistent with changes made by the IRA.

Currently, existing 43 CFR 3101.6 states that lands within Recreation and Public Purposes leases and patents are subject to lease under 43 CFR part 3100. The proposed rule would move that statement to § 3100.3(h) because it belongs in the list of authorities. It

would not result in any substantive regulatory change.

Finally, this proposed section would add a reference to the Fish and Wildlife Coordinating Act (16 U.S.C. 661) in paragraphs (j)(1) through (3) dealing with coordination lands and refuges in Alaska. These references are currently found in the existing 43 CFR 3101.5–2(a), § 3101.5–2(b), and § 3101.5–3, but are more appropriately listed under the authority for leasing. These are not new requirements.

Section 3100.5 Definitions

The purpose of this section is to provide definitions of terms used through subpart 3100. The proposed rule would alphabetize the definitions and remove embedded definitions, so the terms are defined separately.

The proposed rule would update the definition for the term “bid” to include a specific definition corresponding to the term’s use in 43 CFR 3109 as, in the BLM’s experience, this has caused confusion in the past. For leases or compensatory royalty agreements issued under 43 CFR 3109, the term “bid” would mean an amount or percent of royalty or compensatory royalty that the owner or lessee must pay for the extraction of the oil and gas underlying the ROW, which is different from the bonus bids received on competitive leases.

The proposed rule would add a definition for “competitive auction,” which would mean an in-person or internet-based bidding process where leases are offered to the highest bidder. The addition of this term would help the BLM to streamline the regulations by obviating the need to use the longer phrase “oral or internet-based auction” throughout the regulations.

The proposed rule would add a new definition for the term “exception” which would mean a limited exemption, for a particular site within the leasehold, to a stipulation. The addition of this term would help to provide clarity in the regulations. The term is used in 43 CFR subpart 3101 and is further discussed later.

The proposed rule would add a new definition for the term “modification” which would mean a change to the provisions of a lease stipulation for some or all sites within the leasehold and either temporarily or for the term of the lease. The term is used in 43 CFR subpart 3101 and is further discussed later. The addition of this term would allow the BLM to incorporate existing policy into its regulations and help to provide clarity in the regulations.

The proposed rule would add a new definition for the term “oil and gas

agreement” which would mean an agreement between lessees and the BLM to govern the development and allocation of production for existing leases, including, but not limited to, CAs, unit agreements, secondary recovery agreements, and gas storage agreements. The BLM would add this term to identify regulations that apply to multiple types of agreements. The term is used in the proposed rule in 43 CFR subpart 3105 and is further discussed later.

The proposed rule would update the definition for “operating right (working interest)” to include the holder’s obligations under the lease. The amended rule would state, “Operating rights include the obligation to comply with the terms of the original lease, as it applies to the area or horizons for the interest acquired, including the responsibility to plug and abandon all wells that are no longer capable of producing, reclaim the lease site, and remedy environmental problems.” The update to this term would provide clarity in the regulations.

The proposed rule would update the definition for the “primary term of all other leases” to state that it means the initial term of the lease, which is set at 10 years. The change in this definition updates the outdated reference to 5-year terms for competitive leases used prior to FOOGLRA.

The proposed rule would update the definition for “record title” to include the lessee’s obligations under the lease. The lessee’s interest, which is also referred to as the record title, includes the obligations to perform and bear ultimate responsibility to adhere to lease terms, including requirements relating to well operations and abandonment. The update to this term would provide clarity in the regulations.

The proposed rule would add a new definition for “qualified bidder” to mean any person in compliance with the laws and regulations governing a bid. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “qualified lessee” to mean any person that is compliant with the laws and regulations governing the BLM issued leases held by that person. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “responsible bidder” to mean any person who has not defaulted on winning bids, is capable of fulfilling the requirements of onshore BLM oil and gas leases, and does not have a history of noncompliance with applicable statutes and regulations or the terms of a BLM-issued oil and gas

lease. The term “responsible bidder” would not include persons who bid with no intention of paying a winning bid or persons who default on a winning bid. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for “responsible lessee” to mean any person who has not defaulted on previous winning bids, is capable of fulfilling the requirements of onshore Federal oil and gas leases, and does not have a history of noncompliance with applicable statutes or the terms of a BLM-issued oil and gas lease. The addition of this term would provide clarity in the regulations.

The proposed rule would add a new definition for the term “waiver” which would mean a permanent exemption from a lease stipulation. The term is used in subpart 3101 and is further discussed later. The addition of this term would allow the BLM to incorporate existing policy into its regulations and help to provide clarity in the regulations.

Finally, the BLM split out the definitions for “assignment” and “sublease” from the current definition of “transfer” in the existing regulations. This will assist the public in finding the applicable definition as well as highlight the differences between an assignment and a sublease.

Section 3100.9 Information Collection

The current regulation lists out-of-date OMB control numbers for information collection requirements. The proposed rule would update those control numbers and restructure the format of this section to include the authority for and purpose of the section, including a table that lists the current OMB control numbers.

Section 3100.31 Enforceability

The proposed rule would streamline the section on options. The MLA expressly authorizes and restricts options to acquire an interest in a lease. *See* 30 U.S.C. 184(d). While the BLM has not previously received option statements from the industry, the BLM cannot prohibit options and will continue to accept option statements for the record if they are submitted to the BLM. Under the “Enforceability” section (43 CFR 3100.31(a)), the BLM would remove the phrase “without the approval of the Secretary.” That would eliminate the discretion to authorize options for a period of more than 3 years. Paragraph (b)(3) would be revised for clarity to change the reference to “the number of acres covered by the option and of the interests and obligations of the parties to the option,

including the date and expiration date of the option” to read “the number of acres and the type and percentage of interest to be conveyed and retained by the parties to the option, including the expiration date of the option.”

Section 3100.40 Public Availability of Information

The proposed rule would not make any substantive changes to this section; however, the BLM is considering adding language that would provide notice that names and addresses of the nominator, lessee, operating rights holders, and operators would be made public through the BLM’s automated system. The BLM’s lease and agreement case files are already public records, and any change to this section would merely reflect the BLM’s current practice.

3. Section-by-Section Discussion for Changes to 43 CFR Subpart 3101

The proposed rule would remove 10 sections in the existing subpart 3101 as outlined in Section VI of this preamble titled Overview of Modifications. The removal of these sections would cause some of the sections to be redesignated accordingly. The purpose of this removing and redesignating is to achieve consistency and ease of reference throughout subpart 3101, as sections were consolidated and reorganized.

Section 3101.12 Surface Use Rights

This section was promulgated in 1988 to clarify the BLM’s authority to use the terms and conditions of the standard lease form to control site-specific environmental impacts on leaseholds, as opposed to lease-specific protective measures, addressed in lease stipulations, to mitigate impacts to specific resources values identified on leased lands. The standard lease form authorizes the BLM to require “reasonable measures” to the extent that such measures would be consistent with the lessee’s rights. However, this revised section would more clearly outline the measures that the BLM may require to promote development practices that are consistent with multiple use and sustained yield and the terms of the BLM’s oil and gas leases.

Specifically, this section would be updated to state that the authorized officer may require and detail reasonable measures to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities. Such reasonable measures may include, but are not limited to, relocation or modification to siting or design of

facilities, timing of operations, specification of interim and final reclamation measures, and specification of rates of development and production in the public interest. These measures are consistent with the BLM’s standard lease form, which has been in effect since October 2008 and which states that the BLM “reserves [the] right to specify rates of development and production in the public interest. . . .” Additionally, the MLA authorizes the BLM to adopt “such other provisions as [it] may deem necessary . . . for the protection of the interests of the United States . . . and for the safeguarding of the public welfare.” 30 U.S.C. 187. The BLM may also manage the manner of development under this section, which may include waste prevention measures, containment of fluids, and monitoring both water and air quality in the project area. As set out in E.O. 14035, “[t]he term ‘underserved communities’ refers to populations sharing a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.” E.O. 14008 provides additional guidance on securing environmental justice by requiring agencies to “[develop] programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” For the purposes of E.O. 14008, the Council on Environmental Quality has provided interim guidance on the definition of community to “mean either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”¹⁵ These underserved communities can be impacted as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to

¹⁵ M–21–28, July 20, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

persistent environmental health disparities.

Due to the advances in horizontal and directional drilling, and in an effort to strike the best multiple use balance, the BLM proposes to update the following language: “At a minimum, measures shall be deemed consistent with lease rights granted, provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface-disturbing operations for a period in excess of 60 days in any lease year.” The proposed language would state, “Modifications that are consistent with lease rights include, but are not limited to: requiring relocation of proposed operations by more than 800 meters and prohibiting new surface disturbing operations for a period of 90 days in any lease year.” With the changes in technology allowing 3-mile laterals and ½-mile directional wells, the BLM considers 800 meters (approximately ½ mile) to be a reasonable floor for moving operations due to resource concerns. The BLM proposes updating the floor to account for changes in technology.

The BLM also proposes these changes because the existing provision has been misconstrued as limiting BLM’s authority to require relocation only up to 200 meters. The IBLA has upheld the BLM’s authority to move operations and confirmed that the siting and timing parameters in the current regulations are minimums. The BLM has the authority to impose measures higher than those in the regulations as long as they “constitute [] reasonable measure[s] to minimize adverse impacts under 43 CFR 3101.1–2.” *Yates Petroleum*, 176 IBLA 144, 156 (2008). The BLM is requesting comments on the proposed distance standard for reasonable measures.

Section 3101.13 Stipulations and Information Notices

The proposed rule would split the existing content of this section into two paragraphs for clarity and would add a new paragraph (a) to state that, when developing stipulations, the BLM would consider the sensitivity and importance of potentially affected resources and any uncertainty concerning the present or future condition of those resources. The BLM is proposing this change to more explicitly recognize its mandate to manage the Federal lands for multiple use and to provide for the protection of the resources on those lands. When evaluating stipulations to be included in a lease, the BLM will assess whether a resource is adequately protected by stipulation without regard to the

restrictiveness of the stipulation on operations.

The proposed rule also would update the existing content of this section (paragraph (b)) to reflect the IRA’s elimination of the noncompetitive leasing process. Paragraph (b) refers to lease stipulations, and paragraph (c) refers to lease information notices. No other substantive changes have been made to the language that now constitutes these two paragraphs. In addition, the BLM proposes to move the language and requirements from the existing regulation found at § 3101.5–4 (which refers to stipulations applied to leases for lands managed by the Fish and Wildlife Service) to a new paragraph (d) under this section to consolidate all stipulation requirements in one section.

Section 3101.14 Modification, Waiver, or Exception

The proposed rule would update the title of this section from “Modification or waiver of lease terms and stipulations” to “Modification, waiver, or exception.” The first paragraph in this section describes the standards the BLM will use when evaluating modifications, waivers, or exceptions. It states that a public review period will be required when a change to a lease term or stipulation is substantial or involves a major concern to the public.

In paragraph (a), the proposed rule proposes to add the existing modification, waiver, or exception policy for lease stipulations into the regulations based on Instruction Memorandum Number 2022–003, *Documentation and Tracking Requirements for Waivers, Exceptions, and Modifications for Fluid Minerals Exploration and Development Activities*. Unlike the existing policy, the BLM is proposing to remove the provision that allows the BLM to grant modifications, waivers, or exceptions (MWEs) to lease stipulations if the authorized officer determines that the “proposed operations would not cause unacceptable impacts.” This very subjective standard has been overused at times and has led to unnecessary adverse environmental impacts in some instances. The BLM would consider a change to the lease terms to be substantial if the change would have an important, considerable, consequential, major, or meaningful effect on the environment that was not previously considered, thus requiring public notification (30-day public review) of a lease term or stipulation.

In paragraphs (b) and (c), the proposed rule would split an existing provision in the regulations related to

modifications of stipulations into two provisions, one of which would address modifications made before lease issuance and the other of which would address modifications made after lease issuance. This regulatory change reflects decisions of the IBLA, which have stated that if a lease is issued without prior notice of an additional stipulation, the stipulation is not binding on the potential lessee and is without effect in the absence of the potential lessee’s acceptance of the stipulation. See *Emery Energy, Inc.*, 64 IBLA 175 (1982). For modifications to stipulations prior to lease issuance, the BLM proposes to add language clarifying that the potential lessee must be given an opportunity to accept the additional or modified stipulation. If the potential lessee does not accept the additional or modified stipulation, the BLM may reject the bid and include the lands in the next Notice of Competitive Lease Sale. If the modification in stipulation(s) increases the value of the parcel, the BLM, following current policy, will reject the bid and include the lands in the next Notice of Competitive Lease Sale. For example, if the lease is currently subject to a no-surface-occupancy stipulation, and the BLM determines a controlled-surface-use stipulation is appropriate instead, this could increase the value of the lease. After lease issuance, if the BLM adds or modifies a stipulation without notice to the lessee, the additional or modified stipulation is not binding on the lessee and is without effect in the absence of the lessee’s acceptance of the stipulation. When a stipulation is required by the relevant Resource Management Plan and the BLM inadvertently omits it, a lessee’s failure to sign and accept modifications to the stipulations when requested by the authorized officer may subject the lease to cancellation.

Section 3101.22 Acquired Lands

For clarity, the BLM proposes to repeat the language found in the existing 43 CFR 3101.2–1(a) for public domain lands to describe the same acreage limitations that also apply to acquired lands.

Section 3101.23 Excepted Acreage

The proposed rule would update the existing 43 CFR 3101.2–3(a)(1) to change the language from “unit or cooperative plan or communitization agreement” to read “oil and gas agreement.” Under this proposed rule, unit agreements and CAs would no longer be referred to as cooperative plans and, as discussed earlier in this preamble, a new definition would be added to define “oil and gas

agreements,” which includes unit agreements and CAs. In addition, the BLM has noticed that the phrase “operating, drilling, or development contract” in the existing 43 CFR 3101.2–3(a)(3) has often been confused with approved Applications for Permit to Drill. A reference to 43 CFR 3105.30 would be added to this section to clarify the phrase since “operating, drilling, or development contract” has a specific regulatory meaning.

Section 3101.25 Computation

The proposed rule would remove as outdated all language referencing an entity’s ownership in a company, parties to a contract, and acreage held in common by the same persons. In 1982, the BLM eliminated the requirement to submit documents related to qualifications and now requires entities to certify their compliance with law on the lease or assignment application, subject to the criminal sanctions in 18 U.S.C. 1001 (see 47 FR 8544, February 28, 1982). Accordingly, the BLM no longer keeps documents related to qualifications and does not collect information on stock ownership, company or corporate structures (resolutions or company formation documents), or ownership in a company.

Section 3101.2–6 Showing Required

As explained in the previous section, the BLM eliminated qualification statements in 1982. The proposed rule would remove this section in its entirety, as it is outdated and no longer necessary. The BLM can run reports through its Mineral and Lands Record System to obtain the data confirming compliance with acreage limitations. When an entity exceeds its acreage limitation, the BLM provides the company with a list of the entity’s leases for a particular State and provides the entity with an appropriate timeframe to identify inconsistencies or to relinquish, transfer, or otherwise divest sufficient interests before the BLM takes appropriate action to cancel the entity’s excessive leases or interests.

Section 3101.30 Leases Within Unit Areas, Joinder Evidence Required

It is the policy of the BLM not to include lands that are partly within and partly outside the boundary of an oil and gas agreement in any one parcel listed in a Notice of Competitive Lease Sale. The proposed rule would remove 43 CFR 3101.3–2, “Separate Leases to Issue,” in its entirety due to the elimination of noncompetitive offers from the IRA. Incorporating this change, the heading of 43 CFR 3101.30 would

now read, “Leases within unit areas, joinder evidence required.” In the remaining language regarding joinder evidence, the BLM proposes to change the term “operator” to “lessee” because this section is referring to the time of lease issuance.

Section 3101.40 Terminated Leases

The proposed rule would remove the existing 43 CFR 3101.4, “Lands Covered by Application to Close Lands to Mineral Leasing” in its entirety, since this section only applies to noncompetitive leases, which the IRA eliminated. Section 3101.40 would now be referred to as “Terminated leases.” The BLM proposes to move the content of the existing regulations at 43 CFR 3108.2–2(d) and 43 CFR 3108.2–3(c) to this section to consolidate the requirements for issuing a lease for previously leased lands that have terminated.

Section 3101.5–1 Wildlife Refuge Lands (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.3), for ease of reference. The BLM proposes to move paragraph (a) and the first sentence of paragraph (b), which refer to lands subject to leasing, to the Authority for leasing section at 43 CFR 3100.3(b)(2)(xiv). The BLM proposes to move the remaining language in paragraph (b) to 43 CFR 3101.52(d), to consolidate it with the regulations addressing consent from other Federal agencies.

Section 3101.5–2 Coordination Lands (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.03) for ease of reference.

Section 3101.53 Alaska Wildlife Areas (Existing Rule)

The BLM proposes to move the content of this existing section to the Authority for leasing section (43 CFR 3100.3(k)) for ease of reference.

Section 3101.5–4 Stipulations (Existing Rule)

The BLM proposes to move the content of this existing section, which refers to stipulations prescribed by the Fish and Wildlife Service, to the general stipulations section (43 CFR 3101.13) for ease of reference.

Section 3101.6 Recreation and Public Purposes Lands (Existing Rule)

The BLM proposes to move the content of this existing section, which

refers to lands subject to leasing, to the Authority for leasing section (43 CFR 3100.3(i)) for ease of reference.

Section 3101.50 Federal Lands Administered by an Agency Outside of the Department of the Interior

The proposed rule would redesignate this section from 43 CFR 3101.7 to 43 CFR 3101.50 because of the consolidation and reorganization of neighboring sections.

Section 3101.51 General Requirements

The proposed rule would consolidate the three paragraphs under this existing section into one paragraph. Currently, there are separate paragraphs for (a) Acquired lands, (b) Public Domain lands, and (c) National Forest System lands. The new paragraph would provide that all lands will be leased only with the consent of the surface managing agency and that the surface management agency will report to the BLM whether it consents to leasing with stipulations, or, alternately, withholds consent or objects to leasing. On acquired lands, National Forest System lands, and public lands reserved for the use of the Department of Defense, the consent of the surface management agency is statutorily required prior to offering the lands for oil and gas lease. The surface management agency has the authority to refuse to consent to lease. Pursuant to longstanding BLM policy, public domain lands withdrawn or reserved for the use of another agency will be leased only after consultation with the surface management agency or upon recommendation for leasing by the surface management agency. The BLM deems a surface management agency’s recommendation to not lease to have the same effect as the agency withholding consent or objecting to leasing. Regardless of whether the lands are acquired or public domain lands, the BLM will not lease lands when a surface management agency objects to leasing or withholds its consent. Consolidating these paragraphs would reduce any confusion. When an agency has given its consent to leasing, the BLM incorporates all the stipulations provided by the agency for a lease parcel. The BLM may add its own stipulations to the lease parcel. The Secretary of the Interior has the final authority and discretion to decide to offer and issue a lease. Therefore, although an agency agrees that the lands may be leased, the BLM has the authority, on behalf of the Secretary, to not issue a lease for all or a portion of the lands.

Section 3101.52 Action by the Bureau of Land Management

The proposed rule would update paragraph (b) to remove the phrase “and shall reject any lease offer,” because the IRA, by eliminating noncompetitive leasing, eliminated such offers. For ease of reference, the proposed rule would add a paragraph (d) from language now found at 43 CFR 3101.5–1(b), which references the consent required for lands managed by the Fish and Wildlife Service. The proposed rule would also remove from paragraph (d) the phrase “on a form approved by the director,” as there is no such standard form for stipulations.

4. Section-by-Section Discussion for Changes to 43 CFR Subpart 3102

The proposed rule would revise one section heading in the existing subpart 3102. The purpose of this revision is to replace outdated terminology.

Section 3102.20 Non-U.S. Citizens

The BLM proposes to rename the section on “aliens” and to replace this outdated, derogatory terminology with the phrase “non-U.S. citizens” in both the heading of the section and the language used in the paragraph. The BLM proposes to add a new paragraph (b) due to a final rule from the Office of Investment Security, Department of the Treasury, implementing the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. That final rule was published at 85 FR 3158 (Jan. 17, 2020) and codified at 31 CFR part 802. The rule sets forth the process relating to the national security review by the Committee on Foreign Investment in the United States (CFIUS) of certain transactions, referred to in the rule as “covered real estate transactions,” that involve the purchase or lease (including an assignment or other transfer) by, or concession to, a foreign person of certain real estate in the United States. Covered real estate transactions may include certain transactions involving the Federal mineral estate. The CFIUS looks not only at the entities that are lessees, but also to any (legal) person with the ability to exercise control, as defined by the regulations of the Department of Treasury’s implementing regulations, over the lessee. The CFIUS review could result in the modification, suspension, or prohibition of the acquisition of a lease or interest therein. Accordingly, the BLM recommends that each potential bidder, lessee, or other interest holder review the regulations at

31 CFR part 802 before bidding on or acquiring an interest in a Federal oil and gas lease.

Section 3102.40 Signatures

The BLM proposes to add a new introductory paragraph to clarify that this section applies to signatures on all applications and forms. When applicants submit a form or application to the BLM, they are certifying their acceptance of lease terms and stipulations, as well as their compliance with the regulations under subpart 3100. The BLM may, in its discretion, accept electronic signatures and submissions. Paragraph (a) would be updated to include that when copies of the BLM-approved forms are submitted to the BLM, they must be exact reproductions without additions, omissions, or other changes. The existing paragraph (b), referring to assignments and transfers, would be removed from this section since this language is already covered in the existing 43 CFR 3106.4–1. The existing paragraph (d), which refers to qualification numbers, would be removed as obsolete: the BLM discarded qualification statements in favor of self-certifications in 1982.

Section 3102.51 Compliance

The proposed rule would revise the introductory paragraph to more clearly define the qualifications to hold interest in a lease. The BLM proposes to update paragraph (a) to change the term “alien stockholders” to “non-U.S. citizens who own stock” for consistency with the changes described earlier. Paragraph (d) would be updated to remove the sentence, “The term *entity* is defined at 43 CFR 3400.0–5(rr) of this title,” because the proposed rule would add a new definition for “person,” which would include “entities” as explained earlier in 43 CFR 3000.5. Paragraphs (d), (e), and (f) would be updated to include the appropriate references to the United States Code, which are more meaningful than “sections 2(a)(2)(A) of the Act,” “section 41 of the Act,” “section 17(g) of the Act,” and “section 30A of the Act.”

In addition, the BLM proposes to revise paragraph (f) to emphasize that reclamation obligations reside primarily with oil and gas lessees, operating rights owners, and operators and not the American public and to ensure that those who are in non-compliance with section 17(g) of the MLA are not qualified to hold a lease. The BLM reviewed the timeframe it takes to add a person to the list of persons in noncompliance with MLA section 17(g). Under the current policy, it takes a

minimum of 100 days from the date when the BLM first issues an incident of noncompliance (INC), or 130 days from the date when the BLM first issues a written order, due to the time it takes to complete each enforcement action. The timeframe to complete each enforcement action is generally as follows:

- Written Order (30 days)
- First INC (30 days)
- Second INC (30 days)
- Impose civil penalties (40 days)

Therefore, the BLM proposes to modify paragraph (f) and specify that noncompliance with MLA section 17(g) begins when a person has failed to comply with their reclamation obligations in the time specified by notice from the BLM, not, as under the current regulations, when the authorized officer has imposed a civil penalty or collected a bond, whichever is first. The new language would more closely track the language of the MLA at 30 U.S.C. 226(g) and would recognize the changes that were made in 2016 to 43 CFR 3163.1 and 3163.2 (81 FR 81609, Nov. 17, 2016) regarding notice of noncompliance. This language clearly states that a person’s failure to timely comply with a notice of noncompliance with reclamation requirements or other standards would trigger the noncompliance with section 17(g); it would not rely on a specific follow-up action (assessment, civil penalty, or bond collection) by the BLM. This would allow the BLM flexibility in how it responds to a person’s failure to comply, while clearly stating when noncompliance with section 17(g) begins.

With the regulations matching the law, the BLM would expect to quickly identify persons in noncompliance and prevent these persons from acquiring future Federal leases. The BLM would add a person to the list of persons in noncompliance with MLA section 17(g) after the abatement date has passed for the first enforcement action, either a written order or the first INC. This would result in a person being added to the 17(g) list in a minimum of 30 days, instead of the current minimum of 100 or 130 days.

Finally, the BLM proposes to add a new paragraph (h) to state that, in accordance with 2 CFR parts 180 and 1400, compliance means that the lessee, potential lessee, and all parties described at the beginning of the section are not excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension, unless the DOI explicitly approves an exception for a

transaction pursuant to the regulations in those parts.

Section 3102.52 Certification of Compliance

The BLM proposes to update the last sentence of this paragraph to remove the phrase “an offer,” because the IRA, by eliminating noncompetitive leasing, eliminated such offers.

5. Section-by-Section Discussion for Changes to 43 CFR Subpart 3103

The proposed rule would revise one section heading and remove two others in the existing 43 CFR subpart 3103 regulations, necessitating redesignating throughout the subpart.

Section 3103.11 Form of Remittance

The BLM proposes to update the existing paragraph by changing the reference from the Minerals Management Service to the successor agency, the ONRR.

Section 3103.12 Where Remittance Is Submitted

The proposed rule would rename this section from “Where submitted” to “Where remittance is submitted.” The BLM proposes to update paragraph (a)(1) to clarify that the processing fees for various applications would be found in the fee schedule in 43 CFR 3000.120. The BLM proposes to update paragraph (a)(2) to replace the ONRR’s mailing address and direct rental payments to the ONRR’s online rental payment system to conform to ONRR’s regulations at 30 CFR 1218.51. The BLM proposes to update paragraph (b) to replace the phrase “communitized leases in producing well units” with the more commonly used language of “communitized leases in producing spacing units.” In addition, the BLM proposes to remove the phrase “and easements for directional drilling,” as this is an outdated reference, and the BLM has never issued easements for directional drilling.

Section 3103.21 Rental Requirements

The proposed rule would update paragraph (a) to remove the phrases “or competitive nomination” and “List of Lands Available for Competitive Nominations or” consistent with the changes made to 43 CFR part 3120. The proposed rule would also remove the reference to noncompetitive lease offers, the phrase “if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision,” as well as the last two sentences in their entirety, because the IRA ended noncompetitive leasing. The proposed rule would update paragraph (b) in this

section to remove the phrase “List of Lands Available for Competitive Nominations or a” due to modifications made to 43 CFR part 3120 to make nominations nonbinding.

Diligent Development

The BLM is considering adding a new requirement for diligent development obligations under Federal oil and gas leases and is particularly interested in receiving comments on this topic. As stated in the DOI’s *Report on the Federal Oil and Gas Leasing Program*, dated November 2021, noncompetitive leases are frequently less developed than competitive leases. Similarly, the GAO reported (see GAO 22–103968 and GAO 21–138) that competitive leases with higher bonus bids were more likely to produce than competitive leases with lower bonus bids or noncompetitive leases. Accordingly, the BLM is considering adding a section to further promote development of leases by specifying the steps that must be taken to meet diligent development obligations. For example, the lessee would meet the diligent development obligation if, at the end of the fifth year of the lease term, the lessee: (a) has established actual production in paying quantities on the lease; (b) has established allocated production in paying quantities on the lease; (c) has filed a complete Application for Permit to Drill; (d) has extended the lease term by committing it to an oil and gas agreement, 43 CFR 3107.30; (e) has filed a Notice of Intent to undertake geophysical exploration. The BLM reviewed existing leases and the development milestones on those leases and determined that 56 percent of the current leases have met the proposed diligent development obligation under one of the options set out here prior to the fifth lease year.

In addition, the BLM is considering requiring the lessee to provide notice to the BLM of how and when the lessee met the diligent development obligation, and a provision increasing the rent if the lessee has not satisfied the diligent development obligation by the end of the fifth lease year. Under this provision, the lease would be subject to a supplemental escalating rental rate of an additional \$1 per acre, or fraction thereof, for each lease year between the sixth and tenth lease years until the diligent development obligation is met. The BLM solicits comments as to whether the increased rental rates prescribed by the IRA may render a diligent development obligation unnecessary.

Section 3103.22 Annual Rental Payments

This section provides information on the royalty rate for existing and future leases. The proposed rule would revise the phrase “timely payment” in the introductory paragraph to “payment on or before the lease anniversary date” to more clearly specify what constitutes a timely payment. The proposed rule would update paragraph (a) to simply state that the annual rental for all leases is as stated in the lease.

To implement the IRA, for all new oil and gas leases issued in the next 10 years, rentals are set at \$3 per acre, or fraction thereof, for lease years 1 and 2; \$5 per acre, or fraction thereof, for years 3 through 8; and \$15 per acre, or fraction thereof, thereafter. After 10 years following the enactment of the IRA, those rental rates become minimums and are subject to increase. Paragraph (b) reflects that following the commencement of production, the rental requirement converts to a minimum royalty in lieu of rental. The minimum royalty is “not less than the rental which otherwise would be required for that lease year” when production begins in paying quantities. (See § 3103.32(a)(2)).

The proposed rule would revise paragraph (b) because the existing paragraph (b) is obsolete. The proposed rule would eliminate the existing introductory paragraph (b). The proposed rule would remove the existing paragraph (d) because, due to the IRA’s amendment of the MLA, reinstatements will no longer be available for noncompetitive leases issued for public domain lands. The proposed paragraph (c) would now state the annual rental for a reinstated lease is located in 43 CFR 3000.130. As required by the IRA, the rental rate for reinstated competitive leases is \$20 per acre, or fraction thereof. The proposed rule would redesignate the existing paragraph (f) to paragraph (d) to state that each succeeding time a specific lease is reinstated, the rental rate will increase by an additional \$10 per acre, or fraction thereof, as required by the IRA.

Section 3103.31 Royalty on Production

All updates to this section would implement provisions of the IRA. The proposed rule would update paragraph (a)(1) to state that leases issued before the passage of the IRA will have a rate as prescribed in the lease or applicable regulations at the time of lease issuance. In paragraph (a)(2), the proposed rule would increase the royalty rates for leases issued on or after the effective

date of the IRA and for the next 10 years to 16.67 percent. Paragraph (a)(3) would be updated to state that for leases issued after the 10-year period following the passage of the IRA, the royalty rate will be not less than 16.67 percent. The proposed paragraph (a)(4) would state that ROW leases issued under subpart 3109 would have a minimum royalty rate of 16.67 percent.

The proposed paragraph (a)(5) would be updated to state that for reinstated leases, the royalty rate is the rate used for royalty determination that applies to new leases at the time of the reinstatement plus 4 percentage points, plus an additional 2 percentage points for each succeeding reinstatement. In no case will the reinstated lease have royalties at a rate less than 20 percent. The IRA amended the MLA to state that competitive leases may be reinstated under a condition that “a requirement for future royalties at a rate of not less than 20 percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force [*i.e.*, at the time of the lease] and used for royalty determination for competitive leases issued pursuant to such section, as determined by the Secretary.” (30 U.S.C. 188(e)(3)). To implement this provision of the IRA, the reinstatement of a terminated lease with a royalty rate of 12.5 percent would be conditioned on a reinstated royalty rate of not less than 20 percent. Leases issued after the enactment of the IRA that carry a royalty rate of 16.67 percent royalty would be conditioned on a reinstated royalty rate of not less than 4 percentage points greater than the competitive royalty schedule in force at the time of the lease, or 20.67 percent. The current regulation increases the royalty rate 2 percentage points for each succeeding reinstatement. This language would remain in the regulation.

Section 3103.32 Minimum Royalties

The proposed rule would revise the exception clause in paragraph (a) by changing “except that on unitized leases” to “except on unitized leases that lack production.” This change clarifies the intended exception without suggesting that rental should be paid on the leased area outside the participating area, even when the producing well for the participating area is located on the leasehold. In general, once oil and/or gas is discovered in paying quantities on the lands committed to a unit, all lands included in the participating area are charged a minimum royalty per acre per year in lieu of rental. Rental for those

portions of unitized leases that are not within such participating areas continue at the rental rate established in the lease. That is, the portion of a lease inside the participating area will pay minimum royalty and the portion outside the participating area is subject to rental. However, if there is actual production on a unitized lease, then minimum royalty should apply to the entire lease (*i.e.*, both portions within and outside the participating area). The proposed changes clarify that for leases partly inside and partly outside the participating area and containing a producing well (or a well that was once capable of production in paying quantities), the entire lease is obligated to pay minimum royalty.

Paragraph (a)(2) would be updated to change “competitive leases issued from successful bids placed at oral or internet-based auctions conducted after December 22, 1987” to read “competitive leases issued after December 22, 1987.” The extra language was necessary to implement changes from FOOGLRA in 1987, but it no longer applies, since the BLM does not have pending competitive lease applications that date back to 1987.

Paragraph (d) would be updated to remove the reference to 43 CFR 3108.2–4, since the section for Class III reinstatements would be eliminated, as further described in the discussion of subpart 3108.

The proposed rule would add a new paragraph (e) to state that if the royalty paid during any year aggregates to less than the minimum royalty, then the lessee must pay the difference at the end of the lease year. This is not a new requirement or a change in the BLM’s policy; it is only added to clarify the pre-existing requirement.

Section 3103.41 Royalty Reductions

The proposed rule would revise paragraph (a) to change the phrase “successfully operated” to “produced in paying quantities,” which has a clearly understood meaning within the oil and gas industry. This change is to clarify the prerequisite for obtaining this relief as the previous term “successfully operated” is not a term that is easily defined.

The BLM considered additional changes to this section due to the GAO’s report entitled, “Federal Oil and Gas Revenue: Actions Needed to Improve BLM’s Royalty Relief Policy” GAO–21–169T. In this report, the GAO found that the BLM’s decisions to grant royalty relief during the COVID–19 pandemic were not made efficiently and equitably across the states. The BLM considered using the Bureau of Ocean Energy

Management (BOEM) regulations and policy on royalty rate reductions. The BOEM has multiple authorities to provide royalty relief. The BOEM regulations include the authority to grant royalty relief for deep water leases and for development and expansion projects (see 30 CFR 203.60 to 203.80), drilling ultra-deep wells on leases not subject to deep water royalty relief (see 30 CFR 203.30 to 203.36), drilling deep gas wells on leases not subject to deep water royalty relief (see 30 CFR 203.40 to 203.49), and end-of-life leases (see 30 CFR 203.50 to 203.56). The BLM provides royalty relief only for a lease’s end-of-life (equivalent to the BOEM’s regulations at 30 CFR 203.50 through 203.56). After reviewing BOEM’s authority, the BLM concluded that the BOEM’s regulations were based on specific legal authorities that the BLM does not have. Therefore, the BLM is not proposing any changes to this section at this time. The existing regulations require evaluation of royalty reduction applications on a lease-by-lease basis, require applicants to provide a detailed statement with “all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental,” and generally provide for royalty rate reductions. The BLM is committed to adhering to those rules and will ensure that they are consistently and faithfully applied to future royalty relief applications.

The BLM solicits feedback to improve the royalty rate reduction section. Revised regulations could provide explicit criteria on royalty rate reductions, which could include setting a limit on the lower end of a royalty rate reduction, implementing a calculation to decide if the BLM should approve a royalty rate reduction, implementing an automatic lifting provision similar to BOEM (see 30 CFR 203.55), or making it explicit that a royalty rate reduction would transfer to the new lessee when a lease is assigned.

Sections 3103.4–2 Stripper Well Royalty Reductions and 3103.4–3 Heavy Oil Royalty Reductions

The proposed rule would eliminate both of these sections in their entirety because they are obsolete. Both sections were revised on October 6, 2010 (75 FR 61624), to eliminate these types of royalty relief. However, these provisions were retained in the final rule because, while these types of royalty relief were no longer available for current production, prior production subject to this relief continued to be subject to audits. In addition, the 7-year statute of limitations period during which ONRR could pursue a demand for royalty

continued to apply. Since that statute of limitations period has passed for all production that qualified for relief under these sections, they are no longer necessary and are being removed.

Section 3103.42 Suspension of Operations and/or Production

This section of the existing regulations implements the provisions of 30 U.S.C. 226(i) and 209 for suspending oil and gas leases. The proposed rule would redesignate this section from 43 CFR 3103.4–4 to 43 CFR 3103.42 as discussed at the beginning of the preamble. The proposed rule would change the language in paragraph (b) to clarify that the term of a suspended lease will be adjusted to account for the time of suspension, *i.e.*, by calculating the running of the primary term without including the time during which the lease was suspended. In the BLM's experience, the language in the current regulations—providing that the primary term of a lease will be “extended by adding the period of the suspension”—has been incorrectly interpreted to mean that the length of the suspension is added to the lease term when the suspension is lifted. For example, consider a lease issued for a primary term of 10 years. In the ninth year, a suspension is granted. The suspension lasts for 2 years. When the suspension is lifted, the time remaining on the primary term is the 1 year that was left prior to the suspension. The 2 years of the suspension are not added to the primary term.

Paragraph (d) would be clarified to state that if there is any production sold or removed during the month the suspension is granted, the lessee must pay royalty on that production. Paragraph (d) would also be split into three sections due to the length of the paragraph and for clarity. The other two sections would become new paragraphs (e) and (f), and the remaining paragraphs would be redesignated.

Redesignated paragraph (g) would update the term “terminating a suspension” to “lifting a suspension,” since “termination” is a term of art that refers to a lease ending through operation of law when the rental is not paid.

The proposed rule would update redesignated paragraph (h) to change the language from “unit or cooperative plan” to read “agreement” to conform to the definitional change made earlier in this proposed rule.

6. Section-by-Section Discussion for Changes to 43 CFR Subpart 3104

The BLM proposes to revise its oil and gas bonding requirements in several

respects. The BLM proposes to increase minimum bond amounts for the first time since 1951 (statewide and nationwide bonds) and 1960 (lease bonds). In addition, the proposed rule would add one section, § 3104.90, into the existing subpart 3104 regulations to address when lessees must come into compliance with the new bond amounts and would revise two section headings in the existing subpart 3104 to more accurately reflect the contents of those sections. The proposed rule would also remove nationwide and unit operator's bonds and add surface owner protection bonds. The BLM believes these proposed changes, particularly the increased bond amounts and the elimination of nationwide bonding, would help ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public.

The MLA authorizes the Secretary to establish standards “as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease.” (30 U.S.C. 226(g)). The existing regulations at § 3104.1 implement this authority and require that, prior to surface-disturbing activities related to drilling operations, the lessee, sublessee, or operator submit a surety or personal bond. The purpose of the bond is to ensure the “complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations.” (43 CFR 3104.1(a)). The regulations at §§ 3104.2 through 3104.4 currently set forth four different bond types:

- *Lease/Individual Bonds*, which provide coverage for one lease and must be in an amount of not less than \$10,000;

- *Statewide Bonds*, which cover all leases and operations in one State and must be in an amount of not less than \$25,000;

- *Nationwide Bonds*, which cover all leases and operations nationwide and must be in an amount of not less than \$150,000; and

- *Unit Operator's Bonds*, which may be used in lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases

committed to an approved unit agreement.

Existing regulations set a minimum amount for these types of bonds. The BLM has not increased its minimum bond amounts since 1951 (statewide and nationwide bonds) and 1960 (individual lease bonds). In September of 2019, the GAO issued a report recommending that the BLM address risks from insufficient bonding (GAO–19–615). The GAO found the bonds held by the BLM were insufficient to prevent wells from becoming orphan wells and thereby shifting the costs to plug and abandon and reclaim these wells onto the taxpayer. Specifically, GAO found that 84 percent of the bonds reviewed were not sufficient to cover the costs to reclaim the wells covered by the bonds. Further, GAO determined the bond amounts, which were usually set at the regulatory minimum, “does not account for variables such as the number of wells [the bonds] cover or other characteristics that affect reclamation costs, such as well depth.”

Currently, the BLM uses Instruction Memorandum 2019–014, *Oil and Gas Bond Adequacy Reviews*, to review existing Federal bond amounts and request increases to the bond amount based on the potential risk or liability posed by the operators. Similar policy has been in place for the past decade, see Instruction Memorandums 2013–151, 2010–161, 2008–122, and 2006–206. The BLM is proposing to increase the minimum bond amounts to reflect inflation and the minimum coverage that would be required for operations on Federal land, based on the BLM's estimate of current plugging and reclamation costs. The proposed minimum bond amounts would provide sufficient protection to allow an operator to begin drilling; however, the BLM would still need to review bond amounts periodically to determine whether the bond amount should be increased based upon the risk of default posed by the operator or the risk to the environment posed by the operations. In the past 2 fiscal years, the BLM has spent \$2.7 million annually on orphaned wells. Without an increase in the bond amounts, the BLM expects to continue to incur similar annual costs to address orphaned wells. Because of inflation, the lack of increased bond amounts for almost 40 years, and the increased number of orphaned wells resulting from insufficient funds available under current bonds and associated costs ultimately borne by the American taxpayer, the revisions to the bond amounts proposed here are justified.

In addition to the proposed rule, the BLM also considered two alternatives: adjusting the bond only for inflation (alternative 2) and requiring a full liability bond (alternative 3). The second alternative, only adjusting the bond amount for inflation, would increase the lease/individual bond to \$100,000 and the statewide bond to \$300,000. The third alternative considered adjusting the bond to cover the full plugging and reclamation cost of all Federal onshore operations covered by the bond. In this alternative, the BLM would allow the operator to use either a statewide bond or an individual bond; however, the operator would be required to submit a bond rider for each additional well drilled to ensure the bond amount covers the full cost for plugging and reclamation for all wells covered by the bond. In this instance, the BLM estimated an average lease/individual bond of \$994,000 would cover 14 wells and an average statewide bond of \$4,686,000 would cover 66 wells. The BLM concluded that implementing the third alternative would require increased staffing at the field and state offices to manage increased workload surrounding the additional bond riders. In addition, it is expected that the BLM's application for permit to drill processing time would slow down due to waiting for additional bond riders.

Although the BLM analyzed the second and third alternatives in the economic analysis, the BLM did not propose either of these alternatives in the proposed rule. The BLM is requesting commenters to provide information on additional alternatives for bonding that the BLM might consider.

Additionally, the BLM is requesting comments on whether it should propose to adjust the minimum bond amounts by inflation. Currently, the BLM is not proposing this in the rule; however, the BLM would prefer to have a method to adjust minimum bond amounts by inflation factors. Please provide comments on if and how the BLM should adjust minimum bond amounts in the future.

Finally, the BLM also proposes to remove the nationwide and unit operator bond types to reduce the cost and burden on the American public for administering these types of bonds. For nationwide bonds, the state office that is administering a nationwide bond must coordinate with not only the field offices within the state, but also every other state office. With the proposed elimination of nationwide bonds, the BLM would not need to coordinate with all the other state offices for a bond

adequacy review. In addition, the BLM state office could more easily ensure that the field offices within the State have completed the required bond reviews. As a result, the BLM would be able to better tailor the bond amounts to the local conditions and State-specific requirements when reviewing a bond for adequacy. The BLM also would be able to review statewide bond amounts and ensure that the bond amount is adjusted before an operator defaults, thus reducing the financial burden on the American taxpayer. Overall, the elimination of nationwide bonding in favor of the proposed increase in the amount of the statewide and lease bonds would allow the agency to ensure improved bonding, with an appropriate focus on specific areas and fields, which should reduce the burden to the taxpayer if an operator fails to complete proper plugging and abandonment.

Section 3104.10 Bond Obligations

To enhance the administration of oil and gas bonding on America's public lands, the BLM is proposing to remove paragraphs (c)(1) and (5), which allow certificates of deposits (CDs) and letters of credit (LOCs) to secure a personal bond. The BLM is proposing to remove CDs because they are difficult to manage: the face of these instruments do not include the BLM's required language that Secretarial approval is required prior to redemption of the CD by any party. The BLM is proposing to remove LOCs because the BLM has found it is difficult for banks to include the BLM's requirements in LOCs. Under the proposed rule, any existing personal bond that is secured by a CD or a LOC need not change the security until the bond is replaced. However, the BLM would not accept CDs or LOCs as security for a new personal bond after the final rule takes effect. Finally, the BLM requests comments with any supporting information on whether the final regulation should provide for any other types of approved financial arrangements and the types of financial arrangements that the BLM should consider.

Section 3104.20 Lease Bond

The proposed rule would change the specifications regarding who must post a bond to state that the operator must be covered by a bond in its name as principal or obligor. The existing regulations authorize a lessee, owner of operating rights (sublease), or operator to post a lease bond. The proposed change would not result in any administrative changes for the BLM, because under the existing regulations, when a lessee or an operating rights

owner posts the bond for the operator, the bond must include the operator as principal. The proposed language is intended to simplify these provisions by requiring an operator to have a bond in its own name and removing the requirement for lessees and sublessees to ensure their bonds cover the operator. The BLM recognizes that lessees and owners of operating rights (sublessees) have certain obligations and are ultimately responsible for operations on their lease, as required by 43 CFR 3106.76, and additional bonding may be required by the authorized officer when, for example, an operator is noncompliant.

The proposed rule would increase the minimum lease bond amount to be not less than \$150,000. The existing lease bond amount of \$10,000, established in 1960, no longer provides an adequate incentive for companies to meet their reclamation obligations, nor does it cover the potential costs to reclaim a well should this obligation not be met. This current bond requirement increases the risk that taxpayers will cover the cost of reclaiming wells in the event the operator refuses to do so or declares bankruptcy. According to a GAO report entitled, *Federal Energy Development, Challenges to Ensuring a Fair Return for Federal Energy Resources*, GAO-19-718T, "weaknesses with bonds for coal mining and for oil and gas development pose a financial risk to the Federal Government as laws, regulations, or agency practices have not been adjusted to reflect current economic circumstances."

To determine the appropriate minimum lease bond amount, the BLM reviewed its existing lease bonds and the number of wells tied to the lease bonds. The BLM currently manages 933 lease bonds; however, only 369 lease bonds cover existing wells or liability. The lease bonds that do not cover any existing liability are usually put in place for a well that has not yet been drilled or where the principal forgot to request termination of the bond after transferring or plugging and abandoning its prior oil and gas liability. For the lease bonds with existing wells, each lease bond, on average, covers 14 wells; however, lease bonds cover a median number of one well per bond. In addition, the lease bonds covering existing wells average \$26,000 per bond. For background, the BLM calculated the average by adding up all the lease bond amounts and dividing this total by the number of lease bonds. The BLM calculated the median by taking the middle value, *i.e.*, the value for which half of the lease bonds are larger and half are smaller. Thus, half of the lease

bonds with existing liability cover one well per bond. The cost to plug one well and reclaim the surface, however, can vary significantly based on the depth of the well. The proposed rule would require the minimum bond amount to be sufficient to reclaim two wells to account for the uncertainty surrounding the depth of wells and the large variability in reclamation costs for orphaned wells. The BLM would conduct bond adequacy reviews on all bonds and increase the required bond amount based upon the risk of the operations. This review would include several risk factors regarding the wells covered by the bond and the operator's compliance history.

Between 1960 and 2022, the cumulative inflation rate, as measured by the U.S. Consumer Price Index was 901 percent and, accordingly, the 2022 equivalent of \$10,000 (the 1960 lease bond amount) would be \$100,105 (<https://www.usinflationcalculator.com>). After reviewing the costs to plug orphaned wells, the BLM determined the cost to plug a well and reclaim the surface ranges from \$35,000 to \$200,000, with an average cost of \$71,000. Considering that the median number of wells is one well per lease bonds, the BLM is proposing to set the new minimum lease bond amount at \$150,000 (rounded up from \$142,000), which would cover the estimated plugging and reclamation costs for two wells. The BLM is proposing to round the bond amount up to the nearest \$50,000 for ease of payment and administration. Through the BLM's current policy for bond adequacy reviews, the BLM will increase the lease bond amount for operators with more than two wells tied to the bond. The proposed minimum lease bond amount would provide sufficient coverage for an operator starting operations with a lease bond.

Based upon a review of the lease bond and related operations, the BLM determined that the minimum lease bond amount should be not less than \$150,000. In addition, the minimum lease bond amount of \$150,000 matches the amounts proposed in Congress by Senator Michael Bennet (S. 2177) and Representative Teresa Leger Fernandez (H.R. 2415). The BLM believes this update would help ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public. The BLM requests comments with any supporting information on whether the final regulation should provide a higher or lower amount for lease bonds.

Section 3104.30 Statewide Bonds

The proposed rule would rename this section from "Statewide and nationwide bonds" to "Statewide Bonds" as BLM proposes to remove nationwide bonds. The proposed rule increases the statewide bond amount to not less than \$500,000, covering all leases and operations in any one State to reflect current economic circumstances. The BLM established the previous statewide bond amount of \$25,000 in 1951. As stated earlier, insufficient bonding levels provide an inadequate incentive for companies to meet their reclamation obligations and do not provide sufficient funding in the event a company fails or refuses to meet its obligations, thereby ultimately shifting the reclamation obligations on the taxpayer.

To determine the appropriate minimum statewide bond amount, the BLM reviewed its existing statewide bonds, and the number of wells tied to the statewide bonds. The BLM currently manages 1,815 statewide bonds; however, only 1,007 statewide bonds cover existing wells. For the statewide bonds with wells, each statewide bond, on average, covers 66 wells; however, the statewide bonds cover a median number of seven wells per bond. The larger number of wells covered provides the BLM more time to conduct a bond adequacy review and increase bond amounts if needed. In addition, the statewide bonds covering existing wells averaged \$387,000 per bond. For background, the BLM calculated the average by adding up all the statewide bond amounts and dividing this total by the number of statewide bonds. The BLM calculated the median by taking the middle value, *i.e.*, the value for which half of the statewide bonds are larger and half are smaller. Since half of the statewide bonds, with existing liability, cover seven wells per bond, the proposed rule would require the minimum bond amount to cover seven wells, the median number of wells. Unlike bonds for individual leases where the BLM is proposing to cover more than the median number of wells, for statewide bonds, the larger number of wells covered (7) reduces the uncertainty related to depth of individual wells and the variability of reclamation costs. It also gives the BLM more time to conduct a bond adequacy review and increase bond amounts if needed. The BLM would conduct bond adequacy reviews on all bonds and increase the required bond amount based upon the risk of the operations. This review would include the number of wells covered by the bond.

Between 1951 and 2022, the cumulative inflation rate, as measured by the U.S. Consumer Price Index was 1,040 percent and, accordingly, the 2022 equivalent of \$25,000 (the 1951 statewide bond amount) would be \$284,914 (<https://www.usinflationcalculator.com>). After researching the BLM's data on orphaned wells, the cost to plug a well and to reclaim the surface ranged from \$35,000 to \$200,000, with an average cost of \$71,000. Considering that the median number of wells is seven wells per statewide bond, the BLM opted to have the minimum statewide bond cover seven wells, which resulted in a statewide bond of \$500,000, rounded from \$497,000. The BLM rounded the bond to the nearest \$50,000 for ease of payment and administration. Through the BLM's current policy for bond adequacy reviews, the BLM will increase the statewide bond amount for operators with more than seven wells tied to the bond. The new minimum statewide bond amount would provide sufficient coverage for an operator starting operations with a statewide bond.

Based upon a review of the statewide bond and related operations, the BLM determined that the minimum statewide bond amount should be not less than \$500,000. In addition, the minimum statewide bond amount of \$500,000 matches the amounts proposed in congress by Senator Michael Bennet (S. 2177) and Representative Teresa Leger Fernandez (H.R. 2415). The BLM believes this update would help ensure that end-of-life liabilities reside primarily with oil and gas lessees and operators and not the American public. The BLM requests comments with any supporting information on whether the final regulation should provide a higher or lower amount for statewide bonds.

Finally, the proposed rule would rescind the use of nationwide bonds, which call upon the BLM to manage nationwide risks and liabilities and are therefore administratively inefficient. The elimination of nationwide bonding in favor of the proposed increase in the amount of the statewide and lease bonds described earlier would allow the agency to ensure improved bonding, with an appropriate focus on specific areas and fields, which should reduce the burden to the taxpayer if an operator fails to complete proper plugging and abandonment.

For more background, the BLM reviewed its existing nationwide bonds, and the number of wells tied to the nationwide bonds. The BLM currently manages 241 nationwide bonds; however, only 129 nationwide bonds

cover existing wells or liability. For the nationwide bonds with wells, each nationwide bond, on average, covers 295 wells; however, the nationwide bonds cover a median number of 35 wells per bond. The nationwide bonds covering existing wells averaged \$198,000 per bond. Compared to statewide bonds, nationwide bonds cover more wells and averaged lower amounts per bond. The BLM believes the increased administrative burden related to managing nationwide bonds has caused nationwide bonds to lag behind statewide bonds for bond increases and reviews. Overall, the BLM believes the elimination of nationwide bonds would result in prompt adjustments to bond amounts with changing circumstances of the bonded parties' operations. The BLM seeks public comment on the appropriate minimum amount for a nationwide bond, if it opts to retain the nationwide bonding provision.

Section 3104.4 Unit Operator's Bond

The proposed rule would eliminate unit operator bonds in their entirety, as currently found in 43 CFR 3104.4. Currently, these bonds are treated like statewide bonds and may be used in lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement. The language for the unit operator bond can be found at 43 CFR 3186.2. The BLM has less than 20 active unit operator's bonds nationwide. The BLM's review of bonds shows that the forms predating June 1987 did not clearly cover the principal in the capacity of a unit operator where the operator does not hold an interest in the lease. Prior to June 1987, the BLM required the principal or obligor to provide a rider to a statewide or nationwide bond extending the bond's coverage to include all obligations of the principal or obligor under the terms and conditions of unit agreements. The current bond forms do not have this deficiency as they contain the statement, "WHEREAS the principal and surety agree(s) that with notice to the surety the coverage of this bond, in addition to the present holding(s) of and/or authorization(s) granted to the principal, shall extend to and include: [. . .] Any activity subsequent hereto of the principal as operator under a lease(s) issued pursuant to the Acts cited in this bond." Today, unit operator bonds are usually submitted to the BLM when a unit agreement includes lands located in more than one State as it costs less to post a single unit operator bond for \$25,000 rather than posting two statewide bonds for \$50,000 or a

nationwide bond for \$150,000. This was not BLM's intention for the unit operator bond in 1987 when the bond forms were updated. Therefore, eliminating and replacing the unit operator's bond, which is already treated and managed like statewide bonds, would bring efficiencies to the program.

Section 3104.40 Surface Owner Protection Bond

The proposed rule would add a provision related to surface owner protection bonds to consolidate all of the bonding provisions in one place. The BLM promulgated the current requirements for surface owner protection bonds through Onshore Order 1 in 2007. The BLM recently codified these requirements in 43 CFR subpart 3171. In this proposed rule, the BLM would incorporate the existing bonding requirements set out in Onshore Order 1. It also would add a new requirement that the surface owner protection bond must be filed on the BLM approved form and specify that the type of bond can either be a personal or surety bond. The BLM requests supporting documentation and comments on whether the final rule should change the minimum bond amount for surface owner protection bonds.

Section 3104.60 Where Filed and Number of Copies

The proposed rule would remove the last sentence in this paragraph, which states that nationwide bonds may be filed in any BLM state office. As noted previously, this rule would eliminate nationwide bonds.

Section 3104.70 Default

The proposed rule would divide the current paragraph (b) into three paragraphs for clarity. Paragraph (b)(1) would state that all the leases covered by the bond may be subject to cancellation if the principal fails to comply with the paragraph (b) requirements. The BLM proposes to add information on failure to comply by referencing section 17 of the MLA and the DOI's suspension and debarment program to ensure the bonded principal understands the risks that incur for a default under the bond. The rule proposes to add paragraphs (b)(2) and (3). Paragraph (b)(2) would state that the bonded party may be prevented from acquiring any new lease or interest when the entity is in violation of section 17 of the MLA; it references the provisions for qualifications to hold a lease at 43 CFR 3102.51(f). Paragraph (b)(3) would state that the bonded party

may be referred to the DOI's Suspension and Debarment Program under 2 CFR part 1400 to determine if the person will be suspended or debarred from doing business with the Federal Government for failure to comply with the paragraph (b) requirements.

Section 3104.90 Bonds Held Prior to [EFFECTIVE DATE OF THE FINAL RULE]

The proposed rule would add a new section entitled "Bonds Held Prior to [EFFECTIVE DATE OF THE FINAL RULE]" to manage the elimination of existing nationwide and unit bonds. Paragraph (a) would state that the current unit operator bonds accepted by the BLM prior to the effective date of the final rule must be replaced by a statewide bond within 2 years from the effective date of the final rule. The BLM would no longer accept new unit operator bonds. Paragraph (b) would provide a phase-in period within which bonds held prior to the final rule must meet the increased minimum bond amounts. The phase-in period for individual, state, and nationwide bonds would be 1, 2, and 3 years, respectively (for nationwide bonds, the phase-in period refers to the time in which nationwide bonds must be converted into state bonds).

The phase-in period should be as short as possible to account for the large number of inadequate bonds and the associated taxpayer exposure. The BLM opted for a 3-year phased approach based on the workload related to reviewing and accepting new bonds or bond riders. This approach would spread out the workload of replacing bonds over a 3-year period and allow the BLM to process the bond increases without requiring additional adjudication staff to manage the increased workload. The BLM opted to start with individual bonds as these are usually smaller operations with an increased risk of bankruptcies. The BLM requests supporting documentation and comments on whether the final regulation should change the priority order for the phase-in period.

7. Section-by-Section Discussion for Changes to 43 CFR Subpart 3105

The proposed rule would add one section and remove five sections in existing 43 CFR subpart 3105. The proposed rule would revise one section heading in the existing 43 CFR subpart 3105 to remove an unnecessary reference to drilling agreements.

Section 3105.10 Cooperative or Unit Agreement

The proposed rule would add a new paragraph (b) to this section to require that all applications to form a unit agreement, a unit expansion, or a designation of a successor operator include the new processing fee found in the fee schedule in 43 CFR 3000.120 of this chapter.

Communitization Agreements

This section of the regulations covers the BLM's management and approval of communitization agreements, which are oil and gas agreements covering one or more Federal leases that cannot be independently developed due to well-spacing or well development programs. The CA allows the lessees to cooperatively develop such tracts. The proposed rule would rename this section from "Communitization or Drilling Agreements" to "Communitization Agreements." The proposed rule would eliminate "drilling agreements" in this section, since the BLM has determined that such agreements are rarely if ever used.

Section 3105.21 Where Filed

The proposed rule would remove the triplicate filing requirement in paragraph (a) as the BLM believes this requirement is no longer needed given electronic filing. The proposed rule would replace the language in current paragraph (b) with a list of three items that an application for a CA must include. Paragraph (b)(1) would require that all applications to form a CA must include a statement as to whether the proposed CA deviates from the BLM's current model CA form and a certification that the applicant received the required signatures. Paragraph (b)(2) would require an Exhibit A to display a map of the area covered by the agreement and the separate agreement tracts, and paragraph (b)(3) would require the filing of an Exhibit B displaying the separate tracts and ownership. The new paragraph (c) would state that all applications to form a CA should be submitted at least 90 calendar days prior to first production to ensure accurate reporting to the ONRR. Finally, the new paragraph (d) would require operators to file the designation of successor operator with the filing fee in the fee schedule at 43 CFR 3000.120.

Section 3105.22 Purpose

The proposed rule would remove the unnecessary reference to drilling agreements.

Section 3105.23 Requirements

The proposed rule would remove the unnecessary reference to drilling agreements.

Section 3105.24 Communitization Agreement Terms

The proposed rule would add a new section to outline CA terms to provide clarity. The new paragraph in this section would provide that these agreements would remain in effect for a period of 2 years from the effective date of the CA or approval date, whichever is later, and as long thereafter as communitized substances may be produced in paying quantities, or as otherwise specified in the agreement.

Section 3105.31 Where Filed

The proposed rule would remove the requirement for five copies of an operating, drilling, or development contract to be submitted when these contracts are submitted to the BLM for approval as the BLM believes this requirement is no longer necessary because of electronic filing.

Section 3105.4 Combination for Joint Operations or for Transportation of Oil

The proposed rule would eliminate the section on the combination for joint operations or for transportation of oil. These provisions are not used by the BLM or operators and are therefore obsolete. A ROW for pipelines may be granted, as provided in 43 CFR part 2880, without retaining the duplicative language under this subpart. A ROW grant is an authorization to use a specific piece of public land for a certain project, such as a road, pipeline, transmission line, or communication site. A more complete explanation of the BLM ROW program is found in Title 43 CFR parts 2800 and 2880.

Subsurface Storage of Oil and Gas

The proposed rule would change the existing 43 CFR 3105.5 to just the heading "Subsurface storage of oil and gas."

Section 3105.41 Where Filed

The proposed rule would update paragraph (a) to include designation of successor operators for gas storage agreements among the applications to be filed in the proper BLM office. This information needs to be filed with the BLM when there is a change in operator. The proposed rule would update paragraph (b) to remove the requirement for five copies of a gas storage agreements to be submitted when these are filed with the BLM as the BLM believes this requirement is no longer necessary because of electronic filing. A

new paragraph (c) would require that all applications for a subsurface gas storage agreement or a designation of a successor operator must include the new processing fee found in the fee schedule in 43 CFR 3000.120.

Section 3105.42 Purpose

The proposed rule would add clarification that a gas storage agreement will require a bond under 43 CFR part 3104.

Section 3105.43 Requirements

The proposed rule would update the language in this section to mirror the language found in 43 CFR 3105.42 for clarity.

Section 3105.50 Consolidation of Leases

The proposed rule would split the single paragraph under this section into several paragraphs for clarity. These paragraphs would also incorporate language from 43 CFR 3135.17 to provide a consistent approach across leasing in the NPR-A and under the MLA. Paragraph (a) would incorporate language stating that leases may be consolidated upon written request of the lessee filed with the proper BLM office. This change is proposed to identify who should submit the request for consolidation. The request must identify each lease involved by serial number and must explain the factors that justify the consolidation. Paragraph (b) would state that all parties holding any undivided interest in any lease involved in the consolidation must agree to enter into the same lease consolidation. Consistent with the existing language, paragraph (c) would clarify the circumstances under which leases cannot be consolidated. Paragraph (d) would state that a consolidated lease will not exceed acreage limits of 2,560 acres for competitive leases and 10,240 acres for noncompetitive leases, as required by 30 U.S.C. 226. Paragraph (e) would require the effective date, anniversary date, and the primary term of the consolidated lease to be those of the oldest original lease included in the consolidation. It would also allow the term of a consolidated lease to be extended beyond the primary lease term pursuant to 43 CFR subpart 3107. Paragraph (f) would state that the highest royalty and rental rates of the each of the leases to be consolidated would apply to the consolidated lease. Paragraph (g) would state that lease stipulations and other terms and conditions of each original lease would, in general, continue to apply to the lease to which they originally applied, regardless of the lease becoming a part

of a consolidated lease. These additions bring consistency between §§ 3135.17 and 3105.50.

8. Section-by-Section Discussion for Changes to 43 CFR Subpart 3106

The proposed rule would add one section and remove two sections in existing subpart 3106. The proposed rule would revise five section headings in the existing subpart 3106 to provide clarity and replace the existing question-and-answer formats.

Section 3106.10 Transfers, General

The proposed rule would split paragraph (a) into two paragraphs and add a provision regarding transfers of operating rights to provide clarity and reduce the confusion the BLM has seen in applications. The new paragraph (b) would state that an assignment of a separate zone, deposit, depth, formation, a specific well, or part of a legal subdivision will be denied. The proposed rule would add a new paragraph (c) to state that operating rights may only be divided with respect to legal subdivisions, depth ranges, and formations within the boundaries of a Federal lease. Terms, such as stratigraphic equivalent, pools, reservoirs, wellbores, and references to unnamed formations occurring at a specified depth within a specific well are not allowed, as they are not definitive, and introduce ambiguity into the boundaries along which lease rights are split.

The proposed language more clearly states the BLM's current obligations. The current regulation at 43 CFR 3106.1(a) states: "Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved." The "stratigraphic equivalent" of a formation (*i.e.*, a division that extends beyond that formation) meets the definition of a "zone." A "pool" of oil or gas trapped in the rocks below the ground surface meets the definition of a "deposit." Under the current regulations, therefore, the BLM must disapprove these types of assignments.

The BLM's practice is sound as a practical matter. The BLM cannot approve assignments or transfers that attempt to separate rights along boundaries that cannot be defined without geological interpretation (for example, "the stratigraphic equivalent of the formation encountered in Well X, at a depth of Y feet below the surface"). A boundary that requires geological

interpretation is inherently imprecise. As for wellbore-only transfers, a wellbore is essentially a line, not a spatial region within a leasehold. The BLM cannot define a distribution of lease rights relative to a linear feature in three-dimensional space below the surface of the ground. Wellbore-only rights that purportedly encompass the area drained by that wellbore pose the problem of defining the boundaries of the area drained, which may require geological interpretation and/or engineering analysis.

The proposed rule would also split the existing paragraph (b) into five paragraphs due to the length of the paragraph and for clarity. The proposed paragraph (d) would revise the second sentence to simply reference 43 CFR 3102.51(g) for certification of compliance rather than repeating the language set out in 43 CFR 3102.51(g). The proposed rule would redesignate the existing paragraph (c) to paragraph (i) because of the previously mentioned reorganization.

Section 3106.20 Qualifications of Transfers

The purpose of this section is to ensure new lessees and operating rights owners comply with the provisions of 43 CFR subpart 3102. The proposed rule would update the title of the section from "Qualifications of transferees" to "Qualifications of assignees and transferees." The proposed rule would also update the paragraph to include "assignees" as well as "transferees." The purpose of these changes is to clarify that this section on qualifications applies to both assignments of record title as well as transfers of operating rights. The proposed rule would add a sentence that states "Only qualified and responsible lessees may own, hold, or control an interest in a lease." This addition is made to conform the language in this provision with similar proposed changes.

Section 3106.30 Fees

This section includes the requirement to submit the requisite filing fees with assignment and transfer applications. The proposed rule would split the current paragraph into two paragraphs for clarity. The reference to the filing fee for assignments and transfers would now be found under paragraph (a). The reference to the filing fee for transfer of overriding royalty or payment out of production would now be found under paragraph (b). References to the filing fees for mergers and name changes and for transfers to heirs or devisees would be removed from this section as the

filing fee requirement is included in the sections for those specific topics.

Section 3106.41 Transfers of Record Title and of Operating Rights (Subleases)

This section describes the forms required for assignment and transfers. The proposed rule would update this section to allow for the acceptance of electronic submissions. The proposed rule would reduce the triplicate filing to a duplicate filing so that the BLM can keep one copy for the official case file and return one copy of the approved assignment or transfer for the applicant's records. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted.

The proposed rule would also require assignments and transfers to be submitted on a current form and would no longer allow the use of obsolete forms. All current forms can be located on the BLM's web pages. The BLM believes that lessees may locate the current form far easier now than in the days prior to widespread internet access.

The current regulations allow for the assignee or transferee to sign only one copy of the assignment or transfer, while the assignor or transferor must sign all three copies of the form. In light of the proposal to reduce the triplicate filing to (at most) a duplicate filing, the BLM believes it would no longer be a burden for the assignee or transferee to sign both copies of the form submitted to the BLM. This change would streamline the BLM's verification of the required signatures.

Section 3106.42 Transfers of Other Interest, Including Royalty Interests and Production Payments

The proposed rule would update paragraphs (a) and (b) to ensure overriding royalty transfers are submitted on the BLM's current assignment or transfer forms.

Section 3106.43 Mass Transfers

This section allows an assignor or transferor to make a mass assignment or transfer when conveying any type of interest in a large number of Federal leases to the same assignee or transferee. The proposed rule would update paragraph (a) to include the words "assignor" and "assignee." As explained earlier, the term "transferees" usually refers to transfers of operating rights, but this section has always functioned to apply to both assignments of record title as well as transfers of operating rights. The BLM believes that adding assignors and assignees to this

language would reduce any confusion on this matter. In addition, the regulatory language was clarified to ensure that the minimum number of leases for a mass transfer is more than one lease.

The proposed rule would update paragraph (b) to reduce the triplicate filing to a duplicate filing so the BLM can keep one copy for the official case file and return one copy of the approved assignment or transfer for the applicant's records. The proposed rule would update paragraph (c) to state that the BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted. In addition, a new paragraph (c)(2) would be added to state that when the BLM does not receive the requisite number of copies for mass transfers, the applicant would reimburse the BLM for the full costs incurred to make the required number of copies. The BLM would waive any copy fees under one dollar.

Section 3106.50 Description of Lands

The proposed rule would update the language in this paragraph from “transfer of record title” to “assignment of record title” for consistency. In addition, the reference to 43 CFR 3110.5 would be removed to more simply state that each assignment must describe the lands in the same manner as the lands described in the lease.

Section 3106.60 Bond Requirements

The purpose of this section is to ensure the new lessee or operating rights owner obtains a bond equivalent in coverage to the assignor's or transferor's bond before approval of the assignment or transfer. The proposed rule would update the title of this section from “Bonds” to “Bond requirements.” This section would also consolidate the separate sections for “Lease bond” (43 CFR 3106.6–1) and “Statewide/nationwide bond” (43 CFR 3106.6–2) into one paragraph to streamline the regulations. In addition, the rule would remove references to a transferee or a new operator as a co-principal on the transferor's or operator's bond. In the BLM's experience, this dynamic does not occur. An assignee assumes all the obligations incurred by the assignor as well as the benefits that have accrued to the assignor. The bond the assignee, transferee, or new operator must provide is a proper bond that would cover any obligations arising under the lease to the same extent as the assignor's bond. The BLM's practice is to ascertain the adequacy of such bond before approving the assignment.

Approval of Transfer or Assignment

The proposed rule would change the existing 43 CFR 3106.7 “Approval of transfer” to the heading “Approval of transfer or assignment.” The reference to both assignments and transfers conforms the title of this section with similar proposed changes.

Section 3106.71 Failure To Qualify

The proposed rule would update the paragraph in this section to active voice and update the language from “transfer of record title or of operating rights (sublease)” to “assignment of record title or transfer of operating rights (sublease),” consistent with the other changes made to this subpart. In addition, the term “qualified lessee” is used in place of the existing language “qualified to hold the transferred interest.” i.

Section 3106.72 Continuing Obligation of an Assignor or Transferor

The purpose of this section is to describe the continuing obligation of the assignor or transferor after the BLM approves the assignment or transfer. The proposed rule would update the title and paragraphs of this section to remove the question-and-answer format. The title would change from “If I transfer my lease, what is my continuing obligation?” to read “Continuing obligation of an assignor or transferor.” In paragraph (a), the proposed rule would change “you are responsible” to “the lessee or sublessee remains responsible” and paragraph (b) would change “you” to “the assignor or transferor.” This is intended to clarify who “you” is in this section.

Section 3106.73 Lease Account Status

The proposed rule would update this section to active voice and revise the phrase “unless the lease account is in good standing” to clarify that the lease account must not be delinquent with respect to royalty payments; lease obligations, such as, but not limited to, rent and minimum royalty; or production reporting to the ONRR for a lease in non-terminable status.

Section 3106.75 Effect of Transfer

This section requires that an assignment to 100 percent of a portion of the lease segregates the transferred and retained portions into separate leases. The proposed rule would update the language in this paragraph from “transfer of record title” to “assignment of record title,” consistent with the other changes made to this subpart. The proposed rule would also update the paragraph in this section to clarify the meaning of undivided interest to the

more commonly used phrase of “less than 100 percent of a portion of the lease.”

Section 3106.76 Obligations of Assignee or Transferee

The purpose of this section is to describe the obligations the lessee or sublessee assumes after the BLM approves the assignment or transfer. By seeking approval of the assignment or transfer and being substituted in place of the assignor or transferor, the assignee or transferee assumes the responsibility for complying with all lease obligations in existence and that a purchaser exercising reasonable diligence should have known existed at the time of the transfer. The proposed rule would update the title and paragraphs of this section to remove the question-and-answer format. The title would change from “If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?” to read “Obligations of assignee or transferee.” This formatting change brings overall consistency with the other regulations in this subpart. The proposed rule would also replace “you” in this section with “the record title holder” or “transferee of operating rights,” as appropriate. It would also state more clearly that the transferee assumes the responsibility to plug and abandon all wells that are no longer capable of producing.

Section 3106.81 Heirs and devisees

The proposed rule would split paragraph (a) into two paragraphs for clarity. The existing paragraph (b) would become paragraph (c) due to the reorganization of the section. The language in paragraph (a) would be updated to state that the lease interest would be assigned or transferred to the heirs, devisees, executor, or administrator of the estate, as appropriate, upon the filing of a court order, death certificate, or other legal document demonstrating that the assignee is to be recognized as the successor of the deceased. New paragraph (b) would contain the requirement for the filing fee. Newly redesignated paragraph (c) would include a requirement to file a qualification statement, as well as the current language found in existing paragraph (b). The proposed rule would add a new paragraph (d) that would contain the bonding requirements that are found in paragraph (a) in the current regulation.

Section 3106.82 Change of Name

The proposed rule would split the reference to the filing fee and bond into

three separate paragraphs for clarity. The current regulation requires a notice of the name change to be accompanied by a list of the serial numbers of the leases affected by the name change. This requirement would be removed, as it is outdated. In practice, the BLM generates a report of the leases affected by the name change and returns that list to the lessee with a notice that recognizes the name change. The proposed paragraph (a) would be updated to require that for a corporate name change, the request must include the Secretary of State's Certificate of Name Change, along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM's current approach for processing these types of documents. New paragraph (b) would contain the requirement for the filing fee. The proposed rule would add a new paragraph (c) that would contain the bonding requirements that are found in the current regulation.

Section 3106.83 Corporate Mergers and Dissolution of Corporations, Partnerships, and Trust

The proposed rule would update the title of this section from "Corporate merger" to "Corporate Mergers and Dissolution of Corporations, Partnerships, and Trust." The goal of renaming the section is to incorporate other types of changes to lease ownership interests that may occur without any intention by the holder of an interest to assign or transfer the interest. The proposed rule would split the current paragraph into three paragraphs for clarity.

The current regulation requires a notification of merger to be accompanied by a list of the serial numbers of the leases affected by the merger. This requirement would be removed, as it is outdated. In practice, the BLM does not rely on a list of leases provided by a lessee and, instead, generates its own report of the leases affected by the merger. The BLM returns that list to the lessee with a notice that recognizes the corporate merger.

This section would be updated to require that, for a merger, the request must include the Secretary of State's Certificate of Merger, along with the Articles of Incorporation, or Amendment, if available. This requirement is consistent with the BLM's current approach for processing these types of documents. New paragraphs would be added allowing the BLM to recognize lease interests assigned through dissolutions of corporations and dissolutions of partnerships and trust. The new provision would state that the BLM

would not recognize any transfers provided by the Articles of Dissolution unless an entity has filed with the BLM a Certificate of Dissolution of an incorporated entity, certified as accepted by the State where the entity was incorporated. Dissolution of a partnership or trust through an order or decree that authorizes settlement, discharge, and distribution of the lease holdings and/or interests must be filed with the BLM for official recognition of the assignment of lease interests. These requirements are consistent with the BLM's current approach for processing these types of documents.

Section 3106.84 Sheriff's Sale/Deed

The proposed rule would add a new section under § 3106.80, to include sheriff's sales as another type of transfer. The BLM accepts these types of assignments to recognize lease interests assigned to other parties through foreclosure actions. The proposed rule would state that where a notice of sale of the leasehold interest is published pursuant to State law applicable to the execution of sales of real property, the purchaser must submit to the proper BLM office a copy of the Sheriff's Certificate of Sale after any redemption period has passed. Additional paragraphs under this new section would include a filing fee requirement, a qualification statement, and bonding requirements. These requirements are consistent requirements with the BLM's current approach for processing these types of documents.

9. Section-by-Section Discussion for Changes to 43 CFR Subpart 3107

The proposed rule would remove six sections in existing 43 CFR subpart 3107. The proposed rule would change the title of this subpart from "Continuation, Extension or Renewal" to "Continuation and Extension" due to the removal of the sections on renewal of leases, as explained later. The proposed rule would revise two section headings in the existing 43 CFR subpart 3107. The goal of the revisions is to replace "plans" with "agreements" to provide clarity and to conform this language with other changes in this proposed rule.

Section 3107.10 Extension by Drilling

The proposed rule would split the existing paragraph into two separate paragraphs for clarity. In paragraph (a), a sentence would be added to state that the BLM would not grant a drilling extension for a lease in its extended term. This change would clarify and complement the first sentence of this section, which states that a drilling

extension would only be granted for a lease on which actual drilling operations are being diligently pursued at the end of the primary lease term or any lease that is committed to an approved oil and gas agreement. A new paragraph (c) would be added to address directional or horizontal wells on off-lease locations by stating that when a BLM-approved directional or horizontal well is drilled within the leased area from an off-lease location with the intent to produce from the leased area, the BLM would consider drilling to have commenced on the leased area when drilling is commenced at the off-lease location. This addition is consistent with the leasing regulations under 43 CFR part 3130.

Section 3107.22 Cessation of Production

The proposed rule would update this section because the IBLA has held that the current regulations—which provide that "[t]he 60-day period commences upon receipt of notification from the authorized officer"—directly conflicts with the statutory provision of section 17(i) of the MLA (30 U.S.C. 226(i)). Refer to *Two Bay Petroleum, Inc.*, 166 IBLA 329 (2005), *International Metals & Petroleum Corp.*, 158 IBLA 15 (2002), and *Merit Productions, et al.*, 144 IBLA 156 (1998). In summary, these cases explain that through operation of law a lease in its extended term expires 60 days following cessation of production, not 60 days after the lessee receives the BLM notice.

The paragraph in the proposed rule would now read that a lease in its extended term because of production (and lacking a well capable of production in paying quantities) would not expire upon cessation of production, if, within 60 calendar days of cessation of production, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The proposed rule would also add a sentence stating, "If these reworking or drilling operations fail to result in production in paying quantities, the lease will expire by operation of law, effective as of the date production ceased."

Section 3107.23 Leases Capable of Production

The proposed rule would update the existing paragraph to specify 60 "calendar days" in order to be clearer.

Section 3107.30 Extension for Terms of Agreements

The proposed rule would update the title of this section from “Extension for terms of cooperative or unit plan” to “Extension for Terms of Agreements.” This conforms this language to other changes in this proposed rule.

Section 3107.31 Leases Committed to an Agreement

The proposed rule would update the title of this section from “Leases committed to plan” to “Leases committed to an agreement.” The proposed rule would also remove the reference to the existing 43 CFR 3107.3–3 (renewal leases) due to the changes made to that section, as further described later.

The proposed rule would add a new paragraph (b) because IBLA cases have held that a well that is capable of production in paying quantities on a lease basis and that is completed on a committed tract within a unit agreement will extend the term of all expiring Federal leases committed to the unit agreement for the term of the unit agreement and/or for so long as the well is capable of production in paying quantities. Refer to *Yates Petroleum Corp.* 67 IBLA 246 (1982).

Section 3107.32 Segregation of Leases Committed in Part

This section addresses any lease committed to a unit agreement that covers less than the entirety of the lands covered by the lease. In paragraph (a), a sentence would be added to state that, for unproven areas, segregation would occur only when the public interest requirement is satisfied pursuant to 43 CFR 3183.4(b). The sentence would also provide that, upon satisfaction of the public interest requirement, the BLM would deem the segregation to have been effective as of the date of commitment of the lands to the unit. Segregating a lease after the public interest requirement is met would create efficiencies in the program. If the public interest requirement is not met, the BLM would not be required to consolidate the improperly segregated leases, and the ONRR would not be required to consolidate improperly segregated lease accounts for payments.

The proposed rule would delete the portion of existing paragraph (b), which described how a lease segregation would be declared invalid if the public interest requirement was not met. This change is consistent with the changes made to paragraph (a).

The proposed rule would add a new paragraph (b)(2) to clarify that the base

or segregated lease may be extended by production on the associated lease by stating that, if a partially committed lease is in an extended term because of production, the segregated, non-producing lease would continue in effect so long as the producing lease exists and rentals are paid, and so long thereafter as oil or gas is produced from the committed lease.

Section 3107.3–3 20-Year Lease or Any Renewal Thereof.

The proposed rule would eliminate this section because it is outdated. All 20-year leases, also known as renewal leases, have either expired or are held by production. Renewal leases are further described in detail under 43 CFR 3107.80.

Section 3107.51 Extension After Discovery on Other Segregated Portions

The proposed rule would update the language in this paragraph from “the date of first discovery of oil or gas in paying quantities” to read “the date a well capable of production in paying quantities is established.” The change reflects language more commonly used by the BLM.

Section 3107.7 Exchange Leases: 20-Year Term

The proposed rule would eliminate this section because it is obsolete. Exchange leases were outstanding MLA leases that could be exchanged for a new lease under the Act of August 21, 1935, Public Law 74–295 § 2(a), 49 Stat. 674, 679. The August 8, 1946, Act eliminated the 1935 Act provisions for exchange leases, and the BLM no longer accepts these types of applications. Public Law 79–696 sec. 3, 60 Stat. 950, 951.

Section 3107.8 Renewal Leases

The proposed rule would eliminate §§ 3107.8–1 through 3107.8–3, which are the provisions related to renewal leases, in their entirety because they are obsolete. Renewal leases that had an expiration date after November 15, 1990, were eligible for a final renewal under the provisions of the November 15, 1990, Act, (for 10 years and for so long thereafter as oil and gas is produced in paying quantities). Public Law 101–567, 104 Stat. 2802. If a lease was renewed after the 1990 amendment and was not producing oil or gas at the end of its 10-year renewal term, the lease expired with no further option for renewal. The BLM no longer accepts these types of applications.

Section 3107.71 Payment of Compensatory Royalty

The proposed rule would redesignate this section from §§ 3107.9–1 to 3107.71 pursuant to the reorganization identified earlier.

Section 3107.72 Subsurface Storage of Oil and Gas

Instead of citing to 43 CFR 3105.5–4, the proposed rule would add the language from 43 CFR 3105.5–4 to this section. This change negates the need to refer to another section of the rule.

10. Section-by-Section Discussion for Changes to 43 CFR Subpart 3108

The proposed rule would remove one section and revise two section headings in the existing 43 CFR subpart 3108. The goal of the revisions is to replace the question-and-answer format and to remove obsolete language related to Class III reinstatements.

Section 3108.10 Relinquishment

The proposed rule would update the title from “As a lessee, may I relinquish my lease?” to read “Relinquishment.” The proposed rule would also change references to “you” to “the lessee(s).” In addition, the proposed rule would update paragraph (c) to allow either the BLM or the appropriate surface management agency to approve a plan for the reclamation of the oil and gas operations on a relinquished lease.

Section 3108.21 Automatic Termination

The proposed rule would update paragraph (b) to remove the phrase “bill rendered by the designated Service Office, or,” because the ONRR updated its policy in 2015 to eliminate the mailing of courtesy notices. The proposed rule would add a new paragraph (c) to incorporate caselaw providing that Congress intended the automatic termination provision of 30 U.S.C. 188 to apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice, and that the automatic termination provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued, *e.g.*, where a lease suspension is lifted or where the lease account reverts from a royalty to a rental status. See *Husky Oil Company of Delaware Depco, Inc.*, 5 IBLA 7 (1972). This might happen where a lease suspension is lifted or where the leases were held by allocated production from an agreement and the agreement terminates, thus reverting the lease account from a royalty to a rental status. The new paragraph (c) would state that the

automatic termination provision does not apply where, due to other contingencies such as a suspension being lifted or unit terminating, additional rental is due on a date other than the lease anniversary date and where the lessee did not receive notice that the obligation had accrued, unless the lessee fails to pay the rental within the period prescribed in the BLM notice.

Section 3108.22 Reinstatement at Existing Rental and Royalty Rates: Class I Reinstatements

The proposed rule would update paragraph (a)(2) to replace the reference to a postmark by the U.S. Postal Service with a reference to the ONRR's online rental payment system, since the ONRR updated its policy in 2015 to require only electronic rental payments. The proposed rule would move paragraph (d)—which provides that the BLM would not issue a new lease for lands that have been covered by a lease that terminated automatically until 90 days after the date of termination—to 43 CFR 3101.40(a). The intent is to ensure that this language is not overlooked by placing it more prominently with lease issuance provisions. The IRA did not make any changes to the grounds and conditions for Class I reinstatements.

Section 3108.23 Reinstatement at Higher Rental and Royalty Rates: Class II Reinstatements

To further implement the IRA, the proposed rule would update paragraph (a) so that the grounds for a Class II reinstatement only apply to competitive leases. The IRA explicitly rescinded the BLM's authority to approve Class II reinstatements for noncompetitive leases issued for public domain lands under the MLA and implicitly did the same for the MLAAL (by eliminating references to higher rental requirements for reinstated, noncompetitive leases). In any event, reinstatements are discretionary; had Congress not directed the BLM to eliminate reinstatement of noncompetitive leases under the MLAAL, the BLM has concluded that such reinstatements are not prudent because the grounds for a reinstatement should be based on the type of lease and not be based on the land status.

The proposed rule would eliminate the existing paragraph (b)(1) in its entirety. This provision addresses the timeliness of Class II reinstatement petitions for leases that terminated on or before August 8, 2005, and is no longer applicable. The proposed rule would update the proposed redesignated paragraph (b)(2)(iii) to remove the reference to funds held in escrow, as this is outdated. The BLM would not

approve a reinstatement if the BLM does not collect all back rentals and royalties at the rates established in the reinstated lease, but the BLM would not require the funds to be held in escrow until a reinstatement is approved.

The proposed rule would move existing paragraph (c)—which states that the BLM will not issue a new lease for lands covered by a terminated lease until all action on the petition is final—to 43 CFR 3101.40(a). The intent is to ensure that this language is not overlooked by placing it more prominently with lease issuance provisions. The proposed rule would update the reference to the Committee on Interior and Insular Affairs (which no longer exists) to the current House Committee on Natural Resources. The proposed rule would remove existing paragraph (f), which refers to royalty reductions, as this language would already be covered under the proposed 43 CFR 3103.41(c).

Section 3108.2–4 Conversion of Unpatented Oil Placer Mining Claims: Class III Reinstatements (Existing Rule)

The purpose of the existing section is for converting unpatented oil placer mining claims validly located prior to February 24, 1920, to an oil and gas lease. The proposed rule would remove the language related to Class III reinstatements in its entirety because the IRA removed the authority for Class III reinstatements.

Section 3108.30 Cancellation

The proposed rule would update the last sentence in paragraph (a) to remove the phrase “after notice to the lessee in accordance with section 31(b) of the Act and only.” This phrase does not add anything to the existing regulation and has therefore led to confusion. The proposed rule would state instead that “The lease may be canceled only after default continues for 30 calendar days after a notice of default has been delivered in accordance with 43 CFR 1810.2.” The proposed rule would update paragraphs (b) and (c) to change the phrase from “by judicial proceedings” to “by court order” to align with the text found in 43 CFR 3136.3(b), bringing consistency to the regulations.

11. Section-by-Section Discussion for Changes to 43 CFR Subpart 3109

The proposed rule would not make any revisions to the section headings in the existing subpart 3109 regulations. This subpart covers the process for leasing lands under the provisions in 30 U.S.C. 301–306, which addresses

leasing under railway and other rights-of-ways.

Section 3109.12 Application

The proposed rule would split the existing paragraph into four separate paragraphs by topic (no specific form is required, who can file, the filing fee, and what an application must include) for clarity. The proposed rule would also add a new requirement (proposed paragraph (d)(5)) that the applicant must include a map of the applicable lands, which would support the bidding process related to the lease or compensatory royalty agreement. In many cases, the adjacent mineral owners or lessees, who can bid upon the parcel, require a map to identify the lands. The requirement for the applicant to provide a map would reduce the cost to the public and would ensure that the BLM is reviewing the correct lands for a lease.

Section 3109.13 Notice

The proposed rule would update the phrase “a bid for the amount or percent of compensatory royalty” to read “a bid for the percent of compensatory royalty.” This change aligns with the BLM's existing process and reduces confusion.

Section 3109.15 Compensatory Royalty Agreement or Lease

The proposed rule would adjust the terms of a ROW lease to match the terms of a competitive lease issued under the MLA with respect to the rental, royalty, and primary term of the lease (10 years). The proposed rule would also specify for clarity that the provisions of 43 CFR part 3100 apply to the issuance and administration of leases for oil and gas deposits underlying a ROW issued under this part.

12. Section-by-Section Discussion for Changes to 43 CFR Part 3110

The proposed rule would remove the existing 43 CFR part 3110 in its entirety. The IRA removed the BLM's authority to issue a noncompetitive lease. The BLM is rejecting all pending noncompetitive lease applications received before enactment of the IRA.

13. Section-by-Section Discussion for Changes to 43 CFR Subpart 3120

The proposed rule would add two new sections and remove four sections in existing 43 CFR subpart 3120. The proposed rule would revise four section headings. The goal of the revisions is to streamline and provide clarity and consistency with other changes in this proposed rule.

Section 3120.11 Lands Available for Competitive Bidding

The proposed rule would update the introductory paragraph from “All lands available for leasing shall be offered” to “All lands eligible and available for leasing may be offered” to conform this section with the language of 30 U.S.C 226(a) and (b). This language will also better reflect Interior’s statutory discretion to identify lands available for oil and gas leasing.

The proposed rule would update paragraph (a) to change the language from “Lands in oil and gas leases” to “Lands that were covered by previously issued oil and gas leases” to provide clarity.

The proposed rule would update paragraph (c) to clarify that a lease interest forfeited through a bankruptcy to the United States may be reoffered through a competitive auction.

The proposed rule would also revise existing paragraph (e) to reflect the IRA’s removal of noncompetitive leasing.

The proposed rule would add a new paragraph (g) to implement provisions of the IRA by stating that lands offered in a previous sale for which no bids were accepted or received may be offered for competitive auction under this subpart. Prior to the IRA, these lands would have been eligible for noncompetitive leasing.

Section 3120.12 Requirements

The proposed rule would update paragraph (a) to conform this section with the language of 30 U.S.C 226(a) and (b). The proposed rule would update paragraph (b) to change “competitive oral or internet-based bidding process” to read “a competitive auction process.” A definition for competitive auction would be added to 43 CFR 3100.5 as explained previously.

The proposed rule would add a new paragraph (c) to codify existing policy and strengthen the bidder registration process. The MLA provides that leases may be issued only to a “responsible qualified bidder” (30 U.S.C. 226(b)(1)(A)). A bid submitted at a competitive auction represents a good-faith intention to acquire an oil and gas lease, and any winning bid constitutes a legally binding commitment to accept the lease and pay monies owed. Any bidder who has not paid the minimum monies owed on the day of sale is not a “responsible qualified bidder” and would be referred to the DOI’s Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment. Definitions for qualified

bidder and responsible bidder would be added to 43 CFR 3100.5 as explained previously.

The proposed rule would redesignate the existing paragraph (c) to paragraph (d). The proposed rule would update this paragraph to refer to the increased national minimum bid of \$10 per acre, or fraction thereof, in 43 CFR 3000.130. The cross-reference to § 3000.130 allows BLM to adjust the minimum bid regularly for inflation. The IRA raised the national minimum bid from \$2 per acre to \$10 per acre. Notably, the IRA specifically authorizes the Secretary to, at the conclusion of the 10-year period established by the statute, “establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) To enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands.” The minimum acceptable bid is important because it establishes the starting bid at the BLM’s oil and gas lease sale auctions.

Section 3120.13 Protests

The proposed rule would rename this section from “Protests and appeals” to “Protests” and would update the paragraphs in this section to change the term “appeal” to “protest.” This change reflects IBLA decisions providing that the current use of the term “appeal” is imprecise and creates confusion. Refer to *Wyoming Outdoor Council, et al.*, 156 IBLA 377 (2002). The BLM’s issuance of a Notice of Competitive Lease Sale is not an appealable action, because a notice merely distributes and communicates general information about a proposed action. The term “protest,” which is any objection raised by any person before an action is taken by the BLM, is the proper term. Appeals are covered under 43 CFR 3000.40 and do not need to be repeated in this section.

Section 3120.30 Nomination Process

The BLM is proposing to update the process by which it formally nominates parcels for sale at a competitive auction. The BLM is considering using this process for certain BLM state offices or for future leases sales and requests comments on whether the regulations should retain this process and, if so, what changes to the formal nomination process should be made.

In 1988, following the passage of FOOGLRA, the BLM published new oil and gas regulations that established two separate processes for leasing public lands: (1) the informal process, which primarily relies on EOI’s from the public;

and (2) the formal nomination process. 53 FR 22829 (“the final rulemaking provides administrative flexibility to allow for either informal EOIs or a formal nomination process to determine the lands offered competitively”). Aside from a few test sales following the enactment of FOOGLRA, the BLM has never employed the formal nomination process. See 53 FR 22829 (“the Director elects to permit informal expressions of interest to be submitted to the proper BLM office but declines at this time to employ formal nominations under 43 CFR 3120.30”). However, the existing regulations, as well as the BLM’s current competitive leasing handbook, continue to provide for the use of the formal nomination process, following notice to the public in the **Federal Register**.

The BLM believes that aspects of this process could be used as a possible mechanism to implement the recommendations from the DOI’s November 2021 “Report on the Federal Oil and Gas Leasing Program,” including “carefully consider[ing] what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses” and “evaluat[ing] operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands.”¹⁶ The proposed rule would update the following sections for the formal nomination process with the intent to make these nominations nonbinding as the BLM considered a nomination to be similar to the noncompetitive pre-sale leasing process, and the IRA removed the noncompetitive leasing process. In addition, the rule proposes to eliminate the allowance for unnominated parcels to become available for noncompetitive leasing.

Section 3120.31 General

The proposed rule would update this paragraph to remove the requirement that a nomination be submitted with a national minimum bid. The purpose of removing this requirement is to make formal nominations nonbinding. To provide the BLM with flexibility, this paragraph would also be updated to remove the citation to 43 CFR 3120.4; that would remove the requirement that a List of Lands Available for Competitive Nominations be posted in the same manner as the Notice of Competitive Lease Sale. This paragraph would also be updated to include language stating that nominations may

¹⁶ <https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf>.

be filed on a form or by a method approved by the Director, providing the BLM with flexibility and discretion to continue to improve the program (by, for example, allowing the public to send electronic nominations).

Section 3120.32 Filing of a Nomination for Competitive Leasing.

The proposed rule would revise the introductory paragraph under this section to state that nominations may be filed “on a form or using a method approved by the Director” similar to the change in § 3120.31 described earlier. The existing paragraph (b) would be revised to remove the second sentence referring to the execution of a nomination constituting a legally binding offer, due to the removal of the noncompetitive leasing process as prescribed by the IRA. The existing paragraph (c) would be updated to remove the reference to refunding all moneys if the nomination has not been completed or timely filed, since the administrative filing fees are nonrefundable. The existing paragraph (d) would be updated to remove the requirement that a nomination must be submitted with a minimum bid and first year rental to reflect the nonbinding nature of the nomination. Through these changes, the only fee that would be required to be submitted with a nomination is the nonrefundable, administrative filing fee, as specified in the proposed 43 CFR 3000.120.

Section 3120.3–3 Minimum Bid and Rental Remittance

The proposed rule would remove this existing section in its entirety, consistent with the changes made to the nomination process, to make formal nominations nonbinding.

Section 3120.3–4 Withdrawal of a Nomination

The proposed rule would remove this existing section in its entirety, consistent with the changes made to the nomination process, to make formal nominations nonbinding.

Section 3120.33 Parcels Receiving Nominations

The proposed rule would redesignate this section from 43 CFR 3120.3–5 to 43 CFR 3120.33 due to the proposed removal of the sections preceding this one. The language for parcels receiving nominations would be updated to use “may” (rather than “shall”) be included in a Notice of Competitive Lease Sale to be consistent with the BLM’s statutory discretion to lease.

Section 3120.3–6 Parcels Not Receiving Nominations

The proposed rule would remove this section in its entirety, due to the removal of the noncompetitive leasing process, consistent with changes made by the IRA.

Section 3120.3–7 Refund

The proposed rule would remove this section because the minimum bid and first year’s rental would not be required for nominations, as explained earlier. The administrative filing fees found under the proposed 43 CFR 3000.120 are nonrefundable and would not be refunded to nominators who are unsuccessful at the competitive auction.

Expression of Interest

The proposed rule would add a new heading, “Expression of Interest,” to include rules for receiving EOIs for competitive leasing.

Section 3120.41 Process

The proposed rule would add requirements for submitting an EOI to the BLM. Paragraph (a) would state that a party submitting an EOI must include the submitter’s name and address and must submit the EOI through the BLM’s online leasing system. The National Fluids Lease Sale System (NFLSS) supports BLM administration of the leasing program for Federal onshore oil and gas and geothermal leasing. Using the NFLSS for the submittal of EOIs gives the BLM the capability for real-time reporting, which can streamline the leasing process and reduce the BLM’s costs by (1) eliminating data entry by BLM staff, placing the onus for correct EOI submissions on the submitter; (2) automatically publishing EOIs in the NFLSS, which facilitates transparency of the EOI process; and (3) supporting the BLM’s communication with submitters by allowing them to track the status of their EOIs through the NFLSS.

Paragraph (b) would require the use of legal land descriptions in EOIs. The scenarios cover: (1) lands surveyed under the public land survey system; (2) unsurveyed lands; (3) lands approved by protracted surveys; (4) lands that have water boundaries; (5) fractional mineral interest in lands; and (5) fractional interest lands. The proposed rule would add the requirement under paragraph (b)(6) that the submitter provide the surface owner information for split estate lands to reflect current policy in Handbook H–3120–1, *Competitive Leases*, and add paragraph (7) to allow the BLM to accept an acquisition or tract number in lieu of the

legal land description, if it constitutes an adequate description of the lands.

Paragraph (c) would allow the submission of more than one EOI by a submitter, so long as each expression separately satisfies the requirements of paragraph (b).

Paragraph (d) would state that each EOI must include the filing fee set out in the proposed 43 CFR 3000.120.

Paragraph (e) would allow the BLM to include lands in a lease sale on its own initiative.

Paragraph (f) would state that, when determining whether the BLM should offer lands specified in an EOI at a lease sale, the BLM would evaluate the Secretary’s obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources, along with other applicable legal requirements. At a minimum, the BLM would consider: (1) proximity to oil and gas development existing at the time of the BLM’s evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations; (2) the presence of important fish and wildlife habitats, including wetland habitats, or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors; (3) the presence of historical properties, sacred sites, and other high-value leasing lands, giving preference to lands that would not impair the cultural significance of such resources; (4) the presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and (5) the potential for oil and gas development, giving preference to lands with high potential for development.

Although paragraph (f) lists specific criteria for the BLM to review, the listed criteria do not limit the BLM’s authority to fulfill its legal obligations under FLPMA, NEPA, and MLA. The BLM would consider additional criteria and factors when evaluating parcels for a lease sale. The BLM requests comments on additional criteria the BLM might consider when giving preference to leasing parcels. Should this rule include among the listed criteria compliance with the goals and objectives of applicable land use plans and protecting communities with environmental justice concerns? How can the rule better achieve the BLM’s intent to give preference to leasing parcels where development would have less impacts on nearby communities?

The BLM proposes that promulgating rules for this EOI preference process would provide a mechanism for implementing the recommendations from the DOI's "Report on the Federal Oil and Gas Leasing Program," including the recommendation to "carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses" and to "evaluate operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands." This process would ensure that oil and gas leasing on public lands occurs in a way that is consistent and deliberate, focus development where there is the most potential for recovery, and allow the agency to manage public lands for other uses as well, including conservation and restoration of wildlife habitat. For example, offering leases where current infrastructure exists should reduce the overall footprint of energy development and limit wildlife impacts and habitat fragmentation. Giving preference to leasing outside of important wildlife habitat would help to ensure that important seasonal ranges remain connected, and that species can access important resources undeterred as they move across the landscape.

The BLM would implement this EOI preference process to conserve certain public lands while ensuring the American taxpayer receives a fair return and meeting the energy demands of the future. The BLM does not intend that parcels must meet all five of the preference criteria in order to be available for leasing, and the term "preference" should not be interpreted to mean "absolute." The BLM recognizes the need for balance and for the preference criteria to be situational and considered on a case-by-case basis. The preference criteria generally would be applied before the NEPA analysis is completed. A summary of how the criteria apply would be included for public comment. The BLM could then take the public comments into account when considering current and future sales.

The BLM requests comments addressing whether or how the preference criteria should be applied when the Federal surface lands are administered by another Federal agency. For example, in National Forest System lands, the Forest Service typically prepares a pre-leasing NEPA analysis that the BLM subsequently relies upon when making its leasing determination.

Paragraph (g) would allow the BLM to reconfigure the lands that are included

in an expression of interest in the parcels that the BLM offers for sale.

Section 3120.42 Agency Inventory of Leasing

The proposed rule would add this new section to provide that periodically the BLM will calculate the acreage for which EOIs have been submitted in the previous year, along with the total acreage offered for lease. This would clarify how the BLM will comply with section 50265 of the IRA, consistent with Instruction Memorandum 2023–006, *Implementation of Section 50265 in the Inflation Reduction Act for Expressions of Interest for Oil and Gas Lease Sales*. The BLM requests public comments on this point.

Section 3120.50 Notice of Competitive Lease Sale

The proposed rule would redesignate this section from 43 CFR 3120.4 to 43 CFR 3120.50 per the previously mentioned reorganization.

Section 3120.51 General

The proposed rule would redesignate this section from 43 CFR 3120.4–1 to 43 CFR 3120.51 per the previously mentioned reorganization.

Section 3120.52 Posting Timeframes

The proposed rule would revise the title of this section from "Posting of notice" to "Posting timeframes." The proposed rule would add a new paragraph (a), providing that, after identifying a preliminary list of lands for a lease sale, the BLM would provide a scoping period, of not less than 30 calendar days, for public comment. The BLM uses preliminary parcel lists to roughly organize potential parcels for sale and to initiate environmental review. While the BLM invites public feedback on the parcel list, preliminary parcel lists do not constitute an official notice of a proposed BLM action or final action and are not subject to protests or appeals.

The proposed rule would add a new paragraph (b) providing that, after drafting a preliminary NEPA document for a lease sale, the BLM would provide a comment period, not less than 30 calendar days. Similar to preliminary parcel lists, preliminary NEPA documents do not constitute an official notice of a proposed BLM action or a final action and are not subject to protests or appeals.

The proposed rule would add a new paragraph (c) providing that the BLM would post the Notice of Competitive Lease Sale at least 60 calendar days prior to the sale and would make available to the public a list of lands to

be offered for competitive sale. This is an additional 15 calendar days from the BLM's current practice. The extended posting timeframe would provide the BLM more time to resolve protests prior to any proposed lease sale. The BLM routinely receives one or more protests on posted sale offerings, but it often does not receive the protests until shortly before or on the morning of the protest deadline. The BLM state offices need a reasonable amount of time to review the reasons for the protest in advance of the sale and decide if withdrawing the protested parcel from the sale is appropriate. Consequently, in new paragraph (d), the BLM would provide that the protest period is allowed only for the first 30 days that the sale notice is posted to provide the second 30 days as the time in which the BLM would review protests.

The proposed rule would also remove the requirement for the notice to be posted in the BLM office or any surface managing agency office. In the BLM's experience, the public finds information concerning Notices of Competitive Lease Sale through the NFLSS or on the individual state office web page, rather than a posted sale notice in the individual offices. The BLM believes that remaining silent in the regulations on how the sale notice would be made available to the public allows the BLM the flexibility and discretion to continue to improve the program. This silence, however, does not in any way abnegate any applicable legal obligations to provide notice in the first instance.

The proposed rule would also add a new paragraph (d) to state that the BLM would provide a protest period, of not less than 30 days, for public input on the upcoming lease sale during the first 30 days of the 60-day public notice period provided for in paragraph (c) earlier. Establishing a deadline for filing protests ensures an orderly and efficient leasing process. Finally, the proposed rule would add a new paragraph (e) to state that "the BLM will make available the final NEPA compliance documents prior to issuing a lease from the lease sale." The BLM plans to post the NEPA compliance documents on ePlanning, but the proposed rule would not codify that practice so that BLM retains flexibility for future sales.

Competitive Auction

The proposed rule would redesignate this section from 43 CFR 3120.5 to remove the regulatory section number, as this is a heading that has no text associated it. The proposed rule would revise the title of this section from "Competitive sale" to "Competitive

auction,” consistent with the proposed definition.

Section 3120.61 Competitive Auction

The proposed rule would redesignate this section from 43 CFR 3120.5–1 to 43 CFR 3120.61 due to the previously mentioned reorganization. The proposed rule would rename this section from “Oral or internet-based auction” to “Competitive auction” and update the paragraphs in this section to replace the reference to oral or internet-based bidding with the term “competitive auction,” consistent with the proposed definition.

Paragraph (a) would also be updated to remove the reference to the formal nominations process, consistent with the changes made to the nomination process.

For this same reason, paragraph (c) would be removed in its entirety.

Section 3120.62 Payments Required

The proposed rule would redesignate this section from 43 CFR 3120.5–2 to 43 CFR 3120.62 due to the previously mentioned reorganization.

The proposed rule would update paragraph (b)(1) to increase the minimum bonus bid to reference 43 CFR 3000.130, consistent with the change described earlier in the proposed 43 CFR 3120.12.

The proposed rule would update paragraph (c) to replace “10 working days” with “10 business days” and would replace the reference to “oral or internet-based auction” with the term “competitive auction.”

Section 3120.63 Award of Lease

The proposed rule would redesignate this section from 43 CFR 3120.5–3 to 43 CFR 3120.63 due to the previously mentioned reorganization.

The proposed rule would update paragraph (c) to remove the reference to noncompetitive offers, consistent with the proposed removal of 43 CFR part 3110.

The proposed rule would revise paragraph (d) to remove the reference to noncompetitive lease offers as required by the IRA. The proposed rule would update Paragraph (d) to require the BLM to resolve all protests covering the lands to be leased prior to issuing a lease to comport with the BLM’s longstanding policy not to issue a lease until all protests covering the lands to be leased have been resolved by the BLM.

Finally, the proposed rule would add a statement that leases would be issued within 60 calendar days following resolution of any protests not resolved prior to the sale and payment by the successful bidder of the remainder of

the bonus bid, if any, and the annual rental for the first lease year. This text corresponds to the provisions in the MLA at 30 U.S.C. 226(b)(1)(A). The proposed rule would also add to paragraph (e) a provision stating that, if the BLM cannot issue the lease within 60 days, the BLM may reject the offer. The BLM has received an increased number of protests and legal challenges to its decision to offer lands for lease or issue leases. These protests and challenges may require the BLM to complete a corrective environmental analysis to reach resolution. The protests, challenges, and new analysis can lead to lengthy delays after the sale before the BLM can issue the lease, with the BLM holding the first-year rentals and bonus bids collected from the sales. In these cases, the BLM’s policy is to reach out to the successful bidder to see if they want to decline the lease or continue to wait until there is a resolution. If the successful bidder declines the lease, the BLM would reject the lease offer.

Section 3120.70 Parcels Not Bid on at Auction

The proposed rule would redesignate this section from 43 CFR 3120.6 to 43 CFR 3120.70 due to the previously mentioned reorganization. The proposed rule would update the paragraph to replace the reference to “oral or internet-based” auction with the term “competitive auction,” consistent with the changes made earlier in this subpart. The section would also remove references to noncompetitive leases pursuant to the IRA and would provide that parcels not bid on at auction would be available for future competitive sale.

Section 3120.80 Future Interest

The proposed rule would redesignate this section from 43 CFR 3120.7 to 43 CFR 3120.80 due to the previously mentioned reorganization.

Section 3120.81 Nomination or Expression of Interest To Make Lands Available for Competitive Lease

The proposed rule would redesignate this section from 43 CFR 3120.7–1 to 43 CFR 3120.81 due to the previously mentioned reorganization. The proposed rule would update the title and paragraph of this section from “Nomination” to “Nomination or Expression of Interest to make lands available for competitive lease,” consistent with the changes made in this subpart.

Section 3120.82 Future Interest Terms and Conditions

The proposed rule would redesignate this section from 43 CFR 3120.7–2 to 43 CFR 3120.82 due to the previously mentioned reorganization.

Section 3120.83 Compensatory Royalty Agreements

The proposed rule would redesignate this section from 43 CFR 3120.7–3 to 43 CFR 3120.82 due to the previously mentioned reorganization.

14. Section-by-Section Discussion for Changes to 43 CFR Subpart 3137

The proposed rule would revise two of the sections and their headings in the existing subpart 3137 regulations. The purpose of updating these sections is to add the processing fees for unit applications and successor operators.

Section 3137.23 NPR–A Unitization Application

The proposed rule would update the title from “What must I include in my NPR–A unitization application?” to “NPR–A unitization application.” The proposed rule would update paragraphs (d)(1) and (4) to change “you” to “the operator.” This is intended to clarify who “you” is in this section. The proposed rule would add a new paragraph (i) to include the required new processing fee for unit agreement applications found in the fee schedule in 43 CFR 3000.120 of this chapter.

Section 3137.61 Change in Unit Operators

The proposed rule would update the title from “How do I change unit operators?” to “Change in unit operators.” The proposed rule would update paragraph (a)(1)(i) by changing “It” to “The new operator.” This is intended to clarify who “it” references in this section. The proposed rule would add a new paragraph (a)(3) to include the required new processing fee for designation of a successor operator found in the fee schedule in 43 CFR 3000.120 of this chapter.

15. Section-by-Section Discussion for Changes to 43 CFR Subpart 3138

The proposed rule would revise one section and its headings in the existing 43 CFR subpart 3138 regulations. The purpose of updating this section is to add the processing fee for subsurface storage agreement.

Section 3138.11 Applications for a Subsurface Storage Agreement

The proposed rule would revise the title from “How do I apply for a subsurface storage agreement?” to

“Applications for a subsurface storage agreement.” The proposed rule would update paragraphs (a)(6), (b), and (c) to change “you” to “the operator.” This is intended to clarify who “you” references in this section. The proposed rule would add a new paragraph (a)(12) to include the required new processing fee for subsurface gas storage agreement applications found in the fee schedule in 43 CFR 3000.120 of this chapter.

16. Section-by-Section Discussion for Changes to 43 CFR Subpart 3140

The proposed rule would not make any revisions to the section headings in the existing 43 CFR subpart 3140 regulations.

Section 3140.5 Definitions

The BLM is proposing to alphabetize the definitions in this section.

Section 3140.11 Existing Rights

The proposed rule would update paragraph (a) to state the application time period ended on November 15, 1983. These regulations are not proposed for elimination because the BLM is still processing applications. The BLM has been working on the planning efforts surrounding the special tar sand areas and the environmental analysis under NEPA to support the conversion to a combined hydrocarbon lease. This process has delayed the BLM in issuing decisions related to the applications.

Section 3140.12 Notice of Intent To Convert

The proposed rule would update paragraphs (a) and (c) to have the specific effective date of November 15, 1983, to ensure there is no confusion related to this rulemaking. In addition, the language in this section would be updated to past tense.

Section 3140.14 Other Provisions

The proposed rule would increase the rental rate in paragraph (b) from \$2 per acre to the annual rental, as specified in 43 CFR 3000.130, consistent with the rental increases in this proposed rule.

The proposed rule would update paragraph (c)(2) to update the royalty rate for a combined hydrocarbon lease from 12.5 percent to 16.67 percent to implement provisions of the IRA. The proposed rule would update paragraph (c)(3) to clarify that the royalty rate reduction requested for tar sands will not apply to the oil and gas and vice versa. Due to the different methods to extract tar sands versus oil and gas, the lessee may need a royalty rate reduction for one resource to continue operations

and no royalty rate reduction for another resource.

Section 3140.23 Application Requirements

The proposed rule would update paragraph (a) to clarify that the application window has closed. The remaining paragraphs under this section would remain unchanged because the BLM continues to process applications; however, the BLM proposed to update the language to past tense.

Section 3140.42 Issuance of the Combined Hydrocarbon Lease

The proposed rule would update paragraph (d) to state that the BLM would issue one combined hydrocarbon lease to cover the existing oil and gas lease or valid claim based on mineral locations which have been approved for conversion within the special tar sand area. The existing paragraph (d)(2) is eliminated in its entirety as the BLM would not issue a combined hydrocarbon lease covering multiple oil and gas leases. Together, these changes permit the existing lease to be converted to a combined hydrocarbon lease without changes to the legal land description or leased area. The BLM believes that converting multiple leases into a combined hydrocarbon lease is not necessary, because combined hydrocarbon leases can be unitized. Unitization allows for the joining together of large areas such as an entire reservoir or field to optimize operations. Existing combined hydrocarbon leases have already been unitized, and the BLM believes there is no need to maintain the conversion of multiple leases in the regulations.

Section 3140.50 Duration of the Lease

The proposed rule would update the paragraph in this section to state that if the applicant withdraws the combined hydrocarbon lease application or the BLM denies the conversion application, the suspension on the oil and gas lease would be lifted and the term would be adjusted by the time remaining on the term of the lease.

Section 3140.70 Lands Within the National Park System

The proposed rule would update the paragraph in this section to make it clear that the conversion application window closed in 1983, consistent with the previously described proposed changes.

17. Section-by-Section Discussion for Changes to 43 CFR Subpart 3141

The proposed rule would not make any revisions to section headings in the

existing 43 CFR subpart 3141 regulations.

Section 3141.10 General

The proposed rule would update paragraph (b) to remove the reference to noncompetitive leasing, as described in 43 CFR subpart 3110. This change is consistent with the implementation of the IRA. The proposed rule would update paragraph (g) to increase the minimum acceptable bid from \$2 per acre to reference the minimum bid in 43 CFR 3000.130, consistent with the change described earlier in 43 CFR 3120.12.

Section 3141.22 Exploration Licenses

The proposed rule would update paragraph (b)(2) to refer to the fee schedule in 43 CFR 3000.120. The proposed rule would update paragraph (b)(4) to remove the triplicate filing requirement. The proposed rule would update paragraph (e)(2) to increase the rental from \$2 per acre for new oil and gas leases issued after August 16, 2022, to the rental rate in 43 CFR 3000.130, consistent with the requirements of the IRA.

Section 3141.52 Term of Lease

The proposed rule would update paragraph (a) to clarify that this section pertains to the primary term of oil and gas leases in special tar sands areas.

Section 3141.53 Royalties and Rentals

The proposed rule would increase the royalty in paragraph (a) from 12.5 percent to 16.67 percent and change the reference from the “Minerals Management Service” to the “ONRR,” consistent with the other changes in this proposed rule and the IRA.

The proposed rule would update paragraph (b) to reference the oil shale lease procedures for reducing the royalty rate applicable to a tar sand lease prior to the commencement of commercial operations, currently at 43 CFR 3903.54. The BLM considers the current regulations to be unclear on which procedures to reference to reduce the royalty rate applicable to a tar sand lease prior to the commencement of commercial operations.

The proposed rule would update paragraph (c) to simply state that the annual rental for all combined hydrocarbon leases is as stated in the lease. The BLM will increase the rentals for combined hydrocarbon leases issued after the effective date of the final rule using 43 CFR 3000.130 for the rental rate, consistent with the changes described previously.

The proposed rule would likewise update paragraph (d) to simply state that

the annual rental for all tar sand leases is as stated in the lease. The BLM will increase the rentals for tar sand leases issued after the effective date of the final rule using 43 CFR 3000.130 for the rental rate, consistent with the changes described previously.

Section 3141.62 Publication of a Notice of Competitive Lease Offering

The proposed rule would remove paragraph (a) in its entirety, eliminating the requirement that the BLM publish a lease sale notice in the **Federal Register** and in a newspaper and providing the BLM with flexibility when determining the appropriate notice method. The remaining paragraph in this section, which refers to making a sale notice available to the public, would be extended to combined hydrocarbon leases in addition to the tar sand and oil and gas leases listed in this paragraph. The proposed rule would change the remaining paragraph to make the Notice of Competitive Lease Sale requirements consistent with the proposed 43 CFR 3120.61 requirements.

Section 3141.63 Conduct of Sales

The proposed rule would eliminate paragraph (a) in its entirety and update the proposed paragraph (b) so there is a single consistent approach for conducting lease sales by competitive auction for both combined hydrocarbon leases and tar sand leases. This change would remove the written sealed bid approach for combined hydrocarbon leases.

The proposed paragraph (b)(2) would be updated to increase the minimum bonus bids for combined hydrocarbon leases and tar sand leases issued after the effective date of the final rule, and it moves the bids to 43 CFR 3000.130 for the Fiscal Terms of New Leases, consistent with the changes described earlier. Finally, the BLM proposes to set the minimum bonus bid for hydrocarbon leases based upon an economic evaluation, which the BLM will complete prior to holding a competitive sale for a hydrocarbon lease.

Section 3141.65 Rejection of Bid

The proposed rule would eliminate existing § 3141.6–4. Since the BLM would hold competitive auctions in a similar manner for oil and gas leases, tar sand leases, and hydrocarbon leases and would use the economic analysis to set the minimum bonus bid, the BLM would not need to reject a bid based upon the fair market value. The reference to the “one-fifth bonus” was changed to “minimum bonus” as needed to reflect the proposed changes

to have a consistent sale approach for both tar sand leases and hydrocarbon leases.

Section 3141.70 Award of Lease

The proposed rule would eliminate the requirement for triplicate copies of the lease forms to be executed by the successful bidder. In addition, the proposed rule would update this section to specify the 30th “calendar day” in order to reduce confusion.

18. Section-by-Section Discussion for Changes to 43 CFR Subpart 3142

The proposed rule would rename the title of this subpart from “Paying Quantities/Diligent Development for Combined Hydrocarbon Leases” to “Paying Quantities/Diligent Development for Combined Hydrocarbon and Tar Sand Leases.” The proposed rule would not make any revisions to the section headings in the existing 43 CFR subpart 3142 regulations.

Section 3142.1 Purpose

The proposed rule would add “and tar sand leases” so that this subpart applies to both combined hydrocarbon and tar sand leases.

Section 3142.5 Definitions

The proposed rule would amend the first defined term to be “Production in paying quantities for combined hydrocarbon leases.” The proposed rule would add definitions for the terms “Production in paying quantities for oil and gas leases” and “Production in paying quantities for tar sand leases.”

Section 3142.21 Minimum Production Schedule

The proposed rule would add a new paragraph (b) to specify that the minimum annual tar sand production schedule for the lease or unit operations would be set at an economical level. The proposed new paragraph (b) would also state that, if the operator or lessee cannot establish economic production, the lease would terminate at the end of the lease’s primary term.

19. Section-by-Section Discussion for Changes to 43 CFR Subpart 3151

The proposed rule would revise § 3151.10 and add a new § 3151.30. The BLM proposes these changes to protect the fiscal and scientific interests of the American public by ensuring the BLM has adequate cost recovery mechanisms for geophysical exploration permits and that it has access to the information obtained by the permittees.

Section 3151.10 Notice of Intent To Conduct Oil and Gas Geophysical Exploration Operations

The introductory paragraph would be updated to include the requirement for the filing fee.

Section 3151.30 Collection and Submission of Data

The proposed rule would add a new section entitled “Collection and submission of data” that would require the permittee to submit to the BLM all data and information obtained from the exploration permit. This new requirement is consistent with exploration permits carried out in Alaska, as set forth in the existing regulations at 43 CFR 3152.6.

20. Section-by-Section Discussion for Changes to 43 CFR Subpart 3160

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR 3160.0–5 regulations.

Section 3160.0–5 Definitions

The BLM is proposing to modify the existing definition for “New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.” The revised definition would remove the sentence describing circumstances in which a gas well would be considered to have been off of production, providing consistency in the BLM’s management of both oil wells (which does not include this language) and gas wells. The BLM is proposing to add a new requirement for operators to notify the BLM when they shut-in a gas well, as described in greater detail under the proposed changes for 43 CFR 3162.3–4. The potential amount of plugging and remediation liability related to long-term shut-in wells is often difficult to identify. The update would therefore require operators to notify the BLM when it is shutting in a well and would allow the BLM to adequately track and evaluate the risk of nonproducing wells.

The BLM proposes new definitions for “Shut-in well” and “Temporarily abandoned well.” These definitions would clarify the terms for the new proposed requirements. The definition would describe a “Shut-in well” as a nonoperational well that can physically and mechanically operate by opening valves or activating existing equipment. The definition would describe a “Temporarily abandoned well” as a nonoperational well that is not physically or mechanically capable of production or injection without additional equipment or without

servicing the well, but that may have future beneficial use.

These definitions were pulled from the BLM's existing policy and are similar to existing industry standard definitions for the two well statuses. The International Association of Drilling Contractors (IADC) and the Alaska Oil and Gas Conservation Commission defines "shut in" as "to close a well's surface, wellhead, or subsurface valves to halt flow from or into the well, with the completion interval remaining open to the tubing below the closed valve" (see <https://iadclexicon.org/shut-in/>). The IADC and the Colorado Oil and Gas Conservation Commission defines "temporarily abandoned well" to "mean a well which is incapable of production or injection without the addition of one or more pieces of wellhead or other equipment, including valves, tubing, rods, pumps, heater-treaters, separators, dehydrators, compressors, piping or tanks" (see <https://iadclexicon.org/temporarily-abandoned-well/>). The BLM proposes to add the statement "may have future beneficial use" into the temporarily abandoned well definition to clarify that the BLM expects an operator to promptly plug a well without future beneficial use. In some cases, the operator could use a nonproductive well bore for enhanced recovery operations or water disposal, even though the well cannot produce hydrocarbons.

21. Section-by-Section Discussion for Changes to 43 CFR Subpart 3162

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR 3162.3–4 regulations.

Section 3162.3–4 Well Abandonment

The proposed rule would modify paragraph (c) to state that no well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer and unless the operator provides adequate and detailed justification for the abandonment, verifies the mechanical integrity of the wells, and isolates the completed interval(s). The BLM would not accept vague assertions that the well may produce. See *Goldmark Engineering, Inc.*, 146 IBLA 225, 227 (1998). The BLM requests comments on whether a temporary abandonment should trigger a bond review in addition to the adequate and detailed justification for the abandonment.

In addition, except in extraordinary circumstances, the proposed rule would provide that the maximum period of time for an operator to delay permanent abandonment of a temporarily

abandoned well would not exceed 4 years. The Energy Policy Act of 2005, as amended by the IJA, defines an idled well as "a well that has been nonoperational for at least 4 years and for which there is no anticipated beneficial use" (see 42 U.S.C. 15907). Therefore, to help avoid wells becoming idled in the first place, the BLM is proposing new reporting and operational requirements for operators of temporarily abandoned wells. When an operator does not address a temporarily abandoned well by returning the well to production in paying quantities (*i.e.*, production sufficient to cover the operator's operational costs) or plugging and permanently abandoning the well, historical data available to the BLM indicates that such wells are at an increased risk of becoming orphaned.

The proposed rule would add a new paragraph (d) outlining new requirements for operators of shut-in wells. Paragraph (d)(1) would require notification to the BLM of the well's shut-in status and shut-in date within 90 days of well shut-in. Paragraph (d)(2) would require, within 3 years of well shut-in, the operator to provide the authorized officer with verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities. Currently, an operator is not required to inform the BLM when they shut-in a well, and these additions would allow the BLM to better track its shut-in well inventory and to take proactive steps to ensure that those wells do not become idled, as directed by Congress at 42 U.S.C. 15907.

The proposed rule would add a paragraph (d)(3) stating that, within 4 years of well shut-in, the operator must: (i) permanently abandon the well; (ii) resume production in paying quantities; or (iii) provide the authorized officer with a detailed plan and timeline for future beneficial use for the well. The proposed rule would further provide that if the BLM determines that there is a legitimate future beneficial use for the well, it may allow the operator to delay permanent abandonment by 1 year. The proposed rule would provide that the authorized officer may grant additional delays in 1-year increments, provided that the operator confirms the future beneficial use of the well and is making verifiable progress on returning the well to a beneficial use. The BLM believes these new requirements with yearly interval checks would help operators manage shut-in wells, preventing them from becoming orphaned in the future.

22. Section-by-Section Discussion for Changes to 43 CFR Subpart 3165.1

The proposed rule would revise the 43 CFR 3165.1 heading from "Relief from operating and producing requirements" to "Relief from operating and/or producing requirements."

Section 3165.1 Relief From Operating and/or Producing Requirements

The purpose of this section is to describe the requirements for lease suspension applications. The BLM proposes to update this section to encourage diligent development of leased lands and ensure lease suspensions are justified and tied to an end date. The BLM is proposing to modify paragraph (b) to clarify who may apply for a lease suspension.

The proposed rule would add a new paragraph (c) to state the BLM would not approve an application for a suspension of a lease in circumstances where an APD on the subject lease is filed less than 90 calendar days before the expiration date of the lease. Applications for lease suspensions are often filed late in the primary term of a lease. Although lessees and operating rights owners are entitled to the full primary term of the lease, they are also responsible for timely filing required plans and necessary applications. Lessees and operating rights owners should not assume the BLM will grant a suspension merely to relieve them of their obligations of diligence and timeliness when complying with these and related requirements. See *Vaquero Energy Inc.*, 185 IBLA 233, 237 (2015). On average, the BLM requires 90 days to complete the required reviews and analysis before issuing a decision on an APD. This change would encourage lessees and operators to diligently pursue development when APDs are filed with the BLM near the end of the primary term of the lease; otherwise, the lease would expire.

The proposed rule would also update the proposed paragraph (d) to ensure lease suspensions would not exceed 1 year when they are requested by the operator. If the circumstances that warranted the suspension are still applicable, a request to extend the suspension prior to the lifting date of the suspension would be required.

The proposed rule would add a new paragraph (e) to state that BLM-directed suspensions may exceed 1 year.

The proposed rule would add a new paragraph (f) to state that lease suspensions would lift when they are no longer justified, when lifting the suspension is in the public interest of the lessor, or as stated in the approval

letter. The BLM requests comments on the best approach for making determinations on lease suspensions that would reduce the cost to the American public and encourage diligent development of leased lands. In June 2018, the GAO issued a final report entitled, “BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures” (GAO–18–411). In summary, oil and gas leases on Federal lands generate billions of dollars in rents and royalty payments each year, but these revenues decline if leases are suspended (*i.e.*, the lease term is placed on hold). In response to GAO recommendations, the BLM issued policy guidance requiring the BLM state offices to regularly review suspended leases and monitor lease suspensions to ensure that lease suspensions in effect are warranted.¹⁷ The BLM believes the proposed additions and updates are warranted to ensure lease suspensions are justified and tied to an end date.

23. Section-by-Section Discussion for Changes to 43 CFR Subpart 3171

The proposed rule would not make any revisions to the numbering or section headings in the existing 43 CFR subpart 3171.6 regulations.

Section 3171.6 Components of a Complete APD Package

The proposed rule would update the existing paragraph (b)(1)(i) to replace the phrase “referenced to the National

Spatial Reference System, North American Datum 1983 or latest edition” with the phrase “generated by an electronic navigation system, and document the datum referenced to generate these coordinates.” The BLM is proposing this change to modernize the existing language that dates to 2007 and avoid the need to incorporate by reference the National Spatial Reference System, North American Datum 1983.

Section 3171.14 Valid Period of Approved APD

The proposed rule would not make any revisions to the numbering or section headings in the existing subpart 43 CFR 3171.14 regulations and proposes to adjust the valid period of time for approved APDs and address instances when an operator does not drill to total depth.

The BLM reviewed the number of APD extensions granted in the past and estimates that operators request extensions on approximately 33 percent or one-third of the APDs approved. The BLM approved 4,859 APDs in FY 2021 and expects to receive approximately 1,600 APD extension requests in FY 2023. This would result in an estimated 3,800 hours of BLM staff time and \$136,000 annually to process APD extension requests, based upon an average processing time of 2.4 hours and processing cost of \$85 per APD extension application. Therefore, the BLM proposes adjusting the valid

period of time for approved APDs to reduce the cost to the American public and encourage diligent development of leased lands.

To find the correct approach, the BLM reviewed the timeframe for operators to drill an approved APD based on well spuds from calendar year 2015 through calendar year 2021. On average, an operator spuds a Federal well 0.78 years after APD approval. Based on the data reviewed, 74 percent of the wells were spud in the first year after APD approval, 15 percent of the wells were spud in the second year after APD approval, 6 percent of the wells were spud in the third year after APD approval, and 5 percent of the wells were spud in fourth year after APD approval. Therefore, because APD approvals are ordinarily valid for 2 years, only 11 percent of the wells spud required an APD extension approval from the BLM.

The BLM also reviewed the valid period for State permits to drill based upon State regulations or conditions tied to the permits. The State permits are valid for different times depending on the state; however, the time frame ranges from 6 months to 2 years with some states granting extensions and some states requiring the operator to resubmit the APD for a new permit if the well is not drilled. The BLM summarizes the State’s permit to drill terms in the following table:

State	Term for State permit to drill	Reference
California	1-year permit with an optional 1-year extension upon application of the operator.	Chapter 4. Subchapter 1. Article 3. § 1722(d). Regulations here.
Colorado	3-year permit with no extensions.	Permitting Process Regulations: 311.a. & b. Regulations here.
Louisiana	6-month or 1-year permit. Must re-apply for the APD after it expires.	Title 30. RS 30:28. section 28(B). Regulations here.
Montana	6-month permit. Must re-apply for the APD after the 6-months.	36.22.604 Permit Issuance—Expiration—Extensions. Regulations here.
New Mexico	2-year permit with an optional 1-year extension upon application by the operator on C–103.	Based on conditions of approval tied to the permit, found here. NM regulations do not specify permit validity.
North Dakota	1-year permit with the ability to extend the APD with a \$100 filing fee.	Found on ND DMR website here.
Oklahoma	18-month permit with an optional 6-month extension without fee. Only one extension may be granted.	Okla. Admin. Code § 165:10–3–1(j). Regulations here.
Texas	2-year permit.	Title 16. Part 1. Chapter 3. section 3.5(g). Regulations here.
Utah	1-year permit	R649–3–4. 6. Regulations here.
Wyoming	2-year permit with the ability to resubmit the APD with an extension filing fee for an additional 2 years.	WY OGCC Chapter 3. section 8(h). Regulations here.

Therefore, the BLM is considering changes to this section and is requesting comments on the best approach to adjust APD extensions that would

reduce the cost to the American public and encourage diligent development of leased lands. The BLM is considering two options. The first option would

involve removing the option to extend APDs and changing the APD term from 2 years to 3 years. The second option would retain the 2-year APD term with

¹⁷ PIM 2019–007, Monitoring and Review of Lease Suspensions. <https://www.blm.gov/policy/pim-2019-007>.

a potential for a 1-year extension. The BLM would require a filing fee based upon the required review in Instruction Memorandum 2023–011, *Approved Application for Permit to Drill Extensions*, and incorporate this policy for APD extensions into the regulations. Either option would continue to allow operators to spud 95 percent of the wells approved in the initial APD based upon the current time between APD approval and well spud. If the operator does not drill the APD in the time provided, then the operator would need to apply for a new APD.

At this time, the BLM is proposing the first option to change the APD term from 2 years to 3 years with no extensions to reduce the administrative burden. This would reduce the cost for both the American public and the operators by eliminating the need for operators to file and BLM to review applications for APD extensions. The current proposal would update the existing paragraph (a) to state that an APD is valid for 3 years. The BLM proposes to remove the sentence describing the 2-year extension.

The BLM is proposing to add two new paragraphs to this section to address the many partially drilled and uncompleted

wells remaining on Federal lands and to require operators to comply with the approved APD prior to the permit's expiration date. Under the BLM's current regulations, operators can spud wells near the APD's expiration date by setting conductor or surface casing. The operators could then extend past the APD's primary term and delay reclamation of the disturbed land by arguing that it would return and drill to total depth in the future. The BLM is proposing to add paragraphs (b) and (c) to remove the loophole and encourage operators to pursue diligent development of leased lands.

The proposed rule would add a new paragraph (b) to state that the approved APD expires on the date as written unless the operator has: (1) drilled the well to the approximate total depth in the approved APD; (2) is drilling the well with a rig capable of drilling the well to total depth; or (3) submits a plan, approved by the BLM, for continuously drilling the well to reach the proposed total depth in the approved APD. If the APD expiration date passes without satisfying one of these three requirements, the operator would need to submit a new APD to

drill or continue drilling the well under the expired APD.

The proposed rule adds a new paragraph (c) to address outstanding surface disturbance or wellbores upon the APD's expiration. The new section states that upon expiration of the approved APD, if the operator created surface disturbance or began drilling the well under the approved APD, the operator or lessee must comply with plugging, abandonment, and reclamation requirements. The BLM proposes to add this section to ensure operators will promptly resolve any surface disturbance or wellbores upon expiration of the APD.

24. Section-by-Section Discussion for Changes to 43 CFR Subpart 3186

The proposed rule would remove the existing § 3186.2 regulations in their entirety, consistent with the changes in 43 CFR 3104.4 to remove the unit operator's bond.

VI. Overview of Modifications

The following is an overview table of the proposed significant modifications to parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3171, and 3180:

43 CFR SUBPART 3000—MINERALS MANAGEMENT: GENERAL

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3000.0–5—Definitions.	43 CFR 3000.5—Definitions.	No significant change.
43 CFR 3000.1—Nondiscrimination.	43 CFR 3000.10—Nondiscrimination.	No significant change.
43 CFR 3000.2—False statements.	43 CFR 3000.20—False statements.	No significant change.
43 CFR 3000.3—Unlawful interests.	43 CFR 3000.30—Unlawful interests.	No significant change.
43 CFR 3000.4—Appeals.	43 CFR 3000.40—Appeals.	No significant change.
43 CFR 3000.5—Limitations on time to institute suit to contest a decision of the Secretary.	43 CFR 3000.50—Limitations on time to institute suit to challenge a decision of the Secretary.	No significant change.
43 CFR 3000.6—Filing of documents.	43 CFR 3000.60—Filing of documents.	No significant change.
43 CFR 3000.7—Multiple development.	43 CFR 3000.70 Multiple development.	No significant change.
43 CFR 3000.8—Management of Federal minerals from reserved mineral estates.	43 CFR 3000.80—Management of Federal minerals from reserved mineral estates.	No significant change.
43 CFR 3000.9—Enforcement.	43 CFR 3000.90—Enforcement actions under 30 U.S.C. 195.	No significant change.
43 CFR 3000.10—What do I need to know about fees in general?	43 CFR 3000.100—Fees in general.	No significant change.
43 CFR 3000.11—When and how does BLM charge me processing fees on a case-by-case basis?	43 CFR 3000.110—Processing fees on a case-by-case basis.	No significant change.
43 CFR 3000.12—What is the fee schedule for fixed fees?	43 CFR 3000.120—Fee schedule for fixed fees.	The proposed rule would add a new fee for EOs, as required by the IRA; Would propose a new fixed filing fees for various oil and gas applications; and Would propose an update to existing oil and gas fixed filing fees.
New.	43 CFR 3000.130—Fiscal terms of new leases.	The proposed rule would add a new section covering the financial terms of new leases (including rentals and minimum bonus bids).

43 CFR SUBPART 3100—OIL AND GAS LEASING

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3100.0–3—Authority	43 CFR 3100.3—Authority	The proposed rule would add or remove legal references for lands identified as eligible for leasing; and Would move wildlife refuge lands, as well as lands patented under the Recreation and Public Purposes Act, formerly found under subpart 3101, to this part's authority section;
43 CFR 3100.0–5—Definitions	43 CFR 3100.5—Definitions	The proposed rule would alphabetize and add new definitions for “competitive lease sale,” “exception,” “modification,” “oil and gas agreements,” “qualified bidder,” “qualified lessee,” “responsible bidder,” “responsible lessee,” and “waiver.”
43 CFR 3100.0–9—Information collection	43 CFR 3100.9—Information collection	The proposed rule would remove the outdated Paperwork Reduction Act Information Collection (IC) Control Numbers and updates the IC section to include a table summarizing the current OMB-approved Control Numbers for oil and gas leasing; and would add a new section to allow the BLM to accept electronic signatures and submission of documents.
43 CFR 3100.1—Helium	43 CFR 3100.10—Helium	No significant change.
43 CFR 3100.2—Drainage	Drainage	No significant change.
43 CFR 3100.2–1—Compensation for drainage	43 CFR 3100.21—Compensation for drainage	No significant change.
43 CFR 3100.2–2—Drilling and production or payment of compensatory royalty.	43 CFR 3100.22—Drilling and production or payment of compensatory royalty.	No significant change.
43 CFR 3100.3—Options	Options	No significant change.
43 CFR 3100.3–1—Enforceability	43 CFR 3100.31—Enforceability	No significant change.
43 CFR 3100.3–2—Effect of option on acreage	43 CFR 3100.32—Effect of option on acreage	No significant change.
43 CFR 3100.3–3—Option statements	43 CFR 3100.33—Option statements	No significant change.
43 CFR 3100.4—Public availability of information.	43 CFR 3100.40—Public availability of information.	No significant change.

43 CFR SUBPART 3101—ISSUANCE OF LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3101.1—Lease terms and conditions ...	Lease terms and conditions	No significant change.
43 CFR 3101.1–1—Lease form	43 CFR 3101.11—Lease form	No significant change.
43 CFR 3101.1–2—Surface use rights	43 CFR 3101.12—Surface use rights	No significant change.
43 CFR 3101.1–3—Stipulations and information notices.	43 CFR 3101.13—Stipulations and information notices.	No significant change.
43 CFR 3101.1–4—Modification or waiver of lease terms and stipulations.	43 CFR 3101.14—Modification, waiver, or exception.	The proposed rule would update the provisions on modification or waiver of lease terms and stipulations.
43 CFR 3101.2—Acreage limitations	Acreage limitations	No significant change.
43 CFR 3101.2–1—Public domain lands	43 CFR 3101.21—Public domain lands	No significant change.
43 CFR 3101.2–2—Acquired lands	43 CFR 3101.22—Acquired lands	No significant change.
43 CFR 3101.2–3—Excepted acreage	43 CFR 3101.23—Excepted acreage	No significant change.
43 CFR 3101.2–4—Excess acreage	43 CFR 3101.24—Excess acreage	No significant change.
43 CFR 3101.2–5—Computation	43 CFR 3101.25—Computation	No significant change.
43 CFR 3101.2–6 Showing required	Removed	The proposed rule would remove this section and other portions of the regulations related to qualification statements declared out of date (see 47 FR 8544 (Feb. 26, 1982)).
43 CFR 3101.3—Leases within unit areas	43 CFR 3101.30—Leases within unit areas, joinder evidence required.	No significant change.
43 CFR 3101.3–1—Joinder evidence required ..	Removed	The proposed rule would remove this title since the next section would be removed.
43 CFR 3101.3–2—Separate leases to issue ...	Removed	The proposed rule would remove this section, as well as references to the nomination process based on proposed changes to part 3120.
43 CFR 3101.4—Lands covered by application to close lands to mineral leasing.	Removed	The proposed rule would remove this section, as well as references to the nomination process based on proposed changes to part 3120.

43 CFR SUBPART 3101—ISSUANCE OF LEASES—Continued

Existing regulation	Proposed regulation	Substantive changes
New	43 CFR 3101.40—Terminated leases	The proposed rule would move 43 CFR 3108.2–2(d) and 43 CFR 3108.2–3(c) on issuing leases for lands that were previously covered by a terminated lease to this section on lease issuance.
43 CFR 3101.5—National Wildlife Refuge System lands.	Removed	The proposed rule would move this part to 43 CFR 3100, which is in the Authority section.
43 CFR 3101.5–1—Wildlife refuge lands	Removed	The proposed rule would move this section to 43 CFR 3100.0–3(a)(2)(xii) and 3100.0–3(b)(2)(xiv), which are in the Authority section.
43 CFR 3101.5–2—Coordination lands	Removed	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.5–3—Alaska wildlife areas	Removed	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.5–4—Stipulations	Removed	The proposed rule would consolidate this section with 43 CFR 3101.13.
43 CFR 3101.6—Recreation and public purposes lands.	Removed	The proposed rule would move this section to 43 CFR 3100.3, which is in the Authority section.
43 CFR 3101.7—Federal lands administered by an agency outside of the Department of the Interior.	Federal lands administered by an agency outside of the Department of the Interior.	No significant change.
43 CFR 3101.7–1—General requirements	43 CFR 3101.51 General requirements	The proposed rule would consolidate the separate paragraphs under this section into one paragraph.
43 CFR 3101.7–2—Action by the Bureau of Land Management.	43 CFR 3101.52—Action by the Bureau of Land Management.	No significant change.
43 CFR 3101.7–3—Appeals	43 CFR 3101.53—Appeals	No significant change.
43 CFR 3101.8—State's or charitable organization's ownership of surface overlying federally owned minerals.	43 CFR 3101.60—State's or charitable organization's ownership of surface overlying federally owned minerals.	No significant change.

43 CFR SUBPART 3102—QUALIFICATIONS OF LESSEES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3102.1 Who may hold leases	43 CFR 3102.10 Who may hold leases	No significant change.
43 CFR 3102.2 Aliens	43 CFR 3102.20 Non-U.S. Citizens	The proposed rule would change the terminology for referring to citizens of other countries; and Would add language from the Treasury Department regulations at 31 CFR part 802, where the Committee on Foreign Investment in the United States (CFIUS) is authorized to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.
43 CFR 3102.3 Minors	43 CFR 3102.30 Minors	No significant change.
43 CFR 3102.4 Signature	43 CFR 3102.40 Signature	The proposed rule would update this section to give the BLM the ability to accept documents with electronic signatures; Would remove the requirement for multiple copies of assignments or transfers to be submitted to the BLM; and Would remove the reference to qualification numbers, which were declared obsolete (see 47 FR 8544 (Feb. 26, 1982)).
43 CFR 3102.5 Compliance, certification of compliance and evidence.	Compliance, certification of compliance and evidence.	No significant change.

43 CFR SUBPART 3102—QUALIFICATIONS OF LESSEES—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3102.5–1 Compliance	43 CFR 3102.51 Compliance	The proposed rule would update the current section to refer to reclamation obligations to be compliant with requirements of section 17(g) of the MLA start at the Notice of Proposed Civil Penalties instead of the imposition of a civil penalty; and Would add a qualification requirement to ensure compliance with 2 CFR parts 180 and 1400, based on which the BLM would reject any lease issuance, assignment, or transfer to any entity excluded from doing business with the Federal government through suspension and debarment.
43 CFR 3102.5–2 Certification of compliance	43 CFR 3102.52 Certification of compliance	No significant change.
43 CFR 3102.5–3 Evidence of compliance	43 CFR 3102.53 Evidence of compliance	No significant change.

43 CFR SUBPART 3103—FEES, RENTALS AND ROYALTY

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3103.1—Payments	Payments	No significant change.
43 CFR 3103.1–1—Form of remittance	43 CFR 3103.11—Form of remittance	No significant change.
43 CFR 3103.1–2—Where submitted	43 CFR 3103.12—Where remittance is submitted.	No significant change.
43 CFR 3103.2—Rentals	Rentals	No significant change.
43 CFR 3103.2–1—Rental requirements	43 CFR 3103.21—Rental requirements	No significant change.
43 CFR 3103.2–2—Annual rental payments	43 CFR 3103.22—Annual rental payments	The proposed rule would remove outdated phase-in language from past rulemakings; and Would update the following financial terms of new leases as required by the IRA: • Rental amount for competitive leases is to be \$3 per acre, or fraction thereof, for the first 2 years, then \$5 per acre, or fraction thereof, for lease years 3 through 8, and then \$15 per acre, or fraction thereof, thereafter; • For Class II reinstated competitive leases, the rent increases to \$20 per acre; • Royalty percentage is proposed to be not less than 16.67 percent for competitive leases; and • For reinstated competitive leases, the royalty increases to not less than 20 percent, plus 2 percentage points for each succeeding reinstatement.
43 CFR 3103.3—Royalties	Royalties	No significant change.
43 CFR 3103.3–1—Royalty on production	43 CFR 3103.31—Royalty on production	No significant change.
43 CFR 3103.3–2—Minimum royalties	43 CFR 3103.32—Minimum royalties	The proposed rule would clarify the intent of minimum royalty to be reduced by the actual royalty paid throughout the year.
43 CFR 3103.4—Production incentives	Production incentives	No significant change.
43 CFR 3103.4–1—Royalty reductions	43 CFR 3103.41—Royalty reductions	No significant change.
43 CFR 3103.4–2—Stripper well royalty reductions.	Removed	The proposed rule would remove the regulations governing stripper well royalty reductions.
43 CFR 3103.4–3—Heavy oil royalty reductions	Removed	The proposed rule would remove the regulations governing heavy oil royalty reductions.
43 CFR 3103.4–4—Suspension of operations and/or production.	43 CFR 3103.42 Suspension of operations and/or production.	No significant change.

43 CFR SUBPART 3104—BONDS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3104.1—Bond obligations	43 CFR 3104.10—Bond obligations	The proposed rule would remove Certificates of Deposits (CD) and Letters of Credit (LOC) as forms of security for personal bonds.

43 CFR SUBPART 3104—BONDS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3104.2—Lease bond	43 CFR 3104.20—Lease bond	The proposed rule would increase the minimum bonding amounts to \$150,000 per lease bond.
43 CFR 3104.3—Statewide and nationwide bonds.	43 CFR 3104.30—Statewide bonds	The proposed rule would increase the minimum bonding amounts to \$500,000 per statewide bond; and would remove nationwide bonds.
43 CFR 3104.4—Unit operator's bond	43 CFR 3104.40—Surface owner protection bond.	The proposed rule would remove unit operator's bonds.
43 CFR 3104.5—Increased amount of bonds ...	43 CFR 3104.50—Increased amount of bonds	No significant change.
43 CFR 3104.6—Where filed and number of copies.	43 CFR 3104.60—Where filed and number of copies.	No significant change.
43 CFR 3104.7—Default	43 CFR 3104.70—Default	The proposed rule would update the language to state reference that noncompliance is in violation of section 17 of the MLA; and would add language stating that being in noncompliance would result in not being able to acquire new lease interests, as well as referring the entity for a determination as to whether the entity should be suspended or debarred from doing business with the Federal government in accordance with 2 CFR part 1400.
43 CFR 3104.8—Termination of period of liability.	43 CFR 3104.80—Termination of period of liability.	No significant change.
New	43 CFR 3104.90—Bonds held prior to [EFFECTIVE DATE OF FINAL RULE].	The proposed rule would add a phase-in period for the new minimum bond amounts.

43 CFR SUBPART 3105—COOPERATIVE CONSERVATION PROVISIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3105.1—Cooperative or unit agreement.	43 CFR 3105.10—Cooperative or unit agreement.	The proposed rule would add a reference to the new fixed filing fees proposed in 43 CFR 3000.120.
43 CFR 3105.2—Communitization or drilling agreements.	Communitization agreements	The proposed rule would remove references to drilling agreements that the BLM does not create or manage.
43 CFR 3105.2-1—Where filed	43 CFR 3105.21—Where filed	The proposed rule would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.2-2—Purpose	43 CFR 3105.22—Purpose	No significant change.
43 CFR 3105.2-3—Requirements	43 CFR 3105.23—Requirements	The proposed rule would add conditions and requirements for Communitization Agreements (self-certification statement, maps, exhibits showing tracts and ownership).
New	43 CFR 3105.24—Communitization agreement terms.	The proposed rule would add the primary term of communitization agreements.
43 CFR 3105.3—Operating, drilling or development contracts.	Operating, drilling or development contracts ...	No significant change.
43 CFR 3105.3-1—Where filed	43 CFR 3105.31—Where filed	The proposed rule would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.3-2—Purpose	43 CFR 3105.32—Purpose	No significant change.
43 CFR 3105.3-3—Requirements	43 CFR 3105.33—Requirements	No significant change.
43 CFR 3105.4—Combination for joint operations or for transportation of oil.	Removed	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-1—Where filed	Removed	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-2—Purpose	Removed	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-3—Requirements	Removed	The proposed rule would remove this section as it is not used by the BLM or operators.
43 CFR 3105.4-4—Rights-of-way	Removed	The proposed rule would remove this section as it is covered under 43 CFR part 2880.
43 CFR 3105.5—Subsurface storage of oil and gas.	Subsurface storage of oil and gas	No significant change.

43 CFR SUBPART 3105—COOPERATIVE CONSERVATION PROVISIONS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3105.5-1—Where filed	3105.41—Where filed	The proposed rule would add a reference to the new fixed filing fees proposed in 43 CFR 3000.120; and would remove the requirement for multiple copies of applications to be filed with the BLM.
43 CFR 3105.5-2—Purpose	43 CFR 3105.42—Purpose	No significant change.
43 CFR 3105.5-3—Requirements	43 CFR 3105.43—Requirements	No significant change.
43 CFR 3105.5-4—Extension of lease term	43 CFR 3105.44—Extension of lease term	No significant change.
43 CFR 3105.6—Consolidation of leases	43 CFR 3105.50—Consolidation of leases	The proposed rule would split this section into multiple paragraphs to increase readability.

43 CFR SUBPART 3106—TRANSFERS BY ASSIGNMENT, SUBLEASE, OR OTHERWISE

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3106.1—Transfers, general	43 CFR 3106.10—Transfers, general	The proposed rule would clarify the requirements for transfers of operating rights. The proposed rule would state that operating rights may only be divided with respect to legal subdivision, depth ranges, and formations, within the boundaries of a Federal lease.
43 CFR 3106.2—Qualifications of transferees ..	43 CFR 3106.20—Qualifications of assignees and transferees.	No significant change.
43 CFR 3106.3—Fees	43 CFR 3106.30—Fees	No significant change.
43 CFR 3106.4—Forms	Forms	No significant change.
43 CFR 3106.4-1—Transfers of record title and of operating rights (subleases).	43 CFR 3106.41—Transfers of record title and of operating rights (subleases).	The proposed rule would change the triplicate filing requirement to a duplicate filing requirement.
43 CFR 3106.4-2—Transfers of other interests, including royalty interests and production payments.	43 CFR 3106.42—Transfers of other interests, including royalty interests and production payments.	The proposed rule would require transfers of overriding royalty to be submitted on a BLM form.
43 CFR 3106.4-3—Mass transfers	43 CFR 3106.43—Mass transfers	The proposed rule would change the triplicate filing requirement to a duplicate filing requirement and would waive the need for the duplicate when the filing is submitted electronically.
43 CFR 3106.5—Description of lands	43 CFR 3106.50—Description of lands	No significant change.
43 CFR 3106.6—Bonds	43 CFR 3106.60—Bond Requirements	No significant change.
43 CFR 3106.6-1—Lease bond	Removed	The proposed rule would update the bond section related to a new interest owner's responsibility for holding a bond.
43 CFR 3106.6-2—Statewide/nationwide bond	Removed	No significant change.
43 CFR 3106.7—Approval of transfer	Approval of transfer or assignment	No significant change.
43 CFR 3106.7-1—Failure to qualify	43 CFR 3106.71—Failure to qualify	No significant change.
43 CFR 3106.7-2—If I transfer my lease, what is my continuing obligation?	43 CFR 3106.72—Continuing obligation of an assignor or transferor.	No significant change.
43 CFR 3106.7-3—Lease account status	43 CFR 3106.73—Lease account status	No significant change.
43 CFR 3106.7-4—Effective date of transfer	43 CFR 3106.74—Effective date of transfer ...	No significant change.
43 CFR 3106.7-5—Effect of transfer	43 CFR 3106.75—Effect of transfer	No significant change.
43 CFR 3106.7-6—If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?	43 CFR 3106.76—Obligations of assignee or transferee.	No significant change.
43 CFR 3106.8—Other types of transfers	Other types of transfers	No significant change.
43 CFR 3106.8-1—Heirs and devisees	43 CFR 3106.81—Heirs and devisees	No significant change.
43 CFR 3106.8-2—Change of name	43 CFR 3106.82—Change of name	No significant change.
43 CFR 3106.8-3—Corporate merger	43 CFR 3106.83—Corporate mergers and dissolution of corporations, partnerships, and trust.	The proposed rule would include the new filing fee and requirements for other types of transfers that the BLM accepts (for example, dissolutions of corporations).
New	43 CFR 3106.84—Sheriff's sale/deed	The proposed rule would include the new filing fee and requirements for other types of transfers that the BLM accepts (for example, Sheriff's sale/deeds).

43 CFR SUBPART 3107—CONTINUATION AND EXTENSION

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3107.1—Extension by drilling	43 CFR 3107.10—Extension by drilling	The proposed rule would add language pertaining to lease extensions to address circumstances where directional or horizontal wells are drilled from an off-lease location with the intent to produce from the leased area.
43 CFR 3107.2—Production	Production	No significant change.
43 CFR 3107.2–1—Continuation by production	43 CFR 3107.21—Continuation by production	No significant change.
43 CFR 3107.2–2—Cessation of production	43 CFR 3107.22—Cessation of production	The proposed rule would rephrase the provision regarding cessation of production to better reflect section 17(i) of the MLA.
43 CFR 3107.2–3—Leases capable of production.	43 CFR 3107.23—Leases capable of production.	No significant change.
43 CFR 3107.3—Extension for terms of cooperative or unit plan.	Extension for terms of agreements	No significant change.
43 CFR 3107.3–1—Leases committed to plan ..	43 CFR 3107.31—Leases committed to an agreement.	No significant change.
43 CFR 3107.3–2—Segregation of leases committed in part.	43 CFR 3107.32—Segregation of leases committed in part.	The proposed rule would revise the section for the segregation of leases committed in part to units to state this would occur only after the public interest requirement has been met; and would clarify when leases may be extended by production from associated leases.
43 CFR 3107.3–3—20-year lease or any renewal thereof.	Removed	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.4—Extension by elimination	43 CFR 3107.40—Extension by elimination	No significant change.
43 CFR 3107.5—Extension of leases segregated by assignment.	Extension of leases segregated by assignment.	No significant change.
43 CFR 3107.5–1—Extension after discovery on other segregated portions.	43 CFR 3107.51—Extension after discovery on other segregated portions.	No significant change.
43 CFR 3107.5–2—Undeveloped parts of leases in their extended term.	43 CFR 3107.52—Undeveloped parts of leases in their extended term.	No significant change.
43 CFR 3107.5–3—Undeveloped parts of producing leases.	43 CFR 3107.53—Undeveloped parts of producing leases.	No significant change.
43 CFR 3107.6—Extension of reinstated leases	43 CFR 3107.60—Extension of reinstated leases.	No significant change.
43 CFR 3107.7—Exchange leases: 20-year term.	Removed	The proposed rule would remove this section and all references to exchange leases as these have either expired or are held by production.
43 CFR 3107.8—Renewal leases	Removed	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8–1—Requirements	Removed	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8–2—Application	Removed	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.8–3—Approval	Removed	The proposed rule would remove this section and all references to renewal leases as this was removed by the Act of November 15, 1990.
43 CFR 3107.9—Other types	Other types	No significant change.
43 CFR 3107.9–1—Payment of compensatory royalty.	43 CFR 3107.71—Payment of compensatory royalty.	No significant change.
43 CFR 3107.9–2—Subsurface storage of oil and gas.	43 CFR 3107.72—Subsurface storage of oil and gas.	No significant change.

43 CFR SUBPART 3108—RELINQUISHMENT, TERMINATION, CANCELLATION

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3108.1—As a lessee, may I relinquish my lease?.	43 CFR 3108.10—Relinquishment	No significant change.

43 CFR SUBPART 3108—RELINQUISHMENT, TERMINATION, CANCELLATION—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3108.2—Termination by operation of law and reinstatement.	Termination by operation of law and reinstatement.	No significant change.
43 CFR 3108.2–1—Automatic termination	43 CFR 3108.21—Automatic termination	The proposed rule would remove the reference to “a bill rendered by the designated Service office” from the section on automatic terminations, since the Office of Natural Resources Revenue’s (ONRR) no longer sends courtesy notices; and would specify that the automatic termination provision does not apply when rental becomes due on a date other than the anniversary date, unless the lessee fails to pay the rental within the period prescribed by the BLM notice to reflect developments in case law.
43 CFR 3108.2–2—Reinstatement at existing rental and royalty rates: Class I reinstatements.	43 CFR 3108.22—Reinstatement at existing rental and royalty rates: Class I reinstatements.	The proposed rule would revise the explanation of “reasonable diligence” to reference payment to the ONRR’s online rental payment system.
43 CFR 3108.2–3—Reinstatement at higher rental and royalty rates: Class II reinstatements.	43 CFR 3108.23—Reinstatement at higher rental and royalty rates: Class II reinstatements.	The proposed rule would remove the grounds for a Class II reinstatement to apply to all noncompetitive leases; would remove references to reinstating leases that terminated before 2005; would change outdated references to the House Committee on Interior and Insular Affairs to the House Committee on Natural Resources; and would remove the reference to royalty reductions, which are already covered under 43 CFR subpart 3103.
43 CFR 3108.2–4—Conversion of unpatented oil placer mining claims: Class III reinstatements.	Removed	The proposed rule would remove this section as the IRA rescinded the authority for Class III reinstatements.
43 CFR 3108.3—Cancellation	43 CFR 3108.30—Cancellation	No significant change.
43 CFR 3108.4—Bona fide purchasers	43 CFR 3108.40—Bona fide purchasers	No significant change.
43 CFR 3108.5—Waiver or suspension of lease rights.	43 CFR 3108.50 Waiver or suspension of lease rights.	No significant change.

43 CFR SUBPART 3109—LEASING UNDER SPECIAL ACTS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3109.1—Rights-of-way	Rights-of-way	No significant change.
43 CFR 3109.1–1—Generally	43 CFR 3109.11—Generally	No significant change.
43 CFR 3109.1–2—Application	43 CFR 3109.12—Application	The proposed rule would add a requirement for applicants to provide a map to process rights-of-way (ROW) lease applications.
43 CFR 3109.1–3—Notice	43 CFR 3109.13—Notice	No significant change.
43 CFR 3109.1–4—Award of lease or compensatory royalty agreement.	43 CFR 3109.14—Award of lease or compensatory royalty agreement.	No significant change.
43 CFR 3109.1–5—Compensatory royalty agreement or lease.	43 CFR 3109.15—Compensatory royalty agreement or lease.	The proposed rule would add a list of references to the part 3100 regulations that apply to ROW leases covered by subpart 3109 for clarity.
43 CFR 3109.2—Units of the National Park System.	43 CFR 3109.20—Units of the National Park System.	No significant change.
43 CFR 3109.2–1—Authority to lease. [Reserved].	Removed	No significant change.
43 CFR 3109.2–2—Area subject to lease. [Reserved].	Removed	No significant change.
43 CFR 3109.3—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.	43 CFR 3109.30—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.	No significant change.

43 CFR Part 3110—Noncompetitive Leases

- Removes this part in its entirety as required by the IRA.

43 CFR SUBPART 3120—COMPETITIVE LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3120.1—General	General	No significant change.
43 CFR 3120.1–1—Lands available for competitive leasing.	43 CFR 3120.11—Lands available for competitive leasing.	No significant change.
43 CFR 3120.1–2—Requirements	43 CFR 3120.12—Requirements	No significant change.
43 CFR 3120.1–3—Protests and appeals	43 CFR 3120.13—Protests	The proposed rule would update the language under protests and appeals to reflect developments in case law.
43 CFR 3120.2—Lease terms	Lease terms	No significant change.
43 CFR 3120.2–1—Duration of lease	43 CFR 3120.21—Duration of lease	No significant change.
43 CFR 3120.2–2—Dating of leases	43 CFR 3120.22—Dating of leases	No significant change.
43 CFR 3120.2–3—Lease size	43 CFR 3120.23—Lease size	No significant change.
43 CFR 3120.3—Nomination process	43 CFR 3120.30—Nomination process	The proposed rule would update the nomination process to make clear that they are nonbinding, would add a new filing fee, and would remove the allowance for noncompetitive lease offers to be submitted on unnominated parcels.
43 CFR 3120.3–1—General	43 CFR 3120.31—General	No significant change.
43 CFR 3120.3–2—Filing of a nomination for competitive leasing.	43 CFR 3120.32—Filing of a nomination for competitive leasing.	No significant change.
43 CFR 3120.3–3—Minimum bid and rental remittance.	Removed	The proposed rule would update this section to make nominations nonbinding.
43 CFR 3120.3–4—Withdrawal of a nomination	Removed	The proposed rule would update this section to make clear that nominations are nonbinding.
43 CFR 3120.3–5—Parcels receiving nominations.	43 CFR 3120.33—Parcels receiving nominations.	No significant change.
43 CFR 3120.3–6—Parcels not receiving nominations.	Removed	The proposed rule would update this section to remove the allowance for noncompetitive lease offers to be submitted on unnominated parcels.
43 CFR 3120.3–7—Refund	Removed	The proposed rule would update this section to make clear that nominations are nonbinding.
New	Expressions of interest	The proposed rule would add information on the submission of EOIs; and would add a new filing fee for EOIs, as required by the IRA.
New	43 CFR 3120.41—Process	The proposed rule would clarify the BLM's existing discretion to deny EOIs that are not in the public interest.
New	43 CFR 3120.42—Agency Inventory of Leasing.	The proposed rule would add a section providing that periodically the BLM will calculate the acreage for which EOIs have been submitted in the previous year and the total acreage offered for lease.
43 CFR 3120.4—Notice of competitive lease sale.	Notice of competitive lease sale	No significant change.
43 CFR 3120.4–1—General	43 CFR 3120.51 General	No significant change.
43 CFR 3120.4–2—Posting of notice	43 CFR 3120.52—Posting timeframes	No significant change.
43 CFR 3120.5—Competitive sale	Competitive auction	No significant change.
43 CFR 3120.5–1—Oral or Internet-based auction.	43 CFR 3120.61—Competitive auction	No significant change.
43 CFR 3120.5–2—Payments required	43 CFR 3120.62—Payments required	The proposed rule would increase the minimum bonus bid from \$2 per acre to \$10 per acre, or fraction thereof as required by the IRA; and would add a new requirement that, if a person or entity does not pay the minimum monies owed the day of the sale, the BLM may refer that person or entity to the DOI's Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment.
43 CFR 3120.5–3—Award of lease	43 CFR 3120.63—Award of lease	No significant change.
43 CFR 3120.6—Parcels not bid on at auction	43 CFR 3120.70—Parcels not bid on at auction.	No significant change.
43 CFR 3120.7—Future interest	Future interest	No significant change.
43 CFR 3120.7–1—Nomination to make lands available for competitive lease.	43 CFR 3120.81—Nomination or Expression of Interest to make lands available for competitive lease.	No significant change.

43 CFR SUBPART 3120—COMPETITIVE LEASES—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3120.7-2—Future interest terms and conditions.	43 CFR 3120.82—Future interest terms and conditions.	No significant change.
43 CFR 3120.7-3—Compensatory royalty agreements.	43 CFR 3120.83—Compensatory royalty agreements.	No significant change.

43 CFR SUBPART 3137—UNITIZATION AGREEMENTS-NATIONAL PETROLEUM RESERVE-ALASKA

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3137.23—What must I include in my NPR-A unitization application?	43 CFR 3137.23—NPR-A unitization application.	The proposed rule would add a new filing fee for unit applications.
43 CFR 3137.61—How do I change unit operators?	43 CFR 3137.61—Change in unit operators ...	The proposed rule would add a new filing fee for successor operators.

43 CFR SUBPART 3138—SUBSURFACE STORAGE AGREEMENTS IN THE NATIONAL PETROLEUM RESERVE-ALASKA (NPR-A)

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3138.11—How do I apply for a subsurface storage agreement?	43 CFR 3138.11—Applications for a subsurface storage agreement.	The proposed rule would add a new filing fee for subsurface storage agreements.

43 CFR SUBPART 3140—CONVERSION OF EXISTING OIL AND GAS LEASES AND VALID CLAIMS BASED ON MINERAL LOCATIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3140.0-1—Purpose	43 CFR 3140.1—Purpose	No significant change.
43 CFR 3140.0-3—Authority	43 CFR 3140.3—Authority	No significant change.
43 CFR 3140.0-5—Definitions	43 CFR 3140.5—Definitions	No significant change.
43 CFR 3140.1—General provisions	General provisions	No significant change.
43 CFR 3140.1-1—Existing rights	43 CFR 3140.11—Existing rights	The proposed rule would clarify that the application time period ended on November 15, 1983.
43 CFR 3140.1-2—Notice of intent to convert ..	43 CFR 3140.12—Notice of intent to convert	No significant change.
43 CFR 3140.1-3—Exploration plans	43 CFR 3140.13—Exploration plans	No significant change.
43 CFR 3140.1-4—Other provisions	43 CFR 3140.14—Other provisions	The proposed rule would specify that royalty rate reductions for tar sands would not apply to oil and gas leases and vice versa.
43 CFR 3140.2—Applications	Applications	No significant change.
43 CFR 3140.2-1—Forms	43 CFR 3140.21—Forms	No significant change.
43 CFR 3140.2-2—Who may apply	43 CFR 3140.22—Who may apply	No significant change.
43 CFR 3140.2-3—Application requirements	43 CFR 3140.23—Application requirements ...	No significant change.
43 CFR 3140.3—Time limitations	Time limitations	No significant change.
43 CFR 3140.3-1—Conversion applications	43 CFR 3140.31—Conversion applications	No significant change.
43 CFR 3140.3-2—Action on an application	43 CFR 3140.32—Action on an application	No significant change.
43 CFR 3140.4—Conversion	Conversion	No significant change.
43 CFR 3140.4-1—Approval of plan of operations (and unit and operating agreements).	43 CFR 3140.41—Approval of plan of operations (and unit and operating agreements).	No significant change.
43 CFR 3140.4-2—Issuance of the combined hydrocarbon lease.	43 CFR 3140.42—Issuance of the combined hydrocarbon lease.	No significant change.
43 CFR 3140.5—Duration of the lease	43 CFR 3140.50—Duration of the lease	No significant change.
43 CFR 3140.6—Use of additional lands	43 CFR 3140.60—Use of additional lands	No significant change.
43 CFR 3140.7—Lands within the National Park System.	43 CFR 3140.70—Lands within the National Park System.	No significant change.

43 CFR SUBPART 3141—LEASING IN SPECIAL TAR SAND AREAS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3141.0-1—Purpose	43 CFR 3141.1—Purpose	No significant change.
43 CFR 3141.0-3—Authority	43 CFR 3141.3—Authority	No significant change.
43 CFR 3141.0-5—Definitions	43 CFR 3141.5—Definitions	No significant change.
43 CFR 3141.0-8—Other Applicable Regulations.	43 CFR 3141.8—Other Applicable Regulations.	No significant change.
43 CFR 3141.1—General	43 CFR 3141.10—General	No significant change.
43 CFR 3141.2—Prelease exploration within Special Tar Sand Areas.	Prelease exploration within Special Tar Sand Areas.	No significant change.

43 CFR SUBPART 3141—LEASING IN SPECIAL TAR SAND AREAS—Continued

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3141.2—Geophysical exploration	43 CFR 3141.21—Geophysical exploration	No significant change.
43 CFR 3141.2—Exploration licenses	43 CFR 3141.22—Exploration licenses	No significant change.
43 CFR 3141.3—Land use plans	43 CFR 3141.30—Land use plans	The proposed rule would specify that royalty rate reductions for tar sands would not apply to oil and gas leases and vice versa.
43 CFR 3141.4—Consultation	Consultation	No significant change.
43 CFR 3141.4—1—Consultation with the Governor.	43 CFR 3141.41—Consultation with the Governor.	No significant change.
43 CFR 3141.4—2—Consultation with others	43 CFR 3141.42—Consultation with others	No significant change.
43 CFR 3141.5—Leasing procedures	Leasing procedures	No significant change.
43 CFR 3141.5—1—Economic evaluation	43 CFR 3141.51—Economic evaluation	No significant change.
43 CFR 3141.5—2—Term of lease	43 CFR 3141.52—Term of lease	No significant change.
43 CFR 3141.5—3—Royalties and rentals	43 CFR 3141.53—Royalties and rentals	No significant change.
43 CFR 3141.5—4—Lease size	43 CFR 3141.54—Lease size	No significant change.
43 CFR 3141.5—5—Dating of lease	43 CFR 3141.55—Dating of lease	No significant change.
43 CFR 3141.6—Sale procedures	Sale procedures	No significant change.
43 CFR 3141.6—1—Initiation of competitive lease offering.	43 CFR 3141.61—Initiation of competitive lease offering.	No significant change.
43 CFR 3141.6—2—Publication of a notice of competitive lease offering.	43 CFR 3141.62—Publication of a notice of competitive lease offering.	No significant change.
43 CFR 3141.6—3—Conduct of sales	43 CFR 3141.63—Conduct of sales	No significant change.
43 CFR 3141.6—4—Qualifications	43 CFR 3141.64—Qualifications	No significant change.
43 CFR 3141.6—5—Fair market value for combined hydrocarbon leases.	43 CFR 3141.65—Fair market value for combined hydrocarbon leases.	The proposed rule would remove this section as it is not needed with the changes to § 3141.63.
43 CFR 3141.6—6—Rejection of bid	43 CFR 3141.65—Rejection of bid	No significant change.
43 CFR 3141.6—7—Consideration of next highest bid.	43 CFR 3141.66—Consideration of next highest bid.	No significant change.
43 CFR 3141.7—Award of lease	43 CFR 3141.70—Award of lease	No significant change.

43 CFR SUBPART 3142—PAYING QUANTITIES/DILIGENT DEVELOPMENT FOR COMBINED HYDROCARBON AND TAR SAND LEASES

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3142.0—1—Purpose	43 CFR 3142.1—Purpose	No significant change.
43 CFR 3142.0—3—Authority	43 CFR 3142.3—Authority	No significant change.
43 CFR 3142.0—5—Definitions	43 CFR 3142.5—Definitions	Added definitions for production in paying quantities.
43 CFR 3142.1—Diligent development	43 CFR 3142.10—Diligent development	No significant change.
43 CFR 3142.2—Minimum production levels	Minimum production levels	No significant change.
43 CFR 3142.2—1—Minimum production schedule.	43 CFR 3142.21—Minimum production schedule.	No significant change.
43 CFR 3142.2—2—Advance royalties in lieu of production.	43 CFR 3142.22—Advance royalties in lieu of production.	No significant change.
43 CFR 3142.3—Expiration	43 CFR 3142.30—Expiration	No significant change.

43 CFR SUBPART 3151—EXPLORATION OUTSIDE OF ALASKA

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3151.1—Notice of intent to conduct oil and gas geophysical exploration operations.	43 CFR 3151.10—Notice of intent to conduct oil and gas geophysical exploration operations.	The proposed rule would require notices of intent to include the filing fee required by 43 CFR 3000.120 in order to be to consider a Notice of Intent to Conduct Oil and Gas Exploration Operations properly filed.
43 CFR 3151.2—Notice of completion of operations.	43 CFR 3151.20—Notice of completion of operations.	No significant change.
New	43 CFR 3151.30—Collection and submission of data.	The proposed rule would add a new requirement for the permittee to provide the BLM with all data and information obtained in carrying out the exploration plan, matching the requirement for geophysical exploration permits in Alaska.

43 CFR SUBPART 3160—ONSHORE OIL AND GAS OPERATIONS: GENERAL

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3160.0–5—Definitions	43 CFR 3160.0–5—Definitions	The proposed rule would add definitions for “shut-in well” and “temporarily abandoned well.”

43 CFR SUBPART 3162—REQUIREMENTS FOR OPERATING RIGHTS OWNERS AND OPERATORS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3162.3–4—Well abandonment	43 CFR 3162.3–4—Well abandonment	The proposed rule would add a cap for temporarily abandoning a well and new requirements for shut-in wells to reduce the liability to the public.

43 CFR SUBPART 3165—RELIEF, CONFLICTS, AND APPEALS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3165.1—Relief from operating and producing requirements.	43 CFR 3165.1—Relief from operating and/or producing requirements.	The proposed rule would clarify that the BLM would not grant lease suspensions based solely on an APD filed at the end of a lease’s life cycle and would ensure that any suspension is justified and tied to an end date.

43 CFR 3171—APPROVAL OF OPERATIONS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3171.6—Components of a complete APD package.	43 CFR 3171.6—Components of a complete APD package.	The proposed rule would avoid the need to incorporate by reference the National Spatial Reference System, North American Datum 1983.
43 CFR 3171.14—Valid Period of Approved APD.	43 CFR 3171.14—Valid Period of Approved APD.	The proposed rule would change the validity period for an APD from 2 years to 3 years and would remove the potential for an extension of an APD.

43 CFR 3186—MODEL FORMS

Existing regulation	Proposed regulation	Substantive changes
43 CFR 3186.2—Model Collective Bond	Removed	The proposed rule would remove this section in its entirety due to changes made under 3104.

VII. Procedural Matters*A. Regulatory Planning and Review (E.O. 12866, E.O. 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within the OMB will review all significant rules. The OIRA has determined that this proposed rule is economically significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 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.

This proposed rule would replace the BLM’s current rules governing oil and gas leasing, which are contained in 43 CFR 3100 through 3140, and revise some oil and gas operations, which are contained in 43 CFR 3160 and 3171.

The BLM developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

The BLM reviewed the requirements of the proposed rule and determined that it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE80”, click the

“Search” button, open the Docket Folder, and look under Supporting Documents.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The number of small businesses in states where there are existing Federal oil and gas leases is estimated to be 20,975 for the Crude Petroleum Extraction and Natural Gas Extraction industries (NAICS codes 211120 and 21130, respectively). The BLM concludes that the proposed bonding requirement changes might increase challenges when securing bonds, especially for small businesses. This will increase the cost for business on Federal onshore oil and gas leases and might provide some incentives to shift leasing and operations to State or private lands. The cost of securing bonds may have a disproportionately larger impact on small businesses because it results in a larger percentage of the companies’ net revenue. However, because the bonds would cost an estimated 1 to 3.5 percent of the bond value (one bonding agency reported that over 70 percent of their small-business customers paid 2 percent or less on their surety bond premiums) the annual cost to secure a bond would not be material (see <https://www.insureon.com/small-business-insurance/surety-bonds/cost>).

Finally, the rule would have a distributional and positive impact on the Direct Property and Casualty Insurance Carriers Industry (NAICS 524126). Additional premiums would be paid by lessees in the oil and natural gas extraction industries to surety companies who would be providing the coverage to meet the proposed requirements. The number of small businesses in states where there are

existing Federal oil and gas leases is estimated to be 476,687 in that industry.

C. Congressional Review Act

Based upon the economic analysis, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This proposed rule:

- (a) Would not have an annual effect on the economy of \$100 million or more.
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (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.

D. Unfunded Mandates Reform Act (UMRA)

The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule contains no requirements that would apply to State, local, or tribal governments. The proposed rule would revise requirements that would otherwise apply to the private sector participation in a voluntary Federal program. The costs that the proposed rule would impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is therefore not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

E. Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would replace the BLM’s current rules governing oil and gas leasing, which are contained in 43 CFR 3100 through 3140, and some oil and gas operations, which are contained in 43 CFR 3160 and 3171. Therefore, the proposed rule would impact future leases on Federal land; however, it

would not impact current leases. All other terms in the regulations are not considered a taking of private property as such operations are subject to the existing lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations.

This proposed rule conforms to the terms of the existing leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The proposed rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

G. Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

H. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through

a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty.

The BLM evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 to identify possible effects of the rule on federally recognized Indian Tribes. Since the proposed changes to leasing only apply to Federal lands, the proposed rule will not impact the leasing of Indian minerals.

In August of 2021, the BLM sent a letter to each registered Tribe informing them of certain rulemaking efforts, including the development of this proposed rule. The letter offered Tribes the opportunity for individual government-to-government consultation regarding the proposed rule. The opportunity for tribal consultation will remain open throughout the rulemaking process.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

This proposed rule contains information-collection requirements that are subject to review by OMB under the PRA. OMB has generally approved the existing information collection requirements contained in the regulations that would be affected by this proposed rule under the following OMB Control Numbers:

- 43 CFR 3100, 3120, and Subpart 3162—OMB Control Number 1004–0185;
- 43 CFR 3106—OMB Control Number 1004–0034;
- 43 CFR part 3130—OMB Control Number 1004–0196;
- 43 CFR 3150—OMB Control Number 1004–0162; and
- 43 CFR 3160—OMB Control Number 1004–0137.

The BLM plans to transfer the information collection requirements contained in 43 CFR 3106 from OMB control number 1004–0034 to OMB Control Number 1004–0185 in order to keep similar information collections requirements together under the same

OMB Control Number. Additionally, the BLM plans to transfer information collection requirements contained in 43 CFR 3160 from OMB Control Number 1004–0137 to a new OMB Control Number. The new and revised information collection requirements are discussed as follows, along with the resulting changes in public burdens.

1. Proposed Changes Impacting Information Collections Formerly Under OMB Control Number 1004–0137

The proposed rule would result in new information collection requirements that would require OMB approval under a new OMB control number (formerly 1004–0137). This proposed rule is estimated to result in 33,121 annual responses, 252,928 annual burden hours, \$35,400,000 non-hour cost burdens under this new OMB Control Number.

The proposed new information collection requirements are described as follows.

43 CFR 3162.3–4—Well

Abandonment. The BLM is proposing to modify paragraph (c) to include that no well may be temporarily abandoned unless the operator provides adequate and detailed justifications, verifies the mechanical integrity of the wells, and isolates the completed interval(s). The BLM proposes to add a new paragraph (d) outlining new requirements for operators of shut-in wells. Paragraph (d)(1) provides for notification of the well's shut-in status and shut-in date within 90 days of shut in. Paragraph (d)(2) provides for the verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities within 3 years. When a well remains in a shut-in status by the fourth year, as outlined in paragraph (d)(3), the operator must either: (i) permanently abandon the well; (ii) resume production; or (iii) provide a detailed plan and timeline for the beneficial use for the well. The BLM may grant additional delays provided the operator submits information that confirms the use and is making progress on returning the well to a beneficial use. The new information collection requirements would include:

- Justification for Temporary Well Abandonment—43 CFR 3162.3–4(c);
- Abandon Well Shut-in Status—43 CFR 3162.3–4(d);
- Verification of Mechanical Integrity—43 CFR 3162.3–4(d)(2); and
- Plan and Timeline for Future Beneficial Use—43 CFR 3162.3–4(d)(3)(iii).

The BLM believes these new requirements with yearly interval

checks will help operators stay on top of shut-in wells, thus preventing them from becoming orphaned in the future. The addition of these information collection requirements would result in an addition of 5,000 annual responses, 44,000 annual burden hours.

Currently, there are 301,663 annual responses, 1,835,888 annual burden hours, and \$31,080,000 annual non-hour cost burdens inventoried under the OMB Control Number 1004–0137. This rule will create a new OMB Control Number and removes 28,121 annual responses, 208,298 annual burden hours, and \$31,080,000 annual non-hour cost burdens inventoried under OMB Control Number 1004–0137 into this OMB Control Number.

In addition, there is an adjustment of \$4.3 million in annual non-hour cost burdens (from \$31 million to 35.4 million). This adjustment results from the annual inflation adjustment of filing fees and do not result from the proposed rule. The resulting new estimated total burdens for this new OMB Control Number are provided as follows.

Title of Collection: Onshore Oil and Gas Operations and Production (43 CFR parts 3160 and 3170).

OMB Control Number: 1004–NEW.

Form Numbers: BLM Form 3160–003; BLM Form 3160–004; and BLM Form 3160–005 (these forms will not change).

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Oil and gas operators on public lands and some Indian lands.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 33,121.

Estimated Completion Time per Response: Varies from 4 to 32 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 252,928.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion; One-time; and Monthly.

Annual Burden Cost: \$35,400,000.

2. Proposed Changes Impacting OMB Control Number 1004–0162

Currently, there are 68 annual responses, 26 annual burden hours, and \$25 annual non-hour cost burdens inventoried under OMB Control Number 1004–0162. It is not anticipated that the proposed rule will change the results to the annual responses, annual burden hours, or non-hour cost burdens under this OMB Control Number. The proposed revised information collection requirement is described as follows.

43 CFR 3151.3—Collection and submission of data. The proposed rule would add a new requirement for the permittee to provide the BLM with all data and information obtained in carrying out the exploration plan, matching the requirement for geophysical exploration permits in Alaska. This does not change the existing burden for what applicants need to submit to the BLM for acquiring a geophysical exploration permit.

Title of Collection: Onshore Geophysical Exploration (43 CFR part 3150 and 36 CFR parts 228 and 251).

OMB Control Number: 1004–0162.

Form Number: BLM 3150–4/FS 2800–16; BLM 3150–5/FS 2816a (these forms will not change).

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: The respondents for this collection of information are businesses that seek to conduct geophysical exploration on Federal lands.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Estimated Completion Time per

Response: Varies from 20 minutes to 1 hour, depending on activity.

Number of Respondents: 68.

Annual Responses: 68.

Annual Burden Hours: 26.

Annual Burden Cost: \$1,150.

3. Proposed Changes Impacting OMB Control Number 1004–0185

Currently, there are 9,132 annual responses, 37,695 annual burden hours, and \$751,415 annual non-hour cost burdens inventoried under OMB Control Number 1004–0185. This proposed rule is estimated to result in 16,340 annual responses, 29,410 annual burden hours, \$1,793,159, non-hour cost burdens under this OMB Control Number. The proposed rule would result in new, revised, and removed information collection requirements. Additionally, as discussed earlier, the BLM will also be transferring certain information collection requirements, along with the associated burdens from OMB Control Number 1004–0034 to OMB Control Number 1004–0185. These proposed changes are discussed as follows.

Revised Information Collection Requirements

43 CFR 3100.31(b)—Option Enforceability. The proposed rule revises this requirement to clarify that a statement of the number of acres and the type and percentage of interest to be conveyed and retained by the parties to

the option must be submitted for an option or renewal to be enforceable. This does not change the burden requirement. The existing regulation already states the interest to be conveyed and retained in exercise of the option. The BLM needs to understand if the type of interest is referring to record title or operating rights and the percentage to be conveyed and retained by the option holder.

43 CFR 3105.21—Where to File Communitization Agreements. The proposed rule removes the triplicate filing requirement. The proposed rule adds a new paragraph (b) to this section to require that all applications to form a CA be filed with a statement as to whether the proposed CA deviates from the BLM's current model CA form, and a certification that the applicant received the required signatures. Further, all applications to form a CA shall include an Exhibit A displaying a map of the agreement and the separate agreement tracts and all applications to form a CA shall include an Exhibit B displaying the separate tracts and ownership. The new paragraph (c) states that all applications to form a CA should be submitted at least 90 calendar days prior to first production to ensure correct reporting to the ONRR. These requirements codify existing policy requirements and does not change the existing burden for what applicants to submit to the BLM. The information is needed to understand all the parties that share in the production of a well due to State spacing orders.

43 CFR 3105.31—Where to file Operating, Drilling or Development Contracts. The proposed rule would remove the requirement for five copies of an operating, drilling or development contract to be submitted when these contracts are submitted to the BLM for approval. This reduces the burden to respondents.

43 CFR 3105.40—Subsurface storage application (formerly 3105.5). The proposed rule would designate the existing 43 CFR 3105.5 for gas storage agreements to the proposed numbering 43 CFR 3105.40. This redesignation would be due to the elimination of the section on the combination for joint operations or for transportation of oil. The proposed rule would update paragraph (a) to include designation of successor operators for gas storage agreements among the applications to be filed in the proper BLM office. The proposed rule would update paragraph (b) to remove the requirement for five copies of a gas storage agreements to be submitted when these are filed with the BLM. A new paragraph (c) would require that all applications for a gas

storage agreement or a designation of a successor operator must include the new processing fee found in the fee schedule in 43 CFR 3000.120. The new processing fee is intended to reimburse the BLM for processing the applications.

43 CFR 3105.50—Consolidation of Leases (formerly 3105.6). Leases may be consolidated upon written request of the lessee filed with the proper BLM identify each lease involved by serial number and shall explain the factors that justify the consolidation and requires that each request for a consolidation of leases the processing fee found in the fee schedule in 43 CFR 3000.120. The proposed rule splits the single paragraph under this section into several paragraphs for clarity, however these are not new requirements and do not change the existing burden.

43 CFR 3106.81—Heirs and devisees. The proposed updates this information collection requirement to state that the lease interest will be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a court order, death certificate, or other legal document demonstrating that transferee is to be recognized as the successor of the deceased. These requirements codify existing policy requirements and does not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

43 CFR 3106.82—Change of name. The current regulation requires a notice of the name change to be accompanied by a list of the serial numbers of the leases affected by the name change. This requirement is removed as it is outdated and unenforceable. This lessens the burden to respondents. In practice, the BLM generates a report of the leases affected by the name change and returns that list to the lessee with a notice that recognizes the name change that occurred through operation of law. This section is updated to require that, for a corporate name change, the request should include the Secretary of State's Certificate of Name Change along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM's current approach for processing these types of documents. These requirements codify existing policy requirements and do not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

43 CFR 3106.83—Corporate mergers and dissolution of corporations, partnerships and trust. The proposed rule updates the title of this section from "Corporate merger" to "Corporate

mergers and dissolution of corporations, partnerships and trust.” The goal of the renaming of this section is to incorporate these other types of transfers that have the same process. The current regulation requires a notification of merger to be accompanied by a list of the serial numbers of the leases affected by the merger. This requirement is eliminated as it is outdated and unenforceable. This lessens the burden to respondents. In practice, the BLM does not rely on a list of leases provided by a lessee and instead generates its own report of the leases affected by the merger. The BLM returns that list to the lessee with a notice that recognizes the merger that occurred through operation of State law. This section is updated to require that, for a merger, the request should include the Secretary of State’s Certificate of Merger along with the Articles of Incorporation, or Amendment, if available. This is consistent with the BLM’s current approach for processing these types of documents. These requirements codify existing policy requirements and do not change the existing burden for what applicants currently submit to the BLM to show proof on how the lease interest transferred to another party.

43 CFR 3108.23—Reinstatement at higher rental and royalty rates: Class II reinstatements. The proposed rule would eliminate the existing paragraph (b)(1) in its entirety. This provision addresses the timeliness of Class II reinstatement petitions for leases that terminated on or before August 8, 2005, and is no longer applicable. This does not change an existing burden since a petition to reinstate a lease that terminated on or before August 8, 2005, would have already been received by an applicant.

43 CFR 3109.12—Application. The proposed rule also adds a new requirement that the applicant must include a map of the applicable lands which will support the bidding process related to the lease or compensatory royalty agreement. These requirements codify existing policy requirements and does not change the existing burden for what applicants to submit to the BLM.

New Information Collection Requirements

43 CFR 3106.84—Sheriff’s sale/deed. The proposed rule adds a new section under other types of transfers to include sheriff’s sales. The BLM accepts these types of transfers to recognize lease interests transferred to other parties through foreclosure actions. The proposed rule states that where a notice of sale of the leasehold interest is

published pursuant to State law applicable to the execution of sales of real property, the purchaser shall submit a copy of the Sheriff’s Certificate of Sale after any redemption period has passed to the proper BLM office. Additional paragraphs under this new section include a filing fee requirement, a qualification statement, and bonding requirements. These requirements are consistent with the BLM’s current approach for processing these types of documents. These documents are already submitted and recognized by the BLM when changes in ownership of interests in Federal oil and gas leases occur without any intention by the holder of interest to assign or transfer interest. The addition of this information collection would result in an addition of 1 annual response, 1 annual burden hour, and \$55.80 annual non-hour cost burdens.

43 CFR 3120.43—Expression of Interest. The proposed rule adds a new section titled “Expression of Interest” to codify the current process of receiving EOIs for competitive leasing to the BLM’s online leasing system. An expression of interest is a description of lands that an applicant seeks to include in a competitive auction. The expression must provide a description of the lands identified by legal land description and identify the U.S. mineral ownership percentage. The addition of this information collection would result in an addition of 395,864 annual responses (calculated by acreage received), 3,958,640 annual burden hours (to process the acreage received), and \$220,892,112 annual non-hour cost burdens.

Removed Information Collection Requirements

43 CFR 3101.26—Ad-Hoc Acreage Statement. At any time, the BLM may require a lessee or operator to file a statement showing as of the specified date, the serial number and the date of each lease in which he/she has any interest, in the particular State, setting forth the acreage covered thereby. The BLM uses the information to determine whether or not a lessee is in compliance with the law with respect to statutory acreage limitations. This revision results in the reduction of 1 response and 1 burden hour, annually.

43 CFR 3105.4—Combination for joint operations or for transportation of oil. The proposed rule eliminates the section on the combination for joint operations or for transportation of oil. These provisions are not used by the BLM or operators and are outdated. This revision results in the reduction of 1 response and 1 burden hour, annually.

43 CFR 3107.8—Renewal leases. The proposed rule eliminates the provisions on renewal leases in their entirety because they are outdated. Renewal leases that had an expiration date after November 15, 1990, were eligible for one last renewal under the provisions of the November 15, 1990, Act, *i.e.*, for 10 years, and for so long thereafter as oil and gas is produced in paying quantities. If a lease was renewed after the 1990 amendment and was not producing oil or gas at the end of its 10-year renewal term, the lease expired with no further option for renewal. The removal of this information collection would result in a reduction 1 annual response, 1 annual burden hour, and \$475 annual non-hour cost burdens.

D. Class III reinstatement petition (43 CFR 3108.2–4).

The requirement would be removed from the proposed rule resulting in a reduction of one annual response and one burden hour as well as \$651 in non-hour cost burden.

Information Collection Requirements Transferred From OMB Control Number 1004–0034.

The following two information collection will be moved into OMB Control Number 1004–0185 to keep information collection requirements in Subpart 3106 under the same OMB Control Number:

1. **43 CFR 3106.41—Transfers of record title and of operating rights (subleases) and 3106.42, Transfers of other interests, including royalty interests and production payments.** This transfer would result in 3,852 annual responses, 1,926 annual burden hours, and \$404,460 non-hours cost burdens being added to this OMB Control Number.

2. **43 CFR 3106.43—Mass transfers.** This transfer would result in 4,944 annual responses, 2,472 annual burden hours, and \$519,120 non-hours cost burdens being added to this OMB Control Number.

The resulting new estimated total burdens for OMB Control Number 1004–0185 are provided as follows.

Title of Collection: Onshore Oil and Gas Leasing, and Drainage Protection (43 CFR parts 3100, 3120, and 3150, and Subpart 3162).

OMB Control Number: 1004–0185.

Form Number: None.

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Holders of onshore oil and gas lease and public lands and Indian lands (except on the Osage Reservation), operators of such

leases, and holders of operating rights on such leases.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Varies from 1 hour to 24 hours per response, depending on activity.

Number of Respondents: 16,339.

Annual Responses: 16,340.

Annual Burden Hours: 29,410.

Annual Burden Cost: \$1,793,159.

4. Proposed Changes Impacting OMB Control Number 1004–0196

Currently, there are there are 21 annual responses and 220 annual burden hours associated with this OMB control number. There are also no non-hours cost burden currently associated with this OMB control number. The proposed rule is not projected to result in any new annual responses The additional requirements proposed in 43 CFR 3170.80(b) include description of the anticipated PA(s) size and define the proposed PAs in the unit designation agreements required by 43 CFR 3137.21, and 3137.23 is not projected to result in additional burden for that information collection.

43 CFR 3000.12 would introduce new filing fees for the following information collections, resulting in a new non-hour burden cost of \$1,320:

- Statement of change of unit operator (43 CFR 3137.61); and
- Application for storage agreement (43 CFR 3138.11). Additionally, 43 CFR 3137.86, New information demonstrating that the participating area should be larger or smaller than previously determined, contains the following three information collection requirements for which the burden has not been formerly captured in this OMB control number:
 - Information demonstrating that a participating area should be larger than previously determined (43 CFR 3137.86(a)(1));
 - Application to enlarge participating area outside of existing boundaries (43 CFR 3137.86(a)(2)); and
 - Statement for additional committed tract or tracts are added to the unit under paragraph (a)(2) (43 CFR 3137.86(a)(3)).

The resulting new estimated total burdens for OMB Control Number 1004–0196 are provided as follows.

Title of Collection: Oil and Gas Leasing; National Petroleum Reserve—Alaska (43 CFR part 3130).

OMB Control Number: 1004–0196.

Form Number: None.

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Participants within the oil and gas leasing program within the National Petroleum Reserve-Alaska.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Estimated Completion Time per Response: Varies from 15 minutes to 80 hours, depending on activity.

Number of Respondents: 24.

Annual Responses: 24.

Annual Burden Hours: 223.

Annual Burden Cost: \$1,320.

In summary, the net burden changes that would result from the new, revised, and removed information collection requirements as contained in the proposed rule are as follows:

OMB Control No.	Annual responses			Annual burden hours			Non-hour burden costs		
	Current	Proposed	Change	Current	Proposed	Change	Current	Proposed	Change
1004–ONEW (transfer from 1004–0137)	28,121	33,121	+5,000	208,928	252,928	+44,000	\$31,080,000	\$35,400,000	+\$4,320,000
1004–0162	68	68	0	26	26	0	25	1,150	+1,125
1004–0185	9,132	16,340	+7,208	37,695	29,410	– 8,285	751,415	1,793,159	+1,041,744
1004–0196	21	24	+3	220	223	+3	0	1,320	+1,320
Total Burden Changes	37,342	49,553	+12,211	246,869	282,587	+35,716	31,831,440	39,125,897	+5,364,189
Minus Burden Transferers from 1004–0034: .....	.....	.....	– 8,796	.....	.....	– 4,398	.....	.....	– 923,580
Minus Burden Transfer from 1004–0137 .....	.....	.....	– 28,121	.....	.....	– 208,928	.....	.....	4,320,000
Minus changes from the IRA in 1004–0185 for EOIs: .....	.....	.....	– 395	.....	.....	– 3,160	.....	.....	– 1,975,000
Net Burden Changes Resulting from the Proposed Rule: .....	.....	.....	+3,020	.....	.....	+28,160	.....	.....	1,854,391

If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information-collection by the date indicated in the DATES and ADDRESSES sections as previously described

J. National Environmental Policy Act

A detailed environmental analysis under NEPA is not required, because the proposed rule is covered by a categorical exclusion (see 43 CFR 46.205). This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this proposed rule is “of an administrative, financial, legal, technical, or procedural nature.” We have also determined that the proposed rule does not involve any of the

extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of “any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a “significant energy action” as

“any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by OIRA as a significant energy action.”

The BLM believes that the rule may affect the location chosen for future oil or gas development but will have little impact on an entity's decision to invest in energy development, the size of that development, or the production from that development. As a result of this

rule, an entity holding existing nonproducing leases may choose to shift more future development to these existing leases or to develop non-Federal acreage instead of securing new Federal leases, and some entities may be relatively less likely to choose a new Federal lease to a comparable non-Federal lease. Also, any incremental changes in oil or gas production estimated to result from the rule's enactment would constitute a small fraction of total U.S. gas production, and any potential and temporary deferred production of oil would likewise constitute a small fraction of total U.S. oil production. For these reasons, we do not expect that the proposed rule would significantly impact the supply, distribution, or use of energy. As such, the rulemaking is not a "significant energy action" as defined in Executive Order 13211.

L. Clarity of This Regulation (Executive Orders 12866, 12988, and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and 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 the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this final rule include: Peter Cowan, Senior Mineral Leasing Specialist in BLM Headquarters; Jennifer Spencer, Mineral Leasing Specialist in BLM Headquarters; William Lambert, Petroleum Engineer in BLM Headquarters; Christopher Rhymes, former Attorney Advisor in DOI Office of the Solicitor. Technical support provided by: Scott Rickard, Economist in BLM Headquarters; Holly Elliott, Planning and Environmental Specialist in BLM Wind River Bighorn

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List of Subjects

43 CFR Part 3000

Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3140

Government contracts, Hydrocarbons, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3150

Administrative practice and procedure, Alaska, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-

mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Administrative practice and procedure, Flaring, Immediate assessments, Indians-lands, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and recordkeeping requirements, Royalty-free use, Venting.

43 CFR Part 3180

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3000, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180 as follows:

- 1. Revise part 3000 to read as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

Sec.

- 3000.5 Definitions.
- 3000.10 Nondiscrimination.
- 3000.20 False statements.
- 3000.30 Unlawful interests.
- 3000.40 Appeals.
- 3000.50 Limitations on time to institute suit to challenge a decision of the Secretary.
- 3000.60 Filing of documents.
- 3000.70 Multiple development.
- 3000.80 Management of Federal minerals from reserved mineral estates.
- 3000.90 Enforcement actions under 30 U.S.C. 195.
- 3000.100 Fees in general.
- 3000.110 Processing fees on a case-by-case basis.
- 3000.120 Fee schedule for fixed fees.
- 3000.130 Fiscal terms of new leases.

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

§ 3000.5 Definitions.

As used in 43 CFR parts 3000 and 3100, the term:

Acquired lands means lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

Acreage for which expressions of interest have been submitted means acreage that is identified in an expression of interest received by BLM, that has not been proposed for leasing

in any pending sale or other expression of interest pending BLM disposition, and for which BLM may lawfully issue an oil and gas lease.

Acres offered for lease means all acres that BLM has offered for oil and gas lease, regardless of whether those acres are acreage for which expressions of interest have been submitted.

Act or MLA means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

Anniversary date means the same day and month in succeeding years as that on which the lease became effective.

Authorized officer means any BLM employee authorized to perform the duties described in parts 3000 and 3100.

BLM or Bureau means the Bureau of Land Management.

Director means the Director of the Bureau of Land Management.

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

Interest means ownership in a lease, or prospective lease, of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An *interest* may be created by direct or indirect ownership, including options. *Interest* does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in 43 CFR 3101.20 and qualifications of lessees in 43 CFR subpart 3102.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

ONRR means the Office of Natural Resources Revenue.

Party in interest means a party who is or will be vested with any interest under the lease as defined in this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest.

Person means any individual or entity, including a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.

Proper BLM office means the Bureau of Land Management state office having jurisdiction over the lands subject to the regulations in parts 3000 and 3100. (See 43 CFR 1821.10 for office location and

area of jurisdiction of Bureau of Land Management offices.)

Properly filed means a document or form submitted to the proper BLM office with all necessary information and payments, as provided in 43 CFR subpart 1822.

Public domain lands means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

Secretary means the Secretary of the Interior.

Surface managing agency means any Federal agency, other than the BLM, having management responsibility for the surface resources that overlay federally owned minerals.

§ 3000.10 Nondiscrimination.

Any person acquiring a lease under this chapter must comply fully with the equal opportunity provisions of Executive Order 11246 dated September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor (41 CFR part 60 and 43 CFR part 17).

§ 3000.20 False statements.

As provided in 18 U.S.C. 1001, it is a crime punishable by imprisonment or a fine, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3000.30 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in 43 CFR part 20, is allowed or entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—see 43 CFR part 20; Member of Congress—see R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433.)

§ 3000.40 Appeals.

Except as provided in 43 CFR 3000.120, 3000.130, 3101.53(b), 3165.4, and 3427.2, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of 43 CFR parts 3000 or 3100 has a right of appeal pursuant to 43 CFR part 4.

§ 3000.50 Limitations on time to institute suit to challenge a decision of the Secretary.

No action challenging a decision of the Secretary involving any oil or gas lease, offer or application can be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3000.60 Filing of documents.

All necessary documents must be filed in the proper BLM office. Documents may be submitted to the BLM using hard-copy delivery services, in-person delivery, or by electronic filing. A document will be considered filed when it is received in the proper BLM office. When using hard-copy delivery services or in-person delivery, the document will be considered filed only when received during regular business hours. See 43 CFR part 1820, subpart 1822.

§ 3000.70 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral does not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3000.80 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals are reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals will be accomplished under the regulations of 43 CFR parts 3000 and 3100. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

§ 3000.90 Enforcement actions.

The United States Department of Justice is the agency responsible for the enforcement actions described in 30 U.S.C. 195, which makes it unlawful for any person to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the

provisions of the MLA or its implementing regulations; or to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning the:

(a) Value of any lease or portion thereof issued or to be issued under the MLA;

(b) Availability of any land for leasing under the MLA;

(c) Ability of any person to obtain leases under the MLA; or

(d) Provisions of the MLA and its implementing regulations.

§ 3000.100 Fees in general.

(a) *Setting fees.* Fees may be statutorily set fees, relatively nominal filing fees, or processing fees intended to reimburse the BLM for its reasonable processing costs. For processing fees, the BLM takes into account the factors in section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. The BLM considers the factors for each type of document when the processing fee is a fixed fee and for each individual document when the fee is decided on a case-by-case basis, as explained in § 3000.110.

(b) *Conditions for filing.* The BLM will not accept a document that the applicant submits without the proper filing or processing fee amounts except for documents where the BLM sets the fee on a case-by-case basis. Fees are not refundable except as provided for case-by-case fees in § 3000.110. The BLM will keep the fixed filing or processing fee as a service charge even if the BLM does not approve the application or the applicant withdraws it completely or partially.

(c) *Periodic adjustment.* The BLM will periodically adjust fees established in this subchapter according to changes in the Implicit Price Deflator for Gross Domestic Product, which is published quarterly by the U.S. Department of Commerce. Because the fee recalculations are simply based on a mathematical formula, the BLM will change the fees in final rules without opportunity for notice and comment.

(d) *Timing of fee applicability.* (1) For a document that the BLM received before November 7, 2005, the BLM will not charge a fixed fee or a case-by-case fee under this subchapter for processing that document, except for fees applicable under then-existing regulations.

(2) For a document that the BLM receives on or after November 7, 2005, the applicant must include the required fixed fees with the documents filed, as provided in § 3000.120(a) of this chapter, and the applicant is subject to case-by-case processing fees as provided in § 3000.110 and under other provisions of this chapter.

§ 3000.110 Processing fees on a case-by-case basis.

(a) Fees in this subchapter are designated either as case-by-case fees or as fixed fees. The fixed fees are established in this subchapter for specified types of documents. However, if the BLM decides at any time that a particular document designated for a fixed fee will have a unique processing cost, such as the preparation of an Environmental Impact Statement, the BLM may set the fee under the case-by-case procedures in this section.

(b) For case-by-case fees, the BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures:

(1) The applicant may request the BLM's approval to do all or part of any study or other activity according to standards the BLM specifies, thereby reducing the BLM's costs for processing the document, in accordance with all other applicable laws and regulations.

(2) Before performing any case processing, the BLM will give the applicant a written estimate of the proposed fee for reasonable processing costs after the BLM considers the FLPMA section 304(b) factors.

(3) The applicant may comment on the proposed fee.

(4) The BLM will then give the applicant the final estimate of the processing fee amount after considering the applicant's comments and any BLM-approved work that the applicant will do.

(i) If the BLM encounters higher or lower processing costs than anticipated, the BLM will re-estimate the reasonable processing costs following the procedure in paragraphs (b)(1) through (4) of this section, but the BLM will not stop ongoing processing unless the applicant does not pay in accordance with paragraph (b)(5) of this section.

(ii) If the fee the applicant would pay under this paragraph (b)(4) is less than the BLM's actual costs as a result of consideration of the FLPMA section 304(b) factors, and the BLM is not able

to process the document promptly because of the unavailability of funding or other resources, the applicant will have the option to pay the BLM's actual costs to process the document.

(iii) Once processing is complete, the BLM will refund to the applicant any money that the BLM did not spend on processing costs.

(5)(i) The BLM will periodically estimate what its reasonable processing costs will be for a specific period and will bill the applicant for that period. Payment is due to the BLM 30 days after the applicant receives its bill. The BLM will stop processing the document if the applicant does not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than the BLM's reasonable processing costs for the period, the BLM will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without the BLM's prior written approval.

(6) The applicant must pay the entire fee before the BLM will issue the final document.

(7) The applicant may appeal the BLM's estimated processing costs in accordance with the regulations in 43 CFR part 4, subpart E. The applicant may also appeal any determination the BLM makes under paragraph (a) of this section that a document designated for a fixed fee will be processed as a case-by-case fee. The BLM will not process the document further until the appeal is resolved, in accordance with paragraph (b)(5)(i) of this section, unless the applicant pays the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, the BLM will adjust the fee in accordance with paragraph (b)(5)(ii) of this section.

§ 3000.120 Fee schedule for fixed fees.

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for FY 2024. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the previous adjustment and will subsequently be posted on the BLM website (<https://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2024 PROCESSING AND FILING FEE TABLE

Document/action	FY 2023 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150, 3160, and 3180):	
Formal Lease nomination	\$125.
Expression of Interest fee per acre, or fraction thereof	5.
Competitive lease application	3,100.
Leasing under right-of-way	660.
Lease consolidation	525.
Assignment and transfer of record title or operating rights	105.
Overriding royalty transfer, payment out of production	15.
Name change, corporate merger, sheriff's deed, corporate dissolution, or transfer to heir/devisee ...	250.
Lease reinstatement, Class I	1,260.
Geophysical exploration permit application—all states	1,150.
Renewal of exploration permit—Alaska	30.
Final application for Federal unit agreement approval, Federal unit agreement expansion, and Federal subsurface gas storage application.	1,200.
Designation of successor operator for Federal agreements	120.
Geothermal (part 3200):	
Noncompetitive lease application	475.
Competitive lease application	185.
Assignment and transfer of record title or operating rights	105.
Name change, corporate merger or transfer to heir/devisee	250.
Lease consolidation	525.
Lease reinstatement	90.
Nomination of lands	135.
plus per acre nomination fee	0.13.
Site license application	70.
Assignment or transfer of site license	70.
Coal (parts 3400, 3470):	
License to mine application	15.
Exploration license application	390.
Lease or lease interest transfer	80.
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	45.
Prospecting permit application amendment	80.
Extension of prospecting permit	130.
Lease modification or fringe acreage lease	35.
Lease renewal	610.
Assignment, sublease, or transfer of operating rights	35.
Transfer of overriding royalty	35.
Use permit	35.
Shasta and Trinity hardrock mineral lease	35.
Renewal of existing sand and gravel lease in Nevada	35.
Public Law 359; Mining in Powersite Withdrawals: General (part 3730):	
Notice of protest of placer mining operations	15.
Mining Law Administration (parts 3800, 3810, 3830, 3860, 3870):	
Application to open lands to location	15.
Notice of location*	20.
Amendment of location	15.
Transfer of mining claim/site	15.
Recording an annual FLPMA filing	15.
Deferment of assessment work	130.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35.
Mineral patent adjudication	3,585 (more than 10 claims).
	1,790 (10 or fewer claims).
Adverse claim	130.
Protest	80.
Oil Shale Management (parts 3900, 3910, 3930):	
Exploration license application	375.
Application for assignment or sublease of record title or overriding royalty	75.
Onshore Oil and Gas Operations and Production (parts 3160, 3170):	
Application for Permit to Drill	11,805.

* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute must be paid.

(b) The amount of a fixed fee is not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

§ 3000.130 Fiscal terms of new leases.

(a) The table in this section shows the fiscal terms for new leases. Terms will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the

previous adjustment and will subsequently be posted on the BLM website (<https://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FISCAL TERMS FOR NEW LEASES TABLE

Oil and gas (parts 3100, 3110, 3120, 3130, 3140)	Fiscal term
Competitive oil and gas, tar sand, and combined hydrocarbon leases.	Rental of \$3 per acre, or fraction thereof, per year during the first 2-year period beginning upon lease issuance, \$5 per acre per year, or fraction thereof, for the following 6 years, and then \$15 per acre, or fraction thereof, per year thereafter.
Competitive lease reinstatement, Class II	Base rental of \$20 per acre, or fraction thereof.
Competitive combined hydrocarbon leases.	Minimum bonus bids of \$25 per acre, or fraction thereof.
Competitive oil and gas and tar sand leases.	Minimum bonus bids of \$10 per acre, or fraction thereof.

(b) The financial terms for new leases are not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

■ 2. Revise part 3100 to read as follows:

PART 3100—OIL AND GAS LEASING

Subpart 3100—Oil and Gas Leasing: General

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- 3100.3 Authority.
- 3100.5 Definitions.
- 3100.9 Information collection.
- 3100.10 Helium.

Drainage

- 3100.21 Compensation for drainage.
- 3100.22 Drilling and production or payment of compensatory royalty.

Options

- 3100.31 Enforceability.
- 3100.32 Effect of option on acreage.
- 3100.33 Option statements.
- 3100.40 Public availability of information.

Subpart 3101—Issuance of Leases

Lease Terms and Conditions

- 3101.11 Lease form.
- 3101.12 Surface use rights.
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- 3101.14 Modification, waiver, or exception.

Acreage Limitations

- 3101.21 Public domain lands.
- 3101.22 Acquired lands.
- 3101.23 Excepted acreage.
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- 3101.30 Leases within unit areas, joinder evidence required.
- 3101.40 Terminated leases.

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- 3101.51 General requirements.
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- 3101.53 Appeals.
- 3101.60 State's or charitable organization's ownership of surface overlying federally owned minerals.

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- 3102.10 Who may hold leases.
- 3102.20 Non-U.S. Citizens.
- 3102.30 Minors.
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Compliance, Certification of Compliance and Evidence

- 3102.51 Compliance.
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Subpart 3103—Fees, Rentals, and Royalty

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- 3103.11 Form of remittance.
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- 3104.10 Bond obligations.
- 3104.20 Lease bond.
- 3104.30 Statewide bonds.
- 3104.40 Surface owner protection bond.
- 3104.50 Increased amount of bonds.
- 3104.60 Where filed and number of copies.
- 3104.70 Default.
- 3104.80 Termination of period of liability.
- 3104.90 Bonds held prior to [EFFECTIVE DATE OF THE FINAL RULE].

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- 3105.10 Cooperative or unit agreement.

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- 3105.22 Purpose.
- 3105.23 Requirements.
- 3105.24 Communitization agreement terms.

Operating, Drilling, or Development Contracts

- 3105.31 Where filed.
- 3105.32 Purpose.
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Subsurface Storage of Oil and Gas

- 3105.41 Where filed.
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Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

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3109.21–3109.22 [Reserved]

3109.30 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, and 1740; and 42 U.S.C. 15801.

Subpart 3100—Onshore Oil and Gas Leasing: General**§ 3100.3 Authority.**

(a)(1) *Public domain.* Oil and gas in public domain lands and lands returned to the public domain under 43 CFR 2370 are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148).

(2) *Exceptions.* (i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages;

(iv) Naval petroleum and oil shale reserves;

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska;

(vi) Lands recommended for wilderness allocation by the surface managing agency;

(vii) Lands within the BLM's wilderness study areas;

(viii) Lands designated by Congress as wilderness study areas, except where oil

and gas leasing is specifically allowed to continue by the statute designating the study area;

(ix) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress;

(x) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act (16 U.S.C. 1133) established before midnight, December 31, 1983, unless otherwise provided by law;

(xi) Lands designated under the Wild and Scenic Rivers Act, subject to valid existing rights, and that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1280); and

(xii) Wildlife refuge lands, which are those lands embraced in a withdrawal of lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing. No expressions of interest covering wildlife refuge lands will be considered for oil and gas leasing, except as provided by applicable law.

(b)(1) *Acquired lands.* Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351 et seq.).

(2) *Exceptions.* (i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

(ii) Incorporated cities, towns and villages;

(iii) Naval petroleum and oil shale reserves;

(iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;

(v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;

(vi) Lands reported as excess under the Federal Property and Administrative Services Act of 1949;

(vii) Lands acquired by the United States by foreclosure or otherwise for resale;

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within the BLM's wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress;

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act (16 U.S.C. 1133) established before midnight, December 31, 1983, unless otherwise provided by law;

(xiii) Lands designated under the Wild and Scenic Rivers Act, subject to valid existing rights, and that constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1280); and

(xiv) Wildlife refuge lands, which are those lands embraced in a withdrawal of lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing. No expressions of interest for wildlife refuge lands will be considered except as provided in applicable law.

(c) National Petroleum Reserve—Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

(d) Where oil or gas is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the BLM to lease such lands (see 43 U.S.C. 1457; also Attorney General's Opinion of

April 2, 1941 (Vol. 40 Op. Atty. Gen. 41)).

(e) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared as excess to or surplus by the General Services Administration, authority to lease such lands may be transferred to the Department in accordance with the Federal Property and Administrative Services Act of 1949 and the Mineral Leasing Act for Acquired Lands, as amended.

(f) The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under certain rights-of-way to the owner of the right-of-way or any assignee.

(g)(1) *Certain lands in Nevada.* The Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886), authorizes leasing on certain lands in Nevada.

(2) *Lands patented to the State of California.* The Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026), authorizes leasing on certain lands patented to the State of California.

(3) *National Forest Service Lands in Minnesota.* The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing on certain National Forest Service Lands in Minnesota.

(4) *Units of the National Park System.* The Secretary is authorized to permit mineral leasing in the following units of the National Park System if he/she finds that such disposition would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area, pursuant to the following authorities:

(i) *Lake Mead National Recreation Area*—The Act of October 8, 1964 (16 U.S.C. 460n *et seq.*).

(ii) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area*—The Act of November 8, 1965 (79 Stat. 1295; 16 U.S.C. 460q *et seq.*).

(iii) *Ross Lake and Lake Chelan National Recreation Areas*—The Act of October 2, 1968 (82 Stat. 926; 16 U.S.C. 90 *et seq.*).

(iv) *Glen Canyon National Recreation Area*—The Act of October 27, 1972 (86 Stat. 1311; 16 U.S.C. 460dd *et seq.*).

(5) *Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965 (Pub. L. 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of leasable minerals from lands (or interest in lands) within the recreation area under the jurisdiction of the Secretary of Agriculture in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 *et seq.*), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

(h) Under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), all lands within Recreation and Public Purposes leases and patents are subject to lease under the provisions of this part, subject to such conditions as the Secretary deems appropriate.

(i)(1) Coordination lands are those lands withdrawn or acquired by the United States and made available to the States by cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

(2) Representatives of the BLM and the Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those coordination lands which will not be subject to oil and gas leasing. Coordination lands not closed to oil and gas leasing may be subject to leasing on the imposition of such stipulations as are agreed upon by the State Game Commission, the Fish and Wildlife Service and the BLM.

(j) No lands within a refuge in Alaska open to leasing will be available until the Fish and Wildlife Service has first completed compatibility determinations.

§ 3100.5 Definitions.

As used in this part, the term: *Actual drilling operations* includes not only the physical drilling of a well,

but also the testing, completing or equipping of such well for production.

Assignment means a transfer of all or a portion of the lessee's record title interest in a lease.

Bid means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person for a lease parcel in a competitive lease sale. For leases or compensatory royalty agreements issued under 43 CFR subpart 3109, “bid” means an amount or percent of royalty or compensatory royalty that the owner or lessee must pay for the extraction of the oil and gas underlying the right-of-way.

Competitive auction means an in-person or internet-based bidding process where leases are offered to the highest bidder.

Exception is a limited exemption, for a particular site within the leasehold, to a stipulation.

Lessee means a person holding record title in a lease issued by the United States.

Modification is a change to the provisions of a lease stipulation for some or all sites within the leasehold and either temporarily or for the term of the lease.

National Wildlife Refuge System Lands means lands and water, or interests therein, administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction; wildlife management areas; or waterfowl production areas.

Oil and gas agreement means an agreement between lessees and the BLM to govern the development and allocation of production for existing leases, including, but not limited to, communitization agreements, unit agreements, secondary recovery agreements, and gas storage agreements.

Operating right (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease. Operating rights include the obligation to comply with the terms of the original lease, as it applies to the area or horizons for the interest acquired, including the responsibility to plug and abandon all wells that are no longer capable of producing, reclaim the lease site, and remedy environmental problems.

Operating rights owner means a person holding operating rights in a lease issued by the United States. A

lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

Operator means any person, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Primary term of lease subject to section 4(d) of the Act prior to the revision of 1960 (30 U.S.C. 226–1(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

Primary term of all other leases means the initial term of the lease, which is 10 years.

Qualified bidder means any person in compliance with the laws and regulations governing a bid.

Qualified lessee means any person in compliance with the laws and regulations governing the BLM issued leases held by that person.

Record title means a lessee's interest in a lease, which includes the obligation to pay rent and the ability to assign and relinquish the lease. Record title includes the obligation to comply with the lease terms, including requirements relating to well operations and abandonment. Overriding royalty and operating rights are severable from record title interests.

Responsible bidder means any person who has not defaulted on the payment of winning bids for BLM-issued oil and gas leases, is capable of fulfilling the requirements of onshore BLM oil and gas leases, and does not have a history of noncompliance with applicable statutes and regulations or with the terms of a BLM-issued oil and gas lease. The term “responsible bidder” does not include persons who bid with no intention of paying a winning bid or persons who default on a winning bid.

Responsible lessee means any person who has not defaulted on previous winning bids, is capable of fulfilling the requirements of onshore Federal oil and gas leases, and does not have a history of noncompliance with applicable statutes or the terms of a BLM-issued oil and gas lease.

Sublease means a transfer of a non-record title interest in a lease, *i.e.*, a transfer of operating rights is normally a sublease, and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

Transfer means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: *Assignment* and *Sublease*. *Unit operator* means the person authorized under the unit

agreement approved by the Department of the Interior to conduct operations within the unit.

Waiver is a permanent exemption from a lease stipulation.

§ 3100.9 Information collection.

(a) Authority: 44 U.S.C. 3501–3520.

(b)(1) *Purpose*. The Paperwork Reduction Act of 1995 generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) Control Number. This part displays OMB control numbers assigned to information collection requirements contained in the BLM's regulations at 43 CFR part 3100. This section aids in fulfilling the requirements of the Paperwork Reduction Act to display current OMB Control Numbers for these information collection requirements. Interested persons should consult <https://www.reginfo.gov> for the most current information on these OMB control numbers; including among other things, the justification for the information collection requirements, description of likely respondents, estimated burdens, and current expiration dates.

(2) *Table 1 to Paragraph (b)—OMB Control number assigned pursuant to the Paperwork Reduction Act.*

43 CFR part or section	OMB Control No.
§§ 3100, 3103.41, 3120, and Subpart 3162	1004–0185
§§ 3106, 3135, and 3216	1004–0034
Part 3130	1004–0196
Subpart 3195	1004–0179
§ 3150	1004–0162
§§ ,* 3160 3171, 3176, and 3177	1004–NEW
§§ 3172, 3173, 3174, 3175	1004–0137
§§ 3162.3–1, 3178.5, 3178.7, 3178.8, 3178.9 and Subpart * 3179	1004–0211

* Information collection requirements for onshore oil and gas operations are generally accounted for under OMB Control Number 1004–NEW; however, information collection requirements pertaining to particular to waste prevention, production subject to royalties, and resource conservation are accounted for under OMB Control Number 1004–0211.

§ 3100.10 Helium.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the Act have been reserved to the United States.

Drainage

§ 3100.21 Compensation for drainage.

Upon a determination by the authorized officer that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent

lands, the authorized officer may execute agreements with the owners of adjacent lands whereby the United States and its lessees will be compensated for such drainage. Such agreements must be made with the consent of any lessee affected by an agreement. Such lands may also be offered for lease in accordance with 43 CFR part 3120.

§ 3100.22 Drilling and production or payment of compensatory royalty.

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee must both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with 43 CFR 3162.2–4.

Options

§ 3100.31 Enforceability.

(a) No option to acquire any interest in a lease is enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option).

(b) No option or renewal thereof is enforceable until a signed copy or notice of the option has been filed in the proper BLM office. Each such signed copy or notice must include:

- (1) The names and addresses of the parties thereto;
- (2) The serial number of the lease to which the option is applicable;
- (3) A statement of the number of acres and the type and percentage of interests to be conveyed and retained by the parties to the option, including the date and expiration date of the option.

(c) The signatures of all parties to the option or their duly authorized agents. The signed copy or notice of the option required by this paragraph must contain or be accompanied by a signed statement by the holder of the option that he/she is the sole party in interest in the option; if not, he/she must set forth the names and provide a description of the interest therein of the other interested parties, and provide a description of the agreement between them, if oral, and a copy of such agreement, if written.

§ 3100.32 Effect of option on acreage.

The acreage to which the option is applicable will be charged both to the grantor of the option and the option holder. The acreage covered by an unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the proper BLM office.

§ 3100.33 Option statements.

Each option holder must file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing:

- (a) Any changes to the statements submitted under § 3100.31(b); and
- (b) The number of acres covered by each option and the total acreage of all options held in each State.

§ 3100.40 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this part 3100 and parts 3120 through 3190 of this chapter are subject to 43 CFR part 2, except as provided in paragraph (c) of this section. 43 CFR part 2 includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in

Department of the Interior records. Certain mineral information not protected from public disclosure under 43 CFR part 2 may be made available for inspection without a Freedom of Information Act (FOIA) (5 U.S.C. 552) request.

(b) When you submit data and information under this part 3100 and parts 3120 through 3190 of this chapter that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. The BLM will keep all such data and information confidential to the extent allowed by 43 CFR 2.26.

(c) Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian Tribe—

- (1) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and
- (2) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to:
 - (i) The terms, conditions, or financial return to the Indian parties;
 - (ii) The extent, nature, value, or disposition of the Indian mineral resources; or
 - (iii) The production, products, or proceeds thereof.

(d) For information concerning Indian minerals not covered by paragraph (c) of this section:

- (1) The BLM will withhold such records as may be withheld under an exemption to FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation;
- (2) The BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA) and give them a reasonable period of time to state objections to disclosure, using the standards and procedures of 43 CFR 2.28, before making a decision about the applicability of FOIA exemption 4 to:

(i) Information obtained from a person outside the United States Government; when

(ii) Following consultation with a submitter under 43 CFR 2.28, the BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; but

(iii) The BLM has reason to believe that disclosure of the information may result in commercial or financial injury

to the Indian mineral owner(s) but is uncertain that such is the case.

Subpart 3101—Issuance of Leases

Lease Terms and Conditions

§ 3101.11 Lease form.

A lease will be issued only on the standard form approved by the Director.

§ 3101.12 Surface use rights.

A lessee will have the right to use only so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to applicable requirements, including stipulations attached to the lease, restrictions deriving from specific, nondiscretionary statutes, and such reasonable measures as may be required and detailed by the authorized officer to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities. Such reasonable measures may include, but are not limited to, relocation or modification to siting or design of facilities, timing of operations, specification of interim and final reclamation measures, and specification of rates of development and production in the public interest. Modifications that are consistent with lease rights include, but are not limited to, requiring relocation of proposed operations by more than 800 meters and prohibiting new surface disturbing operations for a period of up to 90 days in any lease year.

§ 3101.13 Stipulations and information notices.

(a) The BLM may consider the sensitivity and importance of potentially affected resources and any uncertainty concerning the present or future condition of those resources and will assess whether a resource is adequately protected by stipulation without regard for the restrictiveness of the stipulation on operations.

(b) The authorized officer may require stipulations as conditions of lease issuance. Stipulations will become part of the lease and will supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 will be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the Notice of Competitive Lease Sale available from the proper BLM office.

(c) The BLM may attach an information notice to the lease. An information notice has no legal consequences, except to give notice of existing requirements, and may be

attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices may not be a basis for denial of lease operations.

(d) Where the surface managing agency is the Fish and Wildlife Service, leases will be issued subject to stipulations prescribed by the Fish and Wildlife Service as to the time, place, nature and condition of such operations in order to minimize impacts to fish and wildlife populations and habitat and other refuge resources on the areas leased. The specific conduct of lease activities on any refuge lands will be subject to site-specific stipulations prescribed by the Fish and Wildlife Service.

§ 3101.14 Modification, waiver, or exception.

(a) A stipulation included in an oil and gas lease will be subject to modification, waiver, or exception if the authorized officer determines, in conjunction with any surface management agency, that the factors leading to its inclusion in the lease have changed sufficiently to make the specific protections provided by the stipulation no longer justified. If the authorized officer determines that a change to a lease term or stipulation is substantial or a stipulation involves an issue of major concern to the public, the changes to the stipulation will be subject to public review for at least 30 calendar days.

(b) Prior to lease issuance, if the BLM determines that an additional stipulation will be added to the lease or a modification to an existing stipulation is required, the potential lessee must be given an opportunity to accept the additional or modified stipulation. If the potential lessee does not accept the additional or modified stipulation, the BLM may reject the bid, and may include the lands in the next Notice of Competitive Lease Sale. If the change in stipulation(s) increases the value of the parcel, the BLM will reject the bid, and will include the lands in the next Notice of Competitive Lease Sale.

(c) After lease issuance, if a lessee does not accept an additional or modified stipulation, that additional or modified stipulation is not binding on the lessee and is without effect. When a stipulation is required by the relevant Resource Management Plan, or surface management agency land management plan, and was inadvertently omitted, a lessee's failure to sign and accept changes in the stipulations when

requested by the authorized officer may subject the lease to cancellation.

Acreage Limitations

§ 3101.21 Public domain lands.

(a) No person may take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

(b) In Alaska, the acreage that can be taken, held, owned or controlled is limited to 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts. The boundary between the two leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established by section 302(8) of the Alaska National Interest Lands Conservation Act, at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

§ 3101.22 Acquired lands.

No person may take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option. Where the United States owns only a fractional interest in the mineral resources of the lands involved in a lease, only that part owned by the United States will be charged as acreage holdings. The acreage embraced in a future interest lease will not be charged as acreage holdings until the lease for the future interest becomes effective.

§ 3101.23 Excepted acreage.

(a) The following acreage will not be included in computing acreage limitations:

(1) Acreage under any lease any portion of which is committed to any federally approved oil and gas agreement;

(2) Acreage under any lease for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year; and

(3) Acreage under leases subject to an operating, drilling or development contract approved by the Secretary, as provided in 43 CFR 3105.30.

(b) Acreage subject to offers to lease, overriding royalties and payments out of production will not be included in computing acreage limitations.

§ 3101.24 Excess acreage.

(a) Where, as the result of the termination or contraction of an oil and gas agreement or the elimination of a lease from an operating, drilling, or development contract, a party holds or controls excess accountable acreage, that party will have 90 calendar days from the date of termination, contraction or elimination, to reduce the holdings to the prescribed limitation and to file proof of the reduction in the proper BLM office. Where, as a result of a merger or the purchase of the controlling interest in a corporation, a party acquired acreage in excess of the amount permitted, the party holding the excess acreage will have 180 calendar days from the date of the merger or purchase to divest the excess acreage. If additional time is required to complete the divestiture of the excess acreage, a petition requesting additional time, along with a full justification for the additional time, may be filed with the authorized officer prior to the termination of the 180 days provided herein.

(b) If any person is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein will be subject to cancellation or forfeiture in their entirety, until sufficient acreage has been eliminated to comply with the acreage limitation. Excess acreage or interest will be cancelled in the inverse order of acquisition.

§ 3101.25 Computation.

The accountable acreage of a party owning an undivided interest in a lease will be the party's proportionate part of the total lease acreage.

§ 3101.30 Leases within unit areas, joinder evidence required.

Before issuance of a lease for lands within an approved unit, the lease offeror must file evidence with the proper BLM office that it has joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for its failure to enter into such agreement. If such statement is satisfactory to the authorized officer, the lessee may be permitted to operate independently but will be required to conform to the terms and provisions of the unit agreement with respect to such operations.

§ 3101.40 Terminated leases.

(a) The authorized officer will not issue a lease for lands which have been

covered by a lease which terminated automatically until 90 calendar days after the date of termination.

(b) The authorized officer will not, after the receipt of a petition for reinstatement, issue a new lease affecting any of the lands covered by the terminated lease until all action on the petition is final.

Federal Lands Administered by an Agency Outside of the Department of the Interior

§ 3101.51 General requirements.

Public domain and acquired lands will be leased only with the consent of the surface managing agency, which, upon receipt of a description of the lands from the authorized officer, will report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

§ 3101.52 Action by the Bureau of Land Management.

(a) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer will incorporate the stipulations into any lease which it may issue. The authorized officer may add stipulations.

(b) The authorized officer will not issue a lease on lands to which the surface managing agency objects or withholds consent. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer will review all recommendations and will accept all reasonable recommendations of the surface managing agency.

(d) Where the surface managing agency is the Fish and Wildlife Service, there will be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge, except with the consent and approval of the Secretary with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations must be conducted in accordance with BLM stipulations.

§ 3101.53 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under 43 CFR part 4.

(b) Where, as provided by statute, the surface managing agency has required

that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror will be subject to the administrative remedies if provided for by the particular surface managing agency.

§ 3101.60 State's or charitable organization's ownership of surface overlying federally owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party will be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. Where a party controlling the surface opposes the issuance of a lease or wishes to place such restrictive stipulations upon the lease that it could not be operated upon or become part of a drilling unit and hence is without mineral value, the facts submitted in support of the opposition or request for restrictive stipulations may be given consideration and each case will be decided on its merits. The opposition to lease or necessity for restrictive stipulations expressed by the party controlling the surface affords no legal basis or authority to refuse to issue the lease or to issue the lease with the requested restrictive stipulations for the reserved minerals in the lands; in such case, the final determination whether to issue and with what stipulations, or not to issue the lease depends upon whether or not the interests of the United States would best be served by the issuance of the lease.

Subpart 3102—Qualifications of Lessees

§ 3102.10 Who may hold leases.

Leases or interests therein may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

§ 3102.20 Non-U.S. Citizens.

(a) Leases or interests therein may be acquired and held by non-U.S. Citizens only through stock ownership, holding

or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any BLM State office.

(b) The Committee on Foreign Investment in the United States is authorized to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions. Covered real estate transactions may include certain transactions involving the Federal mineral estate (see 31 CFR part 802).

§ 3102.30 Minors.

Leases must not be acquired or held by someone considered to be a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors on their behalf. Such legal guardians or trustees must be citizens of the United States or otherwise meet the provisions of 43 CFR 3102.10.

§ 3102.40 Signature.

Signatures on all applications and BLM forms certify acceptance of lease terms and stipulations, as well as compliance with the regulations under 43 CFR part 3100. Refer to § 3102.50 for certification of compliance and evidence. The BLM also accepts electronic signatures and submissions.

(a) A bid to lease must be made on a current form approved by the Director. Copies must be exact reproductions of the official approved form, without additions, omissions, or other changes. When the bid is filed in person at the proper BLM office, the bid must be typed or printed plainly, signed, and dated by the offeror or an authorized agent on behalf of the present or potential lessee. Bids may be made to the BLM by other arrangements, such as electronically signed and filed, when specifically authorized by the BLM.

(b) Documents signed by any party other than the present or potential lessee must be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized

officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

Compliance, Certification of Compliance and Evidence

§ 3102.51 Compliance.

Only responsible and qualified bidders and lessees may own, hold, or control an interest in a lease or prospective lease. Responsible and qualified bidders and lessees, including corporations, and all members of associations, including partnerships of all types, will, without exception, be qualified and in compliance with the Act. Compliance means that the persons are:

(a) Citizens of the United States (see § 3102.10) or non-U.S. citizens who own stock in a corporation organized under State or Federal law (see § 3102.20);

(b) In compliance with the Federal acreage limitations (see § 3101.20);

(c) Not minors (see § 3102.30);

(d) Except for an assignment or transfer under 43 CFR subpart 3106, in compliance with section 2(a)(2)(A) of the Act (30 U.S.C. 201(2)(A)), in which case the signature on a bid or lease constitutes evidence of compliance. A lease issued to any person in violation of this paragraph (d) will be subject to the cancellation provisions of 43 CFR 3108.30.

(e) Not in violation of the provisions of section 41 of the Act (30 U.S.C. 195); and

(f) In compliance with section 17(g) of the Act (30 U.S.C. 226(g)), in which case the signature on an offer, lease, assignment, or transfer constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in 43 CFR 3400.0–5(rr), has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person has an interest. A person is noncompliant with section 17(g) of the Act when they fail to comply with their reclamation obligations or other standards established under 30 U.S.C. 226 in the time specified in a notice from the BLM. A lease issued, or an assignment or transfer approved, to any such person in violation of this paragraph (f) will be subject to the cancellation provisions of 43 CFR 3108.30, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance will end upon

a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with 43 CFR 3106.10(d) and section 30A of the Act (30 U.S.C. 187(a)). The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of 43 CFR 3102.53.

(h) Not excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension (2 CFR parts 180 and 1400), unless the Department explicitly approves an exception for a transaction pursuant to the regulations in those parts.

§ 3102.52 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease must certify that it is in compliance with the Act as set forth in 43 CFR 3102.51. A corporation or publicly traded association, including a publicly traded partnership, must certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership of the corporation, association or partnership are in compliance with the Act. Execution and submission of a competitive bid form or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

§ 3102.53 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer will result in adjudication of the action based on the incomplete submission.

Subpart 3103—Fees, Rentals and Royalty Payments

§ 3103.11 Form of remittance.

All remittances must be by personal check, cashier's check, certified check, or money order, and must be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Office of Natural Resources Revenue, as appropriate. Payments made to the BLM may be made by other arrangements

such as by electronic funds transfer or credit card when specifically authorized by the BLM. In the case of payments made to the ONRR, such payments may also be made by electronic funds transfer.

§ 3103.12 Where remittance is submitted.

(a)(1) All processing fees for the respective lease applications, nominations, or requests for approval of a transfer found in the fee schedule in § 3000.120 of this chapter and all first-year rentals and bonuses for leases issued under 43 CFR part 3100 must be paid to the proper BLM office.

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, must be paid to the ONRR through its online rental payment system.

(b) All rentals and royalties on producing leases, communitized leases in producing spacing units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements must be paid to the ONRR.

Rentals

§ 3103.21 Rental requirements.

(a) Each competitive bid submitted in response to a Notice of Competitive Lease Sale must be accompanied by full payment of the first year's rental based on the total acreage in the Notice of Competitive Lease Sale.

(b) If the acreage is incorrectly indicated in a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

(c) Rental will not be prorated for any lands in which the United States owns an undivided fractional interest and must be paid for the full acreage in such lands.

§ 3103.22 Annual rental payments.

Rentals must be paid on or before the lease anniversary date. A full year's rental must be submitted even when less than a full year remains in the lease term, except as provided in 43 CFR 3103.42(d). Failure to make the required payment on or before the lease anniversary date will cause a lease to terminate automatically by operation of law. If the designated ONRR office is not open on the anniversary date, payment received on the next day the designated ONRR office is open to the public will be deemed to be timely made. Payments made to an improper BLM or ONRR office will be returned and will not be forwarded to the designated ONRR

office. Rental must be paid at the following rates:

(a) The annual rental for all leases is as stated in the lease;

(b) Rental will not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease will be due in addition to compensatory royalty;

(c) For leases that are reinstated under § 3108.23, the annual rental will be as specified in 43 CFR 3000.130 beginning with the termination date upon the filing of a petition to reinstate a lease; and

(d) Each succeeding time a specific lease is reinstated under § 3108.23, the annual rental on that lease will increase by an additional \$10 per acre or fraction thereof.

Royalties

§ 3103.31 Royalty on production.

(a) Royalty on production will be payable only on the mineral interest owned by the United States. Royalty must be paid in the amount or value of the production removed or sold as follows:

(1) For leases issued before August 16, 2022, the rate prescribed in the lease or in applicable regulations at the time of lease issuance;

(2) For leases issued between August 16, 2022, and August 16, 2032, the royalty rate will be 16.67 percent;

(3) For leases issued on or after August 16, 2032, a rate of not less than 16.67 percent on all leases issued under the Act;

(4) A minimum of 16.67 percent on all leases issued under 43 CFR subpart 3109;

(5) For reinstated leases, the rate used for royalty determination that applies to new leases at the time of the reinstatement plus 4 percentage points, plus an additional 2 percentage points for each succeeding reinstatement. In no case will royalties on the reinstated lease be less than 20 percent.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas will be determined pursuant to 43 CFR 3162.7–4.

(d) Payment of a royalty on the helium component of gas will not convey the right to extract the helium from the gas stream. Applications for the right to extract helium from the gas stream will be made under 43 CFR part 16.

§ 3103.32 Minimum royalties.

(a) A minimum royalty must be paid at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except on unitized leases that lack production, the minimum royalty must be paid only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of \$1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

(b) Minimum royalties will not be prorated for any lands in which the United States owns a fractional interest and must be paid on the full acreage of the lease.

(c) Minimum royalties and rentals on non-participating acreage must be paid to the ONRR.

(d) The minimum royalty provisions of this section are applicable to leases reinstated under 43 CFR 3108.23.

(e) If the royalty paid during any year aggregates to less than the minimum royalty, then the lessee must pay the difference at the end of the lease year.

Production Incentives

§ 3103.41 Royalty reductions.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development or that the leases cannot be produced in paying quantities under the terms provided therein, may waive, suspend or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the benefits under paragraph (a) of this section must be filed by the operator/payor in the proper BLM office. The application must contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

(2) Each application must show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than

6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty, the number of wells counted as producing each month and the average production per well per day.

(3) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be produced in paying quantities upon the fixed royalty or rental. Where the application is for a reduction in royalty, complete information must be furnished as to whether overriding royalties, payments out of production, or similar interests are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders to a reduction of all other royalties or similar payments from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

(c) Petition may be made for a reduction of royalty for leases reinstated under 43 CFR 3108.23. Petitions to waive, suspend or reduce rental or minimum royalty for leases reinstated under 43 CFR 3108.23 may be made under this section.

§ 3103.42 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension must be filed in the proper BLM office. Complete information showing the necessity of such relief must be furnished.

(b) The term of any lease will be adjusted to account for the suspension. Beginning on the date the suspension is lifted, the term will be extended by the time that was remaining on the term of the lease on the effective date of the suspension. No lease will expire during any suspension.

(c) A suspension will take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of 43 CFR 3165.1.

(d) Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. However, if there is any production sold or removed during the suspension, the lessee must pay royalty on that production.

(e) Rental and minimum royalty payments will resume on the first day of the lease month in which the suspension of all operations and production is lifted. Where rentals are creditable against royalties and have been paid in advance, proper credit may be allowed on the next rental or royalty due under the terms of the lease.

(f) Rental and minimum royalty payments will not be suspended during any period of suspension of operations only or suspension of production only.

(g) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption will be regarded as lifting the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (e) of this section.

(h) The relief authorized under this section also may be obtained for any Federal lease included within an approved oil and gas agreement. Oil and gas agreement obligations will not be suspended by relief obtained under this section but will be suspended only in accordance with the terms and conditions of the specific agreement.

Subpart 3104—Bonds

§ 3104.10 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator must submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts must be not less than the minimum amounts described in this subpart in order to ensure compliance with the Act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the

restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in 43 CFR 3162.3 and 3162.5 and orders issued by the authorized officer.

(b) Surety bonds must be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds must be accompanied by a:

(1) Cashier's check;

(2) Certified check; or

(3) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities must be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease.

§ 3104.20 Lease bond.

The operator must be covered by a bond in its own name as principal or obligor in an amount of not less than \$150,000 for each lease conditioned upon compliance with all of the terms of the lease. Additional bonding may be posted by a lessee, or owner of operating rights (sublessee), as they are ultimately responsible under § 3106.72. Where two or more principals have interests in different formations or portions of the lease, separate bonds may be posted.

§ 3104.30 Statewide bonds.

In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than \$500,000 covering all leases and operations in any one State.

§ 3104.40 Surface owner protection bond.

(a) If a good-faith effort by the Federal lessee, its operator, or representatives has not resulted in an agreement with the surface owner to pay compensatory damages to the surface owner, the authorized officer will require an adequate surface owner protection bond in an amount sufficient to indemnify the surface owner against the reasonable and foreseeable damages to crops and tangible improvements from the proposed operations that would not otherwise be covered by a bond held by the BLM. This surface owner protection bond is not part of the bond obligations under lease or statewide bonds.

(b) The surface owner protection bond must be provided on a BLM-approved form.

(c) The surface owner protection bond may be a personal or surety bond and must be not less than \$1,000.

(d) The BLM will notify the surface owner of the proposed surface owner protection bond amount.

(e) If the surface owner objects to the sufficiency of the surface owner protection bond, the BLM authorized officer will determine the sufficiency of the bond necessary to indemnify the surface owner for the reasonable and foreseeable damages to crops and tangible improvements.

§ 3104.50 Increased amount of bonds.

(a) When an operator desiring approval of an APD has caused the BLM, or a surface management agency, to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the APD, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer will require, prior to approval of the APD, a bond in an amount equal to the costs, when higher than the minimum bond amounts, as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the ONRR that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances will it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the ONRR, plus the amount of money owed to the lessor due to previous violations remaining outstanding.

§ 3104.60 Where filed and number of copies.

All bonds must be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use will be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of 43 CFR 3104.20 and

3104.30, bonds or bond riders must be filed in the BLM State office having jurisdiction over the lease or operations covered by the bond or rider.

§ 3104.70 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder will be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal must either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal must make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and must post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond must be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may:

- (1) Subject all leases covered by such bond(s) to cancellation under the provisions of 43 CFR 3108.30;
- (2) Prevent the bond obligor or principal from acquiring any additional Federal leases in accordance with 43 CFR 3102.51(f); and
- (3) Result in the bond obligor or principal being referred to the Department's Suspension and Debarment Program under 2 CFR part 1400 to determine if the person will be suspended or debarred from doing business with the Federal Government.

§ 3104.80 Termination of period of liability.

The authorized officer will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

§ 3104.90 Bonds held prior to [EFFECTIVE DATE OF THE FINAL RULE].

(a) Unit operator bonds accepted by the BLM prior to [EFFECTIVE DATE OF THE FINAL RULE] must be replaced with a statewide bond by [DATE TWO YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE]. The BLM will not accept any new unit operator bonds.

(b) All bonds not meeting the appropriate minimum bond amount as of [EFFECTIVE DATE OF THE FINAL RULE] must meet that amount by:

- (1) [DATE ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE] for lease bonds; and
- (2) [DATE TWO YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] for statewide bonds;
- (c) All nationwide bonds must be converted to statewide bonds by [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

Subpart 3105—Cooperative Conservation Provisions

§ 3105.10 Cooperative or unit agreement.

(a) The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

(b) An application to form a unit agreement, a unit expansion, or a designation of a successor operator must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

Communitization Agreements

§ 3105.21 Where filed.

(a) An application to form a communitization agreement (CA) or modify an existing agreement must be filed with the proper BLM office for final approval.

(b) An application for a CA must include:

- (1) A statement as to whether the proposed CA deviates from the BLM's current model CA form, and a certification that the applicant received the required signatures;
- (2) An Exhibit A displaying a map of the area covered by the proposed agreement and the separate agreement tracts; and
- (3) An Exhibit B displaying the separate tracts and ownership;
- (c) To ensure accurate reporting to ONRR, an application for a CA should be submitted at least 90 calendar days prior to first production.
- (d) An application for designations of successor operator for a CA must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

§ 3105.22 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve a CA for such lands with other lands, whether or not owned by the United States, upon a

determination that it is in the public interest. Operations or production under such an agreement will be deemed to be operations or production as to each lease committed thereto.

§ 3105.23 Requirements.

(a) The CA must describe the separate tracts comprising the drilling or spacing unit, must show the apportionment of the production or royalties to the several parties, the name of the operator, and contain adequate provisions for the protection of the interests of the United States. The agreement must be signed by or on behalf of all necessary parties and must be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement will be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved CAs are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement will be the effective date of the order.

(c) The public interest requirement for an approved CA will be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establishes to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a CA during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer will be invalid and no Federal lease included in the CA will be eligible for an extension under 43 CFR 3107.40.

§ 3105.24 Communitization agreement terms.

The CA will remain in effect for a period of 2 years from the effective date or approval date, whichever is later, and so long thereafter as communitized substances may be produced in paying quantities, or as otherwise specified in the agreement.

Operating, Drilling or Development Contracts**§ 3105.31 Where filed.**

A contract submitted for approval under this section must be filed with the proper BLM office.

§ 3105.32 Purpose.

Approval of operating, drilling or development contracts will be granted only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a scale large enough to justify the discovery, development, production or transportation of oil or gas and to finance the same.

§ 3105.33 Requirements.

The contract must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan for development and operation of the field. All the contracts held by the same contractor in the area or field must be submitted for approval at the same time and full disclosure of the projects made.

Subsurface Storage of Oil and Gas**§ 3105.41 Where filed.**

(a) Applications for subsurface storage or designations of successor operator must be filed in the proper BLM office.

(b) The final gas storage agreement signed by all the parties in interest must be submitted to the BLM.

(c) Applications for subsurface storage agreements or designations of successor operator must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

§ 3105.42 Purpose.

To avoid waste and to promote conservation of natural resources, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil and gas, whether or not produced from lands owned by the United States. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. The BLM will require a bond as provided under § 3104 for operations conducted in a subsurface storage agreement.

§ 3105.43 Requirements.

The agreement must disclose the ownership of the lands involved, the parties in interest, the storage fee, rental

or royalty offered to be paid for such storage and all information demonstrating such storage would avoid waste and promote the conservation of natural resources.

§ 3105.44 Extension of lease term.

Any lease used for the storage of oil or gas will be extended for the period of storage under an approved agreement. The obligation to pay annual lease rent continues during the extended period.

§ 3105.50 Consolidation of leases.

(a) Leases may be consolidated upon written request of the lessee filed with the proper BLM office. The request must identify each lease involved by serial number and justify the consolidation. Each request for a consolidation of leases must include the processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) All parties holding any undivided interest in any lease involved in the consolidation must agree to enter into the same lease consolidation.

(c) Leases containing different types of lands (public domain lands vs. acquired lands), mixed fractional mineral interest, or provisions required by law that cannot be reconciled, will not be consolidated.

(d) Consolidation of leases will not exceed acreage limits of 2,560 acres for competitive leases and 10,240 acres for noncompetitive leases.

(e) The effective date, the anniversary date, and the primary term of the consolidated lease will be those of the oldest original lease included in the consolidation. The term of a consolidated lease may be extended beyond the primary lease term under subpart 3107.

(f) The highest royalty and rental rates of the each of the leases to be consolidated will apply to the consolidated lease.

(g) Lease stipulations and other terms and conditions of each original lease, except as noted in paragraphs (e) and (f) of this section, will continue to apply to that lease or any portion thereof regardless of the lease becoming a part of a consolidated lease.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise**§ 3106.10 Transfers, general.**

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein.

(b) An assignment of a separate zone, deposit, depth, formation, specific well, or of part of a legal subdivision, will be denied.

(c) Within the boundaries of a Federal lease, operating rights may only be divided with respect to legal subdivisions, depth ranges, and formations.

(d) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska will be denied unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Reference 43 CFR 3102.51(g) for certification of compliance.

(e) The rights of the transferee to a lease or an interest therein will not be recognized by the Department until the transfer has been approved by the authorized officer.

(f) A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer.

(g) A request for approval of a transfer of a lease or interest in a lease must be filed within 90 days from the date of its execution. The 90-day filing period will begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(h) A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests must be filed in the proper BLM office but will not require approval.

(i) No transfer of an offer to lease or interest in a lease will be approved prior to the issuance of the lease.

§ 3106.20 Qualifications of assignees and transferees.

Assignees and transferees must comply with the provisions of 43 CFR subpart 3102 and post any bond that may be required. Only responsible and qualified lessees may own, hold, or control an interest in a lease.

§ 3106.30 Fees.

(a) Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee for assignments and transfers found in the fee schedule in § 3000.120 of this chapter.

(b) Each transfer of overriding royalty or payment out of production must include payment of the processing fee for overriding royalty transfers or payments out of productions found in the fee schedule in § 3000.120 of this chapter for each lease to which it applies.

Forms

§ 3106.41 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an operating right (sublease) must be filed with the proper BLM office on a current form approved by the Director. A separate form for each transfer, in duplicate, must be filed for each lease out of which a transfer is made. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted. Copies of documents other than the current form approved by the Director must not be submitted. However, reference(s) to other documents containing information affecting the terms of the transfer may be made on the submitted form.

§ 3106.42 Transfers of other interests, including royalty interests and production payments.

(a) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved must be described for each lease on the current assignment or transfer form when filed.

(b) A single executed copy of each such transfer of other interests for each lease must be filed with the proper BLM office.

§ 3106.43 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of 43 CFR 3106.41 and 3106.42 when an assignor or transferor transfers interests of any type in more than one Federal lease to the same assignee or transferee.

(b) The mass transfer must be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer must be on a current form approved by the Director with an exhibit attached to each copy listing the following for each lease:

- (1) The serial number;
- (2) The type and percent of interest being conveyed; and
- (3) A description of the lands affected by the transfer in accordance with 43 CFR 3106.50.

(c)(1) One duplicate copy of the form must be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section. The BLM does not require a duplicate copy of the assignment or transfer when it is electronically submitted.

(2) When the BLM does not receive the requisite number of copies, the applicant must reimburse the BLM for

the full costs incurred to make the required number of copies. The BLM will waive fees under one dollar.

(d) A mass transfer must include the processing fee for assignments and transfers found in the fee schedule in § 3000.120 of this chapter for each such interest transferred for each lease.

§ 3106.50 Description of lands.

Each assignment of record title must describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

§ 3106.60 Bond requirements.

Where the lessee or operating rights owner (sublessee) maintains a bond covering the lease (including a statewide bond), the assignee of record title interest or transferee of operating rights in such lease must furnish, if bond coverage continues to be required, a proper bond that will cover any obligations arising under the lease to the same extent as the assignor's or transferor's bond.

Approval of Transfer or Assignment

§ 3106.71 Failure to qualify.

The BLM will not approve any assignment of record title or transfer of operating rights (sublease) if any party in interest is not a qualified lessee, or if the bond is insufficient. The BLM approves assignments and transfers for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.72 Continuing obligation of an assignor or transferor.

(a) The lessee or sublessee remains responsible for performing all obligations under the lease until the date the BLM approves an assignment of record title interest or transfer of operating rights.

(b) After the BLM approves the assignment or transfer, the assignor or transferor will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. This includes paying compensatory royalties for drainage. It also includes responsibility for plugging wells and abandoning facilities drilled, installed, or used before the effective date of the assignment or transfer.

§ 3106.73 Lease account status.

The BLM will not approve a transfer if the lease account is delinquent with

respect to: royalty payments; lease obligations, such as, but not limited to, rent and minimum royalty; or production reporting to ONRR for a lease in non-terminable status.

§ 3106.74 Effective date of transfer.

The signature of the authorized officer on the official form will constitute approval of the assignment of record title or transfer of operating rights (sublease) which will take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.75 Effect of transfer.

An assignment of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. An assignment of record title to less than 100 percent of a portion of the lease or a transfer of operating rights (sublease) will not segregate the transferred and retained portions into separate leases.

§ 3106.76 Obligations of assignee or transferee.

(a) The assignee of record title agrees to comply with the terms of the original lease during the lease tenure. The assignee assumes the responsibility to plug and abandon all wells which are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known existed at the time of the transfer. When required, the record title holder must also maintain an adequate bond to ensure performance of these responsibilities.

(b) The transferee of operating rights agrees to comply with the terms of the original lease as it applies to the area or horizons for the interest acquired. The transferee assumes the responsibility to plug and abandon all wells that are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time of the transfer. When required, the operating rights holder must also maintain an adequate bond to ensure performance of these responsibilities.

Other Types of Transfers

§ 3106.81 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, their rights will be

assigned or transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of legal documents demonstrating that the assignee or transferee is recognized as the successor of the deceased.

(b) The filing must include the processing fee for the assignment to an heir/devisee found in the fee schedule in § 3000.120 of this chapter with the request to assign lease rights.

(c) The filing must include a qualification statement demonstrating qualification to hold an interest in a lease in accordance with 43 CFR subpart 3102. Any ownership or interest otherwise forbidden by the regulations in this part which may be acquired by descent, will, judgment or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition may be subject to cancellation.

(d) A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

§ 3106.82 Change of name.

(a) A legally recognized change of name of a lessee or sublessee must be reported to the proper BLM office. The notice of name change must be submitted in writing with adequate information concerning the name change. For a corporate name change, the request must include the Secretary of State's Certificate of Name Change, along with the Articles of Incorporation, or Amendment, if available.

(b) An entity must include with the notice of name change the required processing fee listed in the fee schedule in § 3000.120 of this chapter.

(c) If a bond(s) has been furnished, a change of name on the bond may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.83 Corporate mergers and dissolution of corporations, partnerships, and trusts.

(a) In the event a corporate merger affects leases where property of the dissolving corporation to the surviving corporation is accomplished by operation of law, an assignment of any affected lease interest is not required. An entity must notify the BLM of the merger and provide copies of the Secretary of State's Certificate of Merger, along with the Articles of Incorporation, or Amendment, if available, to the BLM.

(b) The BLM will not recognize any transfers provided by the Articles of Dissolution unless an entity has filed with the BLM a Certificate of

Dissolution of an incorporated entity, certified as accepted by the State where the entity was incorporated.

(c) An entity must file with the BLM a dissolution of a partnership or trust through an order or decree that authorizes settlement, discharge, and distribution of the lease holdings and/or interests for official recognition of the assignment of lease interests.

(d) An entity must include the processing fee for corporate merger found in the fee schedule in § 3000.120 of this chapter.

(e) The authorized officer may require a bond rider or replacement bond for all affected corporations, partnerships or trusts.

§ 3106.84 Sheriff's sale/deed.

(a) Where a notice of sale of the leasehold interest is published pursuant to State law applicable to the execution of sales of real property, the purchaser must submit a copy of the Sheriff's Certificate of Sale to the proper BLM office after any redemption period has passed.

(b) When submitting the certificate described in paragraph (a), an entity must include the processing fee for sheriff's deed found in the fee schedule in § 3000.120 of this chapter.

(c) The purchaser(s) must file a qualification statement to hold an interest in a lease in accordance with 43 CFR subpart 3102. Failure to provide a qualification statement after 2 years will result in the BLM cancelling the lease or interest.

(d) If a bond has been furnished by the previous interest holder, the authorized officer may require a new bond.

Subpart 3107—Continuation and Extension

§ 3107.10 Extension by drilling.

(a) Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved oil and gas agreement upon which such drilling takes place, will be extended for 2 years subject to the rental being timely paid as required by 43 CFR 3103.20, and subject to the provisions of 43 CFR 3105.23 and 3186.1, if applicable. The BLM will not grant a drilling extension for a lease in its extended term.

(b) Actual drilling operations must be conducted in a manner that a reasonable person seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other

pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement, it must be taken to a depth sufficient to penetrate at least one formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it must be taken to a depth sufficient to penetrate at least one new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable.

(c) When a BLM-approved directional or horizontal well is drilled within the leased area from an off-lease location with the intent to produce from the leased area, the BLM will consider drilling to have commenced on the leased area when drilling is commenced at the off-lease location.

Production

§ 3107.21 Continuation by production.

A lease will be extended so long as oil or gas is being produced in paying quantities.

§ 3107.22 Cessation of production.

A lease in its extended term because of production (and lacking a well capable of production in paying quantities) will not expire upon cessation of production, if, within 60 calendar days of cessation of production, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. If these reworking or drilling operations fail to result in production in paying quantities, the lease will expire by operation of law, effective as of the date production ceased.

§ 3107.23 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities will expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 calendar days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production must be continued unless and until suspension of production is granted by the authorized officer.

Extension for Terms of Agreements

§ 3107.31 Leases committed to an agreement.

(a) Any lease or portion of a lease committed to an oil and gas agreement that contains a general provision for

allocation of oil or gas will continue in effect so long as the lease or portion thereof remains subject to the agreement; *provided*, that there is production of oil or gas in paying quantities under the agreement prior to the expiration date of such lease.

(b) A well that is drilled and completed on a lease committed to a unit agreement, and that is capable of production in paying quantities on a lease basis, will extend the term of all expiring Federal leases committed to the unit agreement for the term of the unit agreement and for so long as the well is capable of production in paying quantities.

§ 3107.32 Segregation of leases committed in part.

(a) Any lease committed after July 29, 1954, to any unit agreement, which covers lands within and lands outside the area covered by the agreement, will be segregated, as of the effective date of commitment to the unit, into separate leases; one covering the lands committed to the agreement, the other lands not committed to the agreement. For unproven areas, such segregation will occur only when the public interest requirement is satisfied pursuant to 43 CFR 3183.4(b). Upon satisfaction of the public interest requirement, the BLM will deem the segregation to have been effective as of the date of commitment of the lands to the unit.

(b)(1) The segregated lease covering the non-unitized portion of the lands will continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer.

(2) If a partially committed lease is in an extended term because of production, the segregated, non-producing lease will continue in effect so long as the producing lease exists and rentals are paid, and so long thereafter as oil or gas is produced from the committed lease.

§ 3107.40 Extension by elimination.

Any lease eliminated from any approved or prescribed oil and gas agreement authorized by the Act and any lease in effect at the termination of such agreement, unless relinquished, will continue in effect for the original term of the lease or for 2 years after its elimination from the agreement or after the termination of the plan or agreement, whichever is longer, and for so long thereafter as oil or gas is produced in paying quantities. No lease will be extended if the public interest requirement for an approved oil and gas agreement has not been satisfied, as determined by the authorized officer.

Extension of Leases Segregated by Assignment

§ 3107.51 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, will continue in effect for the primary term of the original lease, or for 2 years after the date a well capable of production in paying quantities is established upon any other portion of the original lease, whichever is the longer period.

§ 3107.52 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term will continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

§ 3107.53 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty will continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.60 Extension of reinstated leases.

Where a reinstatement of a terminated lease is granted under 43 CFR 3108.20 and the authorized officer finds that the reinstatement will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of such lease for a period sufficient to give the lessee such an opportunity. Any extension will be subject to the following conditions:

(a) No extension will exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(b) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition, but in no event for more than 2 years from the date the reinstatement is authorized and so long thereafter as oil or gas is produced in paying quantities.

Other Types

§ 3107.71 Payment of compensatory royalty.

The payment of a compensatory royalty will extend the term of any lease for the period during which such compensatory royalty is paid and for a period of 1 year from the discontinuance of such payments.

§ 3107.72 Subsurface storage of oil and gas.

Any lease used for the storage of oil or gas will be extended for the period of storage under an approved agreement.

Subpart 3108—Relinquishment, Termination, Cancellation

§ 3108.10 Relinquishment.

The lessee(s) may relinquish the lease or any legal subdivision of the lease at any time. The lessee(s) must file a written relinquishment with the BLM State Office with jurisdiction over the lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date the lessee filed it with the BLM. However, the lessee(s) and the party that issued the bond will continue to be obligated to:

(a) Make payments of all accrued rentals and royalties, including payments of compensatory royalty due for all drainage that occurred before the relinquishment;

(b) Place all wells to be relinquished in condition for suspension or abandonment as the BLM requires; and

(c) Complete reclamation of the leased sites after stopping or abandoning oil and gas operations on the lease, under a plan approved by the BLM or the appropriate surface management agency.

Termination by Operation of Law and Reinstatement

§ 3108.21 Automatic termination.

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated ONRR office on or before the lease anniversary date. However, if the designated ONRR office is closed on the anniversary date, a rental payment received on the next business day the ONRR office is open to the public will be considered timely made.

(b) If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in a decision rendered by the authorized officer, and such figure is found to be in error resulting in a deficiency, such lease will not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section.

A deficiency will be considered nominal if it is not more than \$100 or more than 5 percent of the total payment due, whichever is less. The designated ONRR office will send a Notice of Deficiency to the lessee. The Notice will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated ONRR office. If the payment required by the Notice is not paid within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(c) The automatic termination provision does not apply where, due to other contingencies, additional rental is due on a date other than the lease anniversary date and where the lessee did not receive notice that the obligation had accrued, unless the lessee fails to pay the rental within the period prescribed in the BLM Notice.

§ 3108.22 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence includes a rental payment that is paid to the ONRR through its online rental payment system on or before the lease anniversary date. If the designated ONRR office or payment system is not operational on the anniversary date, payment received on the next business day in which the designated ONRR office or payment system is operational to the public will be deemed timely); and

(3) A petition for reinstatement and the processing fee for lease reinstatement, Class I, found in the fee schedule in § 3000.120 of this chapter, are filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued must be paid to the ONRR.

(b) The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence is on the lessee.

(c) Under no circumstances will a terminated lease be reinstated if:

(1) A valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease; or

(2) The oil and gas interests of the United States in the lands have been disposed of or otherwise have become unavailable for leasing.

§ 3108.23 Reinstatement at higher rental and royalty rates: Class II reinstatements.

(a) The authorized officer may, if the requirements of this section are met, reinstate a competitive oil and gas lease which was terminated by operation of law for failure to pay rental timely when the rental was not paid or tendered within 20 calendar days of the termination date, and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence, or no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent.

(b)(1) Such leases may be reinstated if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty calendar days after the last date that any lessee of record received Notice of Termination by certified mail; or

(ii) Twenty-four months after termination of the lease.

(2) After determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if:

(i) No valid lease has been issued prior to the filing of the petition for reinstatement affecting any of the lands covered by the terminated lease, whether such lease is still in effect or not;

(ii) The oil and gas interests of the United States in the lands have not been disposed of or have not otherwise become unavailable for leasing;

(iii) Payment of all back rentals and royalties at the rates established for the reinstated lease has been made;

(iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases in 43 CFR 3103.22 and future royalties at the rates set in 43 CFR 3103.31 for all production removed or sold from such lease or shared by such lease from production allocated to the lease by virtue of its participation in an oil and gas agreement;

(v) A notice of the proposed reinstatement of the terminated lease and the terms and conditions of reinstatement has been published in the **Federal Register** at least 30 days prior to the date of reinstatement for which the lessee must reimburse the BLM for the full costs incurred in the publishing of said notice; and

(vi) The lessee has paid the BLM a nonrefundable administrative fee of \$500.

(c) The authorized officer will furnish to the Chairpersons of the Committee on Natural Resources of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, at least 30 days prior to the date of reinstatement, a copy of the notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the authorized officer considers significant in making the determination to reinstate.

(d) If the authorized officer reinstates the lease, the reinstatement will be effective as of the date of termination, for the unexpired portion of the original lease or any extension thereof remaining on the date of termination, and so long thereafter as oil or gas is produced in paying quantities. Where a lease is reinstated under this section and the authorized officer finds that the reinstatement of such lease either:

(1) Occurs after the expiration of the primary term or any extension thereof; or

(2) Will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of the reinstated lease for such period as determined reasonable, but in no event for more than 2 years from the date of the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

§ 3108.30 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved oil and gas agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only if the default continues for 30 calendar days after a notice of default has been delivered in accordance with 43 CFR 1810.2.

(b) Whenever the lessee fails to comply with any of the provisions of the

law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved oil and gas agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by court order in the manner provided by section 31(a) of the Act (30 U.S.C. 188).

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the Act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by court order in the manner provided by section 27(h)(1) of the Act (30 U.S.C. 184).

(d) Leases will be subject to cancellation if improperly issued.

§ 3108.40 Bona fide purchasers.

A lease or interest therein may not be cancelled to the extent that such action adversely affects the title or interest of a *bona fide* purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers will be charged with constructive notice as to all pertinent regulations and all BLM records pertaining to the lease and the lands covered by the lease. Prompt action may be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the Act, any person who shows the holding of an interest as a *bona fide* purchaser without having violated any provisions of the Act. No hearing will be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a *bona fide* purchaser.

§ 3108.50 Waiver or suspension of lease rights.

If, during any proceeding with respect to a violation of any provision of the regulations in 43 CFR parts 3000 and 3100 or the Act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved will be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

Subpart 3109—Leasing Under Special Acts

Rights-of-Way

§ 3109.11 Generally.

The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes either the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or the entering of a compensatory royalty agreement with adjoining landowners. This authority will be exercised only with respect to railroad rights-of-way and easements issued pursuant either to the Act of March 3, 1875 (43 U.S.C. 934 *et seq.*), or pursuant to earlier railroad right-of-way statutes, and with respect to rights-of-way and easements issued pursuant to the Act of March 3, 1891 (43 U.S.C. 946 *et seq.*). The oil and gas underlying any other right-of-way or easement is included within any oil and gas lease issued pursuant to the Act which covers the lands within the right-of-way, subject to the limitations on use of the surface, if any, set out in the statute under which, or permit by which, the right-of-way or easement was issued, and such oil and gas will not be leased under the Act of May 21, 1930.

§ 3109.12 Application.

(a) No approved form is required for an application to lease oil and gas deposits underlying a right-of-way.

(b) The right-of-way owner or his/her transferee must file the application in the proper BLM office.

(c) Include the processing fee for leasing under right-of-way found in the fee schedule in § 3000.120 of this chapter.

(d) An application must include:

(1) Facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee;

(2) An executed transfer of the right to obtain a lease, if necessary;

(3) A description of the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way;

(4) A description of each legal subdivision through which a portion of the right-of-way desired to be leased traverses; however, a description by metes and bounds of the right-of-way is not required; and

(5) A map of the applicable lands.

§ 3109.13 Notice.

After the BLM has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on its own

motion, the authorized officer will serve notice on the owner or lessee of the oil and gas rights of the adjoining lands. The adjoining landowner or lessee will be allowed a reasonable time, as provided in the notice, within which to submit a bid for the percent of compensatory royalty, the owner or lessee must pay for the extraction of the oil and gas underlying the right-of-way through wells on such adjoining lands. The owner of the right-of-way will be given the same time period to submit a bid for the lease.

§ 3109.14 Award of lease or compensatory royalty agreement.

Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands will be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation.

§ 3109.15 Compensatory royalty agreement or lease.

(a) The lease or compensatory royalty agreement will be on a form approved by the Director.

(b) The primary term of the lease will be for a period of 10 years.

(c) The following provisions of 43 CFR part 3100 apply to the issuance and administration of leases for oil and gas deposits underlying a right-of-way issued under this part:

(1) All of subpart 3101, except § 3101.20; and

(2) All of subparts 3102 through 3108;

§ 3109.20 Units of the National Park System.

(a) Oil and gas leasing in units of the National Park System will be governed by 43 CFR part 3100 and all operations conducted on a lease or permit in such units will be governed by 43 CFR parts 3160 and 3180.

(b) Any lease or permit respecting minerals in units of the National Park System may be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent will only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the unit pursuant to the authorizing legislation of the unit. Any lease or permit issued will be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the unit, to preserve their

use for public recreation, and to the condition that site specific approval of any activity on the lease will only be given upon concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands will also be submitted to the Bureau of Reclamation for review.

(c) The units subject to the regulations in this part are those units of land and water which are shown on the following maps on file and available for public inspection in the office of the Director of the National Park Service and in the Superintendent's Office of each unit. The boundaries of these units may be revised by the Secretary as authorized in the Acts.

(1) Lake Mead National Recreation Area—The map identified as “boundary map, 8360–80013B, revised February 1986.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The map identified as “Proposed Whiskeytown-Shasta-Trinity National Recreation Area,” numbered BOR–WST 1004, dated July 1963.

(3) Ross Lake and Lake Chelan National Recreation Areas—The map identified as “Proposed Management Units, North Cascades, Washington,” numbered NP–CAS–7002, dated October 1967.

(4) Glen Canyon National Recreation Area—the map identified as “boundary map, Glen Canyon National Recreation Area,” numbered GLC–91,006, dated August 1972.

(d) The following excepted units will not be open to mineral leasing:

(1) *Lake Mead National Recreation Area.* (i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation;

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B, dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(2) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.* (i) All waters of Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high-density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611–20,004B, dated April 1979, entitled “Land Classification,

Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.” This map is available for public inspection in the Office of the Superintendent;

(iii) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(3) *Ross Lake and Lake Chelan National Recreation Areas.* (i) All of Lake Chelan National Recreation Area;

(ii) All lands within ½ mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation;

(iii) All lands proposed for or designated as wilderness;

(iv) All lands within ½ mile of State Highway 20;

(v) Pyramid Lake Research Natural Area and all lands within ½ mile of its boundaries.

(4) *Glen Canyon National Recreation Area.* Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled “Mineral Management Plan—Glen Canyon National Recreation Area.” This map is available for public inspection in the Office of the Superintendent and the office of the BLM State Offices, Arizona and Utah.

§§ 3109.21–3109.22 [Reserved]

§ 3109.30 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Section 6 of the Act of November 8, 1965 (Pub. L. 89–336), authorizes the Secretary to permit the removal of oil and gas from lands within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area in accordance with the Act or the Mineral Leasing Act for Acquired Lands. Subject to the determination by the Secretary of Agriculture that removal will not have significant adverse effects on the purposes of the Central Valley project or the administration of the recreation area.

PART 3110 [REMOVED]

■ 3. Under the authority of 30 U.S.C.

189, part 3110 is removed.

■ 4. Revise part 3120 to read as follows:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

General

3120.11 Lands available for competitive leasing.

3120.12 Requirements.

3120.13 Protests.

Lease Terms

3120.21 Duration of lease.

3120.22 Dating of leases.

3120.23 Lease size.

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3120.31 General.

3120.32 Filing of a nomination for competitive leasing.

3120.33 Parcels receiving nominations.

Expressions of Interest

3120.41 Process.

3120.42 Agency inventory of leasing.

Notice of Competitive Lease Sale

3120.51 General.

3120.52 Posting timeframes.

Competitive Auction

3120.61 Competitive auction.

3120.62 Payments required.

3120.63 Award of lease.

3120.70 Parcels not bid on at auction.

Future Interest

3120.81 Nomination or expression of interest to make lands available for competitive lease.

3120.82 Future interest terms and conditions.

3120.83 Compensatory royalty agreements.

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; Pub. L. 113–291, 128 Stat. 3762; and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3120—Competitive Leases

General

§ 3120.11 Lands available for competitive leasing.

All lands eligible and available for leasing may be offered for competitive auction under this subpart, including but not limited to:

(a) Lands that were covered by previously issued oil and gas leases that have terminated, expired, been cancelled or relinquished;

(b) Lands for which authority to lease has been delegated from the General Services Administration;

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the Act, an underlying lease, interest or option in the lease is cancelled or forfeited through a bankruptcy or otherwise to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option may be sold to the highest responsible and qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less

than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest may likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with 30 U.S.C. 184(h)(2) by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold will be subject to the terms and conditions of the existing lease(s);

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing);

(e) Lands included in any expression of interest submitted to the authorized officer;

(f) Lands selected by the authorized officer; and

(g) Lands that were offered on a previous sale for which no bid was accepted or received.

§ 3120.12 Requirements.

(a) Each BLM State Office will hold sales at least quarterly if eligible lands are available for competitive leasing.

(b) Lease sales will be conducted by a competitive auction process.

(c) The BLM may issue a lease only to the highest responsible and qualified bidder. If a person does not pay the minimum monies owed the day of the sale, the BLM may refer that person to the Department of the Interior's Office of the Inspector General, Administrative Remedies Division, for appropriate action, including potential suspension and debarment.

(d) The national minimum acceptable bid will be as specified in § 3000.130 of this chapter and payable on the gross acreage and will not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.13 Protests.

(a) No action pursuant to the regulations in this subpart will be suspended under 43 CFR 4.21(a) due to a protest from a notice by the authorized officer to hold a lease sale.

(b) Notwithstanding paragraph (a) of this section, the authorized officer may suspend the offering of a specific parcel while considering a protest against its inclusion in a Notice of Competitive Lease Sale.

(c) Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good cause after reviewing the reason(s) for a protest.

Lease Terms

§ 3120.21 Duration of lease.

Competitive leases will be issued for a primary term of 10 years.

§ 3120.22 Dating of leases.

All competitive leases will be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.80, will be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest will be effective as of the date the mineral interests vest in the United States.

§ 3120.23 Lease size.

Lands may be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which may be as nearly compact in form as possible.

§ 3120.30 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.31 through 3120.33 after review of any comments received during a period of not less than 30 calendar days following publication in the **Federal Register** of notice that implementation of those sections is being considered.

§ 3120.31 General.

The Director may elect to accept nominations, as set forth in this section, as part of the competitive process required by the Act or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted, and nominations in response to this list must be made in accordance with instructions contained therein and on a form or by a method approved by the Director. Those parcels receiving nominations will be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the BLM.

§ 3120.32 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form or using a method approved by the Director must:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality must appear as the nominator. All communications relating to leasing will be sent to that name and address, which

will constitute the nominator's name and address of record;

(b) Be completed, and filed in accordance with the instructions printed on the form and the regulations in this subpart;

(c) Be filed within the filing period and in the BLM State Office specified in the List of Lands Available for Competitive Nominations. A nomination will be unacceptable and will be returned if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance, as specified in § 3000.120 of this chapter for a formal lease nomination.

§ 3120.33 Parcels receiving nominations.

Parcels which receive nominations may be included in a Notice of Competitive Lease Sale. The Notice will indicate the number of nominations received for each parcel.

Expressions of Interest

§ 3120.41 Process.

(a) A party submitting an expression of interest in leasing land available for disposition under section 17 of the Mineral Leasing Act must include the submitter's name and address and must submit the expression of interest through the BLM's online leasing system.

(b) The expression must provide a description of the lands identified by legal land description, as follows:

(1) For lands surveyed under the public land survey system, describe the lands to the nearest aliquot part within the legal subdivision, section, township, range, and meridian;

(2) For unsurveyed lands, describe the lands by metes and bounds, giving courses and distances, and tie this information to an official corner of the public land surveys, or to a prominent topographic feature;

(3) For approved protracted surveys, include an entire section, township, range, and meridian. Do not divide protracted sections into aliquot parts;

(4) For lands that have water boundaries, describe the lands based on the initial survey or deed acquiring ownership;

(5) For fractional interest lands, identify the United States mineral ownership by percentage;

(6) For split estate lands, where the surface rights are in private ownership and the rights to develop the oil and gas are managed by the Federal Government, submit the private surface owner's name and address.

(7) For lands where the acquiring agency has assigned an acquisition or tract number covering the lands applied, submit the number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(c) A submitter may submit more than one expression of interest, so long as each expression separately satisfies the requirements of paragraph (b) of this section.

(d) Each expression of interest must include a filing fee, as found in the fee schedule in § 3000.120 of this chapter.

(e) The BLM may include lands in a lease sale on its own initiative.

(f) When determining whether the BLM should offer lands specified in an expression of interest at lease sales, the BLM will evaluate the Secretary's obligations to manage public lands for multiple use and sustained yield and to take any action required to prevent unnecessary or undue degradation of the lands and their resources, along with other applicable legal requirements. At a minimum, the BLM will consider:

(1) Proximity to oil and gas development existing at the time of the BLM's evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations;

(2) The presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors;

(3) The presence of historic properties, sacred sites, and other high value leasing lands, giving preference to lands that would not impair the cultural significance of such resources;

(4) The presence of recreation and other important uses or resources, giving preference to lands that would not impair the value of such uses or resources; and

(5) The potential for oil and gas development, giving preference to lands with high potential for development.

(g) The BLM may offer for sale all or some of the lands specified in an expression of interest and may offer those lands as part of a parcel that includes lands not specified in the expression of interest.

§ 3120.42 Agency inventory of leasing.

Until August 16, 2032, the BLM will from time to time calculate, for the

preceding 1-year period, the acreage for which expressions of interest have been submitted to the BLM and the sum total of acres offered for lease.

Notice of Competitive Lease Sale

§ 3120.51 General.

(a) The lands available for competitive lease sale under this subpart will be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale will be stated in the notice.

(c) The notice will include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.52 Posting timeframes.

(a) After identifying a preliminary list of lands for a lease sale, the BLM will provide a scoping period, of not less than 30 calendar days, for public comment on the preliminary parcel list for the upcoming lease sale. The preliminary parcel list is not subject to protests.

(b) After drafting a National Environmental Policy Act (NEPA) document for a lease sale, the BLM will provide a comment period, of not less than 30 calendar days, for public comment on the NEPA document for the upcoming lease sale. The draft NEPA document is not subject to protests or appeals.

(c) At least 60 calendar days prior to conducting a competitive auction, the BLM will make available to the public a list of lands to be offered for competitive lease sale in a Notice of Competitive Lease Sale.

(d) After posting the Notice of Competitive Lease Sale notice, the BLM will provide a protest period, of not less than 30 calendar days, for public input on the upcoming lease sale.

(e) The BLM will make available the final NEPA compliance documents prior to issuing a lease from the lease sale.

Competitive Auction

§ 3120.61 Competitive auction.

(a) Parcels will be offered by competitive auction.

(b) A winning bid will be the highest bid by a responsible and qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer will be final.

§ 3120.62 Payments required.

(a) Payments must be made in accordance with 43 CFR 3103.11.

(b) Each winning bidder must submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid as specified in § 3000.130 of this chapter;

(2) The total amount of the first year's rental; and

(3) The processing fee for competitive lease applications found in the fee schedule in § 3000.120 of this chapter for each parcel.

(c) The winning bidder must submit the balance of the bonus bid to the proper BLM office within 10 business days after the last day of the competitive auction.

§ 3120.63 Award of lease.

(a) A bid will not be withdrawn and will constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and processing fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with 43 CFR subpart 3102, will constitute a binding lease offer, including all terms and conditions applicable thereto, and must be submitted when payment is made in accordance with § 3120.62(b). Failure to comply with § 3120.62(c) will result in rejection of the bid and forfeiture of the monies submitted under § 3120.62(b).

(b) A lease will be awarded to the highest responsible and qualified bidder. A copy of the lease will be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the land may be reoffered competitively under this subpart.

(d) The BLM will not issue a lease until it resolves all protests covering the lands to be leased.

(e) Leases will be issued within 60 calendar days, following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. If the BLM cannot issue the lease within 60 days, the BLM may reject the offer.

§ 3120.70 Parcels not bid on at auction.

Lands offered at the competitive auction that received no bids may be offered in a future competitive auction.

Future Interest

§ 3120.81 Nomination or expression of interest to make lands available for competitive lease.

A nomination or expression of interest for a future interest lease must be filed in accordance with this subpart.

§ 3120.82 Future interest terms and conditions.

(a) No rental or royalty will be due to the United States prior to the vesting of

the oil and gas rights in the United States. However, the future interest lessee must agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee must file in the proper BLM office an assignment or transfer, in accordance with 43 CFR subpart 3106, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also will cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty will be as for any competitive lease issued under this subpart, as provided in 43 CFR subpart 3103, and the acreage will be chargeable in accordance with 43 CFR 3101.20.

§ 3120.83 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest will be established on an individual case basis. Such agreements may be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

■ 5. The authority citation for part 3130 continues to read as follows:

Authority: 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

■ 6. Revise § 3137.23 to read as follows:

§ 3137.23 NPR—A unitization application.

The unitization application must include:

- (a) The proposed unit agreement;
- (b) A map showing the proposed unit area;
- (c) A list of committed tracts including, for each tract, the:
 - (1) Legal land description and acreage;
 - (2) Names of persons holding record title interest;
 - (3) Names of persons owning operating rights; and
 - (4) Name of the unit operator.
- (d) A statement certifying:

(1) The operator invited all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) within the external boundary of the unit area described in the application to join the unit;

(2) That there are sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area;

(3) The commitment status of all tracts within the area proposed for unitization; and

(4) The operator accepts unit obligations under § 3137.60 of this subpart.

(e) Evidence of acceptable bonding;

(f) A discussion of reasonably foreseeable and significantly adverse effects on the surface resources of the NPR—A and how unit operations may reduce impacts compared to individual lease operations;

(g) A discussion of the proposed methodology for allocating production among the committed tracts. If the unit includes non-Federal oil and gas mineral estate, you must explain how the methodology takes into account reservoir heterogeneity and area variation in reservoir producibility; and

(h) Other documentation that the BLM may request. The BLM may require additional copies of maps, plats, and other similar exhibits.

(i) The processing fee found in the fee schedule in § 3000.120 of this chapter.

■ 7. Revise § 3137.61 to read as follows:

§ 3137.61 Change in unit operators.

(a) To change unit operators, the new unit operator must submit to the BLM:

- (1) Statements that:
 - (i) The new operator accepts unit obligations; and
 - (ii) The percentage of required interest owners consented to a change of unit operator;
- (2) Evidence of acceptable bonding (see § 3137.60(b)); and
- (3) The processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) The effective date of the change in unit operator is the date the BLM approves the new unit operator.

■ 8. Revise § 3138.11 to read as follows:

§ 3138.11 Applications for a subsurface storage agreement.

(a) An application for a subsurface storage agreement must include:

- (1) The reason for forming a subsurface storage agreement;
- (2) A description of the area to be included in the subsurface storage agreement;
- (3) A description of the formation to be used for storage;
- (4) The proposed storage fees or rentals. The fees or rentals must be

based on the value of the subsurface storage, injection, and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances the operator and the BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests have consented to the gas storage agreement in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement;

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage; and

(12) The processing fee found in the fee schedule in § 3000.120 of this chapter.

(b) The BLM will negotiate the terms of a subsurface storage agreement with the operator, including bonding, and reservoir management.

(c) The BLM may request documentation in addition to that which the operator provides under paragraph (a) of this section.

■ 9. Revise part 3140 to read as follows:

PART 3140—LEASING IN SPECIAL TAR SAND AREAS

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

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- 3142.1 Purpose.
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Minimum Production Levels

- 3142.21 Minimum production schedule.
- 3142.22 Advance royalties in lieu of production.
- 3142.30 Expiration.

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; Pub. L. 97–78, 95 Stat. 1070; 42 U.S.C. 15801, unless otherwise noted.

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

§ 3140.1 Purpose.

The purpose of this subpart is to provide for the conversion of existing oil and gas leases and valid claims based on mineral locations within Special Tar Sand Areas to combined hydrocarbon leases.

§ 3140.3 Authority.

These regulations are issued under the authority of the Mineral Lands

Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78).

§ 3140.5 Definitions.

As used in this subpart, the term: *Combined hydrocarbon lease* means a lease issued in a Special Tar Sand Area for the removal of gas and nongaseous hydrocarbon substances other than coal, oil shale or gilsonite.

Complete plan of operations means a plan of operations that is in substantial compliance with the information requirements of 43 CFR part 3592 for both exploration plans and mining plans, as well as any additional information required in this part and under 43 CFR part 3593, as may be appropriate.

Owner of an oil and gas lease means all of the record title holders of an oil gas lease.

Owner of a valid claim based on a mineral location means all parties appearing on the title records recognized as official under State law as having the right to sell or transfer any part of the mining claim, which was located within a Special Tar Sand Area prior to January 21, 1926, for any hydrocarbon resource, except coal, oil shale or gilsonite, leasable under the Combined Hydrocarbon Leasing Act.

Special Tar Sand Area means an area designated by the Department of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077) referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

Unitization means unitization as that term is defined in 43 CFR part 3180.

General Provisions

§ 3140.11 Existing rights.

(a) The owner of an oil and gas lease issued prior to November 16, 1981, or the owner of a valid claim based on a mineral location situated within a Special Tar Sand Area may convert that portion of the lease or claim so situated to a combined hydrocarbon lease, provided that such conversion is consistent with the provisions of this subpart. The application time period ended on November 15, 1983.

(b) Owners of oil and gas leases in Special Tar Sand Areas who elect not to convert their leases to a combined hydrocarbon lease do not acquire the rights to any hydrocarbon resource except oil and gas as those terms were defined prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981. The failure to file an application

to convert a valid claim based on a mineral location within the time herein provided will have no effect on the validity of the mining claim nor the right to maintain that claim.

§ 3140.12 Notice of intent to convert.

(a) Owners of oil and gas leases in Special Tar Sand Areas which were scheduled to expire prior to November 15, 1983, could have preserved the right to convert their leases to combined hydrocarbon leases by filing a Notice of Intent to Convert with the BLM Utah State Office.

(b) A letter, submitted by the lessee, notifying the BLM of the lessee's intention to submit a plan of operations constituted a notice of intent to convert a lease. The Notice of Intent must have contained the lease number.

(c) The Notice of Intent must have been filed prior to the expiration date of the lease. The notice would have preserved the lessee's conversion rights only until November 15, 1983.

§ 3140.13 Exploration plans.

(a) The authorized officer may grant permission to holders of existing oil and gas leases to gather information to develop, perfect, complete or amend a plan of operations required for conversion upon the approval of the authorized officer of an exploration plan developed in accordance with 43 CFR 3592.1.

(b) The approval of an exploration plan in units of the National Park System requires the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) The filing of an exploration plan alone will be insufficient to meet the requirements of a complete plan of operations as set forth in § 3140.2–3.

§ 3140.14 Other provisions.

(a) A combined hydrocarbon lease will be for no more than 5,760 acres. Acreage held under a combined hydrocarbon lease in a Special Tar Sand Area is not chargeable to State oil and gas limitations allowable in 43 CFR 3101.2.

(b) The annual rental rate for all combined hydrocarbon leases will be as stated in the lease. The rental rate for a combined hydrocarbon lease will be payable upon conversion and annually, in advance, thereafter.

(c)(1) The royalty rate for a combined hydrocarbon lease converted from an oil and gas lease will be that provided for in the original oil and gas lease.

(2) The royalty rate for a combined hydrocarbon lease converted from a valid claim based on a mineral location will be 16.67 percent.

(3) A reduction of royalties may be granted either as provided in § 3103.40 or, at the request of the lessee and upon a review of information provided by the lessee, prior to commencement of commercial operations if the purpose of the request is to promote development and the maximum production of tar sand. A reduction of royalties for the tar sand will not apply to the oil and gas resource. A reduction of royalties for the oil and gas will not apply to the tar sand resource.

(d)(1) Existing oil and gas leases and valid claims based on mineral locations may be unitized prior to or after the lease or claim has been converted to a combined hydrocarbon lease. The requirements of 43 CFR part 3180 will provide the procedures and general guidelines for unitization of combined hydrocarbon leases. For leases within units of the National Park System, unitization requires the consent of the Regional Director of the National Park Service in accordance with § 3140.41(b).

(2) If the plan of operations submitted for conversion is designed to cover a unit, a fully executed unit agreement will be approved before the plan of operations applicable to the unit may be approved under § 3140.20. The proposed plan of operations and the proposed unit agreement may be reviewed concurrently. The approved unit agreement will be effective after the leases or claims subject to it are converted to combined hydrocarbon leases. The plan of operations will explain how and when each lease included in the unit operation will be developed.

(e) Except as provided for in this subpart, the regulations set out in 43 CFR part 3100 are applicable, as appropriate, to all combined hydrocarbon leases issued under this subpart.

Applications

§ 3140.21 Forms.

No special form is required for a conversion application.

§ 3140.22 Who may apply.

Only owners of oil and gas leases issued within Special Tar Sands Areas, on or before November 16, 1981, and owners of valid claims based on mineral locations within Special Tar Sands Areas, are eligible to convert leases or claims to combined hydrocarbon leases in Special Tar Sands Areas.

§ 3140.23 Application requirements.

(a) The BLM stopped accepting conversion applications on November 15, 1983. The applicant must have submitted to the BLM Utah State Office,

a written request for a combined hydrocarbon lease signed by the owner of the lease or valid claim which must be accompanied by three copies of a plan of operations which must meet the requirements of 43 CFR 3592.1 and which must have provided for reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of development or mining.

(b) A plan of operations may be modified or amended before or after conversion of a lease or valid claim to reflect changes in technology, slippages in schedule beyond the control of the lessee, new information about the resource or the economic or environmental aspects of its development, changes to or initiation of applicable unit agreements or for other purposes. To obtain approval of a modification or amended plan, the applicant must submit a written statement of the proposed changes or supplements and the justification for the changes proposed. Any modifications will be in accordance with 43 CFR 3592.1(c). The approval of the modification or amendment is the responsibility of the authorized officer. Changes or modification to the plan of operations will have no effect on the primary term of the lease. The authorized officer will, prior to approving any amendment or modification, review the modification or amendment with the appropriate surface management agency. For leases within units of the National Park System, no amendment or modification will be approved without the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) The plan of operations may be for a single existing oil and gas lease or valid claim or for an area of proposed unit operation.

(d) The plan of operations must identify by lease number all Federal oil and gas leases proposed for conversion and identify valid claims proposed for conversion by the recordation number of the mining claim.

(e) The plan of operations must include any proposed designation of operator or proposed operating agreement.

(f) The plan of operations may include an exploration phase, if necessary, but it must include a development phase. Such a plan can be approved even though it may indicate work under the exploration phase is necessary to perfect the proposed plan for the development phase as long as the overall plan demonstrates reasonable protection of

the environment and diligent development of the resources requiring enhanced recovery methods of mining.

(g)(1) Upon determination that the plan of operations is complete, the authorized officer will suspend the term of the Federal oil and gas lease(s) as of the date that the complete plan was filed until the plan is finally approved or rejected. Only the term of the oil and gas lease will be suspended, not any operation and production requirements thereunder.

(2) If the authorized officer determines that the plan of operations is not complete, the applicant will be notified that the plan is subject to rejection if not completed within the period specified in the notice.

(3) The authorized officer may request additional data after the plan of operations has been determined to be complete. This request for additional information will have no effect on the suspension of the running of the oil and gas lease.

Time Limitations

§ 3140.31 Conversion applications.

A plan of operations to convert an existing oil and gas lease or valid claim based on a mineral location to a combined hydrocarbon lease must have been filed on or before November 15, 1983, or prior to the expiration of the oil and gas lease, whichever was earlier, except as provided in § 3140.12.

§ 3140.32 Action on an application.

The authorized officer will take action on an application for conversion within 15 months of receipt of a proposed plan of operations.

Conversion

§ 3140.41 Approval of plan of operations (and unit and operating agreements).

(a) The owner of an oil and gas lease, or the owner of a valid claim based on a mineral location will have such lease or claim converted to a combined hydrocarbon lease when the plan of operations, filed under § 3140.23, is deemed acceptable and is approved by the authorized officer.

(b) The conversion of a lease within a unit of the National Park System will be approved only with the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

(c) A plan of operations may not be approved in part but may be approved where it contains an appropriately staged plan of exploration and development operations.

§ 3140.42 Issuance of the combined hydrocarbon lease.

(a) After a plan of operations is found acceptable, and is approved, the authorized officer will prepare and submit to the owner, for execution, a combined hydrocarbon lease containing all appropriate terms and conditions, including any necessary stipulations that were part of the oil and gas lease being converted, as well as any additional stipulations, such as those required to ensure compliance with the plan of operations.

(b) The authorized officer will not sign the combined hydrocarbon lease until it has been executed by the conversion applicant and the lease or claim to be converted has been formally relinquished to the United States.

(c) The effective date of the combined hydrocarbon lease will be the first day of the month following the date that the authorized officer signs the lease.

(d) The authorized officer will issue one combined hydrocarbon lease to cover the existing contiguous oil and gas leases or valid claims based on mineral locations which have been approved for conversion within the special tar sand area.

§ 3140.50 Duration of the lease.

A combined hydrocarbon lease will be for a primary term of 10 years and for so long thereafter as oil or gas is produced in paying quantities. If the applicant withdraws the combined hydrocarbon lease application or the BLM denies the conversion application, the suspension on the oil and gas lease will be lifted and the term will be extended by the time remaining on the term of the lease.

§ 3140.60 Use of additional lands.

(a) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill site or waste disposal. Application for a lease or permit to use additional lands must be filed under the provisions of 43 CFR part 2920 with the proper BLM office having jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(b) A lease for the use of additional lands will not be issued when the use can be authorized under 43 CFR parts 2800 and 2880. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads, and railroads.

(c) Within units of the National Park System, permits or leases for additional lands will only be issued by the National Park Service. Applications for such permits or leases must be filed with the Regional Director of the National Park Service.

§ 3140.70 Lands within the National Park System.

The BLM stopped accepting conversion applications on November 15, 1983. Conversions of existing oil and gas leases and valid claims based on mineral locations to combined hydrocarbon leases within units of the National Park System will be allowed only where mineral leasing is permitted by law and where the lands covered by the lease or claim proposed for conversion are open to mineral resource disposition in accordance with any applicable minerals management plan. (See 43 CFR 3100.3(h)(4)). In order to consent to any conversion or any subsequent development under a combined hydrocarbon lease requiring further approval, the Regional Director of the National Park Service must find that there will be no resulting significant adverse impacts on the resources and administration of such areas or on other contiguous units of the National Park System in accordance with 43 CFR 3109.20(b).

Subpart 3141—Leasing in Special Tar Sand Areas**§ 3141.1 Purpose.**

The purpose of this subpart is to provide for the competitive leasing of lands and issuance of combined hydrocarbon leases, oil and gas leases, or tar sand leases within special tar sand areas.

§ 3141.3 Authority.

The regulations in this subpart are issued under the authority of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), and the Energy Policy Act of 2005 (Pub. L. 109–58).

§ 3141.5 Definitions.

As used in this subpart, the term:

Combined hydrocarbon lease means a lease issued in a Special Tar Sand Area for the removal of any gas and nongaseous hydrocarbon substance other than coal, oil shale or gilsonite.

Oil and gas lease means a lease issued in a Special Tar Sand Area for the

exploration and development of oil and gas resources other than tar sand.

Special Tar Sand Area means an area designated by the Department of the Interior's Orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077), and referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

Tar sand means any consolidated or unconsolidated rock (other than coal, oil shale or gilsonite) that either:

(1) Contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature greater than 10,000 centipoise, or

(2) contains a hydrocarbonaceous material and is produced by mining or quarrying.

Tar sand lease means a lease issued in a Special Tar Sand area exclusively for the exploration for and extraction of tar sand.

§ 3141.8 Other applicable regulations.

(a) *Combined hydrocarbon leases.* (1) The following provisions of 43 CFR part 3100, as they relate to competitive leasing, apply to the issuance and administration of combined hydrocarbon leases issued under this part.

(i) All of 43 CFR subpart 3100;
(ii) The following sections of 43 CFR subpart 3101: §§ 3101.11, 3101.21, 3101.22, 3101.24, 3101.25, 3101.61, 3101.62, and 3101.65;

(iii) All of 43 CFR subpart 3102;
(iv) All of 43 CFR subpart 3103, with the exception of §§ 3103.21, and 3103.31–1 (a), (b), and (c);

(v) All of 43 CFR subpart 3104;
(vi) All of 43 CFR subpart 3105;
(vii) All of 43 CFR subpart 3106, with the exception of § 3106.10(i);

(viii) All of 43 CFR subpart 3107;
(ix) All of 43 CFR subpart 3108; and
(x) All of 43 CFR subpart 3109, with special emphasis on § 3109.20(b).

(2) Prior to commencement of operations, the lessee must develop either a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment or file an application for a permit to drill as described in 43 CFR part 3160, whichever is appropriate.

(3) The provisions of 43 CFR part 3180 will serve as general guidance to the administration of combined hydrocarbon leases issued under this part to the extent they may be included in unit or cooperative agreements.

(b) *Oil and gas leases.* (1) All of the provisions of 43 CFR parts 3100, and 3120 apply to the issuance and administration of oil and gas leases issued under this part.

(2) All of the provisions of 43 CFR parts 3160 and 3170 apply to operations on an oil and gas lease issued under this part.

(3) The provisions of 43 CFR part 3180 apply to the administration of oil and gas leases issued under this part.

(c) *Tar sand leases.* (1) The following provisions of 43 CFR part 3100, as they relate to competitive leasing, apply to the issuance of tar sand leases issued under this part.

(i) All of 43 CFR subpart 3102;

(ii) All of 43 CFR subpart 3103 with the exception of §§ 3103.21, 3103.22(d), and 3103.30;

(iii) All of 43 CFR 3120.50; and

(iv) All of 43 CFR 3120.60.

(2) Prior to commencement of operations, the lessee must develop a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment.

§ 3141.10 General.

(a) Combined hydrocarbons or tar sands within a Special Tar Sand Area will be leased only by competitive bonus bidding.

(b) Oil and gas within a Special Tar Sand Area will be leased by competitive bonus bidding as described in 43 CFR part 3120.

(c) The authorized officer may issue either combined hydrocarbon leases, or oil and gas leases for oil and gas within such areas.

(d) The rights to explore for or develop tar sand deposits in a Special Tar Sand Area may be acquired through either a combined hydrocarbon lease or a tar sand lease.

(e) An oil and gas lease in a Special Tar Sand Area does not include the rights to explore for or develop tar sand.

(f) A tar sand lease in a Special Tar Sand Area does not include the rights to explore for or develop oil and gas.

(g) The minimum acceptable bid for a lease issued for tar sand will be as specified in § 3000.130 of this chapter.

(h) The acreage of combined hydrocarbon leases or tar sand leases held within a Special Tar Sand Area will not be charged against acreage limitations for the holding of oil and gas leases as provided in 43 CFR 3101.21.

(i)(1) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are shown by an applicant to be needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill siting or waste disposal. An application for a lease or permit to use additional lands must be filed under the provisions of 43 CFR part 2920 with the proper BLM office having

jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(2) A lease for the use of additional lands will not be issued under this part when the use can be authorized under 43 CFR part 2800. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads and railroads.

(3) Within units of the National Park System, permits or leases for additional lands for any purpose will be issued only by the National Park Service. Applications for such permits or leases must be filed with the Regional Director of the National Park Service.

Prelease Exploration Within Special Tar Sand Areas

§ 3141.21 Geophysical exploration.

Geophysical exploration in Special Tar Sand Areas will be governed by 43 CFR part 3150. Information obtained under a permit must be made available to the BLM upon request.

§ 3141.22 Exploration licenses.

(a) Any person(s) responsible and qualified to hold a lease under the provisions of 43 CFR subpart 3102 and this subpart may obtain an exploration license to conduct core drilling and other exploration activities to collect geologic, environmental and other data concerning tar sand resources only on lands, the surface of which are under the jurisdiction of the BLM, within or adjacent to a Special Tar Sand Area. The application for such a license must be submitted to the proper BLM office having jurisdiction over the lands. No drilling for oil or gas will be allowed under an exploration license issued under this subpart. No specific form is required for an application for an exploration license.

(b) The application for an exploration license will be subject to the following requirements:

(1) Each application must contain the name and address of the applicant(s);

(2) Each application must be accompanied by a nonrefundable filing fee based on the coal exploration license application fee found in the fee schedule in § 3000.120 of this chapter;

(3) Each application must contain a description of the lands covered by the application according to section, township and range in accordance with the official survey;

(4) Each application must include an exploration plan which complies with the requirements of 43 CFR 4392.1(a); and

(5) An application must cover no more than 5,760 acres, which will be as

compact as possible. The authorized officer may grant an exploration license covering more than 5,760 acres only if the application contains a justification for an exception to the normal limitation.

(c) The authorized officer may, if he/she determines it necessary to avoid impacts resulting from duplication of exploration activities, require applicants for exploration licenses to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. If joint participation is determined necessary, it will be conducted according to the following:

(1) Immediately upon the notification of a determination that parties will be given an opportunity to participate in the exploration license, the applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the exploration license are situated. This notice must contain an invitation to the public to participate in the exploration license on a pro rata cost sharing basis. Copies of the "Notice of Invitation" must be filed with the authorized officer at the time of publication by the applicant for posting in the proper BLM office having jurisdiction over the lands covered by the application for at least 30 days prior to the issuance of the exploration license.

(2) Any person seeking to participate in the exploration program described in the Notice of Invitation must notify the authorized officer and the applicant in writing of such intention within 30 days after posting in the proper BLM office having jurisdiction over the lands covered by the Notice of Invitation. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of the person(s) seeking to participate and to avoid the duplication of exploration activities in the same area, or that the person(s) should file a separate application for an exploration license.

(3) An application to conduct exploration which could have been conducted under an existing or recent exploration license issued under this paragraph may be rejected.

(d) The authorized officer may accept or reject an exploration license application. An exploration license will become effective on the date specified by the authorized officer as the date when exploration activities may begin. The exploration plan approved by the

BLM will be attached and made a part of each exploration license.

(e) An exploration license will be subject to these terms and conditions:

(1) The license will be for a term of not more than 2 years;

(2) The annual rental rate for an exploration license will be as stated in the license;

(3) The licensee must provide a bond in an amount determined by the authorized officer, but not less than \$5,000. The authorized officer may accept bonds furnished under 43 CFR subpart 3104, if adequate. The period of liability under the bond will be terminated only after the authorized officer determines that the terms and conditions of the license, the exploration plan and the regulations have been met;

(4) The licensee must provide to the BLM, upon request, all required information obtained under the license. Any information provided will be treated as confidential and proprietary, if appropriate, at the request of the licensee, and will not be made public until the areas involved have been leased or if the BLM determines that public access to the data will not damage the competitive position of the licensee.

(5) Operations conducted under a license will not unreasonably interfere with or endanger any other lawful activity on the same lands, must not damage any improvements on the lands, and will not result in any substantial disturbance to the surface of the lands and their resources;

(6) The authorized officer will include in each license requirements and stipulations to protect the environment and associated natural resources, and to ensure reclamation of the land disturbed by exploration operations;

(7) When unforeseen conditions are encountered that could result in an action prohibited by paragraph (e)(5) of this section, or when warranted by geologic or other physical conditions, the authorized officer may adjust the terms and conditions of the exploration license and may direct adjustment in the exploration plan;

(8) The licensee may submit a request for modification of the exploration plan to the authorized officer. Any modification will be subject to the regulations in this section and the terms and conditions of the license. The authorized officer may approve the modification after any necessary adjustments to the terms and conditions of the license that are accepted in writing by the licensee; and

(9) The license will be subject to termination or suspension as provided in 43 CFR 2920.9–3.

§ 3141.30 Land use plans.

No lease will be issued under this subpart unless the lands have been included in a land use plan which meets the requirements under 43 CFR part 1600 or an approved Minerals Management Plan of the National Park Service. The decision to hold a lease sale and issue leases will be in conformance with the appropriate plan.

Consultation

§ 3141.41 Consultation with the Governor.

The Secretary will consult with the Governor of the State in which any tract proposed for sale is located. The Secretary will give the Governor 30 days to comment before determining whether to conduct a lease sale. The Secretary will seek the recommendations of the Governor of the State in which the lands proposed for lease are located as to whether or not to lease such lands and what alternative actions are available and what special conditions could be added to the proposed lease(s) to mitigate impacts. The Secretary will accept the recommendations of the Governor if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Secretary will communicate to the Governor in writing and publish in the **Federal Register** the reasons for his/her determination to accept or reject such Governor's recommendations.

§ 3141.42 Consultation with others.

(a) Where the surface is administered by an agency other than the BLM, including lands patented or leased under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), all leasing under this subpart will be in accordance with the consultation requirements of 43 CFR subpart 3100.

(b) The issuance of combined hydrocarbon leases, oil and gas leases, and tar sand leases within special tar sand areas in units of the National Park System will be allowed only where mineral leasing is permitted by law and where the lands are open to mineral resource disposition in accordance with any applicable Minerals Management Plan. In order to consent to any issuance of a combined hydrocarbon lease, oil and gas lease, tar sand lease, or subsequent development of hydrocarbon resources within a unit of National Park System, the Regional Director of the National Park Service will find that there will be no resulting

significant adverse impacts to the resources and administration of the unit or other contiguous units of the National Park System in accordance with 43 CFR 3109.20(b).

Leasing Procedures

§ 3141.51 Economic evaluation.

Prior to any lease sale for a combined hydrocarbon lease, the authorized officer will request an economic evaluation of the total hydrocarbon resource on each proposed lease tract exclusive of coal, oil shale, or gilsonite.

§ 3141.52 Term of lease.

(a) Oil and gas leases in special tar sand areas will have a primary term of 10 years and will remain in effect so long thereafter as oil or gas is produced in paying quantities.

(b) Tar Sand leases will have a primary term of 10 years and will remain in effect so long thereafter as tar sand is produced in paying quantities.

§ 3141.53 Royalties and rentals.

(a) The royalty rate on all combined hydrocarbon leases or tar sand leases is 16.67 percent of the value of production removed or sold from a lease. The ONRR will be responsible for collecting and administering royalties.

(b) The lessee may request the Secretary to reduce the royalty rate applicable to a tar sand lease prior to commencement of commercial operations in order to promote development and maximum production of the tar sand resource in accordance with procedures established by the BLM for oil shale leases and may request a reduction in the royalty after commencement of commercial operations in accordance with 43 CFR 3103.41.

(c) The annual rental rate for a combined hydrocarbon lease will be as stated in the lease.

(d) The annual rental rate for a tar sand lease will be as stated in the lease.

(e) Except as explained in paragraphs (a) through (c) of this section, all other provisions of 43 CFR 3103.20 and 3103.30 apply to combined hydrocarbon leasing.

§ 3141.54 Lease size.

Combined hydrocarbon leases or tar sand leases in Special Tar Sand Areas will not exceed 5,760 acres.

§ 3141.55 Dating of lease.

A combined hydrocarbon lease will be effective as of the first day of the month following the date the lease is signed on behalf of the United States, except where a prior written request is made, a lease may be made effective on

the first of the month in which the lease is signed.

Sale Procedures

§ 3141.61 Initiation of competitive lease offering.

The BLM may, on its own motion, offer lands through competitive bidding. A request or expression(s) of interest in tract(s) for competitive lease offerings must be submitted in writing to the proper BLM office.

§ 3141.62 Publication of a notice of competitive lease offering.

Combined Hydrocarbon Leases, Tar Sand Leases or Oil and Gas Leases. At least 45 days prior to conducting a competitive auction, lands to be offered for a competitive lease sale, as in a Notice of Competitive Lease Sale, will be made available to the public. The notice will specify the time and place of sale; the manner in which the bids may be submitted; the description of the lands; the terms and conditions of the lease, including the royalty and rental rates; the amount of the minimum bid; and will state that the terms and conditions of the leases are available for inspection and designate the proper BLM office where bid forms may be obtained.

§ 3141.63 Conduct of sales.

(a) *Oil and gas leases.* Lease sales for oil and gas leases will be conducted using the procedures for oil and gas leases in 43 CFR 3120.60.

(b) *Combined hydrocarbon leases and tar sand leases.* (1) Parcels will be offered by competitive auction.

(2) The winning bid will be the highest bid by a responsible and qualified bidder, equal to the minimum bonus bid amount as specified in § 3000.130 of this chapter or for hydrocarbon leases, the minimum bonus bid amount determined under § 3141.51, whichever is larger.

(3) Payments must be made as provided in 43 CFR 3120.62.

§ 3141.64 Qualifications.

Each bidder must submit with the bid a statement over the bidder's signature with respect to compliance with 43 CFR subpart 3102.

§ 3141.65 Rejection of bid.

If the high bid is rejected for failure by the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the minimum bonus payment accompanying the bid will be forfeited.

§ 3141.66 Consideration of next highest bid.

The Department reserves the right to accept the next highest bid if the highest bid is rejected. In no event will an offer be made to the next highest bidder if the difference between that bid and the bid of the rejected successful bidder is greater than the minimum bonus payment forfeited by the rejected successful bidder.

§ 3141.70 Award of lease.

After determining the highest responsible and qualified bidder, the authorized officer will send the lease on a form approved by the Director, and any necessary stipulations, to the successful bidder. The successful bidder must, not later than the 30th calendar day after receipt of the lease, execute the lease, pay the balance of the bid and the first year's rental, and file a bond as required in 43 CFR subpart 3104. Failure to comply with this section will result in rejection of the lease.

Subpart 3142—Paying Quantities/ Diligent Development for Combined Hydrocarbon and Tar Sand Leases

§ 3142.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases and tar sand leases.

§ 3142.3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§ 3142.5 Definitions.

As used in this subpart, the term: *Production in paying quantities for combined hydrocarbon leases* means:

(1) Production, in compliance with an approved plan of operations and by nonconventional methods, of oil and gas which can be marketed; or

(2) Production of oil or gas by conventional methods as the term is currently used in 43 CFR part 3160.

Production in paying quantities for oil and gas leases means production of oil or gas by conventional methods that meets the definition of “production in paying quantities” in 43 CFR 3160.0–5.

Production in paying quantities for tar sand leases means production of shale oil quantities that provide a positive

return after all costs of production have been met, including the amortized costs of the capital investment.

§ 3142.10 Diligent development.

A lessee will have met its diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which must include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.5(a), by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which will be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

Minimum Production Levels

§ 3142.21 Minimum production schedule.

(a) Upon receipt of the supplement to the plan of operations described in § 3142.10(b), the authorized officer will examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee must furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: ore grade, strip ratio, vertical and horizontal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer will then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which will start in the eleventh year of the lease. This minimum production level will escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the

lease and remain at 1 percent each year thereafter.

(b) The minimum annual tar sand production schedule for the lease or unit operations will be set at a level for paying quantities. If the operator or lessee cannot establish production in paying quantities, the lease will terminate at the end of the lease's primary term.

§ 3142.22 Advance royalties in lieu of production.

(a) Failure to meet the minimum annual tar sand production schedule level in any year will result in the assessment of an advance royalty in lieu of production which will be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there will be no production during the remainder of the lease year, the lessee must submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer may approve a suspension of production for that lease year and the lease will not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit, the lessee must pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer may direct a suspension of production for those periods during which no production occurred.

§ 3142.30 Expiration.

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, will result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee will remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

■ 10. The authority citation for part 3150 continues to read as follows:

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189 and 359; 42 U.S.C. 6508; 43 U.S.C. 1201, 1732(b), 1733, 1734, 1740.

■ 11. Revise subpart 3151 to read as follows:

Subpart 3151—Exploration Outside of Alaska

Sec.

3151.10 Notice of intent to conduct oil and gas geophysical exploration operations.

3151.20 Notice of completion of operations.

3151.30 Collection and submission of data.

Subpart 3151—Exploration Outside of Alaska

§ 3151.10 Notice of intent to conduct oil and gas geophysical exploration operations.

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska must file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent must include the filing fee required by 43 CFR 3000.120 and must be filed with the authorized officer of the proper BLM office on the form approved by the Director. Within 5 business days of the filing date, the authorized officer will process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 business days of the filing date, the authorized officer will promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator must, within 5 business days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator will signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.20 Notice of completion of operations.

Upon completion of exploration, the permittee must file with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer will notify the permittee whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and

extent of actions to be taken by the permittee.

§ 3151.30 Collection and submission of data.

(a) The permittee must submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) All information submitted under this section is subject to 43 CFR part 2, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided at § 3100.40 of this chapter.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 12. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 13. Revise § 3160.0–5 to read as follows:

§ 3160.0–5 Definitions.

As used in this part, the term:

Authorized representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

Federal lands means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

Fresh water means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or aquatic life, unless otherwise specified in applicable notices or orders.

Knowingly or willfully means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful

nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

Lease means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas.

Lease site means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

Lessee means any person holding record title or owning operating rights in a lease issued or approved by the United States.

Lessor means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

Major violation means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

Maximum ultimate economic recovery means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary, or tertiary recovery operations.

Minor violation means noncompliance that does not rise to the level of a *major violation*.

New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales

metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs.

Notice to lessees and operators (NTL) means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

Onshore oil and gas order means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

Operating rights owner means a person who owns operating rights in a lease. A record title holder may also be an operating rights owner in a lease if it did not transfer all of its operating rights.

Operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Paying well means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

Person means any individual, firm, corporation, association, partnership, consortium or joint venture.

Production in paying quantities means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

Protective well means a well drilled or modified to prevent or offset drainage of oil and gas resources from its Federal or Indian lease.

Record title holder means the person(s) to whom BLM or an Indian lessor issued a lease or approved the assignment of record title in a lease.

Shut-in well means a nonoperational well that can physically and mechanically operate by opening valves or activating existing equipment.

Superintendent means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

Surface use plan of operations means a plan for surface use, disturbance, and reclamation.

Temporarily abandoned well means a nonoperational well that is not physically or mechanically capable of production or injection without additional equipment or without servicing the well, but that may have future beneficial use.

Waste of oil or gas means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in:

(1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or

(2) Avoidable surface loss of oil or gas.

■ 14. Revise § 3162.3–4 to read as follows:

§ 3162.3–4 Well abandonment.

(a) The operator must promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer approves the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

(b) Completion of a well as plugged and abandoned may also include conditioning the well as a water supply source for lease operations or for use by the surface owner or appropriate Government Agency, when authorized by the authorized officer. All costs over and above the normal plugging and abandonment expense will be paid by the party accepting the water well.

(c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The operator must provide adequate and detailed justification for the abandonment, verify the mechanical integrity of the well, and isolate the completed interval(s) prior to abandonment. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of up to 1 year and the authorized officer may authorize additional delays, no one of which may exceed an additional 1-year period. Except in extraordinary circumstances, the maximum period of time for an operator to delay permanent abandonment of a temporarily abandoned well will not exceed 4 years. Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations must be

reclaimed in accordance with a plan first approved or prescribed by the authorized officer.

(d) Operators of shut-in wells must:

(1) Notify the authorized officer of the well's shut-in status and provide the date the well was shut-in within 90 days of well shut-in;

(2) Within 3 years of well shut-in, provide the authorized officer with verification of the mechanical integrity of the well and confirmation that the well remains capable of producing in paying quantities; and

(3) Within 4 years of well shut-in, complete one of the following actions:

(i) Permanently abandon the well;

(ii) Resume production in paying quantities; or

(iii) Provide the authorized officer with a detailed plan and timeline for future beneficial use of the well. If the authorized officer determines that there is a legitimate future beneficial use for the well, the officer may allow the operator to delay permanent abandonment by 1 year. The authorized officer may grant additional delays in 1-year increments, provided that the operator confirms the future beneficial use of the well and is making verifiable progress on returning the well to a beneficial use.

■ 15. Revise § 3165.1 to read as follows:

§ 3165.1 Relief from operating and/or producing requirements.

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, must be filed with the authorized officer, and must include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer will act on applications submitted for a suspension of operations or production, or both, filed pursuant to 43 CFR 3103.42. The application for suspension must be filed with the authorized officer prior to the expiration date of the lease; must be executed by all operating rights owners or by the operator on behalf of the operating rights owners; and must include a full statement of the circumstances that makes such relief necessary.

(c) The authorized officer will not approve an application for a suspension of a lease where the applicant cites, as the basis for the suspension, a pending APD filed less than 90 calendar days prior to the expiration date of the lease.

(d) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer in the approval.

Approved suspensions will not exceed 1 year. If the circumstances warrant all operating rights owners, or the operator on behalf of the operating rights owners, may submit a request to extend the suspension prior to the end of the suspension.

(e) BLM-directed suspensions may exceed 1 year.

(f) Suspensions will lift when the basis provided for the suspension no longer exists, when lifting the suspension is in the public interest, or as otherwise stated by the authorized officer in the approval letter.

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 16. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 17. Revise § 3171.6 to read as follows:

§ 3171.6 Components of a complete APD package.

Operators are encouraged to consider and incorporate Best Management Practices into their APDs because Best Management Practices can result in reduced processing times and reduced number of Conditions of Approval. An APD package must include the following information that will be reviewed by technical specialists of the appropriate agencies to determine the technical adequacy of the package:

(a) A completed Form 3160–3; and

(b) A well plat. Operators must include in the APD package a well plat and geospatial database prepared by a registered surveyor depicting the proposed location of the well and identifying the points of control and datum used to establish the section lines or metes and bounds. The purpose of this plat is to ensure that operations are within the boundaries of the lease or agreement and that the depiction of these operations is accurately recorded both as to location (latitude and longitude) and in relation to the surrounding lease or agreement boundaries (public land survey corner and boundary ties). The registered surveyor should coordinate with the cadastral survey division of the appropriate BLM State Office, particularly where the lands have not been surveyed under the Public Land Survey System.

(1) The plat and geospatial database must describe the location of operations in:

(i) Geographical coordinates generated by an electronic navigation system, and

document the datum referenced to generate these coordinates; and

(ii) In feet and direction from the nearest two adjacent section lines, or, if not within the Rectangular Survey System, the nearest two adjacent property lines, generated from the BLM's current Geographic Coordinate Data Base.

(2) The surveyor who prepared the plat must sign it, certifying that the location has been staked on the ground as shown on the plat.

(3) Surveying and staking are necessary casual uses, typically involving negligible surface disturbance. The operator is responsible for making access arrangements with the appropriate Surface Managing Agency (other than the BLM and the FS) or private surface owner. On tribal or allotted lands, the operator must contact the appropriate office of the BIA to make access arrangements with the Indian surface owners. In the event that not all of the Indian owners consent or may be located, but a majority of those who can be located consent, or the owners of interests are so numerous that it would be impracticable to obtain their consent and the BIA finds that the issuance of the APD will cause no substantive injury to the land or any owner thereof, the BIA may approve access. Typical off-road vehicular use, when conducted in conjunction with these activities, is a necessary action for obtaining a permit and may be done without advance approval from the Surface Managing Agency, except for:

(i) Lands administered by the

Department of Defense;

(ii) Other lands used for military purposes;

(iii) Indian lands; or

(iv) Where more than negligible surface disturbance is likely to occur or is otherwise prohibited.

(4) No entry on split estate lands for surveying and staking should occur without the operator first making a good faith effort to notify the surface owner. Also, operators are encouraged to notify the BLM or the FS, as appropriate, before entering private lands to stake for Federal mineral estate locations.

■ 18. Revise § 3171.14 to read as follows:

§ 3171.14 Valid Period of Approved APD.

(a) An APD approval is ordinarily valid for 3 years from the date that it is approved, or until lease expiration, whichever occurs first.

(b) Notwithstanding paragraph (a) of this section, if an APD approval expires by reason other than lease expiration, the APD approval shall remain valid if the operator or lessee:

(1) Has drilled the well to the approximate total depth in the approved APD;

(2) Is drilling the well with a rig capable of drilling the well to the proposed total depth in the approved APD; or

(3) Has submitted a plan, approved by the BLM prior to expiration of the APD approval, for continuously drilling the well to reach the proposed total depth in the approved APD.

(c) If, upon expiration of the approved APD, the operator created surface disturbance or began drilling the well

under the approved APD, the operator or lessee must comply with all applicable plugging, abandonment, and reclamation requirements.

(d) The operator is responsible for reclaiming any surface disturbance that resulted from its actions, even if a well was not drilled.

**PART 3180—ONSHORE OIL AND GAS
UNIT AGREEMENTS: UNPROVEN
AREAS**

■ 19. The authority citation for part 3180 continues to read as follows:

Authority: 30 U.S.C. 189.

§ 3186.2 [Removed]

■ 20. Remove § 3186.2.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, 22, et al.

Modernization of Special Airworthiness Certification; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

14 CFR Parts 1, 21, 22, 36, 43, 45, 61, 65, 91, and 119

[Docket No.: **FAA–2023–1377**; Notice No. **23–10**]

RIN 2120–AL50

Modernization of Special Airworthiness Certification

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend rules for the manufacture, certification, operation, maintenance, and alteration of light-sport aircraft. The proposed amendments would enable enhancements in safety and performance and would increase privileges under a number of sport pilot and light-sport aircraft rules. These enhancements include increasing suitability for flight training, limited aerial work, and personal travel. This proposed rule would expand what aircraft sport pilots may operate. This NPRM also includes proposals to amend the special purpose operations for restricted category aircraft; amend the duration, eligible purposes, and operating limitations for experimental aircraft; and add operating limitations applicable to experimental aircraft engaged in space support vehicle flights to codify statutory language.

DATES: Send comments on or before October 23, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1377 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *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 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.

Docket: Background documents or comments received may be read at

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: For technical questions concerning this action, contact James Newberger, Aircraft Certification Service (AIR–632), Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, telephone (202) 267–1636; email *james.e.newberger@faa.gov*.

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List of Acronyms Frequently Used in This Document

ASTM—ASTM International
 ATD—Aviation Training Device
 CAS—Calibrated Airspeed
 CFR—Code of Federal Regulations
 DOD—Department of Defense
 DOT—Department of Transportation
 FAA—Federal Aviation Administration
 FADEC—Full Authority Digital Electric Control
 FR—Federal Register
 FSTD—Flight Simulation Training Device
 IBR—Incorporation by reference
 LSAMA—Light-Sport Aircraft Manufacturers Assessment
 MOSAIC—Modernization of Special Airworthiness Certification
 MSL—Mean Sea Level (altitude)
 NAICS—North American Industry Classification System
 NPRM—Notice of proposed rulemaking
 NTSB—National Transportation Safety Board
 OMB—Office of Management and Budget
 PIC—Pilot in Command
 PTS—Practical Test Standards
 RFA—Regulatory Flexibility Act
 RIA—Regulatory Impact Analysis
 U.S.C.—United States Code
 VFR—Visual Flight Rules
 VH—Maximum airspeed in level flight with maximum continuous power
 VNE—Maximum never exceed speed
 VS1—Maximum Stalling Speed (in clean configuration)

I. Executive Summary

A. Overview of the Proposed Rule

The FAA proposes to amend rules related to the certification and operation of light-sport category aircraft. This rule would modernize the regulatory approach to light-sport aircraft, incorporating performance-based requirements that reflect advances in technology and use cases for this type of aircraft. The proposal is designed to respond to the evolving needs of this sector and provide for future growth and innovation without compromising safety.

In 2004, the FAA published the final rule titled “Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft,” which established rules for the manufacture, certification, operation, and maintenance of light-sport aircraft (69 FR 44771; July 27, 2004) (hereafter “the 2004 final rule”). That rule provided for the operation and manufacture of aircraft weighing less than 1,320 pounds (or 1,430 pounds for aircraft intended for operation on water). These “light-sport” aircraft included airplanes, gliders, balloons, powered parachutes, weight-shift-control aircraft, and gyroplanes. The FAA bases the rigor of certification requirements and operational limitations on a safety continuum that assesses the exposure of the public to

risk for each aircraft and operation; as the risk increases due to increased operating privileges and aircraft capability, the requirements and corresponding rigor of requirements and procedures for certification increase.

In establishing the 2004 final rule, the FAA intentionally established a rigor of certification for light-sport category aircraft between normal category aircraft and aircraft holding experimental certificates in view of intended operating privileges and aircraft capability. This preamble uses experimental amateur-built aircraft for the safety continuum discussions since they are similar to light-sport category aircraft in this proposal. Amateur-built aircraft are largely used for recreational purposes, are flown by sport pilots and pilots with higher grade certificates, and generally have the same flight envelope and occupancy limits. Amateur-built aircraft are below light-sport category aircraft on the safety continuum because of their lower safety assurance for aircraft design and being subject to stringent operating limitations. Amateur-built aircraft have no regulatory design requirements for suitability of materials used, structural integrity, or instruments, equipment, and systems. This proposed rule would prescribe design requirements for light-sport category aircraft for these items. This proposed rule would also allow light-sport aircraft to conduct aerial work operations that have been authorized by the manufacturer for compensation or hire. Amateur-built aircraft are limited to non-commercial operations for the purpose of education and recreation.

Since the 2004 rule, light-sport category aircraft have shown a lower accident rate than experimental amateur-built airplanes. The FAA considers that the successful safety record of light-sport category aircraft validates certification requirements established in the 2004 final rule and provides support for expanding the scope of certification for light-sport category aircraft and operations. As a result, the FAA identified this proposed rule as an opportunity to expand the 2004 final rule to include a wider variety of aircraft, increase performance, and increase operating privileges to extend these safety benefits to more aircraft. The FAA intends for these expansions to increase safety by encouraging aircraft owners, who may be deciding between an experimental aircraft or a light-sport category aircraft, to choose aircraft higher on the safety continuum and, therefore, meet higher aircraft certification requirements.

This proposed rule also addresses other aircraft that hold special airworthiness certificates. Specifically, the FAA proposes to codify additional special purpose operations for restricted category aircraft that the FAA has previously approved under discretion provided in § 21.25(b)(7). In addition, this rule would amend the duration, eligible purposes, and operating limitations for special airworthiness certificates issued for experimental purposes.

The FAA has identified proposals to improve both the safety and functionality of light-sport category aircraft and light-sport category kit-built aircraft. This rule would amend aircraft, pilot, maintenance, and operational requirements to increase both the safety and performance of these aircraft while mitigating risk. The FAA recognizes that this is a balancing act—where the risk is increased due to greater capability in one area, mitigations may be required from the other areas.

This proposal would establish performance-based requirements related to light-sport certificated aircraft. As a fundamental matter, the proposal would restructure how certification requirements for light-sport category aircraft are presented in the FAA's regulations. Currently, issuance of special airworthiness certificates under § 21.190 for light-sport category aircraft, sport pilot certificates under part 61, subpart J, and repairman (light-sport) certificates under part 65 are limited by a number of aircraft design limitations included in the definition of light-sport aircraft in § 1.1. This proposal would remove that definition and, in its place, write performance-based standards for aircraft and airman certification into 14 CFR parts 21, 61, and 65, where these requirements for other types of aircraft and airman certification reside. This would make the FAA's regulatory approach to light-sport category aircraft more consistent with its approach to other types of aircraft.

Another important change proposed under this rule would eliminate the weight limits for light-sport category aircraft. To enable the design and manufacture of light-sport category aircraft that are safe to fly with increased capacity and ability, this proposal would apply new design and manufacturing requirements. This would allow growth and innovation within performance-based safety parameters. This proposal also expands aircraft that sport pilots can operate. Under this proposal, sport pilots could operate airplanes designed with up to four seats, even though they would remain limited to operating with only

one passenger. Finally, the proposal would change the name of the repairman certificate (light-sport aircraft) to repairman certificate (light-sport). This certificate would apply to existing and new types of aircraft certificated in the light-sport category, such as rotorcraft and powered-lift. Related provisions would update the requirements for maintenance.

The FAA is also proposing regulations related to noise for light-sport aircraft, expanding applicability of part 36 noise limits. To provide flexibility and reduce burdens of compliance with these noise limits, the FAA is proposing options for compliance: conventional noise testing per part 36 or means of compliance via FAA-approved, industry consensus standards. The FAA expects that any consensus standards would not be limited to physical measurements of noise taken during test flights. They might instead be based on empirical data, analytical modeling, or generally accepted noise prediction methods if the underlying noise prediction methods are found to be robust.

In addition to maintenance and manufacturing requirements, the FAA also proposes to expand the kinds of operations that can be performed by light-sport category aircraft. Specifically, this proposal would permit light-sport category aircraft to be used in certain aerial work operations for aircraft that meet the applicable consensus standard for that operation.

Additionally, the FAA is proposing amendments to experimental aircraft regulations. The proposed regulations create new operating purposes for former military and kit-built aircraft and amend the operating purpose for market survey. The proposed regulations also include new operating limitations, an increased certificate duration, and new noise requirements. The FAA is further proposing amendments related to restricted category aircraft, including a codification of special operating purposes for restricted category aircraft. This NPRM also includes proposed changes to right of way and operations around airports in Class G airspace.

B. Summary of Costs and Benefits

The proposed rule largely expands opportunities for light-sport category aircraft. These expansions may result in safety and recreational benefits; there may also be associated design and production costs. The FAA expects requirements to comply with noise standards would be minimal using industry consensus standards. The FAA also does not anticipate more than minimal incremental costs for other provisions of the proposed rule, such as

training, and does not have data to estimate any cost savings, such as those that could result from operating certain light-sport category aircraft in aerial work for compensation.

II. Background

A. History

In the 2004 final rule, the FAA reasoned that new rules for light-sport category aircraft were necessary to address advancing sport and recreational aviation technology, the lack of regulations for existing aircraft, and several petitions for exemptions and rulemaking. The 2004 final rule provided for the manufacture of safe and economical certificated aircraft beyond the weight limit permitted by part 103; established the sport pilot certificate; and allowed certificated pilots to operate light-sport category aircraft for sport and recreation, carry one passenger, and conduct flight training and towing in a safe manner. The resulting regulations also placed restrictions on light-sport category aircraft design and performance requirements including an aircraft weight limit of less than 1,320 pounds (1,430 pounds for aircraft intended for operation on water). Light-sport aircraft include airplanes, gliders, balloons, powered parachutes, weight-shift-control aircraft, and gyroplanes.

The FAA has granted multiple exemptions for light-sport aircraft based on safety considerations that include:

- Retractable landing gear to enable takeoffs and landings from land and water;
 - Various weight increases, with the largest allowing up to 1,850 pounds; and
 - A V_{S1} stalling speed increase to 54 knots calibrated airspeed (CAS).
- Discussion of the specific grants of exemption follow in section II.B.1.

The FAA also amended rules on two occasions for light-sport aircraft and airmen. In 2007, the FAA amended the definition of light-sport aircraft to permit development of lighter-than-air light-sport aircraft and allow retractable landing gear for light-sport aircraft intended for operation on water. In 2010, the FAA also amended rules for persons holding a sport pilot certificate and flight instructors with a sport pilot rating to address airman certification and operational issues that arose since the 2004 final rule. Detailed discussion of these amendments is included in section II.B.2.

In 2010, the FAA completed a Light-Sport Aircraft Manufacturers Assessment (LSAMA) Final Report, dated May 17, 2010 (the LSAMA Final

Report), following its assessment of 14 light-sport category aircraft manufacturers to evaluate compliance with the 2004 final rule. On June 28, 2012, the FAA published a notification in the **Federal Register** (77 FR 38463) (the “LSAMA Notification”) describing its concerns identified in the LSAMA Final Report. Specific concerns included:

- Most manufacturing facilities evaluated could not fully substantiate that the aircraft for which they had issued a statement of compliance did, in fact, meet the consensus standards identified in those documents.
- The accuracy of declarations made in a statement of compliance.
- That more FAA involvement is warranted than originally intended under the 2004 final rule.

Considering these concerns, the FAA established an audit program under FAA Order 8130.36, Special Light-Sport Aircraft Audit Program, for conducting regular audits of light-sport category aircraft manufacturers and their associate facilities. Proposed safety enhancements under this NPRM for new training requirements for manufacturer's employees who are responsible for compliance findings and compliance statements are based on concerns described in the LSAMA Notification and are discussed in sections IV.D.17 and IV.D.19.

The 2004 final rule was successful in encouraging innovation in light-sport aircraft. According to FAA Registry data as of January 2023, over 200 models and 5,321 aircraft have been designed and manufactured under the 2004 final rule, distributed among the various classes of aircraft as follows:

- 4,459 airplanes.
- 456 powered parachutes.
- 336 weight-shift controlled aircraft.
- 70 gliders.

In addition, FAA airman certification databases show that approximately 7,000 sport pilots, 1,000 sport pilot instructors, 1,500 repairman (light-sport aircraft) with a maintenance rating, and 10,000 repairman (light-sport aircraft) with an inspection rating are currently certificated under provisions of the 2004 final rule.

The FAA views the safety record of light-sport category aircraft operations as validation of the original certification requirements and as support for expanding eligibility for aircraft certification, airmen certifications, and related operating privileges. From working with applicants for certification of aircraft, pilots, and repairman of light-sport aircraft since the 2004 final rule took effect, the FAA has identified many proposals for amending those

rules to enhance safety, performance, and privileges for operating light-sport category aircraft. The FAA is also proposing amendments concerning certification and operations of other aircraft that hold special airworthiness certificates. Detailed discussion of the safety record of light-sport category aircraft and these proposals are included in section IV of this NPRM.

B. Related Actions

1. Exemptions to the 2004 Final Rule

As previously stated, the FAA granted multiple exemptions to the 2004 final rule based on safety considerations. Together, these actions permitted exempted aircraft to vary from the rule in the following ways:

- Retractable landing gear to enable takeoffs and landings from land and water.
- Various weight increases, with the largest allowed weight of up to 1,850 pounds.

Data, arguments, and findings that enabled the FAA to grant these exemptions are used as applicable to support proposals herein to codify these and similar provisions.

2. Amendments to the 2004 Final Rule

On April 19, 2007, the FAA published the final rule “Changes to the Definition of Certain Light-Sport Aircraft” (72 FR 19661) to amend the definition of light-sport aircraft to permit development of lighter-than-air light-sport aircraft and allow retractable landing gear for light-sport aircraft intended for operation on water. To date, the FAA has issued no special airworthiness certificates for lighter-than-air light-sport aircraft. This NPRM proposes to permit retractable landing gear for all operations to enhance safety more broadly within the light aircraft community by making light-sport category aircraft more attractive alternatives to experimental amateur-built aircraft.

On February 1, 2010, the FAA published the final rule “Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors with a Sport Pilot Rating” (75 FR 5204; Correction published on March 30, 2010, 75 FR 15609) (hereinafter the 2010 final rule). The purpose of the 2010 final rule was to amend rules for sport pilots and flight instructors with a sport pilot rating to address airman certification and operational issues that arose since regulations for the certification of aircraft and airmen for the operation of light-sport aircraft were implemented in 2004.

3. FAA-Industry Listening Session

On December 12, 2022, the FAA hosted a listening session with representatives of the light-sport aircraft industry. A record of that meeting, including participants and their feedback, is included on the docket for this proposed rule, which is available at FAA–2023–1377. Importantly, that feedback replicated what the FAA has learned about the 2004 final rule as discussed previously in this NPRM.

III. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f) and (g), which establishes the authority of the Administrator to promulgate and revise regulations and rules related to aviation safety. This rulemaking is also promulgated under 49 U.S.C. 44701(a)(2)(A) and (a)(5), which provides that the FAA Administrator shall promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards: (1) in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and (2) that the FAA finds necessary for safety in air commerce and national security; 49 U.S.C. 44703, which provides the general authority of the Administrator to prescribe regulations for the issuance of airman certificates when the Administrator finds, after investigation, that an individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate; 49 U.S.C. 40103(b)(1) and (2), which directs the FAA to issue regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground; and 49 U.S.C. 44715, which provides the Administrator the authority to prescribe regulations to control and abate aircraft noise and sonic boom. These proposed regulations are within the scope of those authorities because they are proposing to amend rules for the manufacture, certification, operation, maintenance, and alteration of light-sport category aircraft, to amend rules related to restricted category aircraft and experimental airworthiness

certification, and to amend rules related to sport pilot and repairman certification.

Additionally, this rulemaking implements the Congressional mandate set forth in section 581 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254), which authorizes certain aircraft holding experimental certificates to conduct space support vehicle flights. Section 581 amends 49 U.S.C. 44737 to allow the operator of an aircraft with a special airworthiness certification in the experimental category to operate the aircraft for the purpose of conducting a space support vehicle flight and conduct such flight under such certificate carrying persons or property for compensation or hire.

IV. Discussion of the Proposal

A. General

The FAA is proposing to amend rules for the manufacture, certification, operation, maintenance, and alteration of light-sport category aircraft. The proposed changes would enhance the safety, performance, and operating privileges of light-sport category aircraft. This proposal would also expand the types and characteristics of aircraft that sport pilots may operate. The proposed changes would increase the suitability of light-sport category aircraft for flight training, limited aerial work, and personal travel. Additionally, the proposal would further enable the manufacture of safe and economical light-sport category aircraft. The FAA also proposes to update the list of approved operations for restricted category aircraft; amend the duration, eligible purposes, and operating limitations for special airworthiness certificates issued for experimental purposes; and add operating limitations applicable to experimental aircraft engaged in space support vehicle flights to codify a statutory provision.

1. The Evolution of Light-Sport Aircraft

The FAA acknowledged in the 2004 final rule that “there are areas where only time and experience will determine whether these regulatory provisions meet the FAA's expectations or require modification.” In the approximately 20 years since the FAA published that rule, the FAA has increased its understanding of these aircraft. The 2004 final rule was successful in encouraging innovation in light-sport aircraft; over 200 models and 5,300 aircraft have been designed and manufactured under the 2004 final rule. The FAA has also considered several requests for exemption from the light-sport aircraft rules, granting eleven of

them. This proposal would amend the rules for these aircraft to improve safety and performance and increase the scope of operations that may be performed with light-sport category aircraft.

2. A Safety Continuum

The FAA bases the rigor of certification requirements and operational limitations on a safety continuum that looks at the exposure of the public to risk for each aircraft and operation; as the risk increases due to increased operating privileges and aircraft capability, the requirements and corresponding rigor of requirements and procedures for aircraft and airman certification increase. In establishing the 2004 final rule, the FAA intentionally established a rigor of aircraft certification for light-sport category aircraft between normal category aircraft and aircraft holding experimental certificates in view of intended operating privileges and aircraft capability. Normal category airplanes can weigh up to 19,000 lbs. and carry 19 persons. Accordingly, their certification rigor is going to be greater than an aircraft that has two to four seats because an accident would result in greater fatalities. However, to mitigate this risk, the part 23 airplane must be designed and manufactured to more stringent airworthiness standards. By meeting the more stringent airworthiness standards, the FAA grants greater operating privileges. Therefore, since light-sport category aircraft subject fewer people to risk and have fewer operating privileges when compared to part 23 airplanes, the 2004 final rule and this proposal includes less stringent certification standards.

Based on the rigor of aircraft certification established for light-sport category aircraft in the 2004 final rule, the FAA expected that light-sport category aircraft fatal accident rates would fall between experimental and normal category aircraft. To validate this expectation against fatal accident data, the FAA compared data for light-sport category airplanes and other aircraft categories or types that were most similar to light-sport category airplanes: experimental amateur-built airplanes with single, reciprocating engines, and fixed landing gear; and small normal category airplanes with single, reciprocating engines, and fixed landing gear. The fatal accident rate data compiled since 2011 for these aircraft ¹

¹ Light aircraft fatal accident trends are included on the docket at FAA–2023–1377. These trends are shown beginning in 2011 because of limitations on available data and since ten-year trends seem sufficient for this proposal.

show that light-sport category aircraft fatal accident rates fall between experimental and normal category aircraft, validating that the rigor of certification requirements and procedures of the 2004 final rule falls, as intended, between experimental and normal category aircraft. This validation also supports proposals described in this NPRM for modest expansions of eligibility for certification of light-sport category aircraft, performance limitations for sport pilots, eligibility for certification of repairman (light-sport), and corresponding operating privileges for additional but similar operating privileges and risks. As described in section IV.C, the FAA has also identified other opportunities to improve the safety of light-sport category aircraft and experimental light-sport category kit-built aircraft.

Additionally, the lower accident rate of light-sport category aircraft as compared to experimental amateur-built airplanes has led the FAA to examine opportunities for expanding the 2004 final rule to include a wider variety of aircraft, increase performance, and increase operating privileges. The FAA intends for these expansions to increase safety by encouraging manufacturers to design and construct, and prospective aircraft owners to choose, aircraft higher on the safety continuum and, therefore, meet higher aircraft certification requirements.

The FAA used the safety continuum to analyze other aircraft as well; in addition to modifying the requirements for light-sport category aircraft and experimental light-sport category kit-built aircraft, this rule would also address the operation of other aircraft that hold special airworthiness certificates. Specifically, the FAA proposes to codify additional special purpose operations for restricted category aircraft that the FAA has previously approved under the discretion provided in part 21. In addition, this rule would amend the duration, eligible purposes, and operating limitations for special airworthiness certificates issued for experimental purposes, including an administrative change to add a new experimental purpose for former military aircraft, and codifying a statutory provision for space support vehicle flights. The FAA has referred to this combined set of proposals as the Modernization of Special Airworthiness Certification (MOSAIC) since these proposals primarily concern the regulation of aircraft that operate under special airworthiness certificates.

3. Expanding Light-Sport Category Aircraft and Related Provisions for Airman, Maintenance, and Operations

a. Eliminating the Definition of Light-Sport Aircraft

Currently, light-sport aircraft is defined in § 1.1, General definitions. Uniquely, the definition affects the scope of certification for light-sport category aircraft, sport pilots, and repairman (light-sport aircraft). Section 21.190 applies this definition to limit the scope of aircraft that may be issued a special airworthiness certificate for light-sport category aircraft. Part 61 uses this definition to specify which aircraft a sport pilot may operate. The FAA notes that, per part 61, a sport pilot may operate any aircraft that meets the definition of light-sport aircraft, including certain normal category, primary category, light-sport category, and experimental aircraft. This proposal would eliminate this definition of light-sport aircraft in § 1.1 and would instead specify separate requirements for aircraft, pilot, and repairman certification in 14 CFR part 21, 61, or 65, respectively. Although the FAA considered retaining and expanding this definition, deleting the definition and establishing separate certification requirements in part 21, 61, or 65 would better align with the location of such requirements for other categories of aircraft and for other airmen.

b. Changes to Aircraft Certification Requirements for Light-Sport Category Aircraft

The FAA has granted eleven exemptions to enable airworthiness certification of light-sport category aircraft with weights that exceed those in the definition of light-sport aircraft. These grants of exemption were based on FAA findings that relieving weight limits would enable significant safety enhancements not contemplated in the original regulations, reduce the likelihood of fatal accidents, and foster innovation in light-sport category aircraft. Consistent with the FAA's analysis of the safe operations accomplished under those exemptions, this proposal would eliminate the weight limits for light-sport category aircraft. As discussed in section IV.C.2, eliminating weight limits for light-sport category aircraft would provide manufacturers opportunities to:

- Incorporate additional safety-enhancing designs and equipment,
- Design airframes that are more rugged for the flight-training environment,
- Increase fuel load and aircraft range,

- Allow for greater cabin size to enable greater occupant heights and weights,
- Improve aircraft handling in gusts, turbulence, and crosswinds, and
- Increase the suitability of light-sport category aircraft for other intended operating purposes, including recreation, personal travel, and certain aerial work.²

This proposal would apply new design and manufacturing requirements for light-sport category aircraft so that light-sport category aircraft are able to fly safely with increased capacity and ability. The FAA is further proposing to increase airplane stalling speed to enable increased aircraft weights to enable more robust airframes, installation of safety enhancing equipment, higher fuel capacity, and more seating capacity. The FAA proposes to eliminate limitations on classes of eligible aircraft, propellers, and landing gear; allow airplanes with up to 4 seats for increased utility and improved flight training opportunities; and increase the maximum airspeed for more practical personal travel. This proposal would require training for manufacturer employees who are responsible for safety findings and for signing a statement of compliance. This NPRM does not propose to amend requirements that limit manufacture of kits for light-sport category aircraft for make and model aircraft that were previously certificated as light-sport category aircraft. Accordingly, most of the proposals for expanding the eligibility for certification of light-sport category aircraft would carry over to light-sport category kit-built aircraft. This proposal would remove the requirement to display the mark "Light-Sport" on light-sport category aircraft. These proposed changes are discussed in greater detail in section IV.D.20.

c. Changes to the Aircraft That Sport Pilots May Operate

This proposal would also expand what aircraft sport pilots can operate. Under this proposal, sport pilots could operate heavier aircraft than currently allowed under the § 1.1 definition and airplanes with up to four seats, even though they would remain limited to carrying only one passenger. This one passenger limitation would also apply to a flight instructor with a sport pilot rating conducting flight training in a four-seat airplane. Additionally, this proposal includes expansions to certain

² The FAA does not explicitly define aerial work; however, the FAA broadly interprets the term to mean work done from the air for compensation that does not involve the carriage of persons or property.

proposed sport pilot privileges through training and endorsements for airplanes that have a controllable pitch propeller, for aircraft with a retractable landing gear, and to conduct night operations. This proposal would also make corresponding changes to regulations affecting the privileges and limitations of a flight instructor certificate with a sport pilot rating. These proposed changes are discussed in greater detail in section IV.E.

d. Changes to Requirements for Repairman (Light-Sport) Certificates

This proposal would revise the name of the “repairman certificate (light-sport aircraft)” to “repairman certificate (light-sport)” and would allow for issuance of a repairman certificate (light-sport) for the new, proposed classes of aircraft that could be certificated in the light-sport category (*i.e.*, helicopter and powered-lift). Additionally, the proposal would remove the hours-based training requirements for a light-sport repairman maintenance rating and instead require that applicants complete a training course, accepted by the FAA, that aligns with the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (Mechanic ACS). The training course would be required to include only those subject areas and knowledge, risk management, and skill elements of the Mechanic ACS that are appropriate to the category of aircraft the training course covers. The proposal would also codify existing policy for repairman certificate (light-sport) training course providers to administer an examination, provide students with a certificate of completion, and require facilities, equipment, materials, and instructors that are appropriate to the training course content being taught. These proposed changes are discussed in greater detail in section IV.F.

e. Changes to Requirements for Maintenance of Light-Sport Category Aircraft

This proposal would require all repairs performed on light-sport category aircraft to meet applicable consensus standards, allow minor alterations to be accepted under the provisions of 14 CFR part 43, and remove the restriction that the Administrator approve aircraft-towing devices installed on these aircraft. These proposed changes are discussed in greater detail in section IV.G.

f. Changes to Requirements for Operating Light-Sport Category Aircraft

In addition to expanding eligibilities for issuance of special airworthiness

certificates for light-sport category aircraft and experimental light-sport aircraft and aircraft that sport pilots may operate, the FAA proposes to expand the kinds of operations that can be performed by light-sport category aircraft. Specifically, this proposal would permit light-sport category aircraft to be used in certain aerial work operations for aircraft that meet the applicable FAA-accepted consensus standard for that operation. This proposal would also remove the requirement for owners/operators of light-sport category aircraft to comply with safety directives issued by the aircraft manufacturer; mandatory compliance with FAA Airworthiness Directives would remain unchanged. These proposed changes are discussed in greater detail in section IV.H.1.

4. Changes to Certain Experimental Certificates

a. Duration

This proposal would increase the duration of certain experimental certificates from one to three years. These proposed changes are discussed in greater detail in section IV.I.1.

b. Changes for Former Military Aircraft

This proposal would add operating former-military aircraft as an additional purpose for which experimental certificates may be issued. Operations of former-military aircraft are currently authorized under other experimental certificates. These proposed changes are discussed in greater detail in section IV.I.5.

c. Codifying the Authorization for Space Support Vehicles

This proposal would codify the statutory language in 49 U.S.C. 44740 permitting the operator of an aircraft with a special airworthiness certification in the experimental category to operate the aircraft for the purpose of conducting a space support vehicle flight while carrying persons or property for compensation or hire. These proposed changes are discussed in greater detail in section IV.H.3. Such operations would be limited to aircraft that takeoff and land at a single launch or reentry site that is operated by an entity licensed to operate the launch or reentry site under 51 U.S.C. chapter 509; are owned or operated by or on behalf of a launch or reentry vehicle operator licensed under 51 U.S.C. chapter 509; and is either a launch vehicle, reentry vehicle, or a component thereof. These operations would only be allowed to simulate space flight conditions in support of training for potential space flight participants, government

astronauts, or crew; testing hardware to be used in space flight; or conducting research and development tasks, which require the unique capabilities of the aircraft conducting the flight.

5. Changes for Restricted Category Aircraft

This proposal would enhance the requirements for the certification of former-military aircraft in the restricted category by requiring the aircraft to have a service history with the U.S. Armed Forces. Under the provision in § 21.25(b)(7), the FAA has approved additional special purpose operations for which restricted category aircraft may be certificated. Currently, those additional purposes are only listed in FAA policy documents for type and airworthiness certification of these aircraft. This proposal would amend § 21.25 to expand the list of special purpose operations for which restricted category aircraft may be certificated to include these additional purposes.

6. Changes for Noise

This proposal would apply 14 CFR part 36 noise standards to light-sport category aircraft and experimental light-sport category aircraft certificated after the effective date of the rule, or that are altered in a manner that changes the noise profile of light-sport category aircraft and certain experimental light-sport category aircraft. This proposal would require light-sport category aircraft and certain experimental light-sport category aircraft to demonstrate compliance to the part 36 noise limits using an FAA-approved consensus standard or a combination of current part 36 procedures that are appropriate for the aircraft seeking an airworthiness certificate for a light-sport category aircraft or an experimental light-sport category aircraft. The FAA anticipates the industry developing acceptable and appropriate consensus standards for noise that would provide simple, low-cost methods of compliance with part 36. For example, a modeling-based consensus standard would be expected to significantly reduce the cost of noise compliance. Not only would there not be a need to physically test every model (or aircraft) but the proposal would also allow manufacturers to use predictive analysis to guide and support aircraft design decisions in earlier phases, avoiding costly future redesign or modifications. The proposed noise requirements are discussed in greater detail in section V.K.

B. Revision of Definitions Applicable to the Certification and Operation of Light-Sport Category Aircraft

1. Revision of the Definition of Consensus Standard

OMB Circular A–119 establishes policy for the Federal use and development of voluntary consensus standards and conformity assessment activities. Federal goals for using consensus standards include providing incentives and opportunities to establish standards that serve national needs, encouraging long-term growth for U.S. enterprises, and promoting efficiency and economic competition through harmonization of standards. Voluntary consensus standards are developed or adopted by consensus standards bodies with broad participation of interested stakeholders, including manufacturers and the FAA.

Because of the general acceptance and use of consensus standards throughout the aviation community, this rule proposes a broader definition for consensus standards than that currently found in § 1.1. The current definition was adopted as part of the 2004 final rule. As such, the definition for consensus standards currently is only applicable for certifying light-sport aircraft. The proposed definition would apply to a wider variety of certification functions applicable under 14 CFR.

The proposed definition would adopt a description of a consensus standard that better aligns with the provisions of OMB Circular A–119. The proposed rule would establish the characteristics that a consensus standard must have to meet the definition of a consensus standard. Accordingly, to be considered a consensus standard under this proposed rule, a consensus standard would need to have been adopted under procedures which provide an opportunity for input by persons interested and affected by the scope or provisions of the standard. These persons would also have had to reach substantial agreement on its adoption. Additionally, to be used as a means of compliance for aircraft design, operation, production, maintenance, or airworthiness, a consensus standard would have to be accepted by the FAA. For the purposes of this proposed definition, the FAA considers “airworthiness” to include noise and continued operational safety requirements.

After a consensus standard has been adopted by a consensus standards body, the FAA would review the standard for acceptance. The FAA typically advises the public of the agency’s acceptance of these consensus standards through a notice of acceptance which is published

in the **Federal Register**. This review and acceptance process is not intended to restrict industry’s ability to develop consensus standards, but rather to enable the FAA to advise the public when an industry-developed consensus standard for aircraft design, operation, production, maintenance, or airworthiness complies with the proposed performance-based regulatory requirements.

Currently, consensus standards for the airworthiness certification of light-sport category aircraft that have been developed by ASTM International (ASTM) and accepted for use by the FAA would meet the proposed definition.³ The current process for developing consensus standards by ASTM for the certification of light-sport category aircraft would be consistent with the provisions of the proposed definition.

The FAA notes that consensus standards have also been developed to comply with the performance-based airworthiness standards for the certification of airplanes found in amendment 64 of 14 CFR part 23. They serve as a means of compliance to the regulatory requirements contained in part 23 and have been accepted by the FAA.⁴ Consensus standards have also been used as a means of compliance for operation of small unmanned aircraft systems (small UAS) over people under part 107 and remote identification of unmanned aircraft under part 89.

The FAA anticipates an increased use of consensus standards to comply with new performance-based regulations and has also proposed their use as part of the special airworthiness certification process to comply with the noise requirements in part 36. Accordingly, the agency determined that it would be appropriate to broaden the current applicability of this definition to a potentially wider range of aircraft certification activities than light-sport category aircraft only.

The revised definition would require that the consensus standards process include participants that are impacted by the consensus standards. For the

development of these consensus standards, organizations and participants in the consensus standards development process could consist of, but not be limited to, aircraft manufacturers, pilots, maintainers, aviation associations, and government regulators. The FAA contends that the use of a consensus standards process to develop means of compliance to performance-based regulations should provide both the FAA and industry with a means to rapidly adapt to changing technology and better respond to market conditions while continuing to enable safe operations within the national airspace system.

Alternatively, the FAA is considering removing the definition of consensus standard from § 1.1. Consensus standard is a commonly accepted term used by industry and across⁵ the Federal Government and may not require a definition in § 1.1 to be understood in the context of 14 CFR. Additionally, as stated previously, the current definition of consensus standard is limited to the context of light sport aircraft and does not recognize the breadth of using consensus standards in aviation today. The FAA requests comment on whether the FAA should remove the definition of consensus standard from § 1.1 altogether or revise the definition as proposed.

2. Removal of Definition of Light-Sport Aircraft From 14 CFR 1.1

Section 1.1 currently defines “light-sport aircraft” as an aircraft other than a helicopter or powered-lift that, since its original certification, has continued to meet several designated parameters (for example, aircraft weight, seating, stalling speed, maximum speed, engine type, propeller type, etc.). Uniquely, the definition affects the scope of certification for light-sport category aircraft, sport pilots, and repairman (light-sport aircraft). Section 21.190 applies this definition to limit the scope of aircraft that may be issued a special airworthiness certificate in the light-sport category. Part 61 uses this definition to specify which aircraft a sport pilot may operate. Because of the common definition, all aircraft certificated under § 21.190 are light-sport aircraft and thus can be flown by sport pilots. However, a sport pilot is not limited to only § 21.190 aircraft and may operate any aircraft that meets the definition of light-sport aircraft, including certain normal category,

³ For example, the FAA published a notice titled “Consensus Standards, Light-Sport Aircraft, Notice No. NOA–21–01” (87 FR 10275; February 23, 2022) in which the FAA designated ASTM Designation F2245–20, “Standard Specification for Design and Performance of a Light Sport Airplane” (F2245–20) as a consensus standard that is available and acceptable for use. F2245–20 applies to aircraft design and, as described in ASTM’s “The Handbook for Standardization,” has been developed with input by a broad array of interested stakeholders.

⁴ See 71 FR 12771, 75 FR 58016, 79 FR 78553 concerning electric wiring systems before part 23, amendment 61. For part 23, amendment 64, see 87 FR 13911.

⁵ Such as pursuant to the National Technology Transfer and Advancement Act (NTTAA) of 1995, and OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.

primary category, light-sport category, and experimental aircraft.

The FAA is proposing to remove the definition of light-sport aircraft from § 1.1 because the regulatory definition contains substantive requirements. A regulatory definition should define a term used in a particular title, chapter, or part of the CFR. Accordingly, the substantive aircraft certification requirements for light-sport category aircraft would be relocated with modifications into proposed § 21.190 and part 22, while requirements establishing the parameters for the aircraft in which a sport pilot may act as pilot in command (PIC) would be incorporated into part 61.

The current § 1.1 definition of light-sport aircraft was created to establish parameters for the airworthiness certification of light-sport category aircraft using consensus standards, as well as to identify aircraft that can be safely operated by pilots exercising the privileges of a sport pilot certificate. Currently, under § 61.315, sport pilots are only permitted to operate aircraft that meet the definition of a light-sport aircraft as defined in § 1.1. Replacing the § 1.1 definition with separate certification requirements for aircraft, pilots, and repairman would allow more flexibility using the proposed certification procedures in § 21.190 and intended operations. In other words, this proposed rule would decouple certification requirements for light-sport category aircraft certification and sport pilot certification. One effect of placing the proposed requirements in separate parts and the expansion of light-sport category aircraft certification requirements is that an aircraft certificated in the light-sport category under § 21.190 may exceed the parameters of an aircraft that a sport pilot may act as PIC of under the separate requirements in part 61.

Persons exercising the privileges of a sport pilot certificate or a flight instructor certificate with a sport pilot rating would no longer be restricted to operating light-sport aircraft as defined in § 1.1. In this proposed rule, these airmen would be able to exercise the privileges of their certificate in any aircraft that does not exceed the aircraft performance limitations derived from the current § 1.1 definition and set forth in the proposed new § 61.316. The FAA's proposal concerning airmen certification is discussed in section IV.E.

C. Expansion of Eligibility for Light-Sport Category Aircraft and Sport Pilots

1. Certification of Additional Aircraft Classes

The current § 1.1 definition of light-sport aircraft excludes helicopters and powered-lift from being considered as light-sport aircraft. The FAA proposes to allow the airworthiness certification of rotorcraft and powered-lift as light-sport category aircraft under § 21.190, provided these aircraft are certificated in accordance with the proposed performance-based requirements in part 22 using an FAA-accepted consensus standard as a means of compliance. This proposed rule would allow any class of aircraft⁶ to be eligible for certification in the light-sport category, so long as the aircraft meets the proposed performance-based requirements of part 22 and the eligibility criteria in proposed §§ 21.190 and 22.100. The FAA anticipates that industry would develop acceptable and appropriate consensus standards to comply with the performance-based requirements in part 22. The FAA contends that such action would maintain a level of safety appropriate to the certification of these aircraft while fostering innovation.

Unmanned aircraft are precluded from certification as light-sport category aircraft. The FAA considered expanding the scope of the proposed eligibility requirements to evaluate the potential certification of unmanned aircraft; however, due to the novelty, technical complexity, and significant operational differences between unmanned and manned aircraft, the FAA chose not to address unmanned aircraft certification as a part of this rulemaking. Accordingly, as proposed in § 21.190(a), this proposal does not apply to the certification of unmanned aircraft in the light-sport category.

The FAA also chose not to consider powered lift privileges for sport pilots, given the complexity and ongoing development of those aircraft designs and associated pilot certification and operational rules that the FAA is considering. However, the FAA expects that future rulemaking may consider these aircraft and associated operations if they can fit within the constraints of sport pilot operations and aircraft certification requirements.

As discussed later in the preamble, the FAA is also proposing to expand sport pilot privileges to include helicopter privileges.

⁶ See 14 CFR 1.1, which defines class, for purposes of the certification of aircraft, as a broad grouping of aircraft having similar characteristic of propulsion, flight, or landing.

2. Maximum Takeoff Weight

Section 1.1 currently limits the maximum takeoff weight for light-sport category aircraft to 1,320 lbs., or 1,430 lbs. for aircraft intended for operation on water. This proposal would eliminate the maximum takeoff weight limitations for light-sport category aircraft. Although this proposal removes the specific weight limits for light-sport category aircraft, this proposed rule would indirectly limit aircraft weight via stalling speed limitations, as discussed in sections IV.C.2 and IV.C.4. As noted in those sections, the stalling speed limit would indirectly limit the weight at around 3,000 pounds. Although still limiting aircraft weight, the proposed V_{S1} stalling speed would enable aircraft with heavier weights than the definition permits for light-sport aircraft. Enabling heavier weights would enable manufacturers to include safety-enhancing designs and equipment such as advanced stall resistant airframes, increased load factor resilience, improved passenger cabin crash safety mechanisms, ballistic safety parachutes, passenger airbags, stronger and more durable landing gear, and greater fuel capacity.

From its work with manufacturers, flight schools, and individual aircraft owners since the 2004 final rule took effect, the FAA anticipates that allowing heavier aircraft would result in more robust airframe designs to meet the needs of aircraft owners. A "robust airframe design" is more reliable, resilient, and does not fail as easily under a given load as a less robust airframe would. In addition, an aircraft in motion with more mass requires more force to disrupt its current flight path. Accordingly, heavier aircraft tend to be more stable during turbulent or windy conditions and, in turn, reduce the workload on the pilot attempting to maintain control and a desired course. Specifically, lighter aircraft get jostled around more in turbulence, which causes the pilot to work harder to maintain aircraft control.

The weight limitations in the definition of light-sport aircraft preclude many of these design and safety features and is representative of why the FAA has granted 11 exemptions to the weight limit for certain light-sport category aircraft with safety features installed. These exemptions allowed airworthiness certification of certain, heavier light-sport category aircraft to enable improved airframe designs and the installation of various safety enhancing devices.

In summary, the current weight limitation precludes the design and

installation of many safety enhancements. Therefore, this NPRM proposes to remove weight as an eligibility requirement for certification of light-sport category aircraft and as a limitation on what aircraft sport pilots may fly. Sport pilots would be permitted to operate these heavier aircraft if the aircraft satisfy the performance limitations in the proposed § 61.316 including the V_{S1} limitation that will indirectly limit the weight to around 3,000 pounds. The FAA does not find that this increased weight would appreciably alter a sport pilot's ability to fly the aircraft, provided the aircraft satisfies the design and performance limitations proposed in § 61.316.⁷

3. Maximum V_H Airspeed in Level Flight

The § 1.1 definition of light-sport aircraft limits light-sport aircraft to a V_H of not more than 120 knots CAS under standard atmospheric conditions at sea level. A V_H speed limit would not be retained for the airplanes or gliders in the proposed § 61.316 performance and design limitations for aircraft that a sport pilot could operate. Although an airplane or glider's maximum airspeed is typically limited to approximately three to four times the aircraft's V_{S1} under ideal conditions, proposed § 22.100(a)(4) would include a V_H limit of 250 knots CAS for light-sport category aircraft to account for potential advances in technology and manufacturing practices that could enable higher speeds. Furthermore, after approximately 20 years of experience with the operation of light-sport category aircraft, the FAA has not noted any definitive data that links cruise speed as a contributing factor in accidents involving light-sport category aircraft. This experience informs the FAA's current rulemaking proposal, including its proposal to increase the airspeed limitation.

Analysis of performance data for 117 type-certificated, light-sport category, and amateur-built airplanes with stalling speeds less than or equal to the proposed 54 knots CAS stalling speed limit shows a maximum speed of 220 knots CAS, with the majority below 190 knots CAS. Allowing a maximum speed of 250 knots CAS is intended to provide an upper limit appropriate for a category of aircraft intended for recreation, flight training, and limited aerial work while

providing sufficient margin to avoid practical constraints of new airplane designs by this limit.⁸

For pilot certification purposes, the FAA does not propose to retain or include a V_H airspeed limitation in the proposed § 61.316 aircraft performance limitations because the FAA determined that, the proposed maximum stalling speed V_{S1} of 54 knots (as explained in section IV.C.4) for airplanes and the existing maximum stalling speed V_{S1} of 45 knots for gliders, will indirectly limit the cruise airspeeds⁹ for the aircraft that sport pilots may fly under the proposed performance limitations in part 61. The FAA recognizes helicopter design and aerodynamic flight limitations inherently limit the V_H speed. The existing fleet of two seat helicopters do not exceed 150 knots in cruise flight. Therefore, the FAA does not propose or need a prescriptive speed limit for two seat helicopters that a sport pilot can operate.

In 2018, the FAA codified additional training and endorsement privileges for flight instructors with a sport pilot rating.¹⁰ This provision authorized these flight instructors to provide additional training and endorsements for sport pilot applicants who wish to conduct cross-country flights in light-sport airplanes with a V_H greater than 87 knots CAS.¹¹ These amendments reinforce that additional training and a subsequent flight instructor endorsement can properly qualify sport pilots to operate various aircraft safely in the national airspace system.

Additionally, the FAA notes that student pilots, who receive training and a validating flight instructor endorsement, can operate aircraft at speeds greater than 120 knots as pilot-in-command. The FAA contends that, since the implementation of the training and instructor endorsement requirements permitting sport pilots to operate airplanes up to the current V_H speed limitation of 120 knots, instructor training and endorsements have been demonstrated to be a proven, effective method for validating that sport pilots

can safely operate faster aircraft in the national airspace system, just as is allowed for student pilots with a lower grade of pilot certificate. This reflects the incongruities between the allowed operations for student pilots and sport pilots. For example, student pilots can operate aircraft at faster speeds than individuals that hold a sport pilot certificate, even though a sport pilot certificate is a higher grade of pilot certificate than a student pilot certificate. Thus, the FAA reasons that sport pilots can be permitted to operate faster aircraft safely in the national airspace system using instructor training and endorsements for validating pilot proficiency.

4. Maximum Stalling Speed (V_{S1})

The light-sport aircraft definition in § 1.1 limits the maximum V_{S1} for light-sport aircraft to 45 knots CAS at the aircraft's maximum certificated takeoff weight and most critical center of gravity. The proposal would retain the 45 knots CAS maximum V_{S1} for gliders and weight-shift-control aircraft. The FAA is proposing to increase the maximum V_{S1} to 54 knots CAS for airplanes. Regulatory provisions addressing V_{S1} would remain inapplicable to rotorcraft and lighter-than-air aircraft (e.g., balloons and airships), and would be removed for powered parachutes.

The 45-knot limitation indirectly prohibits the use of heavier airplanes due to the correlation between stalling speed and aircraft weight. Because the FAA is seeking to accommodate greater airplane weights to enable more robust airframe designs and availability of safety enhancements, the FAA selected this proposed V_{S1} speed limit at nine knots above the current limitation for light-sport aircraft. The FAA determined that an airplane with a maximum V_{S1} limitation of 54 knots would permit airplane designs up to approximately 3,000 pounds. As proposed in §§ 22.100(a)(3) and 61.316(a), the new stalling speed limitation would apply to airplanes at the maximum certificated takeoff weight.

In the absence of a specific weight limitation in the proposed rule, the new V_{S1} limit would provide flexibility for aircraft manufacturers to build more robust airframes and include desirable safety enhancements. This proposed change would expand aircraft that sport pilots may operate to include any existing aircraft that meets the sport pilot performance limitations as specified in proposed § 61.316. For airplanes, the proposed V_{S1} limit is not more than 54 knots CAS for sport pilots.

⁷ See section IV.E of this preamble for a discussion of the design and performance limitations proposed in § 61.316, which would limit the aircraft that a sport pilot could fly to an aircraft that requires skill comparable to the skill required to fly an LSA today.

⁸ Given that the vast majority of light-sport category aircraft operations would occur below 10,000 feet mean sea level (MSL), where part 91 limits airspeed below 250 knots indicated airspeed, the maximum 250 knot CAS limitation is appropriate for the light-sport category.

⁹ As previously stated, an airplane's maximum airspeed is generally limited to three to four times the aircraft's V_{S1} under ideal conditions. If the maximum stalling speed is 54 knots, then the airplane's maximum airspeed would be limited to a maximum airspeed of 216 knots (54 multiplied by 4).

¹⁰ Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions, 83 FR 30232 (June 27, 2018).

¹¹ 83 FR 30254–57.

The FAA has monitored the accident history of light-sport category aircraft since 2004. As of 2021, there have been 984 accidents or incidents involving light-sport category aircraft, with approximately half of those accidents or incidents occurring during the landing phase. Of the 501 landing accidents, seven resulted in a fatality. The second highest number of accidents or incidents, 164, occurred during an emergency descent. The FAA chose a V_{S1} of 54 knots CAS to strike a balance between allowing heavier aircraft to accommodate increased safety features, while increasing the stalling speed no more than necessary to retain low speeds during approach and landing. While the FAA recognizes that low stalling speeds will reduce kinetic energy levels and serve to improve occupant survivability in the event of an aircraft accident, enabling the addition of safety enhancing designs commensurate with increased weight could also improve occupant survivability.

The FAA has determined that retaining the current V_{S1} restriction of 45 knots CAS for light-sport category airplanes would overly restrict the ability of aircraft manufacturers to produce heavier airplanes with additional safety features that this rule is intending to enable. A maximum V_{S1} of 54 knots CAS for airplanes would facilitate the production of heavier, more robust airplanes without unduly compromising the ability of these airplanes to be safely operated. Although the FAA considered increasing the proposed maximum stalling speed of airplanes above 54 knots CAS, the agency's review of current aircraft performance data showed that this proposal would be sufficient to produce four-seat airplanes.

Although the FAA proposes to permit the certification of rotorcraft under the proposal, stall speed restrictions, such as a maximum V_{S1} , are inapplicable for aircraft that depend principally for their support in flight by the lift generated by one or more rotors. Rotorcraft have the ability to hover or remain in place in the air with no horizontal movement. In the event of engine failure, they can autorotate in a controlled descent to the ground. Accordingly, rotorcraft are not subject to a maximum stall speed in this proposed rule.

Stalling speed restrictions are also not being proposed for powered-lift due to their ability to operate in various flight mode configurations, including thrust-borne or hover, similar to a rotorcraft. The designs of lighter powered-lift typically do not have large wing surface areas and therefore have higher stalling

speeds during wing-borne (airplane) flight mode. However, these aircraft also can transition to semi-thrust borne mode where the powerplant shares the responsibility of producing lift as airspeed transitions between enroute airspeeds and hover. Therefore, as discussed under proposed § 22.115 and consistent with the airworthiness criteria from **Federal Register** notifications for the Joby Aero Inc., Model JAS4-1 and Archer Aviation Inc., Model M001 powered-lift, this NPRM proposes to require the determination of minimum safe speeds for various flight configurations for powered-lift rather than a maximum stalling speed.¹²

As discussed, the proposed stalling speed would generally limit the weight of airplanes. However, similar proposed limits would not have the same effect for other classes of aircraft. The FAA recognizes that while restrictions on maximum seating capacity and limitations on aerial work may effectively limit a manufacturer's interest in building larger aircraft, the absence of any aerodynamic or other prescriptive design restriction would not otherwise limit the potential weight of these aircraft. The FAA specifically requests comments on appropriate parameters to limit the weight of light-sport category rotorcraft and powered-lift.

5. Maximum Seating Capacity

The current § 1.1 light-sport aircraft definition limits light-sport aircraft to a maximum seating capacity of no more than two persons, including the pilot. This requirement from the 2004 rule provided for a low-risk design that would be appropriate for operation by a sport pilot. With the performance expansions proposed in this rule for the design of light-sport category aircraft and the intention to decouple these aircraft from sport pilot restrictions, there is no longer a need to restrict all light-sport category aircraft to two seats. This proposed rule, in § 22.100, would keep the maximum seating capacity of not more than two persons, including the pilot, for all classes of light-sport aircraft except airplanes. This proposal would allow airplanes to have a maximum seating capacity of not more than four persons, including the pilot.

When the 2004 final rule published, the FAA was focused on allowing a flight instructor in the aircraft to

provide flight instruction and, eventually, allowing sport pilots to carry a single passenger.¹³ At that time, the FAA did not foresee an expanded market for light-sport category aircraft that could be operated by pilots with a higher grade of certificate who can exercise the privilege of carrying more passengers. For example, an individual with a private pilot certificate may operate an aircraft that has more than two seats and can carry more than one passenger. In this proposed rule, the performance limits of § 61.316 would allow four-seat airplanes but maintain the restriction for sport pilots to carry one passenger, keeping the intent of the 2004 final rule restriction for sport pilots. For this proposal, the holder of a higher grade of pilot certificate at the private pilot level or above could operate a four-seat light-sport category airplane and carry up to three passengers.

Allowing four seats for light-sport category airplanes would increase the utility of these aircraft for recreational and personal use. With the increased utility because of four-seat designs, light-sport category airplane operations by pilots holding higher levels of certification would likely increase. The FAA anticipates an increase to the overall experience level of pilots that operate light-sport category airplanes, and this generally would have a positive safety benefit.

The increased utility of light-sport category airplanes may also improve safety by providing aircraft owners with an attractive alternative to experimental amateur-built aircraft. In this proposed rule, all light-sport category aircraft would be built to FAA-accepted consensus standards that meet performance-based requirements in part 22 for design, production, and airworthiness, unlike amateur-built aircraft, which do not have any similar regulatory requirements. As previously discussed, amateur-built aircraft are lower on the FAA's safety continuum than light-sport category aircraft.

The four-seat design for light-sport category airplanes in this proposal would match the seating limit of primary category airplanes certificated under § 21.24. Primary category rules and the proposals for light-sport category airplanes would result in these categories sharing similar weight and seating limitations for aircraft built for the purpose of personal use.

Although 14 CFR does not impose a seating limitation on amateur-built aircraft, nearly all such aircraft have four or fewer seats. Of the 27,486

¹² Airworthiness Criteria: Special Class Airworthiness Criteria for the Joby Aero, Inc. Model JAS4-1 Powered-Lift (87 FR 67399; November 8, 2022), and Airworthiness Criteria: Special Class Airworthiness Criteria for the Archer Aviation Inc. Model M001 Powered-Lift (87 FR 77749; December 20, 2022).

¹³ See 69 FR 44820.

amateur-built aircraft in the FAA Registry, only 131 have more than four seats.¹⁴ Accordingly, the light aircraft community has shown overwhelming support for recreational and personal use aircraft being designed with four or fewer seats.

Increasing the allowed number of seats above four for light-sport category aircraft would require a significantly heavier aircraft, challenging aircraft designers to comply with the proposed stalling speed limit and adding increased complexity to the aircraft and powerplant. In establishing a prescriptive limit for the number of seats, four seats strikes a balance between risk and utility that is appropriate for a category of aircraft intended for recreation and personal use.

Additionally, proposed § 91.327(f) would limit the number of occupants in light-sport category aircraft to not exceed the aircraft's seating capacity.

The proposed rule would retain the current maximum seating capacity of not more than two persons for other classes of light-sport aircraft, including, gyroplanes, gliders, weight-shift control aircraft, powered parachutes, balloons, and airships. These classes of light-sport category aircraft are operated strictly for recreation. With weight and balance challenges due to unusual seating configurations, additional passengers on these classes of aircraft would increase risk and not be appropriate for certification as light-sport category aircraft.

Although this proposal would enable certification of new types of light-sport category aircraft such as rotorcraft and powered lift, this proposal would limit these aircraft to two seats. The FAA has little experience on the safety metrics associated with these classes of light-sport category aircraft, as such, the FAA finds that the maximum seating capacity of two is appropriate. The FAA may consider future rulemaking to increase the proposed two seat limitation for these classes of aircraft as experience increases and consensus standards are developed.

Regarding pilot certification, the FAA is proposing to allow sport pilots to operate airplanes that have a maximum seating capacity of four persons under § 61.316(c). However, sport pilots will continue to be limited to carrying only one passenger under § 61.315(c)(4).¹⁵ The FAA contends that the piloting

skills necessary to operate a four-seat airplane do not differ from those skills required to operate a two-seat airplane if the airplane satisfies the sport pilot design and performance limitations listed in proposed § 61.316. The number of seats (two versus four) does not affect the skill necessary to control an airplane. The FAA proposes to increase the seating capacity for airplanes that sport pilots may operate because the revised maximum stalling speed, as previously described, would permit sport pilots to operate additional existing and future certificated single-engine production airplanes with four seats.¹⁶ Per the safety continuum concept, increasing the number of persons aboard should require an increased rigor of certification including a higher grade of pilot certificate. Allowing sport pilots to operate four-seat airplanes (even with only two persons aboard) would ease barriers in flight training for sport pilots given the availability of legacy, four-seat airplanes in flight schools. This proposed amendment is like that imposed on recreational pilots that can operate four-seat airplanes but can only carry one passenger,¹⁷ equating the risk associated with these operations to the appropriate level of pilot privileges, consistent with the FAA's safety continuum.

The FAA contends that the proposed maximum seating capacity requirements would provide appropriate utility for recreation, training, personal travel, and certain aerial work while maintaining an appropriate level of safety.

6. Engine and Motors (If Powered)

The current § 1.1 light-sport aircraft definition limits light-sport aircraft to those with a single reciprocating engine if the aircraft is powered. This requirement from the 2004 rule provided for a simple engine design that would be appropriate for operation by a sport pilot. With the performance expansions proposed in this rule for the design of light-sport category aircraft and the intention to decouple from sport pilot limitations, there is no longer a need to restrict light-sport category aircraft to a single reciprocating engine. This proposed rule would omit the single reciprocating engine limitation as an eligibility requirement in § 22.100. Accordingly, this proposed rule would allow light-sport category aircraft to be built with any number and type of engines or motors. The performance limitations for aircraft that a sport pilot

may act as pilot in command of would not include the limitation on a single reciprocating engine if the aircraft is powered.

Since this powerplant limitation was established in 2004, full authority digital engine control (FADEC) technology has evolved significantly. FADEC¹⁸ automates and simplifies the operation of a turbine powerplant. Today, many turbine-powered aircraft use FADEC automation to manage powerplant performance and simplify aircraft powerplant operations, reducing pilot workload. As a result, many turbine-powered aircraft are no longer directly associated with excessive speed or complexity. Advancements in simplified designs of turbine-engine technology have led to the use of small turbine engines in a variety of aircraft, including self-launching gliders. The FAA recognizes that because of automation, many modern turbine powerplants are now easier to operate than many existing piston-powered aircraft. Modern automated powerplants reduce the complexity previously associated with piloting aircraft that use powerplants other than non-turbine engines.

The FAA also reasons that removal of a specific engine requirement will encourage ongoing development, innovation, and increased efficiency of various types of powerplants for aircraft. The FAA seeks to encourage flexibility for aircraft manufacturers to include simple-to-operate powerplants of any design that will provide benefits to include reduced cost, ease of operation, and reduced emissions—especially for electric-powered aircraft. In summary, limiting the number and type of powerplants for light-sport category aircraft is no longer necessary and any risk associated with their use would be appropriately mitigated by aircraft and pilot certification processes.

7. Use of a Controllable Pitch Propeller

The § 1.1 definition of a light-sport aircraft currently requires a fixed or ground adjustable propeller if the aircraft is a powered aircraft other than a powered glider. The light-sport aircraft definition also requires that powered gliders have a fixed or feathering propeller system. These requirements from the 2004 rule provided for simple

¹⁴ Data from FAA Registry dated December 1, 2022.

¹⁵ "You may not act as pilot in command of a light-sport aircraft . . . [w]hile carrying more than one passenger." See: 14 CFR 61.315(c)(4).

¹⁶ For example, this proposed amendment would permit sport pilots to operate existing certificated single-engine production aircraft.

¹⁷ See 14 CFR 61.101(a)(1) and (e)(1)(i).

¹⁸ FADEC combines throttle, prop, and mixture controls into a single control. With a FADEC system, there is no direct pilot control over the engine or manual control mode. FADEC systems are autonomous, self-monitoring, self-operating, and redundant. These systems can decrease pilot workload and provide engine monitoring capability that can alert operators of certain mechanical problems.

designs that would be appropriate for a sport pilot to operate.

With the performance expansions proposed in this rule for the design and certification of light-sport category aircraft, as well as the decoupling from sport pilot aircraft limitations tied to the light-sport aircraft § 1.1 definition, there would no longer be a need to restrict propeller designs for light-sport category aircraft. This proposed rule would omit propeller limitations from the light-sport category eligibility requirements in § 22.100. Accordingly, this proposed rule would allow light-sport category aircraft to be built with any type of propeller design that meets an FAA-accepted consensus standard.¹⁹

Although the operation of controllable-pitch propellers and their associated systems can impose some additional workload on pilots, the FAA considers these propeller designs to be safe and reliable, as they have been used in general aviation aircraft for decades. While controllable-pitch propeller designs can increase workload because they require attention and adjustment by the pilot, the FAA considers the overall design of these systems to be relatively simple to operate and appropriate for inclusion in light-sport category aircraft.

However, proposed § 61.316, which would provide the performance and design limitations for aircraft that may be flown by sport pilots, would retain some propeller limitations and training requirements for sport pilots. Specifically, for powered aircraft other than powered gliders, proposed § 61.316 would permit sport pilots to fly aircraft with a fixed or ground-adjustable propeller, but also allow those with an automated controllable-pitch propeller. Aircraft with an automated controllable-pitch propeller would enable pilots to take advantage of the improved performance associated with these aircraft without imposing additional workload. The current requirement for powered gliders would be relocated to proposed § 61.316.

Due to the significant increase in climb and cruise performance, the FAA is also proposing to permit sport pilots who receive additional training and an instructor endorsement to operate airplanes designed with controllable-pitch propellers that are not automated. The FAA contends that permitting the design and use of a controllable-pitch propeller on airplanes increases safety by taking advantage of the improved climb performance associated with that

propeller system design to avoid and clear obstacles during the climb and departure phase of a flight.

The FAA proposes two allowances to this requirement in the proposed § 61.316(e). First, the FAA proposes that, for powered aircraft other than powered gliders, the airplane may also be equipped with an automated controllable-pitch propeller. These propellers are easy to use and increase airplane performance and efficiency. Specifically, allowing use of an automated controllable-pitch propeller, in addition to fixed or ground-adjustable propellers, increases safety because of increased climb and cruise performance associated with a controllable pitch propeller design.

Second, under the proposed § 61.331, sport pilots would be required to obtain additional flight training and a flight instructor endorsement validating sport pilot proficiency to operate an airplane with a controllable-pitch propeller that is not automated. The FAA contends that additional training and instructor endorsements would appropriately validate that sport pilots can safely operate airplanes with a manually operated controllable-pitch propeller.

8. Fixed-Pitch, Semi-Rigid, Teetering-Two Blade Rotor System (if a Gyroplane)

The current § 1.1 definition of light-sport aircraft requires gyroplanes to have fixed-pitch, semi-rigid, teetering two blade rotor systems. This proposal would omit this as an eligibility requirement in § 22.100 to enable industry to develop new designs for gyroplane rotor systems. However, under proposed § 61.316(a)(6), the FAA would continue to limit sport pilots to operate gyroplanes that have a fixed-pitch, semi-rigid, teetering-two blade rotor system.

9. Retractable Landing Gear

Per the current light-sport aircraft definition in § 1.1, a light-sport aircraft, except for an aircraft intended for operation on water or a glider, must have a fixed landing gear. The proposed rule would remove this limitation as an eligibility requirement in § 22.100. Accordingly, this rule would allow light-sport category aircraft to be designed with fixed or retractable landing gear, or with floats for aircraft intended for operation on water.

In the 2004 rule, the requirement for fixed landing gear was intended to enable aircraft designs that would be simple to operate by persons exercising the privileges of a sport pilot certificate. With the performance expansions proposed in this rule for the design of

light-sport category aircraft and the decoupling from sport pilot restrictions, there is no longer a need to restrict light-sport category aircraft to fixed landing gear. This rule would provide for more robust structures and greater weight allowances that would accommodate necessary enhancements needed for retractable landing gear.

The FAA recognizes that additional training and instructor endorsements can validate that sport pilots can operate aircraft with retractable landing gear safely. The FAA is proposing to permit sport pilots to operate aircraft with a retractable landing gear by requiring additional training and obtaining a flight instructor endorsement validating proficiency, as discussed later in section IV.E. By proposing to establish separate airman and aircraft certification requirements, manufacturers would be provided with the ability to create a wider range of aircraft designs that may be operated by any appropriately rated pilot. Pilots could then pursue the appropriate level of pilot certification necessary to operate light-sport category aircraft and any other aircraft. This would enable greater flexibility for both aircraft manufacturers and pilots.

D. Certification of Light-Sport Category Aircraft

1. Compliance With Design, Production, and Airworthiness Requirements

As a condition for eligibility for certification in the light-sport category, the proposal would require an aircraft to meet performance-based aircraft design, production, and airworthiness requirements using a means of compliance consisting of consensus standards accepted by the FAA. The proposal would provide the regulatory authority to deny airworthiness certification for a light-sport category aircraft if any applicable requirements in § 21.190(c) or part 22 have not been met. The proposed performance-based requirements are discussed further in section IV.D.

2. Establishment of Performance-Based Requirements

This proposal would include performance-based requirements for the certification of aircraft in the light-sport category. The FAA would evaluate any proposed consensus standard against the regulatory requirement to determine whether the consensus standard would constitute an acceptable means of compliance. By proposing these performance-based requirements, the FAA would be providing clear direction to standards-setting organizations regarding the content of consensus

¹⁹ ASTM standard F2506—Standard Specification for Design and Testing of Light Sport Aircraft Propellers.

standards that would be proposed as a means of compliance to meet regulatory requirements. The FAA expects that this proposal should not only facilitate the more rapid development of these consensus standards, but also result in more comprehensive consensus standards that are better able to address the design, production, and airworthiness of aircraft intended for certification in the light-sport category.

The design, production, and airworthiness requirements proposed in part 22 would represent the minimum requirements a consensus standard would be required to address to be an acceptable means of compliance for certification of light-sport category aircraft. The proposed requirements would enable the implementation of new technologies and encourage innovation. This proposed rule would allow manufacturers to incorporate new technologies in their aircraft due to the removal of a prescriptive weight limit that previously limited the installation of safety equipment. This proposed rule would also encourage innovation, such as aircraft designed with simplified flight controls discussed in proposed § 22.180. The requirements proposed in this section would provide safety requirements appropriate for the light-sport category within the context of the FAA's safety continuum. A discussion of each proposed performance-based requirement follows.

3. Performance-Based Requirements for the Certification of Light-Sport Category Aircraft

a. General

The proposed expansion of the classes of aircraft eligible for certification under the proposal and the increase in the size and performance of these aircraft requires the adoption and use of more detailed performance-based requirements. These new requirements would serve to guide consensus standards bodies in developing appropriate consensus standards that would be acceptable to the FAA for the expanded certification of aircraft in the light-sport category.

Manufacturer compliance with the performance-based design, production, and airworthiness requirements proposed in this NPRM is necessary for the safety of the wide range of light-sport category aircraft to be certificated under this proposal. The FAA expects that compliance with these requirements would reduce the occurrence of design and production defects, resulting in aircraft that are safe for their intended operations.

In accordance with their place in the safety continuum, light-sport category aircraft would be subject to a certification process more stringent than that applicable to experimental amateur-built aircraft, but less rigorous than that used for the certification of normal category aircraft. When comparing current certification requirements for light-sport category aircraft to the certification requirements applicable to other aircraft, amateur-built aircraft issued experimental airworthiness certificates are not required to meet performance-based design, production, and airworthiness requirements that light-sport category aircraft would be required to meet. As experimental aircraft occupy a level on the safety continuum with a lesser demand for safety assurance than light-sport category aircraft, amateur-built aircraft are subject to more stringent operating limitations. In contrast, aircraft issued standard airworthiness certificates are required to meet airworthiness standards contained in part 23, 25, 27, 29, or 31 and must be produced pursuant to an FAA design and production approval. Accordingly, normal category aircraft are subject to fewer operating restrictions than light-sport category aircraft. As light-sport category aircraft would not be designed or manufactured pursuant to an FAA design or production approval, these aircraft would be subject to the eligibility requirements in proposed § 22.100 and the more restrictive operating limitations in proposed § 91.327.

The FAA retains oversight authority of light-sport category aircraft manufacturers. Like certification rigor, the rigor of FAA oversight of light-sport category aircraft manufacturers would be consistent with the safety continuum. Policies and procedures for that oversight are included in FAA Order 8130.36.²⁰ To support this proposed rule, the FAA would expand its oversight to verify successful accomplishment of training by the manufacturer's compliance staff per proposed § 22.190, as well as the training and certification of manufacturer's staff who sign its statements of compliance in proposed § 21.190(d)(1).

The FAA does not believe it would be appropriate to include the proposed performance-based design, production, and airworthiness requirements within current part 21 as that part is largely limited to prescribing certification procedures, not certification

requirements. Accordingly, the FAA is proposing to include these requirements within subpart B of part 22. By placing these new design, production, and airworthiness requirements within separate sections of part 22, each functional requirement would be more readily discernable to users, be better able to be individually addressed, and result in the development of a clearer and more understandable manufacturer's statement of compliance.

With certain exceptions, part 22 would apply to non-type certificated aircraft. As aircraft with experimental airworthiness certificates are not certificated using performance-based requirements, proposed part 22 would not be applicable to those aircraft. Additionally, the proposed part would not be applicable to aircraft operating under a special flight permit. Although those permits are issued to aircraft that are safe for flight, aircraft operating under a special flight permit do not have to meet applicable airworthiness requirements. Part 22 would also not be applicable to unmanned aircraft, as the proposed requirements would address the design, production, and airworthiness of aircraft used to carry passengers and would not be appropriate to address the design of an aircraft that could be remotely operated. Requirements for manned aircraft, for example, would need to address occupant protection and egress while proposed requirements for unmanned aircraft would need to address certain flight control system requirements that would be inapplicable to manned aircraft. The FAA notes, however, that requirements for non-type certificated unmanned aircraft could be proposed at a later date.

The FAA has accepted a variety of ASTM consensus standards for the certification of light-sport category aircraft. The FAA has found these consensus standards to be sufficient for the certification of aircraft that meet current eligibility requirements. The FAA has also reviewed currently accepted ASTM consensus standards and evaluated them against the proposed performance expansions and new aircraft designs that would be eligible for certification as light-sport category aircraft. Currently accepted consensus standards would not be sufficient for the certification of the wide range of aircraft with enhanced performance capabilities that could be certificated under this proposal. The FAA anticipates that industry would develop acceptable and appropriate consensus standards to comply with the proposed performance-based requirements in part 22. These proposed

²⁰ FAA Order 8130.36, Special Light Sport Aircraft Audit Program.

performance-based requirements would serve as the underlying regulatory requirements for the development of new or revised consensus standards.

The FAA currently uses performance-based requirements for the certification of other aircraft, most notably normal category airplanes certificated under the requirements of part 23. The FAA recognizes that the performance-based requirements it is proposing for certificating light-sport category aircraft are not of the same scope and detail as those standards. The FAA contends, however, that the greater specificity contained in the part 23 standards reflects the increased rigor of the type certification process and resultant need to develop more detailed consensus standards to comply with those more detailed requirements. The performance-based requirements proposed in this NPRM respond to the need to apply a set of broad-based requirements to a wider range of aircraft that would not be required to meet the more exacting design requirements of type certification. They also provide industry with the flexibility to develop consensus standards applicable to the certification of a wide range of dissimilar aircraft.

Under the proposed rule, a consensus standard would have to meet the following performance-based requirements before the FAA would accept that standard as a means of compliance. A manufacturer would need to meet the appropriate FAA-accepted consensus standards to obtain an airworthiness certificate in the light-sport category.

b. Control and Maneuverability

Proposed § 22.105 would require aircraft to be consistently and predictably controllable and maneuverable through the normal use of primary flight controls at all loading conditions, during all phases of flight. Additionally, the aircraft would not have a tendency to inadvertently depart controlled flight or require exceptional piloting skill, alertness, or strength.

The proposed rule is necessary because if the aircraft's design prevents the pilot from inadvertently departing controlled flight, instances of unintentional unusual attitudes, loss of control of the aircraft, or aircraft structural damage would be reduced. A requirement for control and maneuverability would assist with the consistency and predictability of an aircraft's maneuvering flight characteristics throughout the aircraft's entire flight envelope. The aircraft would not have a tendency to depart controlled flight, meaning that it should

be inherently stable. Additionally, the FAA considers that this requirement would result in aircraft that operate in repeatable, smooth transitions between turns, climbs, descents, and level flight.

Accordingly, flight controls would need to operate easily, smoothly, and positively enough to allow proper performance of their functions. Configuration changes, such as flap extension and retraction, or landing gear extension and retraction would also have to result in safe, controllable, and predictable handling characteristics. The proposed performance requirement would also enable stability, ease of flight, and consistent outcomes of control inputs for light-sport category aircraft throughout their center of gravity limits and flight envelope. The FAA considers that if an aircraft meets these parameters, exceptional piloting skill, alertness, or strength would not be required to operate the aircraft.

The FAA has accepted consensus standards for current light-sport category aircraft that address the controllability and maneuverability of aircraft intended for certification as light-sport category aircraft.²¹ Although the controllability and maneuverability standards vary across the consensus standards for the different classes of light-sport category aircraft, the general provisions of these standards align closely with the elements of proposed § 22.105. The consensus standards currently address controllability and maneuverability, applicable phases of flight, pilot strength and skill, and normal use of flight controls. Proposed § 22.105 would meet the level of rigor the FAA considers appropriate for light-sport category aircraft and its place on the safety continuum between experimental aircraft and normal category airplanes. Proposed § 22.105 would require light-sport category aircraft to be controllable and maneuverable with no adverse handling characteristics. In this context, no adverse handling characteristics would mean the aircraft would be consistently and predictably controllable and maneuverable and would not have a tendency to inadvertently depart controlled flight.

The FAA expects that some existing consensus standards would need to be

updated to account for the proposed expansion of eligibility for aircraft to be certified as light-sport category aircraft. Additionally, those portions of currently accepted consensus standards addressing aircraft controllability and maneuverability would need to be updated to address the specific requirement that aircraft control and maneuverability be consistent and predictable.

The proposed rule would facilitate the manufacture of simple designs that result in the stable, predictable, and controllable operation of the aircraft through the use of primary flight controls. Primary flight controls consist of "traditional" flight controls, such as an aircraft yoke, stick, control column, collective, throttle, or rudder pedals. Flight controls intended to improve aircraft performance characteristics or relieve excessive control loading, such as high lift devices, slats, flaps, flight spoilers, and aircraft trim systems, would not be considered primary flight controls. The proposed rule would also contain specific provisions for the certification of aircraft that may be designed and constructed without primary flight controls, but rather with "simplified flight controls." Specific requirements for aircraft with simplified flight controls are addressed in proposed § 22.180 in the preamble.

The proposed rule would require that existing consensus standards be revised to account for the requirement that operation of the aircraft not require exceptional piloting skill, alertness, or strength. Aircraft meeting this performance requirement would be stable enough to be easily flown by pilots with a minimum of flight experience and would not have handling characteristics that would cause undue pilot fatigue or distraction. Accordingly, these aircraft would provide a more stable platform than other currently available non-type certificated aircraft, thereby aiding in preventing inadvertent loss of control accidents. Although some consensus standards specifically address the forces necessary to pilot the aircraft, not all existing consensus standards meet this requirement. The proposed rule would require that aircraft certificated in the light-sport category have aerodynamic and handling qualities that would not result in unstable flight characteristics or require exceptional pilot skill to keep the aircraft within its flight envelope.

Additionally, the handling characteristics of these aircraft would make light-sport category aircraft a viable alternative for use in the flight training environment and provide both student pilots and flights schools with

²¹ ASTM F2245 Standard Specification for Design and Performance of a Light Sport Airplane; ASTM F2564 Standard Specification for Design and Performance of a Light Sport Glider; ASTM F2317/F2317M Standard Specification for Design of Weight-Shift-Control Aircraft, ASTM F2244 Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft, and ASTM F2355 Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft.

a potentially lower cost, alternate flight training platform. Although the proposed rule would permit the use of technology to enhance the flying qualities of the aircraft, the technology should also not increase the pilot's workload to the detriment of the goal to have simple and easy to fly aircraft. The pilot should not be task-saturated in maintaining control of these aircraft.

Proposed § 22.105 would help prevent inadvertent unusual attitudes and loss of control accidents. Per National Transportation Safety Board (NTSB) accident statistics, the largest number of fatal accidents for general aviation aircraft result from inflight loss of control; the proposed standard would result in the development of consensus standards for light-sport category aircraft that would assist in mitigating this risk.

Powered-lift or certain rotorcraft that could experience failures resulting in asymmetric thrust would need to be designed with safe, controllable, and predictable characteristics that permit a pilot with limited flight experience from becoming task-saturated while maintaining control of the aircraft. The aircraft could also be designed and constructed to include an automated system or provide for some combination of pilot action and automation that would enable the pilot to maintain effective aircraft control. The provisions of this proposed requirement would be consistent with proposed § 22.145, which would require that any propulsion system thrust asymmetry be automatically compensated for, or be capable of being readily compensated for, with no adverse effect on the aircraft's handling qualities.

c. Structural Integrity

Proposed § 22.110 would require that the design and construction of the aircraft provide sufficient structural integrity to enable safe operations within the aircraft's flight envelope and intended lifecycle. It would also require that the aircraft be able to withstand all anticipated flight and ground loads when operated within its operational limits.

The proposed performance requirements are necessary to ensure that light-sport category aircraft are designed and constructed to withstand any foreseeable flight and ground loads that may be experienced throughout the aircraft's flight envelope and intended lifecycle. Failure to establish and validate adequate strength, stiffness, and durability to accommodate anticipated loads encountered during flight or ground operations could result in structural failure of the aircraft.

When comparing the proposed requirements for the certification of light-sport category aircraft to the certification of amateur-built aircraft, the FAA notes that amateur-built aircraft have no regulatory requirement to incorporate design features or be constructed to provide sufficient structural integrity for their intended operations. Amateur builders may experiment with different materials and construction techniques in the design and construction of their aircraft. In contrast, type-certificated aircraft must meet the extensive airworthiness standards for structures in parts 23, 25, 27, 29, and 31 that address areas such as strength, durability, design envelope, loads, aerelasticity, materials, protection, fabrication processes, and performance. The level of rigor proposed for the structural integrity of light-sport category aircraft would not be as extensive as that required for aircraft intended for type-certification yet would establish minimum requirements for structural integrity that are not applicable to the certification of amateur-built aircraft.

FAA-accepted consensus standards currently used for the certification of light-sport category aircraft have provisions addressing structures that generally include provisions for items such as loads, factors of safety, strength and deformation, proof of structure, flight loads, design airspeeds, specialized structures, and emergency landing conditions.²² As a result of the expansion in the performance and capabilities of aircraft that would be certificated as light-sport category aircraft under the proposal, the proposed requirements would require consensus standards for light-sport category aircraft designs to address aircraft structural integrity under a wider range of environmental conditions and operational parameters. Additionally, the prevention of material and structural failures due to foreseeable causes of strength degradation and protection against deterioration or loss of structural strength due to any cause likely to occur throughout the aircraft's lifecycle would also need to be addressed by consensus standards organizations.

The proposed rule would require the aircraft to have the ability to withstand all anticipated flight and ground loads without detrimental permanent deformation or interference with the safe operation of the aircraft. The inclusion of a requirement to address structural integrity in light-sport

category aircraft designs would improve the ability of these aircraft to be consistently dependable, structurally reliable, and fully capable of safely conducting intended operations throughout the aircraft's lifecycle. The proposed requirements would enable aircraft design and manufacturing processes used in construction to attain structural integrity of aircraft with the use of adequate material strength and properties that can accommodate anticipated loads when operated within specified flight envelopes.

d. Powered-Lift Aircraft: Minimum Safe Speed

Proposed § 22.115 would require manufacturers of powered-lift aircraft to establish the minimum safe speed for each flight condition encountered in normal operation, including applicable sources of lift and phases of flight, to maintain controlled safe flight. The minimum safe speed determination would be required to account for the most adverse conditions for each configuration.

Because powered-lift aircraft would be newly eligible for certification as light-sport category aircraft, the FAA has proposed this specific requirement for powered-lift aircraft. The proposed rule is necessary for pilots of these aircraft to be aware of the specific minimum safe speeds at which their specific model of powered-lift aircraft can be operated in each of the aircraft's various configurations. Requiring these speeds to be determined would provide pilots with the essential knowledge to avoid operating these aircraft below minimum safe speeds, thereby reducing the potential for aircraft loss of control.

The proposed requirement to determine minimum safe speeds for powered-lift aircraft addresses all modes of flight (wing-borne, thrust-borne, and semi-thrust borne) in which these aircraft may be operated and the various modes in which lift supporting the aircraft is produced. In the wing-borne flight mode, the wing produces the aircraft's lift. In thrust-borne flight, commonly called hover mode, the powerplant produces the aircraft's lift. In the semi-thrust borne mode, the aircraft is in a transition stage between thrust-borne and wing-borne modes of flight with both the wings and powerplant providing aircraft lift. Although most powered-lift aircraft are designed with the ability to automatically transition from high-speed wing-borne flight to low-speed thrust-borne flight or hover, the proposed requirement would further the pilot's understanding of the handling qualities of the aircraft and facilitate

²² ASTM F2245, F2564, F2317/F2317M, F2244, and F2355.

their ability to make a smooth change from one configuration to another without exceeding the limitations of the aircraft's flight envelope.

The FAA does not consider the imposition of a limiting stalling speed or minimum steady flight speed such as V_{S1} to be practical for application to the design of powered-lift aircraft that would be eligible for certification as light-sport category aircraft. Many of the designs for these smaller powered-lift aircraft have wing sizes that do not provide significant lift in wing-borne flight. As a result of this small wing area and other design features, these aircraft may have stalling or minimum steady flight speeds that are much higher than comparably sized aircraft of other classes that rely primarily on wings to produce lift. Accordingly, the FAA considers the use of a maximum stalling speed as a limitation for these aircraft to be unnecessary.

As powered-lift aircraft can be operated in a variety of flight configurations, the FAA considers the determination of a minimum safe flight speed for each flight condition to be essential. Similar requirements for the determination of minimum flight speeds have also been proposed in two **Federal Register** notices of proposed airworthiness criteria for powered-lift aircraft designs currently involved in the type-certification process.²³ The more extensive requirements set forth in the airworthiness criteria for these powered-lift aircraft designs currently undergoing type-certification would not be required since aircraft subject to this proposal would be certificated as light-sport category aircraft and subject to the operating limitations contained in proposed § 91.327.

The proposed requirement is necessary so that the aircraft has controllable minimum safe speed flight characteristics in all flight conditions with a clear and distinctive minimum safe speed warning that provides sufficient margin to prevent inadvertent deceleration below minimum safe speed. Production acceptance flight testing would verify that the minimum safe speeds account for the most adverse conditions, such as operating at maximum gross weight, in the determination of the minimum safe speeds for each flight condition.

4. Special Requirements for Light-Sport Category Aircraft Used for Aerial Work Operations

Proposed § 22.120 would require that if an aircraft is designated by the manufacturer as suitable for the performance of any aerial work operation, the design and construction of the aircraft must provide sufficient structural integrity to enable safe operation of the aircraft during the performance of that operation and ensure that the aircraft is able to withstand foreseeable flight and ground loads.²⁴

The FAA broadly interprets the term aerial work to mean work done from the air for compensation that does not involve the carriage of persons or property.²⁵ Aerial work could include operations such as those performed in support of agriculture or construction activities, aerial photography, surveying, observation and patrol, search and rescue, and aerial advertisement. Patrolling of powerlines or railroad tracks, for example is a task that could be readily accomplished by a light-sport category aircraft that meets the proposed requirements. However, patrolling over long distances and at low altitudes can put increased stresses on aircraft structures due to the greater prevalence of turbulence at low altitude. The proposal would require manufacturers to design and construct aircraft to be able to withstand potentially greater stresses when engaged in designated aerial work operations than would potentially be experienced during recreational flights.

This proposed performance requirement is necessary so that aircraft designated to conduct aerial work operations are designed and constructed to withstand foreseeable flight and ground loads that may be experienced during those operations. Failure to establish and validate adequate material strength and design properties to accommodate a designated aerial work operation could cause structural failure resulting in loss of aircraft control.

The proposed requirement would only apply to those light-sport category

aircraft designated by a manufacturer to conduct specific aerial work operations. In accordance with the principles of the FAA's safety continuum, the proposed requirement is intended to apply a level of certification rigor appropriate to provide for the airworthiness of light-sport category aircraft during the conduct of these designated operations.

Amateur-built aircraft issued experimental airworthiness certificates have no regulatory requirement to incorporate design features necessary to provide sufficient structural integrity of the aircraft to enable safe aerial work operations. These aircraft are built solely for the purpose of education or recreation and are issued operating limitations which limit their use to education or recreation. Accordingly, aircraft issued these operating limitations are prohibited from aerial work operations by § 91.9, which prohibits the operation of a civil aircraft contrary to its operating limitations. In contrast, type-certificated aircraft meeting the airworthiness standards for structures in part 23, 25, 27, 29, or 31 may be used to conduct aerial work operations since these aircraft are issued standard airworthiness certificate and are not restricted by operating limitations that restrict their use to recreation or education or by regulatory provisions limiting their ability to carry persons or property for compensation or hire as set forth in § 91.319(a)(2).

Light-sport category aircraft are currently precluded by § 91.327 from conducting operations for compensation or hire, except to tow a glider or an unpowered ultralight vehicle or to conduct flight training. As the proposal would enable aerial work operations, the proposal would revise § 91.327 to permit the conduct of any aerial work operation specified in the aircraft's pilot operating handbook or operating limitations, as applicable, and specified in the manufacturer's statement of compliance for that aircraft.

The aircraft's design and construction would need to be sufficient to protect against deterioration or loss of strength and prevent structural failures due to foreseeable causes of strength degradation that would be likely to occur throughout the aircraft's flight envelope during aerial work operations. Additionally, the aircraft would need to be able to withstand all anticipated flight and ground loads during these operations without incurring detrimental permanent deformation or jeopardizing the safe operation of the aircraft. Failure to adhere to proper design and manufacturing processes in the development and production of parts or using materials not suitable or

²⁴ The FAA does not define construction or manufacture in § 1.1. The terms are used interchangeably in this section and mean the same.

²⁵ FAA Order 8900.1, Volume 2, Chapter 2, Section 2, Paragraph 2–127C *Aerial Work Operations*. While 14 CFR does not define "aerial work," the FAA has consistently interpreted the term to mean work done from the air where: the aircraft must depart and arrive at the same point; no property of another may be carried on the aircraft; and only persons essential to the operation may be carried on board. See Legal Interpretation to Jeffrey Hill, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, (March 10, 2011). See 14 CFR 119.1(e)(4).

²³ Airworthiness Criteria: Special Class Airworthiness Criteria for the Joby Aero, Inc. Model JAS4–1 Powered-Lift (87 FR 67399; November 8, 2022), and Airworthiness Criteria: Special Class Airworthiness Criteria for the Archer Aviation Inc. Model M001 Powered-Lift (87 FR 77749; December 20, 2022).

lacking durability for in-service environmental conditions in aerial work operations could result in loss of aircraft performance or critical functionality, thereby resulting in loss of aircraft control. Accordingly, these concerns would be appropriately addressed in the aircraft's design and manufacture under this proposal.

5. Environmental Conditions

Proposed § 22.125 would require the aircraft to have design characteristics to safely accommodate all environmental conditions likely to be encountered during its intended operations.

The proposed requirement is necessary to enable aircraft to be properly designed and constructed to conduct safe ground and flight operations in the specific operating environments for which the aircraft is designated to operate in. Manufacturers would need to account for weather extremes encountered within the United States and the designed maximum altitude of the aircraft to comply with this requirement. Aircraft systems and structures may not function as intended if all operating conditions are not accounted for in an aircraft's design. Improperly functioning systems or structures may lead to loss of aircraft control and an aircraft accident or incident.

There are no regulatory requirements for amateur-built aircraft to be designed with characteristics necessary to safely accommodate environmental conditions. If an amateur-built aircraft has been designed for flight at night or instrument meteorological conditions (IMC) as specified in its operating manual, the aircraft would be issued an operating limitation under the regulatory authority of § 91.319(i) specifying that it must meet the instrument and equipment requirements of § 91.205.

In contrast, aircraft manufactured in accordance with the airworthiness standards set forth in part 23, 25, 27, or 29 are subject to specific design and installation requirements for systems and equipment. Installed systems and equipment must perform their intended function throughout the operating and environmental limits for which the aircraft is certificated. Based on the performance level of the aircraft, other environmental airworthiness requirements are required to be met such as for flight in icing conditions, cockpit and external lighting for night operations, and flight in turbulent or gusty wind conditions. Additionally, balloons manufactured in accordance with the airworthiness requirements of part 31 must be suitably protected, as

set forth in § 31.39, against deterioration or loss of strength in service due to weathering, corrosion, or other causes.

Proposed § 22.105 would meet the level of rigor the FAA considers appropriate for light-sport category aircraft and its place on the safety continuum between amateur-built aircraft and normal category aircraft. Currently accepted consensus standards for light-sport category aircraft generally do not address design characteristics to accommodate environmental conditions. This is largely the result of these aircraft being limited to operating in day, visual meteorological conditions (VMC). The single major exception can be found in ASTM standard F2245, "Standard Specification for Design and Performance of a Light Sport Airplane," for light-sport category airplanes, which provides for the installation of internal and external lights for the conduct of night operations in VMC.

As a result of the expansion in the performance and capabilities of aircraft that would be certificated as light-sport category aircraft under the proposal, the FAA would require light-sport category aircraft designs, structures, and systems to account for the effects of any environmental conditions expected to be encountered while in operation. Examples of environmental conditions that should be accommodated in the aircraft design include heat, cold, precipitation, sunlight, darkness, gusty winds, and turbulence. In this proposal, performance expansions would enable light-sport category aircraft to be equipped with engines and systems capable of flight under instrument flight rules (IFR) in IMC. Additionally, state-of-the-art avionics systems could be installed in these aircraft which would require aircraft designs to provide for the necessary heating and cooling of this electronic equipment. Aircraft designs that fail to accommodate extreme temperature limits of systems may lead to operations outside the environmental limits of critical components, which could adversely affect control of the aircraft.

Aircraft designs must also protect occupants from experiencing inappropriate environmental conditions within the aircraft that could significantly affect their well-being or adversely affect pilot performance. While the effects of heat and cold are well known, designs should also consider other factors such as reducing the effects of windshield glare that could impair pilot vision both inside and outside the aircraft.

The recommended operating instructions and limitations to safely accommodate all environmental

conditions and abnormal procedures likely to be encountered in the aircraft's intended operations, such as gusty winds, contaminated runways, turbulence, icing conditions, or excessive temperatures, would be required to be specified in the pilot's operating handbook, as proposed in § 21.190(c)(2)(i) of this proposal. These requirements are proposed for the safe operation of the aircraft within the environmental parameters for which it is designed to operate.

6. Suitability and Durability of Materials

Proposed § 22.130 would require that the suitability and durability of materials used for products and articles account for likely environmental conditions expected in service, the failure of which could prevent continued safe flight and landing.²⁶

Materials used for aircraft components and structures would need to meet the rigors of all operations within the aircraft's flight envelope for the life of the aircraft, or for the specified life limit of the product or article in which the material is used. Pursuant to proposed § 22.130, aircraft would be designed and manufactured with materials that permit its structure and components to withstand those stresses likely to be encountered within the aircraft's flight envelope. Such stresses could include high load factors resulting from gusts or temperature and humidity extremes. Compliance with material suitability and durability requirements is especially important for critical structures and components whose failure could prevent continued safe flight and landing.

Manufacturer design data defines the configuration of each product or article, its design features, and any materials and processes used in its manufacture. In the selection of materials used for the aircraft's manufacture, manufacturers would have to account for the full range of conditions likely to be encountered within aircraft's design flight envelope for compliance with the proposed § 22.130. Design data would include a determination of the suitability and durability of materials used for the production of each product or article for the full range of the aircraft's authorized operations. Additionally, materials

²⁶ As defined in part 21, product means an aircraft, aircraft engine, or propeller. Article means a material, part, component, process, or appliance. Appliance is defined in § 1.1 and means any instrument, mechanism, equipment, part, apparatus, appurtenance, or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight, is installed in or attached to the aircraft, and is not part of an airframe, engine, or propeller.

selected for the manufacture of the aircraft's structure and components would need to be sufficient to protect those items against deterioration or loss of strength due to any condition likely to be encountered in the aircraft's expected operational environment.

Amateur-built aircraft issued experimental airworthiness certificates have no regulatory requirement to address the suitability and durability of materials to account for the environmental conditions expected to be encountered within the aircraft's operational flight envelope. In contrast, type-certificated aircraft must comply with material suitability and durability requirements specified in the airworthiness standards of parts 23, 25, 27, 29, and 31. In accordance with the principles set forth in the FAA's safety continuum, the proposed requirements have been designed to meet the level of rigor the agency considers appropriate to address the suitability and durability of materials used in the manufacture of aircraft intended for certification as light-sport category aircraft.

Currently accepted consensus standards for all classes of light-sport category aircraft include a design and construction performance requirement, which generally states that materials shall be suitable and durable for the intended use.²⁷ Those consensus standards specify that design values for strength must be chosen so that no structural part is understrength because of either material variations or load concentration. Consensus standards for all classes of aircraft eligible for certification as light-sport category aircraft also include protection of the aircraft's structure.²⁸ These consensus standards generally address the protection of the structure against weathering, corrosion, and wear, as well as provisions for suitable ventilation and drainage. As the suitability and durability of materials used for products and articles would be required to account for likely environmental conditions expected in service, the FAA expects that revisions to these consensus standards would need to be made to account for the significant increase in the performance, capabilities, and classes of aircraft that could be certificated under the proposal. Accordingly, revised consensus standards would need to address aircraft with significantly larger flight envelopes. This would result in materials being used in the aircraft

possessing the suitability and durability to permit the safe operation of the aircraft throughout the wider range of environmental conditions likely to be encountered.

7. Instruments and Equipment

Proposed § 22.135 would require that the aircraft have all instruments and equipment necessary for safe flight, including those instruments necessary for systems control and management. It would also require that the aircraft include all instruments and equipment required for the kinds of operations for which it is authorized. All instruments, equipment, and systems would be required to perform their intended functions under all operating conditions specified in the pilot's operating handbook. The proposal would also require that a failure or malfunction of a system or component that is likely to occur would not cause loss of control of the aircraft. All systems and components would be required to be considered separately and in relation to each other.

Aircraft certificated as light-sport category aircraft are currently required to use a consensus standard for all required equipment, pursuant to the definition of consensus standard in § 1.1. This proposal would remove reference to equipment from the definition of consensus standard and place that requirement in § 22.135. The proposed equipment requirements are necessary so that light-sport category aircraft would have installed equipment that enables the pilot to accomplish tasks such as monitoring, managing, controlling, or responding to the aircraft and its systems under all operating conditions.

For amateur-built aircraft issued experimental airworthiness certificates, no regulatory requirement exists for the aircraft's installed instruments and equipment to meet specific design requirements. However, amateur-built aircraft must comply with regulatory instrument and equipment requirements for operations in certain environmental conditions and airspace as specified in their operating limitations or as required by the applicable operating rules. For example, amateur-built aircraft designed and equipped for flight at night or under IFR may be issued an operating limitation stating that the aircraft must comply with the applicable instrument and equipment requirements of § 91.205. Operating in certain airspace requires that the aircraft meet the transponder equipage requirements specified in § 91.215 and the Automatic Dependent Surveillance-Broadcast

(ADS-B) Out requirements specified in § 91.225.

Type-certificated aircraft must meet the instrument and equipment airworthiness standards in parts 23, 25, 27, 29, and 31 for the types of operations for which certification is requested. Type-certificated aircraft must also comply with the instrument and equipment requirements in §§ 91.205, 91.215, and 91.225 for operations at night, in IMC, or certain airspace, as applicable.

The level of rigor specified for the design of the instrumentation and equipment installed in light-sport category aircraft would not be as extensive as that required for aircraft intended for type-certification, yet more extensive than that specified for amateur-built aircraft. Proposed § 22.135 would account for the fact that necessary instrumentation and equipage for light-sport category aircraft will vary by the class of aircraft and type of operation. Specifically, § 22.135, as proposed, states that aircraft must include all instruments and equipment required for the kinds of operations for which it is authorized. Minimum equipment generally includes flight and navigation instruments, powerplant instruments, and other miscellaneous equipment necessary for the operation of the aircraft's systems. Miscellaneous equipment is usually specific to the class of aircraft. Such equipment associated with the aircraft's electrical system, for example, could include master switches, wiring, and vented battery containers.

The FAA expects that light-sport category aircraft possessing significantly more capabilities than current designs would need to be appropriately equipped in accordance with these increased operational capabilities. Aircraft would be able to conduct IFR flight in IMC and be more likely to be exposed to adverse weather conditions and operations at night. The FAA does note, however, that flight in IMC would have to be authorized by the manufacturer in the pilot's operating handbook and the aircraft would be subject to an operating limitation requiring the aircraft to be equipped to meet the equipment and instrumentation requirements in § 91.205. Additionally, light-sport category aircraft would also be more prone to fly in airspace requiring transponders and ADS-B equipment as aircraft designers may be more willing to install this equipment. This equipment enhances safety of the national airspace system by making an aircraft visible to air traffic control and to other appropriately equipped aircraft,

²⁷ ASTM 2245, F2564, F2317/F2317M, F2244, and F2355.

²⁸ ASTM F2245, F2564, F2317/F2317M, F2244, and F2355.

promoting the separation of aircraft, and decreasing the risk of mid-air collision.

All classes of light-sport category aircraft would need to be properly equipped for operations they are authorized to conduct. For example, if an aircraft is authorized to operate at night, the requirement to have all instruments and equipment necessary for safe flight would necessitate the aircraft be equipped with internal cockpit lighting that would provide the pilot with unrestricted visibility of all required instruments. It would also be required to have external lighting to make the aircraft visible to both operators of other aircraft and to personnel on the ground while operating on or within the vicinity of the airfield.

The FAA encourages aircraft designers to incorporate new instrument and equipment technology into their aircraft designs. The proposed rule is intended to address both the functionality of instruments and equipment, as well as their interface with the other instruments and equipment installed in the aircraft. The FAA particularly encourages the installation of advanced electronic avionics systems that can be used by pilots to meet the aeronautical experience requirements in a technologically advanced aircraft as specified in § 61.129. As aircraft designers would no longer be bound by the parameters contained in the current definition of light-sport aircraft, designers would be better able to include safety-enhancing equipment in their designs, such as angle-of-attack indicators, envelope-protection equipment, and moving-map displays which could assist the pilot in avoiding hazardous conditions and enhance situational awareness. Accordingly, this proposal would facilitate the design and production of technologically advanced aircraft with instruments and equipment that could be used to support both safe and more cost-effective flight training.

The proposed requirement would also require that the equipment, instruments, and systems function properly under all operating conditions and that the failure or malfunction of a single equipment item or an instrument, or the failure of a system would not cause loss of aircraft control. Manufacturers could comply with this requirement by identifying critical single-point failure items or systems and build in redundancy to provide alternatives or back-up options. A specific example of how this requirement could be met would be the installation of a back-up attitude indicator, using a power source other than that used for the primary attitude

indicator, in an aircraft that is authorized to fly in IMC. Attitude indicators are the primary instrument pilots use to maintain proper aircraft attitude and bank angles when ground references are no longer visible. A secondary attitude indicator would prevent a loss of control situation in the event the primary attitude indicator or its power system failed while the aircraft was flying in IMC or without visual reference to the ground.

The FAA anticipates that compliance with the proposed requirements would require analysis of the aircraft's instruments and equipment to consider each separately and in relation to each other as failures resulting from equipment incompatibility may result in an accident. Manufacturers could use various methods to comply with this requirement such as the installation of back-up systems or through testing techniques. The integrity of the aircraft design, equipage, and systems, and the quality of aircraft manufacturing processes is essential for safe flight.

8. Accessibility of Controls and Displays

Proposed § 22.140 would require that the aircraft be designed and constructed so that the pilot can reach all controls and displays in a manner that provides for smooth and positive operation of the aircraft.

This proposed performance requirement is necessary to enable ergonomic and human factors designs in light-sport category aircraft that result in these aircraft being simple to operate. A flightdeck or pilot station not designed to account for ergonomic and human factors may result in controls and displays located in locations that do not allow for their efficient and timely operation by the pilot. Aircraft designs that do not provide the pilot with the ability to effectively activate, operate, or otherwise interface with the aircraft's controls and display information could significantly affect the pilot's ability to safely operate the aircraft resulting in loss of control. The proposal would support ergonomic designs where the activation or operation of a control, switch, or display would not unduly distract a pilot from maintaining proper control of the aircraft. The FAA encourages aircraft designers to use the flexibility of this proposal to prioritize the placement of controls and displays based on their criticality to maintaining safe ground and flight operations.

Amateur-built aircraft issued experimental airworthiness certificates have no regulatory requirement to incorporate design and construction features where the pilot must reach all controls and displays in a manner that

provides for smooth and positive operation of the aircraft. Type-certificated, normal category airplanes must comply with the airworthiness standards found in subpart G of part 23 that specify flightcrew interface requirements with installed instruments and equipment. Type-certificated, normal category rotorcraft must comply with part 27 airworthiness standards that require cockpit controls be located to provide convenient operation and to prevent confusion and inadvertent operation.

The level of rigor for the accessibility of controls and displays in light-sport category aircraft would not be as extensive as the § 25.777 cockpit control requirements for type-certificated aircraft. Although § 25.777 requires that each cockpit control be located to provide convenient operation and to prevent confusion and inadvertent operation, it contains further requirements for the turning direction and effectivity of controls, prevention of interference from structures and pilot clothing, specific locations for the controls of lifting devices (*e.g.*, flaps) and landing gear, and shapes and color contrast of control knobs. The extent of requirements in § 25.777 far exceed the simpler requirement for light-sport category aircraft that its controls and displays be reached by the pilot without disrupting smooth and positive operation of the aircraft.

The proposal, consistent with the FAA's safety continuum, would establish requirements for the accessibility of controls and displays in light-sport category aircraft that are not necessary for amateur-built aircraft. Amateur-built aircraft have no regulatory requirements for the pilot to reach all controls and displays so builders can design their own instrument panel and locate controls and displays wherever they prefer. Because light-sport category aircraft have fewer operational restrictions and may conduct aerial work, the certification rigor for light-sport category aircraft would be greater. Accordingly, light-sport category aircraft would have to have controls and displays where the pilot can reach in a manner that provides for smooth and positive operation of the aircraft. This requirement would help prevent distractions and loss of control accidents. Manufacturers would be able to comply with these requirements through FAA-accepted consensus standards.

For light-sport category airplanes, powered parachutes, and lighter-than-air aircraft (balloons and airships) certificated under current rules, ASTM

standards F2245, for light-sport airplanes, F2244, “Standard Specification for Design and Performance Requirements for Powered Parachute Aircraft,” and F2355, “Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft,” state that for the pilot compartment, accessibility and the ability to reach all controls for smooth and positive operation shall be provided. For weight-shift-control aircraft and gliders, ASTM standards F2317/F2317M, “Standard Specification for Design of Weight-Shift-Control Aircraft,” and F2564, “Standard Specification for Design and Performance of a Light Sport Glider,” state that there must be a control or means accessible to the pilot while wearing a seat belt by which the pilot can effectively shut off the flow of fuel.

As the proposal would expand the scope of aircraft that may be certificated as light-sport category aircraft, revised consensus standards submitted to the FAA for acceptance would need to address the pilot’s ability to reach all controls and displays in a manner that provides for smooth and positive operation in a much wider range of aircraft. Activation or manipulation of aircraft controls and displays could not require a level of attention significant enough to cause the pilot to shift focus, create a distraction, or otherwise interfere with the operation of the aircraft. Such loss of attention or focus could result in an incident or accident.

To comply with the provisions of the proposed rule, a manufacturer would design and install controls and displays that would permit the pilot to readily monitor and perform defined tasks associated with the intended functions of systems and equipment. These provisions would reduce the potential for pilot error and minimize the risk of resulting hazards. Accordingly, the proposed requirement would serve to prevent inadvertent unusual attitudes and loss of control accidents due to poor ergonomics and cockpit design. The proposed requirement would also have the benefit of reducing pilot workload and fatigue since controls and displays would be reached in a manner that provides for smooth and positive operation of the aircraft. These design features would further the conduct of safe operations by minimizing pilot distraction when a control or display is operated.

9. Propulsion System

Proposed § 22.145 would establish requirements for light-sport category aircraft propulsion systems. Propulsion systems would be required to have

controls that are intuitive, simple, and not confusing and be designed so that the failure of any product or article would not prevent continued safe flight and landing or, if continued safe flight and landing cannot be ensured, the hazard would be minimized. Additionally, propulsion systems would not be permitted to exceed safe operating limits under normal operating conditions and would be required to have the necessary reliability, durability, and endurance for safe flight without failure, malfunction, excessive wear, or other anomalies.

Under this proposed requirement, light-sport category aircraft would be equipped with propulsion systems that do not require excessive pilot skill or training to operate. The proposal would enhance safety in the event of any failure of the propulsion system such that safe control of the aircraft could be readily maintained by the pilot, aircraft automation, or their combined action. The ability to maintain safe control of the aircraft in the event of a partial or complete failure of the propulsion system would significantly assist in reducing the probability of an accident or loss of aircraft control.

The FAA considers that continued safe flight and landing means an aircraft is capable of continued controlled flight and landing, possibly using emergency procedures, without requiring exceptional pilot skill or strength. For aircraft designed with simplified flight controls, this may be accomplished through automation. Upon landing, some aircraft damage may occur because of a failure condition.

The proposed requirements, while intended to result in the airworthiness of light-sport category aircraft, have also been specifically designed to meet the level of rigor the agency considers appropriate for the certification of these aircraft in accordance with the FAA’s safety continuum concept. When comparing the proposed requirements for the certification of light-sport category aircraft to the certification requirements of amateur-built aircraft, the FAA notes that amateur-built aircraft have no regulatory requirements applicable to the design or functionality of their propulsion systems. Amateur builders may experiment with a wide range of propulsion system designs and may incorporate a variety of design features for the control, operation, reliability, durability, or endurance of their propulsion systems into their aircraft. Comparatively, light-sport category aircraft propulsion systems would be required to meet the § 22.145 requirements because they could conduct aerial work and have fewer

operational restrictions than amateur-built aircraft. Therefore, light-sport category aircraft would require a higher level of certification rigor for the propulsion system. The requirements for the design of the propulsion system would allow for easy, reliable, and consistent operations. These qualities would allow for safe operations and minimize hazards associated with engine failures. Compliance to the requirements in § 22.145 would be with FAA-accepted consensus standards.

In contrast, type-certificated aircraft must comply with the airworthiness standards for propulsion system in parts 23, 25, 27, and 29. Type-certificated engines installed in these aircraft must comply with the airworthiness standards for engines found in part 33, and the fuel venting and exhaust emission requirements found in part 34, if applicable. If propellers are installed on type-certificated aircraft, then the airworthiness standards of part 35 must also be complied with. The level of rigor of the standards proposed for the propulsion systems of light-sport category aircraft would not be as extensive as that required for aircraft intended for type-certification yet would provide basic certification requirements currently inapplicable to amateur-built aircraft.

For light-sport category aircraft, specialized consensus standards for propellers and reciprocating spark and compression ignition engines exist in current FAA-accepted ASTM consensus standards.²⁹ These standards address data, designs, testing and manufacturing of these products. ASTM Standard 2245 for light-sport category airplanes specifies that powerplant installations must be shown to have satisfactory endurance without failure, malfunction, excessive wear, or other anomalies.

Additionally, the FAA notes that ASTM Standard F2840, “Standard Practice for Design and Manufacture of Electric Propulsion Units for Light Sport Aircraft,” provides a basis for the development of electric propulsion units for electric-powered aircraft that currently cannot be certificated as light-sport category aircraft. While this proposal would allow for the use of electric propulsion in light-sport category aircraft, this standard would need to be evaluated and revised to

²⁹ ASTM standard F2339, “Practice for Design and Manufacture of Reciprocating Spark Ignition Engines for Light Sport Aircraft;” ASTM standard F2538, “Practice for Design and Manufacture of Reciprocating Compression Ignition Engines for Light Sport Aircraft;” ASTM standard F2840, “Practice for Design and Manufacture of Electric Propulsion Units for Light Sport Aircraft;” and ASTM standard F2506, “Specification for Design and Testing of Light Sport Aircraft Propellers.”

account for electric propulsion units that could be installed on additional classes of aircraft and those aircraft with increased performance capabilities that would be permitted to be certificated under the proposal.

The proposed propulsion system requirements would permit aircraft designs to be certificated that enable the application of power to be accomplished through simple, intuitive, and non-confusing means. Moving a bi-directional lever forward to increase speed and backward to reduce speed in level flight, similar to the instinctive use of a legacy power control (throttle), is one way to achieve this. This control, as well as all other propulsion system controls, should be ergonomically located so that movement is achieved without considerable effort for the pilot throughout the aircraft's flight envelope in all flight conditions. While the FAA encourages the automation of propulsion system controls, the continued use of non-confusing legacy propulsion system controls, such as the blue lever for propeller control and red lever for mixture control, would still meet the proposed requirements and assist in maintaining standardization throughout the light-sport category fleet.

The proposal would also require that the propulsion system be designed so that the failure of any product or article does not prevent continued safe flight and landing or, if continued safe flight and landing cannot be ensured, the hazard has been minimized. The results of this proposed requirement would not permit a partial or complete loss of power to adversely affect the handling qualities of an aircraft. For single-engine aircraft, this requirement would ensure the aircraft is controllable after the loss of engine power so that an engine-out descent and landing could be readily accomplished. For multi-engine or multi-motor aircraft, the proposal would enable any power asymmetry to be compensated automatically by the aircraft or by the pilot with no resulting adverse effect on the aircraft's handling qualities. Power asymmetry on a multi-engine or multi-motor aircraft, if not handled properly, can result in loss of control. Propulsion system failures could be addressed by actions such as the aircraft establishing a controlled descent to a landing surface, diverting to an alternate location, or returning to the initial point of departure.

The FAA encourages a hazard assessment, similar to that required by § 23.2410 for the certification of normal category airplanes, be conducted. This assessment would address the likely failure of any product or article so that it would not prevent continued safe

flight and landing or, if continued safe flight and landing cannot be ensured, the hazard has been minimized. For example, if manufacturers install propellers on twin engine airplanes that can be feathered in the event of an inflight engine shutdown, this would help to minimize the hazard of drag. In this instance, decreased drag would benefit aircraft performance by increasing range and decreasing flight asymmetry.

The proposal would require that the propulsion system be designed to preclude operation outside safe operating limits under normal operating conditions and that the system be consistently dependable for all intended operations. Accordingly, the propulsion system would be required to be designed with safety features to prevent the occurrence of operations such as the operation of propellers or rotors outside design RPM limits.

The propulsion system would also be required to have the necessary reliability, durability, and endurance for safe flight without failure, malfunction, excessive wear, or other anomalies. Defects, such as cracks or leaks that could result in the loss or malfunction of an engine, propeller, or rotor system, would be mitigated under this proposal. These proposed requirements for durability and endurance address the safety of system designs and construction methods, as well as the use of materials suited for the operational life of the propulsion system. The proposal would permit light-sport category aircraft designs to address these requirements using conventional, simple propulsion system designs or advanced technologies.

10. Fuel Systems

Proposed § 22.150 would establish requirements for aircraft fuel systems. Fuel systems would be required to provide a means to safely remove or isolate the fuel stored in the system from the aircraft and be designed to retain fuel under all likely operating conditions.

The FAA is proposing this performance requirement because aviation fuel removal or isolation is necessary in the event fuel contamination is known or suspected. Fuel would include both liquid aviation fuel (e.g., avgas) and electrical energy, whether stored in batteries, produced by electric motors, or produced by other power generation devices. Removal or isolation of aviation fuel under such circumstances would prevent damage to the aircraft's engine and fuel system components used to transport fuel from the aircraft's fuel storage tank or other

storage means to the aircraft's propulsion system. The inability to isolate or remove contaminated aviation fuel from the aircraft's fuel system could lead to engine failure and an emergency landing. Additionally, the ability to remove or drain aviation fuel from fuel tanks may be necessary for aircraft maintenance or repairs.

For aircraft with electrical energy stored in batteries or produced by electric motors or other power generation devices, having the ability to remove or isolate electrical current in an aircraft may help prevent damage to electrical components or systems in the event of an electrical malfunction. Electrical components must be able to be isolated or removed from the electrical system to prevent overheating and subsequent fire which could result in significant structural damage or loss of aircraft control.

In this proposal, fuel systems would be required to be designed and constructed to retain fuel under all likely operating conditions, such as during all authorized maneuvers, turbulence encounters, and aircraft accelerations and decelerations and an emergency descent and landing. The FAA considers that this requirement would be necessary for the safe and continuous operation of the aircraft's propulsion system. The proposed requirement for the aircraft to retain fuel under all likely operating conditions is necessary for a variety of purposes. For example, these purposes could include preventing fuel from being a source of ignition or feeding an existing fire, maintaining the aircraft's center of gravity within prescribed limits, providing structural support, preventing loss of aircraft range and endurance, preventing corrosion and equipment damage, and preventing toxic fumes from entering occupied compartments.

The proposed fuel retention requirement would also apply to the storage of electrical energy. Failure to secure or retain a battery or other electrical components powering the aircraft could result in emergency situations that could lead to structural damage or the loss of aircraft control. Examples include electrical or electrical-sourced fires, corrosion that results in structural damage, loss of essential electrical equipment such as avionics equipment providing altitude, heading, and attitude reference information, or toxic fumes entering occupied compartments.

The level of rigor of the proposed requirements for the removal, isolation, and retention of fuel for light-sport category aircraft would not be as extensive as that required for aircraft

intended for type-certification. Type-certificated aircraft are required to comply with extensive airworthiness standards in parts 23, 25, 27, and 29 for the removal, isolation, and retention of fuel.

However, the FAA is proposing requirements for light-sport category aircraft that, in accordance with the safety continuum, would not be imposed on amateur-built aircraft. Amateur-built aircraft fuel system design is not regulated which allows amateur-builders to experiment with how they retain and distribute fuel from their fuel tanks to their engine, or for electric powered aircraft, from their electric power source to a motor. Amateur-builders may install fuel isolation and shut-off valves, filters, pumps, drains, and fuel lines as they deem necessary for the normal and emergency operation of their aircraft. However, because light-sport category aircraft operate with fewer restrictions than amateur-built aircraft, this rule would require light-sport category aircraft fuel systems to provide a means to safely remove or isolate the fuel stored in the system from the aircraft and be designed to retain fuel under all likely operating conditions. These requirements would provide for fuel removal or isolation of contaminated fuel, irregular electrical current, or malfunctioning equipment, which may enable continued operation of an engine or motor. Light-sport category aircraft fuel systems would also have to retain fuel throughout the system which would allow for the mitigation of hazards and safe operations. Compliance with the requirements in § 22.150 would be accomplished through FAA-accepted consensus standards.

For light-sport category aircraft, the current fuel removal, isolation, and retention provisions specified in the applicable consensus standards vary based on the class of aircraft. For instance, current FAA accepted consensus standards for light-sport category airplanes, gliders, and weight-shift-control aircraft, specify that these aircraft have at least one drain or other available method to allow safe drainage of fuel from tanks.³⁰ Consensus standards for all light-sport category aircraft except balloons and powered parachutes specify that the aircraft have a control to shut-off fuel as a means of isolation.³¹ For light-sport category airplanes, gliders, and weight-shift-control aircraft, the standards specify that the battery installation must

withstand all applicable inertia loads.³² Consensus standards for light-sport category airplanes, gliders, powered parachutes, airships, and weight-shift control aircraft specify that their fuel tanks be able to withstand all applicable inertia loads or prescribed load factors.³³ The FAA anticipates that industry would develop acceptable and appropriate consensus standards for all classes of light-sport category aircraft to comply with the proposed requirement for the removal, isolation, and retention of fuel.

11. Fire Protection

Proposed § 22.155 would require that the hazards of fuel or electrical fires following a survivable emergency landing be minimized by incorporating design features to sustain static and dynamic deceleration loads without structural damage to fuel or electrical system components or their attachments that could leak fuel to an ignition source or allow electrical power to become an ignition source.

Fuel and electrical system components need to maintain their connectivity and structural integrity to prevent leakage, fumes, and electrical wiring from igniting a flammable source in the event of a survivable emergency landing. Proposed § 22.155 is necessary to minimize the risk of additional injuries due to fire and create sufficient time for aircraft occupants to safely escape an aircraft immediately after an accident or incident.

Amateur-built aircraft issued experimental airworthiness certificates have no regulatory requirement to incorporate design features to sustain static and dynamic deceleration loads without structural damage to fuel or electrical system components or their attachments. The ability of an amateur-built aircraft to minimize the hazards of fuel or electrical fires is largely dependent upon the manufacturer's design, although amateur builders can assist by using recommended methods, techniques, and practices when installing fuel and electrical components and attachments. Light-sport category aircraft, however, may be more complex and could engage in work for compensation or hire; therefore, the FAA is proposing a heightened requirement that fire sources be minimized. Requiring fire sources be minimized following an impact is consistent with the location of light-sport category aircraft on the safety continuum. Therefore, this proposed

rule would direct this through the requirements of § 22.155. Compliance with these requirements would be accomplished through FAA-accepted consensus standards.

Type-certificated aircraft have airworthiness standards in parts 23, 25, 27, 29, and 31 where fuel tanks, fuel lines, electrical wires, and electrical devices must be designed, constructed, and installed, as far as practicable, to be crash resistant. Type-certificated aircraft must retain fuel to minimize hazards to the occupants during any survivable emergency landing. There are multiple ways for manufacturers to minimize the ignition of fluids and vapors. Retention methods to minimize the probability of ignition of the fluids and vapors include, but are not limited to, stopping the flow of fluids, shutting down equipment, fireproof containment, or the use of extinguishing agents. Type-certificated aircraft also undergo drop testing to demonstrate their ability to withstand deceleration loads without structural damage to fuel system components or their attachments.

The FAA considers that drop testing and the more prescriptive elements of the fire safety rules applicable to type-certificated aircraft would not be preferable because of the lower risk and certification rigor, and fewer operating privileges of light-sport category aircraft. Since light-sport category aircraft subject fewer people to risk per flight, and have fewer operating privileges when compared to part 23 airplanes, this rule would not impose the prescriptive elements of the fire safety rules for type-certificated aircraft subject to part 23, 25, 27, 29, or 31. Although the FAA does not consider it currently necessary to require light-sport category aircraft to undergo drop testing, these aircraft would likely undergo either drop testing or some alternate testing procedure to comply with the fire protection requirements in this proposed rule.

For light-sport category aircraft, the current fuel retention methods in the FAA-accepted consensus standards vary based on the class of aircraft. For instance, during emergency landing scenarios for light-sport category airplanes, powered parachutes, and gliders, the aircraft design must be strong enough to protect occupants from fuel concentrated above or behind their seating location.³⁴ Light-sport category airplanes and gliders may mitigate the risks of fires with the use of heat shielding, electrical isolation, or

³⁰ ASTM F2245, F2564, and F2317/F2317M.

³¹ ASTM F2245, F2564, and F2317/F2317M.

³² ASTM F2245, F2564, and F2317/F2317M.

³³ ASTM F2245, F2564, F2317/F2317M, F2244, and F2355.

³⁴ ASTM F2245, F2564, and F2244.

ventilation.³⁵ Likewise, light-sport category airplanes, gliders, and weight-shift-control aircraft designs protect fuel lines by using fire resistant lines or a fire-resistant covering on the lines.³⁶ For these three aircraft classes, battery installations must be able to withstand all applicable inertia loads. All light-sport category aircraft except balloons and powered parachutes have a control to shut-off fuel as a means of isolation under the current FAA-accepted consensus standards.³⁷ Finally, for light-sport category gliders, the FAA-accepted consensus standards specify that fuel leaking from any system lines or fittings must not either directly hit hot surfaces or equipment causing a fire risk, or directly contact occupants.³⁸

As a result of the expansion in the performance and capabilities of aircraft that would be certificated as light-sport category aircraft under the proposal, the FAA anticipates that industry would develop acceptable and appropriate consensus standards for all classes of light-sport category aircraft to comply with the proposed requirements of § 22.155. The design features must be capable of preventing the ignition of fuel or allowing electrical power to become an ignition source for a fire. The integrity of the fuel or electrical systems and their storage elements, to include structures, tanks, lines, pumps, valves, wirings, and electrical components must be accounted for in this proposed requirement. The design must be capable of stopping or isolating fuel, electrical power, and associated fumes to prevent ignition and spread of fire.

12. Visibility

Proposed § 22.160 would require that the aircraft be designed and constructed so that the pilot has sufficient visibility of controls, instruments, equipment, and placards. Additionally, the proposal would require that the aircraft provide the pilot with sufficient vision outside the aircraft necessary to conduct safe aircraft operations.

Poorly designed pilot compartments and aircraft designs that fail to optimize the pilot's ability to see controls, instruments, and equipment could lead to inadvertent unusual attitudes, stalls, or loss of control of the aircraft. Likewise, structures that block the pilot's ability to see their surroundings, both inside and outside the aircraft, can be a hazard for the pilot and other personnel on the ground and in the air.

Pilots need to be able to visually clear areas around their aircraft during aircraft start-up and while conducting ground movements, just as they need to visually assess that the airspace in which they operate is clear of aircraft and other hazards when operating in visual meteorological conditions. Additionally, restrictions on the ability of pilots to see other controls, or on the ability of both the pilot and other occupants to see required aircraft placards, could affect the safety of the flight, as aircraft warnings and operational limits might not be heeded and the pilot's ability to respond to adverse flight conditions could also be significantly impaired.

The proposed requirement for the pilot to have sufficient visibility of controls, instruments, equipment, and placards within the aircraft and of the aircraft's exterior environment would meet the level of rigor the FAA considers appropriate for light-sport category aircraft and its place on the safety continuum between amateur-built aircraft and normal category aircraft. For amateur-built aircraft, there are no specific regulatory requirements addressing visibility of controls, instruments, and equipment. As stated earlier, amateur builders may design their own instrument panels and locate controls, instruments, and equipment wherever they prefer. Because light-sport category aircraft could be used for aerial work, have fewer operational restrictions, and require a higher level of certification rigor, the FAA is proposing the requirements in § 22.160. These requirements would include interior and exterior visibility requirements to eliminate hazards that could lead to loss of control or loss of the aircraft due to collision with aircraft, wildlife, or structures in the air or on the ground. The requirement would also allow system warning and caution lights and annunciators to be easily seen by the pilot for a timely response to an abnormal indication or emergency. Manufacturers would comply with the § 22.160 requirements by using an FAA-accepted consensus standard.

However, normal category aircraft must comply with even more stringent airworthiness standards in part 23, 25, 27, or 29 for the pilot compartment view. In parts 25, 27, and 29, these standards require the pilot compartment view to provide a sufficiently extensive, clear, and undistorted view for safe operation that is free of glare and reflection that could interfere with the pilot's view. For airplanes certificated in accordance with part 23 requirements, the pilot compartment, its equipment, and its arrangement, to include pilot

view, must allow the pilot to readily perform their duties and aircraft maneuvers.

Proposed § 22.160 imposes a more stringent requirement than the currently accepted consensus standards. Current consensus standards in ASTM Standard F2245 for light-sport airplanes, ASTM Standard F2244 for powered parachutes, and ASTM Standard F2355 for lighter-than-air light-sport aircraft state that the pilot compartment needs to provide appropriate visibility of instruments, placards, and the area outside the aircraft. The consensus standards in ASTM Standard F2564 for a light-sport glider state that the cockpit view must be designed so that the pilot's vision is sufficiently extensive, clear, and undistorted for safe operation and that rain shall not unduly impair the pilot's view. For weight-shift control aircraft, there are no consensus standards for the pilot compartment's internal and external views due to the open-air design of these aircraft. The FAA anticipates that industry would develop acceptable and appropriate consensus standards for applicable classes of light-sport category aircraft to comply with the proposed requirements of § 22.160.

The proposed rule would require the pilot to be able to easily see all aircraft controls and instruments necessary to safely operate the aircraft and its equipment and systems under all conditions and would be applicable to all aircraft that would be eligible for certification as light-sport category aircraft under the proposal. Pilots and other occupants of all classes of light-sport category aircraft must be able to readily see warning placards that would aid in identifying hazards, prevent damage to the aircraft, and provide other relevant safety critical information.

The aircraft must provide pilots with sufficient visibility to readily identify other aircraft or potential hazards such as structures and icing conditions and aid the pilot in complying with other regulatory requirements including § 91.113, "Right-of-way rules: Except water operations," and § 91.155, "Basic VFR weather minimums," while in flight. For example, aircraft that are not designed to enable the pilot to visually detect ice accumulations on the aircraft could result in a stall and loss of control. Improper placement of structural supports could also result in an accident or incident if the pilot's visibility is blocked or impeded. A pilot should not have to make unnecessary or unusual head movements in flight to clear for traffic and other hazards as this could lead to spatial disorientation and unusual attitudes. Additionally, the

³⁵ ASTM F2245 and F2564.

³⁶ ASTM F2245, F2564, and F2317/F2317M.

³⁷ ASTM F2245, F2564, F2317/F2317M, and F2355.

³⁸ ASTM F2564.

pilot compartment must also provide the pilot with sufficient visibility to safely conduct ground operations by enabling the aircraft to remain clear of other aircraft, structures, vehicles, and ground personnel while simultaneously providing adequate visibility for the pilot to read applicable airfield signs and markings. Sufficient visibility is necessary to prevent situations such as runway incursions where an aircraft enters a runway without clearance or authorization.

Additionally, the design of the aircraft should provide the pilot with sufficient forward, aft, and side visibility to allow the pilot to avoid hazards both in the air and on the ground. The proposed requirements would enable the placement of items essential to safe aircraft operations to be visible to the pilot, provide for the avoidance of obstacles, and allow compliance with regulatory requirements while in flight and conducting ground operations.

13. Emergency Evacuation

Proposed § 22.165 would require that aircraft be designed and constructed so that all occupants can rapidly conduct an emergency evacuation. The aircraft's design would be required to account for all conditions likely to occur following an emergency landing, excluding ditching for aircraft not intended for operation on water.

The proposed requirement for emergency evacuation is necessary because aircraft designs that do not consider the ability of the pilot and passengers to rapidly evacuate the aircraft during an emergency can significantly increase the likelihood of serious risk of injuries or fatalities if exiting the aircraft is impeded by a poor design. The proposed requirement would reduce injuries and save lives by requiring aircraft design and construction to account for, and accordingly facilitate, rapid aircraft egress.

The proposed requirement for emergency evacuation would be appropriately scoped for the position of light-sport category aircraft on the FAA's safety continuum. For amateur-built aircraft, there are no specific regulatory requirements for emergency egress, whereas for type-certificated aircraft, parts 23, 25, 27, and 29 contain requirements for emergency evacuation. For example, for the type certification of normal category rotorcraft under part 27, there are requirements in §§ 27.805 and 27.807 for the location and size of emergency exits for the flight crew as well as provisions for the exits to be unobstructed when an emergency landing occurs on water. Requirements

for the cabin emergency exits include items such as location, number available, type, operation, and marking.

For aircraft certificated as light-sport category aircraft, emergency evacuation standards are currently included in certain consensus standards and vary according to the design of the aircraft. For some classes of light-sport category aircraft, such as weight-shift control aircraft and powered parachutes, emergency evacuation standards do not exist since the pilot and passenger are not situated in a fully enclosed compartment. For light-sport airplanes, ASTM Standard F2245 contains a standard for emergency evacuation that states the pilot compartment shall provide the ability to conduct an emergency escape. For light-sport gliders, ASTM Standard F2564 provides standards for emergency exit that state the cockpit must be designed so that unimpeded and rapid escape in emergency situations is possible, and, on closed canopies, the opening system must be designed for simple and easy operation. The opening system must function rapidly and be designed so that it can be operated by each occupant strapped in his seat and from outside the cockpit.

Proposed § 22.165 could be complied with by having multiple escape exits (doors, windows, hatches) or easily accessible mechanisms both inside and outside the aircraft to open escape exits (which should be marked for easy identification and use in compliance with proposed § 22.170). Multiple escape doors or hatches could also be used to enable egress in situations where the aircraft may not be upright. Aircraft intended for operation on water would be required to address emergency water landings. Although the FAA would encourage consensus standards to address ditching, the FAA would not require ditching to be addressed in the certification of light-sport category aircraft as imposing such a requirement would be a more extensive requirement than that currently imposed for smaller type-certificated aircraft. For example, § 23.2315 specifically excludes a consideration of ditching for level 1, level 2, and single engine level 3 airplanes.

The ability to rapidly conduct an emergency evacuation is directly related to the crashworthiness of an aircraft. Accordingly, the FAA is not proposing to directly link or limit crashworthiness and associated emergency evacuation requirements to aircraft stalling speed or another fixed airspeed. Instead, the proposal would permit applicants to take varied approaches to address aircraft crashworthiness. For example,

the FAA encourages the incorporation of advanced technology, such as ballistic recovery systems, and innovations from other industries, such as the automotive industry, to provide increased airframe occupant protection.

The FAA encourages consensus standards bodies to strive for the highest level of occupant crash protection feasible. Comprehensive consensus standards could facilitate the evaluation of the entirety of a crashworthiness system, namely, the interaction of all crashworthiness features, rather than requiring an evaluation of discrete, individual parameters for occupant safety. An aircraft's ability to protect occupants and facilitate an emergency exit can be better understood by evaluating the aircraft as a complete system. The understanding gained from a systems evaluation can be used to develop and implement new technologies and methods to enable more rapid and safer aircraft emergency evacuations with fewer occupant injuries. Such an evaluation could include analysis of important survivability factors identified by the NTSB, including occupant restraints, survivable volume, energy absorbing seats, and seat retention. Consideration given to these crashworthiness requirements may not necessarily prevent accidents, but should improve occupant safety, which would lead to decreased occupant injuries in the event of a crash and increase survivability of accidents.

The FAA is proposing few specific crashworthiness requirements within part 22. The proposed performance requirement for emergency evacuation and other proposed airworthiness requirements would allow for the use of many varied technologies and methods for occupant safety in the event of an emergency landing or other situations where rapid aircraft egress is required. The proposed requirement would promote innovation and encourage the introduction of new occupant protection technologies such as those that have been introduced by the automotive industry. The FAA encourages consensus standards bodies to develop consensus standards that will promote the introduction and rapid integration of these and other solutions into light-sport category aircraft designs.

14. Placards and Markings

Proposed § 22.170 would require that the aircraft display all placards and instrument markings necessary for safe operation and occupant warning. Markings or graphics would be required to clearly indicate the function of each

control, other than primary flight controls.

Placards provide warnings and identify hazards to crewmembers, occupants, aircraft maintenance and servicing personnel, and first responders. Instrument markings provide safe operating parameters for aircraft equipment and systems. Moreover, compliance with placards and markings is currently required by § 91.9. Not conducting aircraft operations in accordance with installed placards and markings could lead to equipment or system failures that could negatively impact other systems, leading to an emergency that could put both the aircraft and occupants at significant risk.

The FAA contends that the proposed requirement for aircraft certificated as light-sport category aircraft to display all placards and instrument markings necessary for safe operation and occupant warning would establish a clear performance-based requirement that is in accord with the position of these aircraft within the FAA's safety continuum. For most experimental aircraft, there are no specific regulatory requirements for placards and instrument markings. However, some have operating limitations requiring display of placards. Type-certificated aircraft, which occupy the opposite end of the FAA's safety continuum, are subject to a variety of detailed placard and instrument marking requirements that are contained in the airworthiness standards found in parts 23, 25, 27, 29, and 31. Placards provide information for the safe operation of the aircraft while instrument markings indicate operating parameters as determined by the airworthiness standards.

For aircraft currently certificated as light-sport category aircraft, placarding and instrument markings are addressed in FAA-accepted consensus standards for each class of aircraft. Because of the various classes of light-sport category aircraft, the placarding and instrument marking consensus standards vary according to the complexity of the aircraft. Some of those standards apply generally, while others address specific situations that may apply only to more complex aircraft, such as placards for unusual design, operating, or handling characteristics, authorized operations, and passenger warnings. ASTM Standard F2245 contains standards for instrument markings on the aircraft's airspeed indicator.

The proposed placarding and instrument marking requirement would be applicable to all classes of aircraft that could be certificated as light-sport category aircraft under this proposal.

Proposed § 22.170 is necessary so that the pilot and other aircraft occupants can clearly see any placards or instrument markings that provide necessary warnings for their safety or for the safe operation of equipment or systems. Markings or graphics provide a clear indication of the function of the marked control to the pilot and aircraft occupants. The FAA notes that primary flight controls would not be required to be specifically marked, as their function should be intuitive to operation of the aircraft and readily ascertainable by the pilot.

Markings and graphics indicating the function of each control prevent confusion and inadvertent operation of equipment and systems by the pilot or other occupants. Improper or confusing placards, often due to poor wording, poor contrast, or poor location, can also prevent the timely actuation of systems or equipment necessary for safe flight or emergency evacuation, while inadvertent operation of equipment and systems can result in an unsafe aircraft attitude or flight condition leading to an emergency.

Accordingly, the proposed marking and placarding requirement is designed to provide appropriate warnings to help prevent errors that could lead to a loss of control or a serious accident or injury. The proposal would ensure that these potentially hazardous situations are properly accounted for and addressed. The FAA also notes that, for aircraft with simplified flight controls, an FAA-accepted consensus standard would be required to address the placarding of an aircraft certificated in the light-sport category with simplified flight controls as proposed in § 22.180.

15. Noise

Proposed § 22.175 would require that aircraft meet the applicable noise standards of part 36 of this chapter. The proposed noise requirements are discussed in section IV.K.

16. Aircraft Having Simplified Flight Controls

Proposed § 22.180 would permit an aircraft that meets certain criteria to be designated by the manufacturer as having simplified flight controls. For an aircraft to be designated as having simplified flight controls, it would be required to meet three criteria. First, the pilot could only control the flight path of the aircraft or intervene in its operation without direct manipulation of individual aircraft control surfaces or adjustment of the available power. Second, the aircraft would be required to be designed to prevent loss of control, regardless of pilot input. Finally, the

aircraft would need to have a means to enable the pilot to discontinue the flight quickly and safely. This feature would also have to be designed to prevent inadvertent activation.

Proposed § 22.180 for aircraft designed with simplified flight controls would only apply to those aircraft specifically designated by the manufacturer in its statement of compliance as having simplified flight controls.

The FAA recognizes that rapid advances are occurring in aircraft automation and flight control technology. Aircraft are being designed and constructed with pilot interfaces and flight controls that no longer resemble those found in traditional aircraft cockpits. These aircraft have highly automated systems for controlling the flight path, speed, and configuration of the aircraft while simultaneously providing protection from aerodynamic hazards such as asymmetric thrust and excessive structural loading. These aircraft also have cockpits or pilot compartments where primary flight controls such as sticks, control columns, throttles, and rudder pedals may have been replaced by simpler non-traditional methods of aircraft control such as touchscreens, switches, or other displays with push-button controls. A joystick controller that directly manipulates individual aircraft control surfaces would not qualify an aircraft as being designed with simplified flight controls. However, a joystick controller that is used to select flight commands or move a cursor on a display would be appropriate for a simplified flight control design.

Proposed § 22.180 would facilitate the development of these highly automated aircraft by providing a certification path that would enable light-sport category aircraft to be specifically designated as having simplified flight controls. As discussed later in this proposal for § 61.31, these aircraft would be permitted to be operated by certificated pilots who may not have received the flight training or possess the aeronautical experience necessary to operate more traditional forms of aircraft, but nonetheless meet the specific requirements proposed for the operation of these highly automated aircraft.

For aircraft having simplified flight controls, the aircraft design would be required to inherently prevent loss of control regardless of pilot input. The FAA considers that a design inherently prevents loss of control if the design includes built-in features such as automation which prevent the pilot

from inputting a flight command that would be hazardous to the aircraft or its occupants. Additionally, the aircraft design would need to include features so that the aircraft could only be operated within its designated flight envelope and within its prescribed operational limitations. These parameters would be preprogrammed and would include boundaries such as airspeed, altitude, vertical speeds, and lateral displacements. For aircraft equipped with multiple engines or rotor systems, the aircraft would need to be able to safely respond, using the aircraft's automation, to asymmetric power situations due to loss of engine power. If used in the design, automation would have to prevent loss of control of the aircraft under all circumstances, even to the point of overriding erroneous or hazardous pilot inputs or only permitting the input of certain commands in specific flight conditions.

The aircraft design would, however, be required to include a means to permit the pilot to discontinue or suspend the flight quickly and safely and prevent inadvertent activation of this feature. A pilot could choose to discontinue or suspend a flight for a variety of reasons such as unexpected weather conditions, physiological needs, a system malfunction, or the presence of other hazards such as a flock of birds or an aircraft near, or intersecting, the route of flight. Discontinuing or suspending a flight could include options such as an immediate landing, a return flight to the aircraft's point of departure, a diversion to an alternate landing site, a course change, or initiation of a low altitude orbit or in-place hover until any hazards have passed. The aircraft design must include a means to prevent inadvertent or accidental activation of the control mechanism for the discontinuance or suspension of flight. This would prevent the aircraft from entering an unplanned or hazardous flight trajectory.

17. Quality Assurance System

Proposed § 22.185 would require aircraft to have been designed, produced, and tested under a documented quality assurance system to ensure each product and article conforms to its design and is in a condition for safe operation.

The 2004 final rule specifically recognized the necessity for aircraft certificated as light-sport category aircraft to be manufactured in accordance with a quality assurance system. The current definition of consensus standards in § 1.1 states that consensus standards used for the certification of light-sport aircraft may include "manufacturer quality

assurance systems." Proposed § 22.185 would establish a clear regulatory requirement so that the aircraft is manufactured in accordance with documented processes and manufactured under a documented quality assurance system.

Establishing and documenting a quality assurance system is critical to assuring that aircraft and aircraft kits meet applicable design, production, and airworthiness requirements and are manufactured and tested in accordance with identified consensus standards. Meeting the proposed quality assurance requirements using applicable FAA-accepted consensus standards would reduce the use of obsolete design drawings or procedures, improper materials or manufacturing techniques, and inadequate testing procedures that could jeopardize the safe operation of an aircraft. A quality assurance system would allow manufacturer or third-party auditors to verify that a manufacturer is producing aircraft in accordance with its established procedures and is continuing to produce safe aircraft.

Under the safety continuum, primary category kit-built aircraft intended for certification as experimental aircraft are the only experimental aircraft that have a regulatory requirement to be produced under a quality assurance system. Those aircraft are based on type-certificated designs and are required by § 21.191(h) to be manufactured by the holder of a production certificate for that kit. Production certificate holders must establish and maintain a quality assurance system as specified in § 21.137.

Persons currently seeking certification of experimental aircraft built from kits that were designed in accordance with the requirements applicable to aircraft certificated as light-sport category aircraft must be able to provide the information required by § 21.193(e). These aircraft are certificated under the provisions of § 21.191(i)(2) and the information provided will reference consensus standards addressing the manufacturer's quality assurance system. Additionally, aircraft built from those kits must have been assembled in accordance with manufacturer's assembly instructions that meet an applicable consensus standard. These aircraft are built under a quality assurance system as specified in ASTM Standard F2972, "Standard Specification for Light Sport Aircraft Manufacturer's Quality Assurance System."

A manufacturer of a type-certificated aircraft must establish and describe in writing a quality system that includes

the 15 elements specified in § 21.137, obtain FAA approval of its quality manual under § 21.138, and show compliance with quality system requirements to the satisfaction of the FAA as part of applying for and obtaining a production certificate. For light-sport category aircraft, ASTM Standard F2972 currently addresses quality assurance systems for light-sport category aircraft. The FAA anticipates that industry would develop acceptable and appropriate consensus standards for light-sport category aircraft to comply with the proposed requirement in § 22.185.

The FAA would rely on a manufacturer's statement of compliance as evidence of compliance to the requirements of § 22.185 for a production quality assurance system. The FAA retains its ability to inspect the manufacturer's facility and quality system.

18. Finding of Compliance by Trained Compliance Staff

Proposed § 22.190 would require the aircraft to have been found compliant with the provisions of the applicable consensus standards by individuals who have been trained on determining compliance with those consensus standards.

Determining compliance with consensus standards is essential in enabling the airworthiness of an aircraft intended for certification as light-sport category aircraft. Accordingly, the FAA considers inclusion of a requirement that the aircraft be found compliant by individuals who have been appropriately trained in making those determinations to be of critical importance.

The FAA notes that experimental aircraft are generally not required to meet specific design or production requirements. Accordingly, there is no current requirement for the training of individuals who assess the suitability of the design or production of those aircraft for their intended operations.

Manufacturers of aircraft produced in accordance with the airworthiness standards set forth in part 23, 25, 27, 29, or 31, however, are required to show compliance with each requirement following a highly detailed and comprehensive certification plan. Assurance of compliance is attained via extensive FAA engagement with the manufacturer in which the manufacturer shows, and the FAA finds, compliance with applicable airworthiness standards. A type certificate is not issued for an aircraft design until the FAA finds compliance with all applicable airworthiness

standards through a rigorous type-certification process involving extensive FAA involvement and oversight. Serial production of these aircraft is accomplished in accordance with the requirements for production certificate holders specified in subpart G of part 21. That subpart includes specific requirements for the certificate holder's organization and quality system.

Given the FAA's reliance on the manufacturer's statement of compliance as the primary evidence of compliance with applicable requirements, the FAA considers it critical that individuals making these compliance findings would be trained in finding compliance to the broad array of applicable FAA-accepted consensus standards. This would require, for example, engineers, pilots, and maintenance experts who make compliance findings for manufacturers to receive training on the specific provisions of the applicable consensus standards and training on determining compliance to those standards.

The proposed requirement would implement a recommendation from the previously mentioned LSAMA Final Report. The LSAMA Final Report noted that a significant number of aircraft manufacturers could not fully demonstrate their ability to meet certain consensus standards. As a result, the report recommended that industry develop training so that manufacturers fully understand FAA regulatory requirements and policies applicable to the certification of light-sport category aircraft and the means necessary to meet applicable requirements. In view of the criticality of this need and the FAA's significant reliance on the manufacturer's statement of compliance, the FAA is proposing this requirement so that all individuals with responsibility for making compliance findings are trained to understand how to make complete and correct findings of compliance.

19. Ground and Flight Testing

Proposed § 22.195 would require that an aircraft intended for certification as a light-sport category aircraft has been ground and flight tested under documented production acceptance test procedures. This testing would be required to validate aircraft performance data; ensure the aircraft has no hazardous operating characteristics or design features; ensure the aircraft is in a condition for safe operation; and ensure the aircraft can safely conduct any aerial work operation designated by the manufacturer. The manufacturer will ensure each aircraft can safely conduct any aerial work operation by

conducting flight testing of the that aerial work operation. If successful, the manufacturer would be able to provide a statement of compliance to the FAA-accepted consensus standards that would be the means of compliance for this proposed requirement.

Ground and flight testing of an aircraft is critical when establishing airworthiness. Accordingly, the FAA considers inclusion of a ground and flight-testing requirement especially important for the certification of light-sport category aircraft.

Aircraft with certain experimental airworthiness certificates, such as those issued for air racing, operating amateur-built aircraft, operating primary kit-built aircraft, and operating light-sport aircraft have flight testing requirements imposed by their operating limitations, yet no specific ground testing requirements. For these experimental aircraft, the flight testing is typically conducted for a set time (e.g., 40 hours) to show compliance with § 91.319(b). The FAA notes that amateur-built aircraft may instead use an FAA-sourced task-based flight test plan as a substitute for the flight hour requirement. Aircraft issued experimental airworthiness certificates for the purpose of research and development or showing compliance with regulations must also undergo flight testing to determine the suitability of the design for the issuance of a design or airworthiness approval, as applicable.

All aircraft manufactured in accordance with the airworthiness standards set forth in part 23, 25, 27, 29, or 31 are subject to ground and flight-testing requirements as part of the type-certification process. The flight testing of aircraft intended for type certification is much more rigorous than that of other aircraft, as the flight testing is conducted for the aircraft to show compliance to the airworthiness standards used in the development of the aircraft's design. Regulatory flight-testing requirements for type-certificated aircraft are specified in § 21.35. A highly detailed and comprehensive test plan is used to conduct ground and flight testing in the development of a type-certificated aircraft.

The level of rigor for the ground and flight testing of light-sport category aircraft would not be as extensive as that required for aircraft intended for type certification, yet more extensive than that specified for experimental aircraft. Ground and flight testing of light-sport category aircraft would not require that the aircraft only be flown for a specified number of hours, as is done for certain experimental aircraft. It

would also not require the flight testing necessary to achieve a showing of compliance with extensive airworthiness requirements, as is required for aircraft being flown as part of a type-certification program. It would, however, require an evaluation of the aircraft to ensure that it meets the requirements specified in § 22.195.

Current flight and ground testing of light-sport category aircraft centers on verifying that the initial production aircraft meets certain operational performance requirements that have been specified by the manufacturer in the pilot's operating handbook (POH). ASTM Standard F3035, "Standard Practice for Production Acceptance in the Manufacture of a Fixed Wing Light Sport Aircraft," contains standards for ground and flight testing fixed-wing aircraft. ASTM standard F3035 addresses several requirements in proposed § 22.195 such as validating aircraft performance data, ensuring the aircraft has no hazardous operating characteristics, and ensuring the aircraft is in a condition for safe operation. The FAA notes that FAA-accepted production acceptance testing consensus standards exist for all classes of light-sport category aircraft.³⁹ Since this proposal would expand the classes of aircraft that could be certificated as light-sport category aircraft and include a provision to allow aerial work as designated by the manufacturer, the FAA anticipates that industry would develop acceptable and appropriate consensus standards to comply with the performance-based requirements in § 22.195.

Manufacturer ground and flight testing of each aircraft intended for certification as light-sport category aircraft would be necessary to verify the aircraft meet the proposed regulatory requirements. Such testing would validate expected aircraft performance data (e.g., airspeeds, fuel flow, fuel burn rate, range, endurance, load factors (g-limits), engine-out (if applicable), etc.) and validate that the design and material used in the construction of the aircraft provides sufficient strength and durability for the conduct of all authorized operations. Ground and flight testing using production acceptance test procedures also would verify that each aircraft does not have any unforeseen hazardous flight

³⁹ ASTM F2356, Standard Specification for Production Acceptance Testing System for Lighter-Than-Air Light Sport Aircraft;

ASTM F2242, Standard Specification for Production Acceptance Testing System for Powered Parachute Aircraft; and ASTM F2447, Standard Practice for Production Acceptance Test Procedures for Weight-Shift-Control Aircraft.

characteristics and that the aircraft was properly constructed. This testing ensures that the aircraft's structure is of sufficient strength for its intended operations and that aircraft controls are not binding, rubbing, or showing unexpected wear. Aircraft designed with simplified flight controls must be ground and flight tested to validate compliance with the requirements of § 22.180. Aircraft that have not undergone adequate environmental testing in a ground and flight test program may experience unpredicted behaviors or malfunctions caused by environmental factors, which may lead to an aircraft accident or incident. Production acceptance test procedures allows a buyer to receive a complete aircraft that conforms to the manufacturer's design data and provides the manufacturer with an opportunity to detect and fix any missing, broken, misaligned, or improperly installed components or systems.

The FAA also notes that if the aircraft has been authorized for the performance of specific aerial work operations by the manufacturer, production acceptance test procedures would verify that the aircraft has been designed and constructed to validate that the aircraft can be used to safely conduct those designated aerial work operations. Ground and flight testing of the aircraft would be required to ensure that those aerial work operations could be safely conducted. The FAA notes that if the manufacturer's statement of compliance indicated that an aircraft was authorized to conduct aerial work that included patrolling operations, for example, the aircraft could be used for the patrolling of any structure or area such as pipelines, transmission lines, harbors, railroad tracks, farmland, forests, etc. Specific testing of the aircraft's ability to safely patrol these structures or areas would be required. As some patrolling using visual observation occurs at low altitudes, a manufacturer would be required to conduct patrolling flight testing at low altitude to verify the aircraft can safely conduct that aerial work operation. The FAA anticipates that industry will develop appropriate consensus standards to document specific ground and flight testing used to validate aerial work operations in the manufacturer's quality assurance records for each aircraft.

The FAA notes that some aerial work operations may place additional stresses and loads on an aircraft if operated outside normal flight profiles. Flight testing would validate any specific limitations necessary to conduct those designated aerial work operations. Additionally, it would confirm that

other applicable requirements can still be met during the conduct of those operations, such as validating that the pilot has proper visibility from the flight compartment. The proposed requirement would validate that the aircraft has been demonstrated to be capable of safely performing those aerial work operations specifically designated in the manufacturer's statement of compliance.

20. Revision of Documentation Submission Requirements for the Issuance of Special Airworthiness Certificates in the Light-Sport Category

Proposed § 21.190(c) would revise the list of documents that an applicant would be required to provide to the FAA at the time of application for an airworthiness certificate for a light-sport category aircraft. In addition to the currently required manufacturer's statement of compliance, the proposal would require submission of a pilot's operating handbook, currently referred to as the aircraft's operating instructions. The proposed rule would require that additional information be contained in that document. The pilot's operating handbook would be required to include recommended operating instructions and limitations, a flight training supplement, a listing of any authorized aerial work operations, and a statement regarding compliance with part 36 requirements. Additionally, the current requirement that an applicant submit maintenance and inspection procedures would be revised to require the submission of a maintenance and inspection program. Similar to the existing airworthiness certification processes for light-sport category aircraft, the FAA would not approve or accept any of the documents submitted. The approach is aligned with the FAA's safety continuum where aircraft higher on the safety continuum have greater privileges but also go through more rigorous certification processes and have greater FAA oversight.

The proposal would provide applicants with clarification regarding the contents of the pilot's operating handbook by specifying that it include operating instructions and limitations to safely accommodate all environmental conditions and abnormal procedures likely to be encountered during the aircraft's intended operations. The operating instructions should address normal, abnormal, and emergency operating procedures as well as operations under all foreseeable environmental conditions. Examples of material that should be included in these instructions and limitations include guidance for operations in, or

the avoidance of, certain weather phenomenon such as freezing precipitation, moderate or severe turbulence, takeoff or landing crosswinds, and hot and cold weather conditions.

By specifying in the proposal that the flight training supplement enable safe operation of the aircraft within the intended flight envelope under all foreseeable conditions, the FAA would codify its expectation that the flight training supplement provide enhanced guidance to pilots regarding those methods and procedures necessary to safely operate the aircraft within its intended flight envelope under all foreseeable conditions. The flight training supplement should also provide aircraft operators with appropriate information to understand the operation of the aircraft and its systems.

Additionally, the pilot's operating handbook would be required to contain a listing of any aerial work operations for which the manufacturer designated the aircraft as capable of performing. This requirement would enable information regarding those designated aerial work operations to be readily available to the pilot. In accordance with the proposal, the manufacturer would be required to provide any aircraft instructions and limitations that effect the safe conduct of any manufacturer-designated aerial work operations. Instructions and limitations that apply to all operations would not need to be repeated for aerial work operations.

The pilot's operating handbook would also be required to include a statement that the aircraft has demonstrated compliance with part 36 to include the tested noise levels and a statement regarding the acceptability of those noise levels for aircraft operations. Per proposed per § 21.190(c)(2)(iv), the statement would assert that, "No determination has been made by the Federal Aviation Administration that the noise levels of this aircraft are or should be acceptable or unacceptable for operation in any location." This statement would provide operators with awareness that they are solely responsible for compliance with any operational noise abatement procedures and requirements for the locations where the aircraft is operated. An explanation of noise testing requirements and their applicability to aircraft certificated as light-sport category aircraft is contained section IV.K.

Currently, an applicant must provide the FAA with the aircraft's maintenance and inspection procedures as part of the

process for an airworthiness certificate for a light-sport category aircraft. This proposal would require the applicant to instead provide a maintenance and inspection program. Maintenance and inspection procedures detail the steps involved in performing a maintenance task, such as changing a tire, or performing an inspection, such as an annual inspection. A maintenance and inspection program is more comprehensive. It contains maintenance tasks as well as instructions and procedures for the conduct of inspections, tests, and checks that includes the airframe, engine, propeller, rotor, and appliances. It also includes a schedule for performing the inspections that must be accomplished under the inspection program expressed in time in service, calendar time, number of system operations, or any combination thereof, as well as qualifications of the person responsible for the inspections.

Proposed § 21.190(c)(4) would require an applicant for a special airworthiness certificate under this section to provide the FAA with evidence that its aircraft has demonstrated compliance with the applicable requirements of part 36. Such evidence may include a statement from the manufacturer concerning compliance with part 36, the means of compliance used, and the resultant noise levels. Section IV.K provides a detailed discussion of proposed noise requirements for aircraft that do not conform to a type certificate.

a. Enhancements to the Manufacturer's Statement of Compliance

Proposed § 21.190(d) would revise the contents of the manufacturer's statement of compliance required to be submitted by an applicant for the issuance of an airworthiness certificate under this section. In addition to the requirements currently specified in § 21.190(c), the manufacturer's statement of compliance would be required to include additional declarations by the aircraft's manufacturer which would be used to better assist the FAA in determining the airworthiness of the aircraft.

The FAA considers the manufacturer's statement of compliance to be a critical element in the certification of light-sport category aircraft as it provides a definitive statement by the aircraft's manufacturer that an aircraft complies with the applicable performance-based regulatory standards using applicable consensus standards as a means of compliance. It also would provide assurance that the manufacturer would undertake certain specific actions to support the continuing airworthiness of the aircraft.

Because of the significant expansion in the types and performance of aircraft that would be permitted to be certificated as light-sport category aircraft, the FAA contends that the manufacturer's statement of compliance would take on an even greater level of importance in supporting the certification of light-sport category aircraft. Accordingly, the proposal would make significant enhancements to the statement of compliance to further strengthen its effect by requiring the manufacturer to provide greater detail regarding the aircraft and the processes and procedures used in its design and production. Those proposed changes are discussed in the paragraphs that follow. The proposed enhancements to the manufacturer's statement of compliance would serve to improve the validity and reliability of the statement. The proposed requirements would serve to further implement the recommendations made in the previously discussed LSAMA Final Report.

The FAA notes that light-sport category aircraft are not produced pursuant to an FAA type or production certificate. The information and data typically provided for type-certificated aircraft is not provided to the FAA during the certification process for light-sport category aircraft. Accordingly, the manufacturer's statement of compliance and inspection of the aircraft assist the FAA in assessing compliance to applicable performance requirements and determining airworthiness of the aircraft.

The proposed requirements of § 21.191(d)(1) for training of individuals with responsibility for making compliance statements would adopt a recommendation from the LSAMA Final Report. The LSAMA Final Report noted that the statement of compliance for certain aircraft may have been made that did not meet applicable consensus standards. As a result, the report recommended that industry develop training to enable manufacturers to fully understand FAA regulatory requirements and policies applicable to the certification of light-sport category aircraft and the means necessary to meet applicable requirements. In view of the criticality of this need and the FAA's primary reliance on the manufacturer's statement of compliance (SOC), the FAA is proposing this requirement to help assure that all individuals with responsibility for making compliance statements are trained and certified to understand how to make complete and correct statements.

Proposed § 21.190(d)(3) would require a statement as to whether the aircraft

meets the design and performance requirements specified in proposed § 61.316 for the aircraft that a sport pilot would be permitted to operate. This proposal would significantly expand the types of aircraft that could be certificated as light-sport category aircraft beyond those aircraft that a sport pilot would be permitted to operate under proposed § 61.316. Accordingly, the proposed requirement would provide persons exercising sport pilot privileges with a readily available means to determine whether a particular aircraft certificated as light-sport category aircraft qualifies for operation by a sport pilot.

Additionally, since the proposal would permit the manufacturer to designate those types of aerial work that may be conducted using the aircraft, the statement of compliance would be required by proposed § 21.190(d)(4) to specify any aerial work operations which the manufacturer has designated as being able to be safely conducted using the aircraft. Inclusion of this information in the statement of compliance provides the owner with a readily available source to determine which aerial work operations are authorized to be conducted in the aircraft. The list of aerial work operations that may be safely conducted using the aircraft should match those listed in the POH. Proposed § 21.190(d)(4) would also assist in validating that the appropriate ground and flight testing of the aircraft has been conducted in accordance with proposed § 22.195(d) to determine that the aircraft can safely conduct those authorized aerial work operations in accordance with the instructions and limitations provided.

Proposed § 21.190(d)(5) would require the statement of compliance to indicate whether the aircraft meets the requirements for aircraft having simplified flight controls (see preamble for proposed § 22.180). This proposal would permit manufacturers to designate aircraft certificated as light-sport category aircraft as having simplified flight controls if the applicable requirements are met. The proposed requirement would provide pilots with a readily available means to determine whether a particular aircraft can be operated by a pilot authorized to exercise privileges in an aircraft having such controls.

Proposed § 21.190(d)(6) would retain the current requirement that the statement of compliance specify the consensus standards used by the manufacturer; however, it would include a reference to proposed subpart B of part 22, which would contain the

applicable design, production, and airworthiness requirements for which the consensus standards would serve as a means of compliance.

A manufacturer would need to identify each consensus standard used for the certification of the aircraft on FAA Form 8130–15, Light-Sport Aircraft Statement of Compliance. The FAA notes that consensus standards organizations typically publish a first issue or specific revision to a consensus standard before acceptance by the FAA. A consensus standard must be accepted by the FAA before it may be used for the certification of a light-sport category aircraft. Additionally, only those FAA-accepted consensus standards effective on the aircraft's date of manufacture are acceptable for use in its original airworthiness certification.

Current § 21.190(c)(4) requires the manufacturer to make available to any interested person the following documents that meet the identified consensus standard: the aircraft's operating instructions, the aircraft's maintenance and inspection procedures, and the aircraft's flight training supplement. Proposed § 21.190(d)(8) would require that the statement of compliance include a statement that the manufacturer will make available to any interested person the documents specified in § 21.190(c) which consist of those documents required to be provided to the FAA for certification of the aircraft. In addition to the currently required documents, this proposal would require the manufacturers statement of compliance, a listing of any aerial work operations, and a statement that the aircraft has demonstrated compliance with noise requirements in part 36.

By proposing to revise the scope of documents that would be provided to the FAA, the proposal would also make a wider range of documents available to interested persons. The FAA contends that broadening the scope of information required to be made available would better assist current and prospective owners, operators, and maintenance personnel in safely operating and maintaining the aircraft. Additionally, it would be particularly beneficial to prospective purchasers of these aircraft by enhancing their understanding of the aircraft's operation, limitations, and maintenance and inspection procedures before purchase.

Proposed § 21.190(d)(10) would revise the requirements found in current § 21.190(c)(5), which requires a statement that the manufacturer will monitor and correct safety-of-flight issues through the issuance of safety

directives and a continued airworthiness system that meets the identified consensus standard. The proposed § 21.190(d)(9) would specifically require the statement of compliance to include a statement that the manufacturer will support the aircraft by implementing and maintaining a documented continued operational safety program that monitors and resolves in-service safety of flight issues, includes provisions for the issuance of safety directives, and includes a process for notifying the FAA and all owners before discontinuance of its continued operational safety program or any transfer to another responsible party for that continued operational safety program.

The FAA considers the implementation of strong continued operational safety programs by aircraft manufacturers essential to maintaining the safety of light-sport category aircraft. The proposed revisions to the statement of compliance per proposed § 21.190(d)(9) would serve to demonstrate the commitment of manufacturers to establish and maintain a comprehensive continued operational safety programs for their products. Well-documented continued operational safety programs would permit manufacturers to effectively monitor and resolve in-service safety of flight issues. When such issues arise, manufacturers may take appropriate action to resolve those issues. Such action could include, but not be limited to, the issuance of safety directives to address unsafe conditions for their products. As discussed later in this preamble, the FAA anticipates that manufacturers would still issue safety directives when necessary to resolve a safety of flight condition per § 21.190(d)(9).⁴⁰

Proposed § 21.190(d)(9)(iii) would require a manufacturer to promptly notify owners of aircraft it manufactured of any safety issues so that safety-critical information can be rapidly disseminated. The proposal would require the statement of compliance to include a statement from the manufacturer that its continued operational safety program would include a process for notifying the FAA and all owners of all safety of flight issues associated with the aircraft. Notification to both the FAA and owners would increase awareness of potential safety issues and better enable the FAA to carry out its oversight

responsibilities, including the issuance of airworthiness directives, of this emerging segment of the aviation industry. The proposal would facilitate increased communication of safety of flight issues to the community, and better enable subsequent owners and operators to become aware of, and take appropriate corrective actions to address, safety of flight issues.

Similarly, this proposal would require a manufacturer to provide notice, in advance, to the FAA and all aircraft owners of continued operational safety program service provider changes or discontinuance. Such changes could result from a merger, purchase, an agreement to allow a third-party to manage the program, or the discontinuance of manufacturing operations. Advanced notification of these changes would provide notice to the FAA and to the owners and operators of affected models. In the event of program cessation, this advanced notification would alert the FAA to the increased chance for potential unsafe conditions on the affected aircraft and the need to take prompt action to mitigate risks should the need arise. The FAA seeks comment regarding whether manufacturers who are discontinuing their continued operational safety program due to discontinuance of manufacturing operations should be required to send the design information regarding the affected aircraft to the FAA prior to discontinuing their continued operational safety program, so that the FAA can better issue airworthiness directives if an unsafe condition is discovered later.

Under proposed § 21.190(d)(10), the statement of compliance would continue to require a statement from the manufacturer that it will monitor and correct safety of flight issues with one important difference. The proposal would require the manufacturer to monitor and correct safety of flight issues through safety directives and a continued operational safety program that meets the specified consensus standard. This would replace the current requirement that the manufacturer monitor and correct through a continued airworthiness system. This proposed revision of "continued airworthiness system" to "continued operational safety program" is intended to better align regulatory terminology with the terminology used in existing FAA-accepted consensus standards. Continued operational safety programs established and maintained by manufacturers are designed to provide support throughout the service lives of their products. The program would

⁴⁰ ASTM F3198, "Standard Specification for Light Sport Aircraft Manufacturer's Continued Operational Safety (COS) Program," directs the aircraft manufacturer to issue safety directives to correct safety of flight conditions.

include, but not be limited to, processes and procedures to monitor the airworthiness of the fleet and prevent the occurrence of safety of flight issues, and the management and use of feedback processes to improve a product's design and production.

Current § 21.190(c)(6) requires a statement that, at the request of the FAA, the manufacturer will provide unrestricted access to its facilities. The FAA might require access to conduct oversight, audit compliance with applicable standards, take those actions necessary to verify unsafe conditions have been properly addressed, or respond to an aircraft accident or incident. Proposed § 21.190(d)(11) would revise this requirement to include a statement by the manufacturer that it will provide unrestricted access to all data necessary to determine compliance with the provisions of this section and other applicable requirements. By only specifying that a manufacturer will provide the FAA with access to its facilities, the current rule does not provide assurance that the FAA will be able to obtain access to the technical data. The proposal recognizes that obtaining access to only a manufacturer's facility may not be sufficient for the FAA to carry out its regulatory responsibilities and that access to data may be necessary to conduct oversight.

Proposed § 21.190(d)(12) would require the manufacturer's statement of compliance to include a statement that the manufacturer has established and maintains a quality assurance system that meets the requirements of § 22.185. The specific requirements that a quality assurance system must meet and the need for aircraft certificated as light-sport category aircraft to be produced under a production quality assurance system are discussed in the section IV.D.16 of this proposed rule addressing proposed § 22.185. By proposing that the manufacturer's statement of compliance contain a statement that the manufacturer has established and maintains such a system, the proposal further emphasizes the specific importance that the FAA attaches to producing light-sport category aircraft under a quality assurance system. Establishing and documenting a quality assurance system is critical in assuring that aircraft and aircraft kits meet applicable design, production, and airworthiness requirements and are manufactured and tested in accordance with identified consensus standards.

b. Creation of an Amended Statement of Compliance

A light-sport category aircraft certificated before the effective date of this proposed rule would be able to continue to operate under the provisions of its airworthiness certificate. However, these aircraft would not be able to take advantage of the expanded capabilities in this proposed rule, to include conducting aerial work. Proposed § 21.190(e) would contain special provisions for aircraft certificated as light-sport category aircraft before the effective date of the final rule that would enable these aircraft to conduct aerial work operations. The proposed § 21.190(e) would permit the owner of an aircraft issued an airworthiness certificate in the light-sport category before the effective date of the final rule to submit an amended manufacturer's statement of compliance which would permit the conduct of certain aerial work operations designated by the manufacturer on the amended statement of compliance.

To show the aircraft is eligible for an amended statement of compliance, the statement would need to identify the aircraft by make, model, serial number, and date of manufacture. The statement would also be required to be made by the original aircraft manufacturer, as the original manufacturer is the source of the design and compliance data used to make the original statement and determine whether the aircraft's design and construction can withstand the expected or known loads associated with the designated aerial work operation. Unlike type-certificated aircraft designs, the FAA does not engage in showing and finding activities using the aircraft manufacturer's design and compliance data for light-sport category aircraft and therefore cannot make any determinations on the appropriateness of specific aerial work operations, even those that may be benign in nature. If a manufacturer is unwilling or unable to submit an amended statement of compliance or provide the data to a third party, the aircraft will not be authorized to conduct aerial work operations. For an amended statement of compliance, the original manufacturer would be responsible for creating the document and listing those authorized aerial work operations.

A light-sport category aircraft certificated before the effective date of this rule would not have to meet the proposed part 22 requirements to obtain an amended statement of compliance. Instead, the statement would need to

reference and reaffirm the statements made in the original manufacturer's statement of compliance and specify the particular consensus standards used to determine compliance. In doing so, the manufacturer would be reaffirming that the aircraft configuration still conforms to the manufacturer's design data and still complies with the original consensus standards, unless the aircraft was modified by the manufacturer or under the manufacturer's authorization. ASTM Standard F2972 requires the manufacturer to keep a permanent record of the documentation used to show compliance of each approved aircraft configuration produced to all applicable consensus standards and regulatory requirements in effect at the time of manufacture. The manufacturer would also be reaffirming that any safety of flight issues identified through the issuance of safety directives or a continued airworthiness system have been corrected by the manufacturer or in accordance with a manufacturer approved procedure. To make these reaffirmations, the aircraft and its maintenance records would need to be reviewed by the manufacturer so that it could determine that the aircraft continues to meet the consensus standards referenced in the original statement of compliance. The FAA notes that such action may be cost prohibitive; however, without the manufacturer's involvement in this process, any validation that the aircraft continues to meet the standards identified in the original manufacturer's statement of compliance would effectively not be possible. Validation could not occur without the manufacturer's data since the data supports compliance with the applicable consensus standards.

Additionally, the statement of compliance would be required to state that the design and construction of the aircraft provides sufficient structural integrity to enable safe operation of the aircraft during the performance of the specified aerial work operations and that the aircraft is able to withstand any foreseeable flight and ground loads. The manufacturer could accomplish this task while simultaneously evaluating the aircraft to reaffirm compliance with the manufacturer's original statement of compliance. The FAA notes that to comply with this provision, manufacturers would use consensus standards for performing aerial work. The proposal would require the amended statement of compliance to identify the consensus standards the aircraft complies with. The FAA anticipates that industry members will

begin developing those standards after this proposal is published.

The proposal would also require that the amended statement of compliance be accompanied by revisions to the aircraft's operating instructions to indicate those aerial work operations that may be safely conducted. It would also require applicable revisions be made to the aircraft's maintenance and inspection program and flight training supplement necessary to accomplish any aerial work operations. These revisions could include, for example, any necessary maintenance tasks or inspections in preparation for, or because of, aerial work operations. If an aerial work operation could be accomplished using standard operational procedures, the aircraft's operating instructions should state this for each aerial work operation for which use of those procedures is appropriate.

21. Removal of Light-Sport Marking Requirements

Proposed revisions to part 45 would eliminate the requirement in § 45.23(b) to mark light-sport category aircraft with "light-sport." This rule would not require owners to remove existing marks. However, aircraft owners would be allowed to remove the marks any time after the effective date of the final rule.

The FAA originally imposed the "light-sport" marking requirement in the 2004 final rule to clearly identify aircraft certificated in the light-sport category. As the proposal would significantly expand the parameters of those aircraft that could be certificated in the light-sport category, the proposal would eliminate the "light-sport" marking requirement. Previously, all aircraft certificated in the light-sport category could be operated by sport pilots and the marking readily identified those aircraft. As certain aircraft certificated in the light-sport category under the proposal may no longer meet the proposed eligibility requirements for operations by persons exercising sport pilot privileges, retaining the "light-sport" marking requirement would no longer serve the purpose of identifying those light-sport category aircraft that persons exercising sport pilot privileges could operate. As such, the FAA is concerned that retaining the "light-sport" marking requirement would be a source of confusion for persons exercising sport pilot privileges. As with other aircraft, a person exercising sport pilot privileges would need to evaluate an aircraft to determine whether the aircraft meets the parameters of those aircraft they are authorized to operate. In addition, information related to the

aircraft certification category is included on the airworthiness certificate for each aircraft and is required per § 91.203(b) to be displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

E. Sport Pilot Certification and Privileges

Part 61 of title 14 prescribes the requirements for pilot and flight instructor certificates and ratings.⁴¹ Pursuant to part 61, the FAA issues six grades of pilot certificates: student, sport, recreational, private, commercial, and airline transport pilot (ATP).⁴² These grades of pilot certificates require increasing levels of pilot experience, testing, and associated privileges. Additionally, the FAA issues flight instructor certificates under subpart H of part 61 and flight instructor certificates with a sport pilot rating under subpart K of part 61.

The sport pilot certificate differs from higher grades of pilot certificates because the FAA does not issue category and class ratings on a sport pilot certificate. Upon the successful completion of the practical test for a sport pilot certificate, the FAA issues the applicant a sport pilot certificate without any category and class ratings and provides the pilot with a logbook endorsement for the category and class of aircraft for which the pilot is authorized to act as PIC (*i.e.*, the category and class of aircraft in which the practical test was conducted).⁴³ To obtain privileges to operate an additional category or class of light-sport aircraft, the sport pilot must receive training and an endorsement from an authorized instructor for the additional privilege, pass a proficiency check from an authorized instructor (other than the instructor who trained them), and receive a logbook endorsement from the instructor who conducted the proficiency check.⁴⁴ The logbook endorsement from the authorized instructor who conducted the proficiency check certifies that the sport pilot is authorized for the additional category and class light-sport aircraft privilege.⁴⁵ An airmen application, known as FAA Form 8710–11, is also submitted to the FAA to document the addition of that new privilege.⁴⁶

⁴¹ 14 CFR 61.1(a)(1).

⁴² 14 CFR 61.5(a)(1).

⁴³ 14 CFR 61.317.

⁴⁴ 14 CFR 61.321.

⁴⁵ 14 CFR 61.321(d).

⁴⁶ FAA Form 8710–11, Airman Certificate and/or Rating Application Supplemental Information and Instructions.

The flight instructor certificate with a sport pilot rating under subpart K differs from the flight instructor certificate issued under subpart H because it has limited privileges compared to a subpart H flight instructor. For example, a flight instructor with a sport pilot rating may only provide training and endorsements that qualify applicants for sport pilot certificates and privileges.⁴⁷ A flight instructor qualified under subpart H may provide training and endorsements to persons seeking a higher-grade of pilot certificate such as a recreational, private, or commercial pilot certificate.

Currently, a sport pilot may only operate an aircraft that meets the definition of light-sport aircraft in § 1.1. As previously discussed, the FAA is proposing to remove the definition of light-sport aircraft from § 1.1 and relocate the substantive requirements, with modifications, to § 21.190. As a result, the FAA is proposing to establish a new regulation, in § 61.316, that would prescribe performance and design limitations for the aircraft sport pilots can operate. Additionally, the FAA is proposing amendments that would modernize the sport pilot and sport pilot instructor regulations. These amendments would expand the types of aircraft a sport pilot may operate, expand sport pilot operational privileges, revise some testing requirements, and permit the use of FAA-qualified aviation training devices (ATD) and flight simulation training devices (FSTD) for sport pilot training credit. Additionally, the FAA proposes training and instructor endorsement requirements for persons seeking to operate aircraft with simplified flight control designations to ensure the safe operation of these new aircraft. These proposals are discussed in greater detail in the following subsections.

1. Sport Pilot Seating Limitation

Currently, by definition in § 1.1, a light-sport aircraft has a maximum seating capacity of no more than two persons, including the pilot. Thus, sport pilots are limited to operating aircraft with two seats. Sport pilots are also limited under § 61.315(c)(4) to carrying one passenger. The FAA is proposing to increase the maximum seat capacity for airplanes that a sport pilot can operate to four seats but would retain the operational limitation for sport pilots that limits them to carrying a single passenger.

In considering whether to expand this two-seat limitation, the FAA reviewed the privileges and limitations that apply to recreational pilots, which are

⁴⁷ 14 CFR 61.413, 61.415.

contained in § 61.101, because a recreational pilot certificate is the next higher grade of pilot certificate and has very similar operating limitations to sport pilots. Currently, § 61.101(e)(1)(i) contains a general limitation that prohibits a recreational pilot from acting as PIC of an aircraft that is certificated for more than four occupants. The FAA adopted this requirement in 1989.⁴⁸ In the final rule that adopted the four-seat limitation for recreational pilots, the FAA determined that limiting recreational pilots to two-seat aircraft was unnecessarily restrictive notwithstanding that a recreational pilot, like a sport pilot, is limited to carrying a single passenger.⁴⁹ The FAA explained that the two-seat limitation was based on the premise that a recreational pilot certificate is intended for recreational purposes rather than transportation.⁵⁰ However, there are many basic aircraft with seating capacities of four seats and these general aviation aircraft are often used for student training or recreational flying.⁵¹ At the time of the 1989 final rule, the FAA received overwhelming support for the four-seat occupancy limitation for recreational pilots.⁵² Since then the NTSB has only recorded 49 accidents with a recreational pilot acting as PIC and only six of those accidents involved a fatality over a 30-year period.

Additionally, like recreational pilot certificates, the two-seat limitation for sport pilots is consistent with the premise that a sport pilot certificate is used for recreational purposes and not for carrying persons or property for compensation or hire. However, airplanes with seating capacities of four seats are often used for flight training and recreational flying while carrying only one passenger.

The FAA contends that the skill necessary to operate two seat airplanes versus four seat airplanes does not appreciably differ due to the similarity

in design, weight and operational capabilities. Also, to determine whether expanding the two-seat limitation to four seats would adversely affect the safety of sport pilot operations, the FAA evaluated the training and testing requirements for recreational pilot certificates and compared those with the requirements for sport pilot certificates. In this comparison, the FAA determined that sport pilots are largely trained and tested to the same standards as recreational pilots.⁵³ Specifically, based on the Practical Test Standards (PTS) for sport pilots and for recreational pilots, the FAA finds that the knowledge and skills that a sport pilot must demonstrate on a practical test are virtually identical to the knowledge and skills that a recreational pilot must demonstrate on a practical test. Considering these testing similarities and that recreational pilots have been safely operating four-seat airplanes with only one passenger since 1989, the FAA finds that permitting sport pilots to operate airplanes with four seats would not adversely affect safety. Furthermore, based on an evaluation of the tasks a person must demonstrate to obtain a sport pilot certificate and the similar aircraft characteristics of a two-seat airplane and a four-seat airplane (*e.g.*, design, weight, and operational capabilities), the FAA finds that the minimum pilot skills that are currently required for sport pilots to operate an airplane with two seats are commensurate with the skills required to operate a four-seat airplane.

The FAA recognizes that there may be airplanes that meet all elements of proposed light-sport category aircraft certification (*e.g.*, those characteristics set forth by proposed § 22.100, except proposed paragraph (a)(2)) that have a maximum seating capacity of more than four seats. In this proposal, the FAA declines to expand sport pilot privileges as applicable to those airplanes with more than four seats. First, the FAA notes that part 61 provides different grades of pilot certificate. With each higher grade of pilot certificate comes expanded privileges. Considering this regulatory framework and the privileges provided to recreational pilots and private pilots, the FAA finds that it would be inappropriate to permit a sport pilot to operate an airplane with more than four seats. Doing so would provide a sport pilot with a greater operational privilege than a recreational

pilot, which is a higher grade of pilot certificate than the sport pilot certificate. In other words, doing so would permit a sport pilot to be afforded a privilege that is reserved for a private pilot certificate holder without requiring the sport pilot to receive the additional training and experience that a private pilot applicant must receive and without requiring the sport pilot to be tested to same standards as a private pilot applicant.

The FAA expects that, without a maximum seating capacity set forth in the proposed regulation, the other proposed aircraft limitations in § 61.316 would indirectly prevent aircraft that sport pilots may fly from having more than four seats. The FAA recognizes; however, that it might be possible that some airplanes to have more than four seats and still meet the proposed aircraft limitations. As a general matter, airplanes with more than four seats become larger and more complex and require increasing pilot skills to operate safely. The FAA finds that permitting sport pilots to operate an airplane with more than four seats would introduce an unacceptable increase in risk to operations in the national airspace system (NAS). An airplane with 5, 6, or 7 seats would have a longer fuselage, a significant increase in weight, and need for a more powerful powerplant compared to a two- or four-seat airplane. As a result, the control pressures to operate the airplane would be greater and increase workload on the pilot. Additionally, the larger powerplants would create significantly more torque and affect directional control of the airplane. For example, increased torque would impose increased demand on the pilot to maintain directional control during the takeoff and climb. Upon evaluating the characteristics of larger airplanes that have more than four seats, the FAA finds that those larger airplanes have significantly different handling characteristics than an airplane with just two- or four-seats. Those different handling characteristics require more demanding operational skills than those skills required to operate a two- or four-seat airplane. The FAA finds that the skills required to safely operate an airplane that has more than four seats require a higher grade of pilot certificate that includes additional experience, training, and testing that is greater than what a sport pilot is required to accomplish. For these reasons, the FAA is proposing a four-seat limitation for the airplanes that a sport pilot seeks to operate. Accordingly, the FAA is proposing a limitation in § 61.316(c) that would permit sport pilots to operate

⁴⁸ Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours, Final Rule, 54 FR 13028 (Mar. 29, 1989).

⁴⁹ 14 CFR 61.101(a)(1).

⁵⁰ *Id.*

⁵¹ The FAA also recognizes that primary category aircraft certificated under § 21.24(a)(1) have a maximum seating capacity of not more than four persons, including the pilot. These aircraft are also purposed for personal use and recreation and use for flight training. The aircraft certification regulations and the associated operating limitations for primary category aircraft are similar but more restrictive (*i.e.*, have higher standards) than the § 21.190 consensus standards certification process for light-sport aircraft.

⁵² As stated in the 1989 final rule, approximately 100 commenters supported the proposal to expand occupancy limitations from two-seats to four-seats. 54 FR 13031.

⁵³ See Sport Pilot PTS for Airplane, Gyroplane, Glider, and Flight Instructor (FAA-S-8081-29 with Change 3) and Recreational Pilot PTS for Airplane, Rotorcraft/Helicopter, and Rotorcraft/Gyroplane (FAA-S-8081-3A).

airplanes with a maximum seating capacity of four persons. However, the FAA proposes to retain the current operational limitation for sport pilots to carry no more than one passenger in any aircraft that a sport pilot can operate. The FAA finds that this limitation is consistent with sport pilot operations today and with the use of the FAA's safety continuum, which the FAA uses to assess risk.

2. Directional Control and Controlled Descent of Powered Aircraft

Currently, the light-sport aircraft definition does not expressly require an aircraft to have the capability to maintain directional control and a controlled descent in the event of a powerplant failure. The omission of this requirement in the regulations does not present a safety concern at this time because this control requirement is inherent in airplane manufacture and design and the light-sport aircraft definition excludes helicopters and powered-lift. For example, airplanes have the ability to maintain directional control and a controlled descent in the event of a partial or total powerplant failure. Given the aerodynamics, a pilot can normally glide the airplane to a safe landing if the powerplant stops functioning.

As discussed in section IV.E.8 of this preamble, the FAA is proposing to permit sport pilots to operate certain kinds of helicopters. However, the ability to maintain directional control and a controlled descent in the event of a powerplant failure is not inherent in all new helicopter designs (specifically multicopters). Some new helicopters may not possess the ability to autorotate to a safe landing in the event of a powerplant failure.

To fit the construct of the FAA safety continuum, as well as the expectation for the use of new aircraft that can be safely operated by sport pilots, the FAA has determined that any aircraft (except balloons and airships) that a sport pilot operates must have the capability to establish a controlled descent and directional control in the event of a partial or complete power plant failure. Therefore, the FAA proposes in § 61.316(h) that a person with a sport pilot certificate may only act as PIC for those powered aircraft (which could include multicopters) whereby the loss of partial power would not adversely affect the directional control of the aircraft. Specifically, § 61.316 describes the sport pilot aircraft performance limitations and would require in proposed paragraph (h) that powered aircraft must provide the pilot an ability to maintain directional control and

controlled descent in the event of a powerplant failure. As proposed, if the aircraft does not possess these capabilities (excluding balloons and airships), a sport pilot would not be able to act as PIC of the aircraft. This requirement would ensure that any aircraft a sport pilot operates is simple to control in the event of a powerplant failure, consistent with the aircraft that sport pilots are currently permitted to operate. Therefore, while the FAA proposes to expand the types of aircraft that sport pilots may operate, the FAA intends to permit sport pilots to operate only those aircraft that would require skills commensurate with the skills of a sport pilot today.

Notably, despite the implicit inclusion of this feature for airplanes, the FAA is not proposing to limit this requirement to helicopters. The FAA reasons that manufacturers may contemplate future airplane or other aircraft designs that do not include an inherent aerodynamic ability for the pilot to maintain directional control and a controlled descent in the event of a powerplant failure. The FAA proposes to impose this requirement for all powered aircraft that a sport pilot may seek to operate as PIC so advancements in airplane technology would include this feature. This requirement would appropriately mitigate the risk to persons both on board the aircraft and on the ground that may be impacted by a powerplant failure emergency.

3. Sport Pilot Operational Privileges

Section 61.315 currently specifies the privileges and limitations of a sport pilot certificate. Currently, under § 61.315(c)(5), sport pilots are prohibited from conducting night operations. Also, the § 1.1 light-sport aircraft definition currently prohibits sport pilots from operating aircraft equipped with retractable landing gear (except for amphibious aircraft and gliders) and aircraft with a controllable pitch propeller. However, the FAA contends that, with the completion of additional training and obtaining a flight instructor qualifying endorsement, sport pilots can safely conduct these types of flight operations. Therefore, the FAA is proposing to add an exception to § 61.315(c)(5) that would permit a sport pilot to conduct night operations if the sport pilot meets certain training, endorsement, and experience requirements, which the FAA is proposing in new § 61.329. These provisions are discussed in greater detail in the next section. Likewise, the FAA is proposing to add a new provision, in § 61.315(c)(20), that would prohibit sport pilots from acting as PIC

of an airplane with a retractable landing gear or a controllable pitch propeller unless a sport pilot meets the training and endorsement requirements proposed in § 61.331.

Specifically, the FAA currently uses additional training and instructor endorsements to enable certain flight operations, including the operation of complex, high altitude, and tailwheel airplanes.⁵⁴ These instructor endorsements are used today and are a proven method to validate pilot proficiency and qualifications. The following sections discuss these proposals in greater detail.

4. Night Operations

As previously discussed, sport pilots are currently prohibited from conducting night operations. Section 1.1 defines "night" as the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the Air Almanac, converted to local time. In support of the proposal to permit sport pilots to conduct night operations, the FAA acknowledges that many states in the U.S. have reduced daylight hours during the winter months. During those days with reduced daylight, sport pilots may be under pressure to complete a flight even after sunset due to weather or delays from unexpected events. A sport pilot who conducts an operation at night, as defined in § 1.1, is in non-compliance with the current prohibition in § 61.315(c)(5). The FAA emphasizes that non-compliance with the FAA's regulations is unacceptable and subject to compliance or enforcement action. The FAA recognizes, however, that the reduced daylight hours in many northern states may result in sport pilots experiencing pressure to conduct flights before night. Due to unforeseen circumstances, these flights may become marginally non-compliant as they near the end of evening civil twilight. Because a sport pilot is not currently required to receive training for operating at night, any sport pilot operations that occur after the end of evening civil twilight create a safety risk. To mitigate that risk, the FAA proposes to permit sport pilots to qualify to operate at night by meeting certain training and experience requirements and by obtaining an endorsement from an authorized instructor. The FAA finds that, with this added training, the window of time during which sport pilots may conduct operations would be expanded thereby promoting better aeronautical decision-making by reducing the pressure on sport pilots to

⁵⁴ See § 61.31(e), (f), (g), and (i).

conduct flights within a certain period of time.

Specifically, to validate that sport pilots possess the necessary skill to safely navigate at night, the FAA proposes the following risk-mitigation training requirements in new § 61.329. Under proposed § 61.329(a) a sport pilot must receive at least three hours of flight training at night from an authorized instructor and receive a logbook endorsement certifying that they are proficient in the operation of the aircraft at night. In addition, proposed § 61.329(b) requires that the sport pilot conduct at least one cross-country night flight, with a landing at an airport of at least 25 nautical miles from the departure airport, except for powered parachutes. Proposed § 61.329(c) would require the sport pilot to accomplish at least ten takeoffs and landings at night with an authorized instructor. Proposed § 61.329(d) would also set forth certain medical requirements: the PIC must either hold a medical certificate issued under part 67, subpart D, Third-Class Airman Medical Certificate, or meet the requirements of § 61.23(c)(3) as long as the person holds a valid U.S. driver's license. Additionally, the operation would be required to be conducted consistent with § 61.113(i). If there is any conflict between § 61.113(i) and proposed § 61.315(d)(4), then proposed § 61.315(d)(4) would take precedence.

A sport pilot may receive the night training and endorsement specified in § 61.329 from a person who holds either a flight instructor certificate issued under subpart H of part 61 or a flight instructor certificate with a sport pilot rating. However, before a flight instructor with a sport pilot rating may provide the night training and endorsement to a sport pilot seeking night privileges, the flight instructor must first receive the training and endorsement themselves. The FAA is, therefore, proposing to amend § 61.415, which prescribes the limits of a flight instructor certificate with a sport pilot rating, by adding new paragraph (n) to state that a flight instructor with a sport pilot rating may not provide training in an aircraft at night unless they have completed the night training and endorsement requirements specified in proposed § 61.329. The FAA notes that, upon publication of the final rule, there would be no sport pilot instructors who satisfy the new night training and endorsement requirements of § 61.329. Thus, as an initial matter, sport pilot instructors would receive the night training and endorsement from a subpart H flight instructor.

The FAA notes that the requirements in proposed § 61.329 largely mirror those required of private pilots who conduct operations at night as set forth by § 61.109, as well as current sport pilot experience requirements under § 61.313. The FAA recognizes that these training requirements are appropriate for private pilots to obtain the knowledge and skills necessary to conduct night operations safely and reasons that a sport pilot should conduct the same night training requirements before acting as PIC at night. After this training has been completed, the sport pilot would receive the endorsement from the authorized instructor, at which point they would be able to conduct night operations.

Currently, § 61.315(c)(5) explicitly restricts a sport pilot from acting as PIC at night. Therefore, as previously stated, the FAA proposes to amend § 61.315(c)(5) by adding an exception for sport pilots who seek privileges to operate an aircraft at night. Amended § 61.315(c)(5) would restrict night operations, except as provided in proposed § 61.329, which would contain the night operation training, experience and endorsement requirements. The FAA notes that a sport pilot seeking to act as PIC of an aircraft carrying a passenger at night would be required to satisfy the recent flight experience requirements in current § 61.57(b).⁵⁵

5. Airplanes With a Controllable Pitch Propeller or Aircraft With a Retractable Landing Gear

The FAA proposes to allow sport pilots to operate an airplane with a controllable pitch propeller or an aircraft equipped with retractable landing gear. The FAA contends that, similar to obtaining the privileges to conduct night operations, additional training and flight instructor endorsements would adequately qualify sport pilots to operate these aircraft safely. Assumptions made in the 2004 final rule suggesting that allowing a retractable landing gear would add unnecessary complexity and would not provide a safety benefit conflicted with

other allowable privileges.⁵⁶ Subsequent amendments were made to the light-sport aircraft definition to permit retractable landing gear for amphibious light-sport airplanes and gliders.⁵⁷ The FAA contends that additional training and endorsements would allow sport pilots to operate airplanes with a controllable pitch propeller or aircraft with retractable landing gear even when not intended for water operations.

Currently, there is a population of sport pilot certificate holders who have never been permitted to operate an airplane with a controllable pitch propeller or an aircraft with retractable landing gear. The FAA finds that permitting these sport pilots to operate aircraft with these new capabilities without first receiving training would introduce an unacceptable safety risk to the NAS. To mitigate this risk, the FAA proposes to require the sport pilot to receive training and an endorsement from an authorized instructor validating proficiency. The FAA finds that requiring training in the operation of an airplane with a controllable pitch propeller or an aircraft with retractable landing gear would allow the sport pilot to become proficient with the use of these specific designs and capabilities before acting as PIC in the aircraft. Additionally, requiring the sport pilot to receive an endorsement from an authorized instructor certifying that the sport pilot is proficient in the operation of the aircraft that contains either a controllable pitch propeller or retractable landing gear would provide assurance that the pilot has acquired the skills necessary to operate those aircraft safely.

To enable sport pilots to operate airplanes with a controllable pitch propeller or aircraft with a retractable landing gear safely, the FAA finds it necessary to propose several new provisions. First, the FAA is proposing to amend current § 61.315, which contains the operational limitations of a sport pilot certificate, by adding new paragraph (c)(20). Proposed § 61.315(c)(20) would prohibit a sport pilot from operating an airplane with a controllable pitch propeller or an aircraft with retractable landing gear unless the sport pilot meets the requirements specified in proposed § 61.331. The FAA proposes to place the aforementioned training and endorsement requirements in new § 61.331. Additionally, because

⁵⁵ Section 61.57(b)(1) states that, except as provided in § 61.57(e), no person may act as PIC of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 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 1 hour after sunset and ending 1 hour before sunrise, and (i) that person acted as sole manipulator of the flight controls, and (ii) the required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a type rating is required).

⁵⁶ See e.g., 69 FR 44800 ("The FAA reiterates its original position that for aircraft other than gliders, retractable landing gear is inconsistent with the simplicity of the light-sport aircraft, and the training requirements for the sport pilot.").

⁵⁷ 72 FR 19661.

controllable pitch propellers and retractable landing gear are design characteristics of an aircraft and the FAA would permit sport pilots to operate aircraft with those characteristics only if certain conditions are met, the FAA finds it necessary to carry those characteristics over to newly proposed § 61.316. Specifically, the FAA proposes in § 61.316(b) to permit a sport pilot to act as PIC of an aircraft that, since its original certification, has retractable landing gear or a controllable pitch propeller if the sport pilot meets the training and endorsement requirements specified in proposed § 61.331.

With respect to the training and endorsement requirements in proposed § 61.331, the FAA recognizes that a controllable pitch propeller and retractable landing gear are features of a complex airplane. Section 61.1 defines complex airplane to mean an airplane that has retractable landing gear, flaps, and a controllable pitch propeller. Notably, however, airplanes may contain only one of these three features (e.g., only a controllable pitch propeller or only retractable landing gear). For the reasons explained above, the FAA finds it necessary to require sport pilots to receive training and an endorsement from an authorized instructor for the operation of an airplane that has only one of these features. It is possible, however, for a sport pilot to receive training and an endorsement from an authorized instructor in a complex airplane pursuant to § 61.31(e). In this event, the FAA finds that the endorsement certifying that the pilot is proficient in the operation of a complex airplane should also count towards the endorsement that is proposed in § 61.331 for an airplane that has only a controllable pitch propeller or an aircraft that has only retractable landing gear. Therefore, the FAA proposes rule language in § 61.331(a)(1) and (b)(1) to ensure that a sport pilot who has received the endorsement required under § 61.31(e) would not be required to receive a duplicative endorsement under proposed § 61.331.

The FAA notes that it is not proposing a minimum number of hours of training, similar to the lack of mandated training hours required in § 61.31(e) for the operation of a complex airplane.⁵⁸ Rather, the authorized instructor is tasked with determining the appropriate amount of training required, to culminate in the authorized instructor attesting to proficiency with an

endorsement. The FAA has permitted training and instructor endorsements for all other grades of pilot certificate for these same privileges, including student pilots, and contends that this is also appropriate for sport pilots.

Furthermore, consistent with the FAA's proposed amendment to current § 61.415 to address the night training and endorsement for sport pilot instructors, the FAA finds it necessary to amend § 61.415 by adding proposed (l), which would require a sport pilot instructor to receive training and an endorsement in an airplane with a controllable pitch propeller or an aircraft with retractable landing gear, as appropriate, before providing flight training to a sport pilot in an aircraft with one of those features.

6. Model-Specific Endorsement for Aircraft Certificated With a Simplified Flight Controls Designation (§§ 61.9, 61.31, 61.415, and 61.429)

As discussed in section IV.E.6 of this preamble, the FAA is proposing to establish a simplified flight controls designation in proposed § 22.180. Aircraft with a simplified flight controls design and designation would not have traditional flight controls available to the pilot. Currently, the FAA does not have a regulatory mechanism to require flight training and an instructor endorsement to validate proficiency for pilots seeking to operate aircraft certificated with a simplified flight controls designation.

The FAA recognizes that simplified flight control designs will vary from one aircraft to another (i.e., model to model). As such, piloting would not involve the commonality of experience that exists in aircraft with traditional flight controls.⁵⁹ Therefore, it is important that a pilot be qualified and validate competency for each simplified flight control make and model⁶⁰ of aircraft to validate competency in that unique design.⁶¹ Furthermore, aircraft with simplified flight control designations may be operated by pilots other than sport pilots, resulting in the same safety

concerns for pilots with higher grades of pilot certificates. Therefore, any qualification requirements to address the simplified flight control systems must apply broadly to persons who hold pilot certificates issued under part 61. Thus, the FAA proposes this qualification for simplified flight controls be attained by a training and endorsement and, in some cases, a practical test.

This section describes the requirements for pilots to act as PIC of an aircraft with a simplified flight controls designation. Section IV.E.7 further describes scenarios pertaining to practical tests where (1) a person seeks a pilot certificate in an aircraft with simplified flight controls, (2) a person has a pilot certificate with a simplified flight controls model-specific limitation and seeks to operate another model of aircraft category and class with a simplified flight controls designation, and (3) a person has a pilot certificate not limited to simplified flight controls (i.e., the person can act as PIC of an aircraft with traditional flight controls) but seeks to obtain privileges to act as PIC of a make and model with a simplified flight controls designation.

Due to the differing characteristics, as previously discussed, the FAA finds that additional training specific to the particular make and model of aircraft with a simplified flight controls designation is necessary to ensure a pilot is sufficiently proficient in the operation of that aircraft. Therefore, the FAA proposes to amend § 61.31 by adding new paragraph (l) to contain the qualification requirements for persons seeking to act as PIC of any aircraft with a simplified flight control designation. Specifically, proposed § 61.31(l)(1) would require pilots seeking to act as PIC of aircraft certificated with a simplified flight controls designation to obtain model-specific training in that aircraft from an authorized instructor. Additionally, proposed § 61.31(l)(2) would require the pilot to receive a logbook endorsement from an authorized instructor who has found the pilot proficient in the safe operation of that model-specific aircraft and the associated simplified flight control system. The FAA's proposal would permit any certificated pilot, regardless of certificate level, who holds the appropriate category and class to operate a simplified flight control-designated aircraft only after receiving the model-specific training and endorsement from an authorized flight instructor specific to the safe operation of each simplified flight control designated aircraft.

⁵⁸ Section 61.1 defines complex airplanes. Section 61.31(e) specifies the training and endorsement requirements.

⁵⁹ Unlike aircraft with simplified flight controls designation, there is commonality with traditional flight control systems. For example, airplanes have a control yoke, rudder pedals, trim, and a throttle. Helicopters have a cyclic, collective, throttle and anti-torque pedals.

⁶⁰ The FAA proposes to use the terms "make and model" in § 61.31(l) consistent with the manner in which they are used throughout part 61. Therefore, as a general matter, "make" refers to the manufacturer of the aircraft (e.g., Cessna, Piper, Cirrus, etc.). "Model" refers to the specific aircraft model (e.g., C152, C172, PA28-112, SR20, etc.).

⁶¹ This is similar to the current requirement for student pilots to receive a model-specific endorsement under § 61.87(n) before conducting PIC operations.

The authorized instructor in proposed § 61.31(l) may be a subpart H instructor or a sport pilot instructor. Before an instructor may provide flight training in an aircraft with a simplified flight controls designation, the instructor would be required to first receive the model-specific training and the accompanying endorsement to validate that the instructor is proficient in the safe operation of the aircraft. Because this would be a limitation in the sport pilot instructor logbook until the sport pilot instructor meets certain conditions, the FAA is proposing to amend current § 61.415 by adding new paragraph (m). Proposed § 61.415(m) would expressly limit the sport pilot instructor from providing training in an aircraft with simplified flight controls design and designation unless the sport pilot has received the model-specific training and endorsement required under proposed § 61.31(l). Additionally, the FAA is proposing an amendment to current § 61.429, which contains the requirements for a subpart H instructor seeking to exercise the privileges of a flight instructor certificate with a sport pilot rating. Specifically, the FAA is proposing to add new paragraph (d) to current § 61.429 to state that a subpart H instructor seeking to exercise the privileges of their flight instructor certificate in a model-specific aircraft that has a simplified flight controls designation must meet the training and endorsement requirements specified in proposed § 61.31(l) before providing any flight training in the aircraft.

Initially, there would be no flight instructors who are qualified to provide flight training in an aircraft that has a simplified flight controls designation because the training and endorsement requirements in proposed § 61.31(l) are new. Thus, no one has yet received the training or endorsement necessary to act as PIC. The FAA is proposing to add new paragraph (m) to current § 61.195 to address this issue. The FAA intends for proposed § 61.195(m) to provide the initial cadre of flight instructors with an alternative to the training and endorsement requirements in proposed § 61.31(l) to enable industry to build the initial cadre of flight instructors who could provide the training and endorsement for aircraft with simplified flight control designations.

Specifically, proposed § 61.195(m) would permit instructor pilots that work with the manufacturer of aircraft with the simplified flight controls designation to provide training and endorsements to the initial cadre of authorized instructors and pilot examiners. This proposed provision would allow for the initial operation of

aircraft with the simplified flight controls designation during and after the aircraft certification process for these new aircraft. An instructor pilot at the manufacturer for the aircraft would be one of the only individuals with significant experience operating the model-specific aircraft with simplified flight controls. Additionally, the instructor pilots are generally tasked with developing and validating training for the aircraft for the manufacturer. The FAA finds that the duties of an instructor pilot establish intricate knowledge of the aircraft's systems and components. The FAA has determined that it would be beneficial to leverage the experience these instructor pilots have to create the initial cadre of authorized instructors who may provide training under proposed § 61.31(l).

To mitigate any safety risk that may result from allowing an instructor pilot to provide training in a model-specific aircraft, the FAA has decided to narrowly confine the training population to include only subpart H instructors. Thus, the FAA is proposing the provisions as a limitation to the flight instructor certificate pursuant to § 61.195 and not to sport pilot instructors. Because an instructor pilot would have significant experience in the model-specific aircraft and the training population would be narrowly confined, the FAA finds that proposed § 61.195(m) would not adversely affect safety.

In developing this proposal, the FAA recognized that any aeronautical experience obtained in an aircraft with a simplified flight controls designation would not be equal to the aeronautical experience obtained piloting aircraft with traditional flight controls. However, because aircraft with simplified flight controls designation would fall within the same category and class of aircraft as aircraft with traditional flight controls, pilots could seek to build flight time for higher certificates and ratings in much more simplistic aircraft. The FAA finds that aeronautical experience in aircraft with simplified flight controls designations would diminish the aeronautical experience in aircraft with traditional flight controls that is necessary to reinforce piloting skills in traditionally equipped aircraft. With that understanding, the FAA is proposing that any pilot time acquired while operating an airplane or helicopter with a simplified flight controls design and designation may not be used to satisfy certain pilot-in-command flight time requirements for a higher-grade certificate. Those pilot time experience limitations can be found in newly

proposed § 61.9. For example, under proposed § 61.9(b), a person seeking a commercial pilot certificate with a rotorcraft category helicopter class rating may not use pilot time acquired in a helicopter with simplified flight control designation to meet the PIC flight time experience requirement in § 61.129(c)(2)(i), which requires 35 hours of PIC flight time in a helicopter. PIC experience in a helicopter with a simplified flight controls does not provide the same skills and experience a commercial pilot needs to conduct commercial operations in a helicopter with traditional flight controls that include unique skills like the conduct of an autorotation. Once a pilot obtains a helicopter class rating on their commercial pilot certificate, that pilot has commercial pilot privileges in many legacy helicopters as a general matter. It is therefore important for an applicant seeking a helicopter class rating on a commercial pilot certificate to continue to obtain the class-specific PIC flight time in a helicopter that has traditional flight controls.

7. Conducting Practical Tests in an Aircraft Certificated With a Simplified Flight Controls Designation (§ 61.45)

Section 61.43 provides the general procedures for conducting a practical test. The completion of a practical test for a certificate or rating consists of performing the tasks specified in the areas of operation applicable to the airman certificate or rating sought. These tasks and maneuvers are contained in the ACS or the PTS, as appropriate. Current production aircraft, as well as those that obtain a simplified flight control designation in the future, may not be able to accomplish all the tasks required during the conduct of a practical test. For example, these aircraft may be unable to perform an aerodynamic stall or steep turns during a practical test, which are typically tested as an area of operation in the practical test. To account for these operational limitations, current § 61.45(b)(2) permits an applicant to use an aircraft with operating characteristics that preclude the applicant from performing all of the tasks required for the practical test; however, the applicant's pilot certificate is issued with an appropriate limitation.

The FAA recognizes that those aircraft having simplified flight controls may not be able to perform all of the tasks required by the ACS or PTS, as applicable. Applicants would be able to use the provision of § 61.45(b)(2) to complete the practical test in such an aircraft; however, they would receive a limitation on their certificate specific to

the make and model of aircraft with simplified flight controls that they tested in. Because the current rule language in § 61.45(b)(2) already provides for the issuance of a limitation in this instance, the FAA finds it unnecessary to propose an amendment to the provision. The FAA would, however, develop guidance to explain that, in the event an applicant uses an aircraft with simplified flight controls designation that is not capable of performing all the required tasks for a practical test, the aircraft limitation would be issued pursuant to § 61.45(b)(2). The limitation would likely be a model-specific limitation to effectively identify the aircraft the test was accomplished in and limit the pilot from operating another aircraft that may be able to perform tasks and maneuvers that the pilot was not trained or tested on.

Further, because simplified flight control characteristics may vary among aircraft due to rapid advances in aircraft automation and flight control technology, the FAA believes that additional safeguards are necessary for those practical tests taken in aircraft with simplified flight controls. Specifically, the FAA proposes new paragraph (g), which would set forth the requirements for an applicant taking a practical test for an initial pilot certificate, rating, or privilege in an aircraft with a simplified flight control designation. First, the examiner would have to agree to conduct the test in proposed § 61.45(g)(1). Additionally, the FAA proposes in § 61.45(g)(2) that the examiner also hold the appropriate category and class rating or privilege, the appropriate simplified flight controls training and model-specific endorsement, and an FAA authorization

to conduct the test. It is important that the examiner is familiar with the make and model of the simplified flight control-designated aircraft before issuing a practical test to conduct the test safely and is familiar with the standards that an applicant must meet so as to demonstrate competency. The FAA finds that examiners must become familiar with the make and model through the training and endorsement requirements themselves before conducting a practical test in the same aircraft. Proposed § 61.45(g)(3) would require the examiner to have the ability to assume control of the aircraft at any time to enable the safe conduct of the test, should the applicant perform poorly during the test and possibly put the aircraft in an unsafe flight condition.

Pilot applicants that successfully complete a practical test in one of these aircraft would then be issued a pilot certificate with a model-specific limitation⁶² per § 61.45(b)(2) and proposed § 61.45(g)(4). Pursuant to § 61.45(g)(4), the model-specific limitation would be issued subject to the requirements of proposed § 61.45(h), which would explicitly limit a pilot who receives a category and class rating or privilege with a simplified flight controls limitation to operation of only that make and model of aircraft. Proposed § 61.45(h) would also detail the requirements under which a pilot could operate a different aircraft. First, if the pilot seeks to operate another make and model of aircraft with a simplified flight controls designation in the same category and class, then the person would be required to only receive training and an endorsement in accordance with proposed § 61.31(l). The person would not be required to take another practical test because the

similarities between classes of aircraft are such that a training and endorsement would be sufficient to address operational differences with the simplified flight controls designs. However, should the pilot seek to operate a different category and class of aircraft with a simplified flight controls designation, the person would be required to successfully complete a practical test for that category and class of aircraft under proposed § 61.45(h)(2). This proposal is no different to the current status quo whereby a person holds a certificate with a category and class rating and seeks to operate an aircraft in a different category and class rating. Additionally, should a pilot who holds category and class ratings and is limited to acting as PIC of aircraft with simplified flight controls (*i.e.*, has taken a practical test for those category and class ratings in only an aircraft with simplified flight controls) seek to act as PIC of an aircraft without a simplified flight controls designation, the person would also be required to successfully complete a practical test for that category and class of aircraft with traditional flight controls under proposed § 61.45(h)(2).⁶³ A practical test would be required to address the more significant operational differences between, first, different categories and classes of aircraft and, second, aircraft with a simplified flight controls designation and those with traditional flight controls.

For instructional purposes, the following table presents a sampling of scenarios pertaining to when a pilot is authorized or is seeking to operate an aircraft with simplified flight controls and the proposed requirements.

TABLE 1—AIRMAN CERTIFICATION SIMPLIFIED FLIGHT CONTROLS REQUIREMENTS

If you hold a—	And you are seeking—	Then you must complete—	Regulatory reference
Sport Pilot Certificate with Rotorcraft-Helicopter Simplified Flight Controls Privilege with Model Specific Limitation.	To operate another model of rotorcraft-helicopter with simplified flight controls.	The training and endorsement required by proposed § 61.31(l).	Proposed § 61.45(h)(1).
Sport Pilot Certificate with Rotorcraft-Helicopter Simplified Flight Controls Privilege with Model Specific Limitation.	A private pilot certificate with rotorcraft-helicopter rating (regardless of a simplified flight controls designation).	The requirements to receive a private pilot certificate, to include a practical test.	Part 61, subpart E, subject to proposed § 61.9.

⁶² Model-specific refers to the make and model of light-sport category aircraft that the applicant uses to test to receive a sport pilot certificate.

⁶³ Because sport pilots are limited already to acting as PIC of rotorcraft-helicopters with simplified flight controls, a sport pilot seeking to act as PIC of another make and model of rotorcraft-

helicopter with simplified flight controls would need only complete the training and endorsement in proposed § 61.31(l). By contrast, a sport pilot who holds airplane-single engine ratings limited to a make and model of airplane with simplified flight controls would be required to take a practical test if seeking to operate a single engine airplane with

traditional flight controls. Likewise, a private pilot who took the private pilot practical test for single engine airplane ratings in a § 21.190 airplane with a simplified flight controls designation would be required to complete another practical test in an aircraft with traditional flight controls.

TABLE 1—AIRMAN CERTIFICATION SIMPLIFIED FLIGHT CONTROLS REQUIREMENTS—Continued

If you hold a—	And you are seeking—	Then you must complete—	Regulatory reference
Private Pilot Certificate with a Rotorcraft Category and Helicopter Class Rating, Simplified Flight Controls Model Specific Limitation.	To operate another model of rotorcraft-helicopter with simplified flight controls.	The training and endorsement required by proposed § 61.31(l).	Proposed § 61.45(h)(1).
Private Pilot Certificate with a Rotorcraft Category and Helicopter Class Rating, Simplified Flight Controls Limitation.	To operate a Rotorcraft-Helicopter without Simplified Flight Controls.	A practical test	Proposed § 61.45(h)(2).
Private Pilot Certificate with a Rotorcraft Category and Helicopter Class Rating, Simplified Flight Controls Limitation.	To operate an airplane with simplified flight controls.	The requirements to add another category and class rating on a private pilot certificate, to include a practical test.	Proposed § 61.45(2) & part 61, subpart E.
Private Pilot Certificate with a Rotorcraft Category and Helicopter Class Rating (no simplified flight controls model limitation).	To operate a Rotorcraft Helicopter with Simplified Flight Controls.	The training and endorsement required by proposed § 61.31(l).	Proposed § 61.31(l).

8. New Rotorcraft-Helicopter Privilege for Sport Pilots and Sport Pilot Instructors

Sport pilots and flight instructors with a sport pilot rating are currently unable to obtain a rotorcraft-helicopter (also referred to in this preamble simply as helicopter) privilege because helicopters are excluded from the definition of light-sport aircraft.⁶⁴ The FAA did not include helicopters within the light-sport aircraft definition in 2004 because of helicopters' complexity in design, maintenance, manufacture, and operation.⁶⁵ At the time, the FAA did not anticipate that manufacturers would design simple-to-operate, low-performance helicopters that fit within the scope of the privileges afforded to the holder of a sport pilot certificate.

The FAA recognizes that manufacturers now have access to new technology enabling simple-to-fly helicopter designs not envisioned in 2004. For example, manufacturers have developed multicopters⁶⁶ with flight controls that would satisfy the simplified flight controls criteria during the aircraft certification process, as previously discussed. Aircraft with simplified flight controls may lack a typical helicopter cyclic or collective control and instead could use a joystick or steering wheel and push button controls (subject to certain requirements)⁶⁷ or a touchscreen

interface that greatly reduce the piloting skills necessary to fly the aircraft. As discussed more fully in the discussion of proposed § 22.180, the aircraft certification process would establish the criteria for the simplified flight controls designation, which would include standards for the pilot interface, the loss of control prevention, and the ability for the pilot to safely discontinue flight.

The FAA proposes to amend part 61, subpart J, to allow sport pilots to operate certain simple-to-fly helicopters. Specifically, the FAA proposes to permit sport pilots to operate new helicopters certificated under the proposed § 21.190 that include the simplified flight control designation. First, the FAA is proposing a limitation in § 61.316(a)(9) that would limit the kinds of helicopters that sport pilots may operate to those helicopters that have been certificated with a simplified flight controls design and designation. To facilitate integration of new simplified flight control helicopter operations under this subpart, the FAA also proposes amendments to §§ 61.311 and 61.313, which are discussed below. The FAA's current proposal aligns with the original intent of the 2004 final rule promulgating the sport pilot certificate and light-sport aircraft definition, which was to allow sport pilots to operate simple-to-fly aircraft.

To facilitate helicopter operations for sport pilots, the FAA proposes in § 61.311 to include "helicopter" in the list of aircraft to which flight proficiency requirements apply and to add helicopter-specific areas of operation and tasks that would apply to sport pilot certificate applicants seeking

a rotorcraft-helicopter privilege. These areas of operation are key to attaining competency in the operation of helicopters and are not otherwise covered by existing areas of operation. Sport pilots seeking a helicopter simplified flight controls privilege will still need to accomplish the other areas of operation listed in current § 61.311, as appropriate. Therefore, the FAA would require that a sport pilot applicant log ground and flight training from an authorized instructor on heliport operations in proposed § 61.311(c) and hovering maneuvers in proposed § 61.311(d) in addition to the existing areas of operation and tasks applicable to helicopters (e.g., takeoffs, landings, performance maneuvers). While these proposed areas of operation and their applicable tasks would be applicable specifically to helicopters, conversely, the FAA recognizes that there are areas of operation that are inherently inapplicable to helicopters: specifically, ground reference maneuvers, slow flight, and stalls. Therefore, the FAA proposes to except helicopters from these areas of operation in the flight proficiency requirements of § 61.311.⁶⁸ As discussed in the following section, because the practical test for a sport pilot certificate for a rotorcraft-helicopter rating would include these areas of operation, training should involve proficiency for the tasks listed under the applicable areas of operation in the regulation, which are reflected in the Sport Pilot Helicopter ACS (see section IV.E.9).

Because of the unique operations and tasks associated with helicopter

⁶⁸ The FAA notes that the paragraph designations of the areas of operation in § 61.311 would change based on the addition of helicopter-specific areas of operation.

⁶⁴ See § 1.1, *Light-sport aircraft*.

⁶⁵ 69 FR 44869, 44793 (July 27, 2004).

⁶⁶ A multicopter is a rotorcraft that can have more than one rotor providing lift. Although multicopters are helicopters by definition, multicopters differ from the conventional helicopter models originally considered during the 2004 rulemaking because the takeoff and landing are intended to be automated and not require extensive pilot training and skill.

⁶⁷ For example, as previously discussed, a joystick controller that is used to select flight

commands or move a cursor on a display could qualify as a simplified flight control design.

operations in the national airspace system, applicants must obtain certain and specialized training and experience, as with any person seeking a certificate, rating, or privilege. These unique operating characteristics include the ability to hover over specific locations, operate in confined spaces and land in unique locations such as sloped terrain, buildings, or other man-made structures. As a result, the FAA contends that helicopter operations impose an unacceptable risk to the general public and other aircraft operating in the national airspace system unless an applicant accomplishes these minimum helicopter flight experience and training requirements.

First, with the proposed addition of flight simulation training device and aviation training device credit paragraphs in § 61.313, as discussed in section IV.E.11 of this preamble, the FAA proposes to renumber § 61.313. Specifically, current § 61.313(a) through (h) would become § 61.313(a)(1) through (8). As subsequently discussed, the FAA proposes to establish the aeronautical experience requirements for the newly proposed rotorcraft-helicopter privileges, which would be § 61.313(a)(9). As proposed, an applicant for a sport pilot certificate who seeks to obtain a helicopter rating would be required to log at least 30 hours of helicopter flight time, 15 hours of flight training, and 5 hours of solo flight. The FAA proposes these minimum experience requirements because the minimum recreational pilot grade of pilot certificate seeking a helicopter rating requires comparable minimum experience requirements.

The FAA contends that the minimum experience requirements for a recreational pilot to obtain a helicopter rating would also be appropriate for a sport pilot certificate because the operational limitations for sport pilots are virtually identical to those for recreational pilots. For example, both sport pilots and recreational pilots are limited to carrying only one passenger, operations below 10,000 feet MSL, a minimum of 3 miles of visibility, prohibition to operate in class A/B/C/D airspace, and a prohibition for night operations. One substantive difference is that recreational pilot applicants are required to obtain 10 more total hours of experience. Another difference is that recreational pilots have more restrictive cross-country operational limitations. However, because helicopters have unique operating capabilities and limitations and additional risks to mitigate including those associated low altitude operations, the FAA contends

that the minimum training and experience requirements for recreational pilots seeking an initial helicopter rating is also appropriate for sport pilot applicants.

Proposed § 61.313(a)(9) would also require applicants to complete at least:

- two hours of flight training enroute to an airport more than 25 nautical miles from where the applicant normally trains;
- three takeoffs and landings at the airport located more than 25 nautical miles from where the applicant normally trains;
- three hours of solo flying in the aircraft for the rating sought on the applicable areas listed in § 61.98; and
- three hours of flight training with an authorized instructor on the areas specified in § 61.311 in preparation for the practical test within the preceding two calendar months from the month of the test.

For the reasons explained in the preceding paragraphs, the FAA proposes these aeronautical experience requirements for sport pilots seeking to add rotorcraft-helicopter privileges because of the unique operational capability of helicopters and the experience requirements listed for a recreational pilot with almost identical operating privileges.

In addition to proposing to allow sport pilots to hold privileges for helicopters, the FAA is likewise proposing to allow sport pilot instructors to obtain or add helicopter privileges to their instructor privileges. Upon reviewing the current flight proficiency requirements in § 61.409 and the current aeronautical experience requirements in § 61.411, the FAA finds that a sport pilot instructor seeking a helicopter privilege should meet similar flight proficiency and experience requirements as a sport pilot instructor seeking an airplane category single-engine class privilege. As explained in section IV.E.10, a person seeking to add a helicopter privilege to a sport pilot instructor certificate would be required to successfully complete a knowledge and practical test, consistent with the FAA's proposal to require a person seeking a sport pilot instructor certificate with an airplane single-engine class privilege to complete a knowledge and practical test.

Under proposed § 61.409, flight instructors would be required to log ground and flight training on the areas of operation that apply to other categories of aircraft, as appropriate, and on the newly proposed areas of operation that are applicable only to helicopters. Specifically, the FAA proposes to add areas of operation that

would require a person seeking a sport pilot instructor certificate with a helicopter privilege to receive training on heliport operations and hovering maneuvers. The FAA notes that these two additional areas of operation are consistent with the areas of operation that the FAA proposes to add to the areas of operation in the flight proficiency requirements of § 61.311 for a person seeking a sport pilot certificate with a helicopter privilege. Finally, the FAA also proposes to add a "special operations" area of operation for helicopters. The base tasks under "special operations" are contained with the Sport Pilot Helicopter ACS under the area of operation labeled "takeoffs, landings, and go-arounds"; therefore, there is no discrepancy between the foundational flight proficiency expectations from a sport pilot to a sport pilot flight instructor pertaining to these special operation tasks. Rather, the FAA is simply aligning the formatting and organization of the Sport Pilot Flight Instructor Helicopter ACS (as it pertains to special operations) with that of the Flight Instructor Helicopter ACS.

While these proposed areas of operation and their applicable tasks would be applicable specifically to helicopters, conversely, the FAA recognizes that there are areas of operation that are inherently inapplicable to helicopters: specifically, ground reference maneuvers, slow flight, and stalls. Therefore, the FAA proposes to except helicopters from these areas of operation in the flight proficiency requirements of § 61.409.⁶⁹ As discussed in the following section, because the practical test for a sport pilot certificate for a rotorcraft-helicopter rating would include these areas of operation, training should involve proficiency for the tasks listed under the applicable areas of operation in the regulation, which are reflected in the Sport Pilot Flight Instructor Helicopter ACS (see section IV.E.9).

In addition, the FAA proposes to add new aeronautical experience requirements to current § 61.411 for applicants seeking a sport pilot instructor certificate with a helicopter privilege. The FAA has determined that the aeronautical experience required for instructional privileges in a helicopter

⁶⁹ The FAA notes that the paragraph designations of the areas of operation in § 61.409 would change based on the addition of helicopter-specific areas of operation. Additionally, during the pendency of this rulemaking, the FAA noted a technical omission in the area of operation "soaring techniques." Specifically, soaring techniques are only applicable to gliders, yet this specificity is not present in the regulatory text. Therefore, the FAA proposes to add applicability language indicating this area of operation is only for gliders.

should mirror the aeronautical experience required for instructional privileges in an airplane. Specifically, proposed § 61.411(h)(1) would require an applicant for a flight instructor certificate with a sport pilot rating seeking a rotorcraft-helicopter privilege to complete at least 150 hours of flight time as a pilot. Under proposed § 61.411(h), this flight time must include at least:

- 100 hours of flight time as PIC in powered aircraft;
- 50 hours of flight time in a rotorcraft-helicopter;
- 25 hours of cross-country flight time;
- 10 hours of cross-country flight time in a rotorcraft-helicopter; and
- 15 hours of flight time as PIC in a helicopter.

The FAA reasons that helicopter experience requirements for a sport pilot instructor should be consistent with the airplane experience requirements for a sport pilot instructor for the following reasons. Helicopters and airplanes are the predominant aircraft that operate in the NAS. With the helicopter privilege being a new privilege to be added to the sport pilot instructor certificate, the FAA finds it reasonable to take a conservative approach and mirror the aeronautical experience requirements that apply to a sport pilot instructor seeking an airplane single-engine privilege. Those aeronautical experience requirements in § 61.411 that apply to a person seeking instructional privileges in a single-engine airplane have been deemed a reasonable level of minimum aeronautical experience since 2004. The FAA does not find any reason to adopt lesser experience requirements for a helicopter privilege at this time given that both airplanes and helicopters have broad access to the NAS, extensive operational capabilities, and are likely the greatest volume of privileges sought by flight instructors.

The FAA recognizes that, initially, there would be no sport pilot instructors who are qualified to provide training for a sport pilot helicopter privilege. To provide flight training to a sport pilot seeking a helicopter privilege, the sport pilot instructor must first obtain the helicopter privilege on their sport pilot certificate before being eligible to obtain the necessary privileges on their sport pilot instructor certificate. In addition, because sport pilots would be limited to operating helicopters with simplified flight control designations, a sport pilot instructor would also be required to obtain the training and endorsement for aircraft with a simplified flight controls

designation required by proposed § 61.31(l).

To address the initial lack of qualified sport pilot instructors, the FAA is proposing to rely on subpart H instructors who already hold rotorcraft category helicopter class ratings on their flight instructor certificates. As discussed in the previous section, the FAA is proposing an amendment to § 61.195(m) that would enable these subpart H flight instructors to receive training and an endorsement at a manufacturer for helicopters with simplified flight controls. Upon obtaining the training and endorsement from an instructor pilot at the manufacturer, the subpart H instructor would be qualified to provide flight training to a sport pilot instructor or a sport pilot who seeks to obtain a helicopter privilege and the § 61.31(l) training and endorsement. This initial reliance on subpart H flight instructors would establish the initial groups of sport pilots and sport pilot instructors with helicopter privileges.

In summary, the FAA seeks to facilitate the operation of certain simple to fly helicopter (*i.e.*, those with simplified flight controls design and designation) for sport pilots and sport pilot flight instructors. The FAA's proposed amendments to §§ 61.311, 61.313, 61.409, and 61.411 would validate that sport pilots seeking to operate simplified flight control rotorcraft-helicopters and flight instructors who instruct in these aircraft are sufficiently trained and tested. As a result, the FAA's proposals balance the demand to enable these helicopter operations while maintaining a rigorous level of training and checking to enable safe operations in the NAS. Sport pilots or flight instructors with a sport pilot rating will not be permitted to operate helicopters without the simplified flight controls design and designation.

9. Sport Pilot and Sport Pilot Flight Instructor for Rotorcraft-Helicopter; Incorporation by Reference

Currently, the required tasks, criteria, and standards for successful completion of a practical test are outlined for sport pilots in three published PTS.⁷⁰ However, because helicopters cannot be certificated under the current § 21.190 and a rotorcraft-helicopter privilege is

not available to sport pilots because by definition a helicopter cannot be a light-sport aircraft, a PTS does not currently exist for sport pilots seeking a rotorcraft category, helicopter class privilege.

In collaboration with the aviation industry and the FAA's routine review processes, the FAA previously identified the need for a new, systematic approach to testing that would (1) provide clearer standards, (2) consolidate redundant tasks, and (3) connect the standards for knowledge, risk management, and skills to the knowledge and practical tests. Therefore, the FAA began to establish the ACSs in 2011 to enhance the testing standard for the knowledge and practical tests. The goal in creating the ACS was to drive a systematic approach to the airman certification process, including knowledge test question development and the conduct of the practical test. In cooperation with the ACS Working Group, established through the Aviation Rulemaking Advisory Committee (ARAC),⁷¹ the FAA integrated "aeronautical knowledge" and "risk management" elements into the existing areas of operations and tasks set forth in the PTS. Therefore, the ACS is a comprehensive presentation integrating the standards for what an applicant must know, consider, and do to demonstrate proficiency to pass the tests required for issuance of the applicable airman certificate or rating.

Because the FAA is actively converting all PTSs to ACSs in collaboration with the ACS Working Group, the FAA does not find it appropriate to draft a Sport Pilot PTS for Rotorcraft-Helicopter, as the other Sport Pilot testing standards are situated. Rather, the FAA has drafted two new ACSs for helicopters with simplified flight controls: (1) Sport Pilot for Helicopter—Simplified Flight Controls ACS, FAA-S-ACS-26 (Sport Pilot Helicopter ACS) and (2) Sport Flight Instructor for Helicopter—Simplified Flight Controls ACS (Sport Flight Instructor Helicopter ACS). Each ACS establishes the aeronautical knowledge, risk management, and flight proficiency standards for sport pilot practical tests and flight instructor proficiency checks for light-sport category aircraft in the rotorcraft-helicopter class for sport pilots and for sport pilots with a flight instructor rating. The Sport Pilot Helicopter ACS contains the following areas of operation: preflight preparation;

⁷⁰ Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Airplane Category, Rotorcraft Category, and Glider Category; Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Lighter-Than-Air Category; Sport Pilot and Sport Pilot Flight Instructor Rating Practical Test Standards for Powered Parachute Category and Weight-Shift-Control Category.

⁷¹ The ARAC is a body established under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The ARAC ACS Working Group is comprised of the FAA, advocacy groups, instructor groups, training providers, academic institutions, and labor organizations.

preflight procedures; airport and heliport operations; hovering maneuvers; takeoffs, landings, and go-arounds; performance maneuvers; navigation; emergency operations; and post-flight procedures. Similarly, the Sport Flight Instructor for Helicopter contains the following areas of operation: fundamentals of instructing; technical subject areas; preflight preparation; preflight lesson on a maneuver to be performed in flight; preflight procedures; airport and heliport operations; hovering maneuvers; takeoffs, landings, and go-arounds; fundamentals of flight; performance maneuvers; emergency operations; special operations; and postflight procedures.

Similar to the current practical test and PTS/ACS framework for sport pilots, the FAA proposes to incorporate the two ACSs into the regulations to delineate what an applicant must demonstrate on a practical test to attain privileges for a sport pilot certificate with a rotorcraft-helicopter privilege or flight instructor certificate with sport pilot rating and rotorcraft-helicopter privilege. First, the FAA proposes to revise § 61.307, which sets forth the required tests an applicant must take to obtain a sport pilot certificate. Specifically, proposed new § 61.307(b)(1) would precisely reflect the standards that a person must successfully demonstrate on a practical test for a sport pilot certificate with rotorcraft-helicopter privilege: those knowledge, risk management, and skill elements for each area of operation on the Sport Pilot Helicopter ACS. Proposed new § 61.307(b)(2) provides the required incorporation by reference language, including how the Sport Pilot Helicopter ACS is made readily available to the public. Similarly, the FAA proposes to revise § 61.405, which sets forth the required tests an applicant must obtain to obtain a flight instructor certificate with a sport pilot rating. Proposed new § 61.405(b)(3) would precisely reflect the standards that a person must successfully demonstrate on a practical test for a flight instructor certificate with a sport pilot certificate rotorcraft-helicopter privilege (*i.e.*, those knowledge, risk management, and skill elements for each area of operation on the Sport Flight Instructor Helicopter ACS). Proposed new § 61.405(b)(4) provides the required incorporation by reference language and how the Sport Flight Instructor Helicopter ACS is made available to the public.

Incorporation by reference is a mechanism that allows Federal agencies to comply with the requirements of the Administrative Procedure Act (APA) to

publish rules in the **Federal Register** and the CFR by referring to material published elsewhere.⁷² Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register**. In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,⁷³ the FAA makes the Sport Pilot ACS for Rotorcraft-Helicopter reasonably available to interested parties by providing free online public access to view on the FAA Training and Testing website at faa.gov/training_testing. The ACS is available for download, free of charge, at the provided web address. The FAA will continue to provide the ACS to interested parties in this manner. In addition to the free online material on the FAA's website, printable versions are available from the FAA. Additionally, all ACSs proposed to be incorporated by reference are contained in the docket for this NPRM for inspection.

The FAA recognizes that on December 12, 2022, the FAA published the Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference (ACS IBR) NPRM.⁷⁴ As it pertains to this NPRM, the ACS IBR NPRM proposed to revise certain part 61 regulations to incorporate the three aforementioned PTSs into the requirements for sport pilots (see footnote 70). The FAA will reconcile this proposal with the ACS IBR final rule as appropriate.

10. Require Sport Pilots and Flight Instructors With a Sport Pilot Rating Seeking To Add an Airplane or Helicopter Privilege To Accomplish a Knowledge and Practical Test

Currently, to obtain a sport pilot certificate or a flight instructor certificate with a sport pilot rating, a person must pass a practical test with an examiner in the category and class of aircraft for the initial privileges for that

certificate.⁷⁵ Once a person possesses a sport pilot certificate or flight instructor certificate with a sport pilot rating and wishes to add privileges to their certificate, the person must pass a proficiency check with an authorized instructor rather than a practical test with an examiner.⁷⁶ This proficiency check requirement currently applies to a person seeking to add an airplane single engine privilege to their certificate. Specifically, under the current framework of § 61.321, a person seeking to obtain privileges to operate an additional category or class of aircraft must (1) receive a logbook endorsement validating they received training on certain aeronautical knowledge and flight proficiency requirements; (2) complete a proficiency check; and (3) receive an endorsement certifying they are proficient in the applicable areas of operation and aeronautical knowledge areas; and (4) complete an application. Similarly, under the current framework of § 61.419, a certificated flight instructor with a sport pilot rating seeking to provide training in an additional category or class of aircraft must meet the same qualifying conditions (*i.e.*, training, endorsements, and a proficiency check).

Given the proposed expansion of certificated light-sport category aircraft that a sport pilot may operate and the addition of rotorcraft-helicopters as light-sport category aircraft, the FAA contends that a proficiency check with an authorized instructor is no longer a sufficient method of evaluation or validation when qualifying a sport pilot or flight instructor with a sport pilot rating to operate or provide training in an airplane or helicopter in the national airspace system. Therefore, the FAA is proposing to amend §§ 61.321 and 61.419 to require sport pilots and flight instructors with a sport pilot rating seeking to add an airplane or helicopter privilege to their existing sport pilot certificate or flight instructor certificate, to accomplish a knowledge test and practical test under §§ 61.307 and 61.405, respectively.

With the expansion of the aircraft models, weight, and speed that a sport pilot may operate under proposed § 61.316, performance and design limitations and the proposed addition of a rotorcraft-helicopter privilege, the FAA contends that a knowledge and practical test is necessary to appropriately validate that a sport pilot can conduct these airplane and helicopter operations safely. The rigor of an FAA knowledge and practical test

⁷² 5 U.S.C. 552(a), which states, "except to the extent that a person has actual or timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the **Federal Register** and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register."

⁷³ 5 U.S.C. 552(a) requires that matter incorporated by reference be "reasonably available" as a condition of its eligibility. Further, 1 CFR 51.5(a)(2) requires that agencies seeking to incorporate material by reference discuss in the preamble of the proposed rule the ways that the material it proposes to incorporate by reference is reasonably available to interested parties and how interested parties can obtain the material.

⁷⁴ 87 FR 75955.

⁷⁵ 14 CFR 61.307, 61.405.

⁷⁶ 14 CFR 61.321, 61.419.

using FAA-approved certification standards is significantly greater than that of a proficiency check conducted by a flight instructor. FAA examiners are trained and qualified annually to validate that the conduct of a practical test meets specific standards and criteria during the evaluation of an applicant. The FAA believes that the use of the airmen certification standards qualifying a pilot for a certificate, rating, or privilege will appropriately mitigate the risk associated with the expansion of flight operations by sport pilots in the NAS. In other words, the aircraft may now vary and perform in such an extensive way such that a proficiency check can no longer adequately validate that a pilot can proficiently operate a light-sport category airplane single engine or rotorcraft-helicopter safely in the national airspace system.

Therefore, the proposed knowledge and practical test requirement would validate competency by replacing the regulatory requirements in §§ 61.321 and 61.419 that currently permit the conduct of a proficiency check to obtain a new airplane or helicopter privilege for sport pilots and other pilots who hold a higher grade of certificate who want to add that category and class privilege at the sport pilot level.⁷⁷ Specifically, proposed § 61.321(e) would require a person who seeks to add an airplane single-engine land or sea or rotorcraft-helicopter land or sea privilege to their pilot certificate to accomplish a knowledge and practical test for that category privilege, as specified in § 61.309. Similarly, proposed § 61.419(e) would require a person who seeks to add an airplane single engine land or sea or rotorcraft-helicopter land or sea privilege to their sport pilot flight instructor certificate to accomplish a knowledge and practical test for that category privilege, as specified in § 61.405. Because these regulations require compliance with §§ 61.307 and 61.419, the practical tests would be aligned to the Sport Pilot Helicopter ACS as proposed in §§ 61.307(b)(1) and 61.405(b)(3), as applicable, for a rotorcraft-helicopter privilege. As previously noted, the ACS IBR rulemaking would address the material on practical tests for an airplane single engine privilege in the light-sport category, and the FAA will reconcile the proposals as the respective

rulemakings progress. The FAA notes that it is retaining §§ 61.321(a) and (c) and 61.419(a) and (c); therefore, these pilots must complete the required training and obtain an authorized instructor recommendation before evaluation by an examiner authorized by the FAA.

11. Aviation Training Device or Flight Simulation Training Device Credit, Removal of Certain Light-Sport Aircraft References, and Other Amendments

The FAA proposes two additional amendments to support modernization of the sport pilot regulations. Currently, the FAA does not permit the use of FSTDs or ATDs to meet sport pilot experience requirements for a certificate or rating. First, the FAA proposes to permit sport pilot applicants to use a qualified FSTD or a FAA-approved ATD (basic or advanced) to meet some of the experience requirements for a sport pilot certificate through the proposed § 61.313(b). Specifically, the FAA would permit sport pilots to use up to 2.5 hours of training credit in an FSTD and ATD representing the appropriate category and class of aircraft to meet the experience requirements of part 61. The FAA notes that the time in an FSTD or an ATD may be combined to meet the 2.5 hours of training, but the proposed regulation does not permit 2.5 hours in each device independently to count towards the experience requirements.⁷⁸

The FSTD and ATD credit allowance proposal is consistent with the FAA's long-standing regulations throughout part 61 that allow simulation credit under certain circumstances. Furthermore, for those part 61 flight schools or those flight school operators who possess a part 141 air agency certificate, this proposal provides training device credit for pilots pursuing an initial pilot certificate or rating. In support, the FAA reasons that permitting the use of FAA evaluated, qualified, and approved FSTDs and ATDs allows students to conduct procedural tasks of various maneuvers in advance of doing those same tasks in an aircraft, thereby reducing the risk of making mistakes during the flight portion of the training and when practicing emergency procedures. Allowing pilot time credit in an FSTD and ATD reduces risk for those students or pilots in training, who then will accomplish those same tasks or maneuvers in an aircraft. Moreover, conducting training in FSTDs and ATDs

reduces cost, teaches safe operational procedures in advance of flight operations, permits practicing emergency procedures without undue risk, and ultimately reduces risk during pilot training.

Second, the FAA proposes conforming amendments to remove reference to light-sport aircraft in §§ 61.45, 61.313, and 61.325. The removal of the reference to light-sport aircraft in subpart J is consistent with the FAA's proposal to remove the definition for these aircraft in § 1.1. Where appropriate, the FAA proposes that the reference to light-sport aircraft will be replaced with a reference to newly proposed § 61.316, which sets forth the performance limitations for the aircraft a sport pilot may operate. As explained in section IV.B.2 of this preamble, this change in terminology is accompanied by broadening some of the limitations that currently exist in the definition of light-sport aircraft in § 1.1.

Section 61.3 speaks to pilot certificates, ratings, and authorizations that are required to operate aircraft in the United States. Currently, the privileges provided in § 61.313 are not codified in § 61.3. The FAA also proposes a conforming amendment to § 61.3 that adds a new paragraph requiring that a sport pilot exercising the privileges listed in § 61.313 receives a qualifying logbook endorsement for the appropriate category and class privilege, as applicable. This clarification to § 61.3 is required because sport pilots do not obtain a rating issued on a sport pilot certificate, but instead they receive an endorsement in their logbook facilitating the appropriate category and class "privilege," as referenced in § 61.317.

Finally, during this rulemaking, the FAA noted that § 61.305 is improperly formatted, as it sets forth a paragraph (a) but no corresponding paragraph (b). Therefore, the FAA is proposing to redesignate existing paragraph (a) as introductory text, existing paragraph (a)(1) as new paragraph (a), and existing paragraph (a)(2) as new paragraph (b). There are no substantive changes proposed for this section; these are only formatting corrections.

F. Repairman (Light-Sport) Certificates

Part 65 provides the requirements for certification of airmen other than flight crewmembers, including certification of a repairman (light-sport aircraft) in subpart E. In addition to meeting the general eligibility requirements (e.g., age, language) set forth by § 65.107(a)(1), an applicant for a repairman certificate (light-sport aircraft) must complete

⁷⁷ The FAA notes that the provision would apply if a pilot held a higher grade certificate as well. For example, if a pilot held a commercial pilot certificate with rotorcraft category and helicopter class ratings and sought to operate a light sport category airplane single engine land, the pilot would be required to take the practical test under this proposal.

⁷⁸ For example, a person may complete 1 hour of training in an FSTD and 1.5 hours in an ATD to meet the 2.5 hours comprehensively. However, a person may not count 2.5 hours in an FSTD and 2.5 hours in an ATD.

specified training requirements.⁷⁹ These specific training requirements are first dependent on whether an applicant seeks an inspection rating or a maintenance rating (or a combination thereof).⁸⁰

For an inspection rating, a person must complete a 16-hour training course acceptable to the FAA on inspecting the particular class of experimental light-sport aircraft for which the person intends to exercise the privileges of this rating. For a maintenance rating, instructional hours are dependent on the class of aircraft on which the repairman intends to exercise the privileges of the certificate and rating. The specific hours for each class of aircraft are the minimum required to demonstrate a person is sufficiently knowledgeable about the class of aircraft they perform work on. For example, a repairman certificate (light-sport aircraft) with a maintenance rating and airplane class privileges requires 120 hours of instruction in a training course pursuant to § 65.107(a)(3)(ii)(A), whereas a maintenance rating with weight-shift control aircraft class privileges requires 104 hours of instruction pursuant to § 65.107(A)(3)(ii)(B).⁸¹

The holder of a repairman certificate (light-sport aircraft) with an inspection rating is limited to performing the annual condition inspection on an aircraft that is owned by the holder, that has been issued an experimental certificate for operating light-sport aircraft under § 21.191 and that is in the same class of aircraft for which the holder has completed training. The holder of a repairman certificate (light-sport aircraft) with a maintenance rating is limited to performing or inspecting maintenance on, and approving for return to service, aircraft issued a special airworthiness certificate in the light-sport category under § 21.190, performing the annual condition inspection on aircraft that have an experimental certificate for operating light-sport aircraft under § 21.191 and

that is in the same class of aircraft for which the holder has completed training.

The repairman certificate identifies the rating (*i.e.*, inspection or maintenance) held and the appropriate privileges/limitations of each rating by class, which are set forth by § 65.107(b) through (d), as applicable. For example, if the applicant meets the eligibility requirements and has completed the applicable training for conducting maintenance on the glider class of light-sport aircraft, the repairman certificate would list “Maintenance—glider” in the privileges and limitations section of the airman certificate. Therefore, that person could only exercise the privileges and limitations set forth by § 65.107(c) and (d) on the glider class of aircraft.

Further, under § 65.107(d), a certificated repairman (light-sport aircraft) with a maintenance rating is not permitted to approve for return to service an aircraft (or any part thereof) unless that person has previously performed the work concerned satisfactorily. If the person has not previously performed such work, then the person may show the ability to do the work by performing it to the satisfaction of the FAA or under direct supervision of certain persons.⁸² These requirements (*i.e.*, class specific privileges/limitations and performance history) provide for a repairman who is sufficiently experienced and knowledgeable on the aircraft and the specific work being performed.

1. Revisions to Terminology (“Light-Sport Aircraft” and “Class”)

The FAA is proposing several amendments to terminology to maintain clarity with the subsequently discussed substantive proposals. Currently, the term “light-sport aircraft” is defined in § 1.1; however, because the FAA is proposing to remove the definition of “light-sport aircraft” from § 1.1, as discussed in section IV.B.2, the FAA proposes to remove the term throughout subpart D of part 65.

First, the FAA proposes to change the certificate title from “repairman certificate (light-sport aircraft)” to “repairman certificate (light-sport).” Because future aircraft certificated in the light-sport category will not necessarily conform to the current definition of light-sport aircraft, the FAA seeks to reduce confusion as to the designation of current light-sport

aircraft versus future aircraft with a special airworthiness certificate in the light-sport category. Specifically, these repairman certificates would simply be issued as a repairman certificate (light-sport) after the implementation of a final rule.

The FAA notes that, should this proposal be adopted, repairman certificates issued before an effective date specified in the final rule would be valid without additional training or reissuance to account for the broader scope of light-sport category aircraft characteristics. Preserving the privileges of repairman certificates issued before the effective date of the final rule, despite the expansion of aircraft upon which the holder of the certificate may perform work, would not result in a reduction in safety for several reasons. The repairman certificate extends privileges only for the category⁸³ of aircraft that a person has received training and testing on, regardless of time of issuance. Additionally, the limitations found in current § 65.107(d) are retained in this proposal.⁸⁴ Thus, a certificated light-sport repairman with a maintenance rating is, and would continue to be, restricted from approving for return to service any aircraft or part thereof unless the repairman previously performed the work satisfactorily, shows the ability to do the work by performing it to the satisfaction of the FAA or performs the work under direct supervision of certain defined persons. The FAA is not proposing changes to existing privileges or limitations of either rating. The FAA finds the existing requirements, as discussed, adequately address the expansion of aircraft that could be inspected or maintained under the current repairman certificate.

Second, the FAA proposes to remove the term “light-sport aircraft” to indicate the category of aircraft a repairman is certificated to work on and, instead, refer only to “aircraft” in these instances. Rather, the regulations would directly cross-reference the appropriate aircraft as provided in part 21 that a repairman (light-sport) could inspect and maintain. For example, proposed § 65.109(a) (which would be a new section as part of a reorganization, as subsequently discussed) would provide the privileges of a repairman certificate (light-sport) with an

⁷⁹ As discussed in the 2004 final rule, the FAA established training requirements for a repairman (light-sport aircraft) certificate because owners of these aircraft cannot show that the owner manufactured the major portion of the aircraft, unlike a builder of an experimental amateur-built aircraft, and therefore cannot show that the owner would have the skill necessary to inspect and maintain the light-sport aircraft. 69 FR 44848.

⁸⁰ A person must meet the eligibility requirements set forth by § 65.107(a)(1) for a repairman certificate (light sport aircraft) before the person is eligible for an inspection rating or maintenance rating pursuant to § 65.107(a)(2)(i) and (3)(i).

⁸¹ Section 65.107(a)(3)(ii) also provides training course instruction hour requirements for powered parachute class privileges, lighter than air class privileges, and glider class privileges.

⁸² These persons include an appropriately rated mechanic, or a certificated repairman, who has previous experience in the operations concerned, as provided in § 65.107(d).

⁸³ The term “category” in this instance is used in the context of airman certification as defined in § 1.1. As subsequently discussed, the FAA is proposing to replace the term “class” as used in § 65.107 with “category.”

⁸⁴ As subsequently discussed, current § 65.107(d) would relocate to new § 65.109(c) under this proposal.

inspection rating and would set forth the type of aircraft a holder may perform the annual condition inspection on in proposed § 65.109(a)(2).

Third, the FAA proposes to replace references to “class” of aircraft with “category” of aircraft in the proposed amendments to §§ 65.107 and 65.109.⁸⁵ Section 1.1 sets forth definitions for category and class. Both terms are defined, first, as used with respect to the certification, ratings, privileges, and limitations of airmen and, second, as used with respect to the certification of aircraft. Under § 65.107, the references to “class” are used in the context of classes of aircraft certification, not airmen certification. For example, § 65.107(a)(3)(ii) sets forth the training course hours of instruction required for airplanes, weight-shift control aircraft, powered parachutes, lighter than air aircraft, and gliders, which are labeled as classes. These aircraft are, in fact, classes under the definition provided in § 1.1 for class as used with respect to aircraft certification.

The FAA has determined using the term “category” in the context of airman certification as defined in § 1.1,⁸⁶ is more appropriate because § 65.107 specifically prescribes repairman certification, ratings, privileges, and limitations (*i.e.*, airman certification⁸⁷). Therefore, the FAA is proposing to replace the term “class” in § 65.107 with “category” as follows:

The term “class” as used in current:	... is replaced with “category” as used in proposed:
§ 65.107(a)(2)(ii)	§ 65.107(c).
§ 65.107(a)(3)(ii)	§ 65.107(d).
§ 65.107(b)(3)	§ 65.109(a)(3).
§ 65.107(c)(3)	§ 65.109(b)(3).

Additionally, the existing regulations in § 65.107(a)(2)(ii) and (a)(3)(ii) include the term “particular” as a modifier to

“class.” The FAA has received numerous inquiries seeking clarification as to what is meant by “particular” in these instances. Given the FAA’s proposal to replace the term class with the term category, the FAA finds the modifier of “particular” as superfluous, as there is no distinction between a “particular category” and a category. Accordingly, the FAA proposes to remove the term “particular” from this section.

Finally, where existing § 65.107(c)(1)⁸⁸ uses the term “approve and return to service” in the context of repairman certificate privileges, the FAA is proposing to revise to “approve for return to service.” Because an aircraft is not in service until it is flown or operated, the holder of a repairman or mechanic certificate cannot “return” the aircraft to service under the privileges of that certificate as flying an aircraft is not a privilege bestowed by any regulation in part 65. The FAA acknowledged the problem with the phrasing and its inconsistency with the language in the part 43 maintenance regulations in a legal interpretation,⁸⁹ where the FAA stated that the wording of the phrase could be improved by removing the word “and” and replacing it with “for.” Accordingly, the FAA is proposing to revise the language in §§ 65.81(a), 65.85(a) and (b), and 65.87(a) and (b), and proposed § 65.109(b) (currently housed in § 65.107(c)(1); the relocation of this regulation is subsequently explained) to more accurately capture the intended privileges of the certificate. Additionally, the FAA proposes to revise certain gender references within those regulations.

2. Light-Sport Repairman Training Courses

As previously discussed, a person must meet certain eligibility

requirements set forth by § 65.107 to obtain a repairman (light-sport aircraft) certificate. Specifically, § 65.107 sets forth a table establishing the general applicability requirements, as well as the specific requirements to obtain an inspection rating and a maintenance rating. After two decades of implementation and receiving stakeholder feedback, the FAA recognizes that the section is difficult to navigate. Therefore, the FAA proposes to reorganize the table into paragraphs, which the FAA believes will improve readability and understanding of the requirements.

Specifically, proposed § 65.107 would set forth only the eligibility and training course requirements, while new proposed § 65.109 would set forth the privileges and limitations. Within § 65.107, proposed paragraph (a) would provide the ratings that may be issued on a repairman certificate (light-sport);⁹⁰ proposed paragraph (b) would set forth the general requirements for a repairman certificate (light-sport); proposed paragraph (c) would set forth the training course requirement for an inspection rating; proposed paragraph (d) would set forth the training course requirement for a maintenance rating, and proposed paragraph (e) would set forth certain parameters that training course providers are expected to meet. Within new § 65.109, proposed paragraph (a) would set forth the privileges and limitations of an inspection rating, proposed paragraph (b) would set forth the privileges and limitations of a maintenance rating, and proposed paragraph (c) would set forth additional limitations for repairman certificate (light-sport). Table 2 is provided for clarity.

TABLE 2

Current regulation:	Contains the requirements for:	Reorganized in proposed:
§ 65.107(a)(2) and (3)	Ratings	§ 65.107(a)
N/A	General eligibility requirements, including a requirement for a test.	⁹¹ § 65.107(b)
§ 65.107(a)(2)	Inspection rating training requirements	§ 65.107(c)
§ 65.107(a)(3)	Maintenance rating training requirements	§ 65.107(d)
new	Training course providers	§ 65.107(e)
§ 65.107(b)	Inspection rating privileges and limitations	§ 65.109(a)

⁸⁵ As subsequently discussed, the FAA proposes to bifurcate § 65.107 into two sections; therefore, proposed § 65.109 is a new section, but contains largely the same information as set forth in current § 65.107(b) through (d).

⁸⁶ Section 1.1 defines category, as used with respect to the certification, ratings, privileges, and limitations of airmen, as a broad classification of

aircraft. Examples include: airplane; rotorcraft; glider; and lighter-than-air.

⁸⁷ The FAA notes that part 65 designation of category and class aligns with the aircraft category and classes as specified in § 61.5(b)(1).

⁸⁸ As subsequently discussed, current § 65.107(c) would relocate to new § 65.109(b) under this proposal.

⁸⁹ Legal Interpretation to Wayne A. Forshey (July 9, 2010).

⁹⁰ This paragraph is new to explicitly state the ratings that the FAA may issue on a repairman (light-sport) certificate. Current § 65.107 only implies that the FAA may issue these ratings.

TABLE 2—Continued

Current regulation:	Contains the requirements for:	Reorganized in proposed:
§ 65.107(c)	Maintenance rating privileges and limitations	§ 65.109(b)
§ 65.107(d)	Additional limitations for repairman (light-sport) certificate holders.	§ 65.109(c)

3. Training Course Content for Maintenance Rating & Incorporation by Reference (1 CFR Part 51)

As discussed, current § 65.107 sets out the training requirements for a repairman certificate (light-sport aircraft) for maintenance and inspection ratings. Currently, the requirements set forth training course instruction hours for these ratings (*i.e.*, a 16-hour training course under § 65.107(a)(2) for an inspection rating and/or varied hours of instruction under § 65.107(a)(3) for a maintenance rating, which as noted depend on the aircraft class for the privileges sought). In the 2004 final rule, the FAA declined to align the curriculum content for a repairman certificate (light-sport aircraft) with a maintenance rating with the training and curriculum subjects for maintenance in part 147 (aviation maintenance technician schools), which were located in then-appendices B, C, and D, because many of the technical subjects set forth at that time were not relevant to light-sport aircraft.⁹² Therefore, the FAA implemented varied training hour requirements dependent on the class of aircraft after finding that differing training hours were required to address distinct knowledge elements between classes.⁹³ The FAA no longer

⁹¹ The FAA notes a minor change in the proposed regulatory text pertaining to the eligibility requirement to read, speak, write, and understand English for a repairman certificate (light-sport). Currently, § 65.107(a)(1)(ii) states that if a person is prevented from reading, speaking, writing, or understanding English due to a medical reason, the FAA may place a limitation on the repairman certificate, as necessary, to ensure safe performance of the actions authorized by the certificate and rating. However, in practice, the FAA issues an exemption to the repairman applicant in conjunction with the application (on FAA Form 8610–3) and temporary airman certificate (FAA Form 8060–4). The temporary certificate (and subsequent permanent certificate) would then list the conditions and limitations from the requirement to read, speak, write, and/or understand English (as applicable) as granted under the part 11 exemption. This practice is in alignment with the treatment of all other persons certificated under part 65 who have an identified obstacle to meeting the English requirements. Therefore, the FAA is removing the limitation direction as superfluous in proposed § 65.107(b)(2).

⁹² 69 FR 44849.

⁹³ *Id.* Distinct knowledge elements between classes could include part 39 and part 43 requirements; type-certificated engines, floats, and composite structures; and two- and four-cycle engines and electrical systems.

believes this is the best approach for maintenance training courses for repairman (light-sport) and proposes the revisions described in this section, which would require repairman to have the appropriate knowledge and skills to maintain light-sport category aircraft and subsequently demonstrate the requisite skill to determine whether the aircraft is in a condition for safe operations. The FAA does not propose changes, however, to the inspection training course requirements.

Since the 2004 final rule, the FAA has published the Aviation Mechanic General, Airframe, and Powerplant ACS (Mechanic ACS). The Mechanic ACS is required as the training curriculum for aviation maintenance technician schools certificated under part 147⁹⁴ and as the testing standard (as of the implementation date of August 1, 2023) for all mechanic certificates issued under part 65.⁹⁵ An ACS is a comprehensive presentation that integrates standards for what an applicant must know, consider, and do to demonstrate proficiency to pass the tests required for the issuance of a certificate or rating. The Mechanic ACS includes high-level subjects (*e.g.*, Fundamentals of Electricity and Electronics, Flight Controls, Engine Inspection), which are broken down into components that include knowledge, risk management, and skill elements relevant to that subject.

Notwithstanding that a repairman is limited in the scope of their privileges to performing maintenance and inspection on light-sport category aircraft, former light-sport category aircraft and light-sport kit-built aircraft, as well as being limited to the aircraft category on which they have received the requisite training, a repairman nevertheless performs the same type of work as a mechanic. As such, it is reasonable to expect a repairman to demonstrate similar knowledge and skills as mechanics (limited in scope applicable to the aircraft category they will work on). The FAA proposes that the Mechanic ACS would most efficiently and effectively set forth the important knowledge and skill elements

that should be included in a training course for a maintenance rating on a repairman certificate (light-sport). In other words, using the Mechanic ACS as a standard for repairman training, but limited in scope as appropriate to the category of aircraft for which the repairman intends to exercise the privileges of the certificate, provides a flexible and performance-based standard for repairman training.

For these reasons, the FAA is proposing to replace the currently specified aircraft class and training hour requirements for a maintenance rating with a performance-based standard for repairman (light-sport) training that will support existing and future categories of aircraft. As such, the FAA is proposing to require training courses to, at a minimum, include the knowledge, risk management, and skill elements for each subject contained in the Mechanic ACS, as appropriate to the category of aircraft being taught. Additionally, the FAA is removing the hours requirement for a maintenance rating training course in each category of aircraft. Similar to the training curriculum for part 147 certificated aviation maintenance technician schools, the Mechanic ACS provides a comprehensive set of standards such that allows a training course provider to offer a training timeline that is best suited to that particular training course and that category of aircraft, while requiring that the applicant receives training on all important subject areas to maintain safety.⁹⁶ Therefore, proposed § 65.107(d) requires a person seeking a maintenance rating to complete a training course accepted by the Administrator that includes the knowledge, risk management, and skill elements for each subject contained in the Mechanic ACS appropriate to the category of aircraft for which the person intends to exercise the privileges of the

⁹⁶ The FAA believes the hours of training maintenance rating course providers are required to design their courses to under the existing regulations would be similar to the hours training course providers would include in new/revised courses meeting the proposal because those courses should already be teaching students the required information on how to maintain their class of aircraft. However, the level of detail offered by each course provider could add or remove hours from the course.

⁹⁴ 14 CFR 147.17.

⁹⁵ 14 CFR 65.75(a) and 65.79(b).

rating (in addition to meeting the general eligibility requirements in proposed § 65.107(a), which are largely unchanged from the current requirements of § 65.107(a)(1)).⁹⁷

In 2022, the Mechanic ACS was incorporated by reference⁹⁸ into part 65 as the testing standard for issuance of a mechanic certificate under part 65, subpart D.⁹⁹ As a result of the proposal to use the Mechanic ACS as a standard under proposed § 65.107(d), the FAA proposes to amend § 65.23(a)(2) to add § 65.107 in the referenced regulations for which the incorporation by reference of the Mechanic ACS applies. In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,¹⁰⁰ the FAA makes the Mechanic ACS reasonably available to interested parties by providing free online public access to view on the FAA ACS website at: [faa.gov/training_testing/testing/acs](https://www.faa.gov/training_testing/testing/acs). Additionally, the Mechanic ACS is available for download, free of charge, at the provided web address.

The FAA notes that it is not proposing any revisions to the current training course content for an inspection rating. Applicants for a repairman certificate (light-sport) with an inspection rating must complete a 16-hour training course acceptable to the FAA on inspecting the particular class of aircraft for which the applicant intends to exercise the privileges of the inspection rating pursuant to current § 65.107(a)(2)(ii), which is proposed § 65.107(c) in the reorganization. As discussed in the original implementation of the inspection rating training course, the 16-hour course is designed to train an individual owner with no background

in aviation maintenance or inspection to perform a satisfactory annual condition inspection on their experimental light-sport aircraft and, based on that inspection, make a determination if that aircraft is safe to fly. Given this limited scope of privileges of the inspection rating (*i.e.*, annual condition inspections only) compared to the broad scope of privileges of a maintenance rating (*i.e.*, all inspections and maintenance), the FAA is not proposing any changes to this requirement relative to training course content.

As a result of the proposed change to training course standards for the maintenance rating, existing course providers would need to review their existing training courses to determine if those courses include the appropriate knowledge, risk management, and skill elements from the Mechanic ACS. If revision is necessary, the course provider would have to submit the revised course to the FAA for acceptance. To allow for a transition period between the current and proposed training standards, the FAA would delay the compliance requirement for having a training course containing the knowledge, risk management, and skill elements of the Mechanic ACS. The FAA will allow for a 6-month compliance timeframe, as evidenced in proposed § 65.107(d)(1). During that time period, both an hours-based training course (developed under current regulations) or an ACS-based training course (developed under the proposed regulations) may be accepted by the FAA for issuance of the maintenance rating on a repairman certificate (light-sport). However, an applicant for a repairman certificate (light-sport) with a maintenance rating who seeks privileges for one of the new categories of aircraft (*i.e.*, rotorcraft or powered-lift), would only be eligible for the certificate if the training was an ACS-based training course, since hours-based training courses developed under current regulations do not address these aircraft categories.

The FAA notes that the agency will continue its current practice of accepting these training courses, providing an acceptance letter to the course provider, and maintaining a web-based computer database record on all accepted training providers available to both industry and FAA personnel.¹⁰¹ However, the FAA currently issues course acceptance with a 24-month expiration. Current practice mandates that the FAA will notify a training course provider 60 days before the end of the acceptance period, at which time

the training provider must reapply for continuing authority to provide the training. Because these training courses will now be aligned with the ACS, the FAA does not see a need to limit the course acceptance timeframe for light-sport repairman inspection or maintenance rating training courses to reexamine a training course provider's training course content. Therefore, a training course that is found acceptable to the FAA will no longer require a 24-month re-application process and will continue to be acceptable, until such time as it is found to be not acceptable (see section IV.F.5 for further discussion on acceptability).

4. Training Course Exams

In 2004, the NTSB commented on the FAA's proposal pertaining to the training required of repairman (light-sport aircraft) applicants and suggested that the FAA implement a testing requirement.¹⁰² Currently, training providers issue a written exam to students, successful completion of which is measured at 80%. However, neither the examination nor the 80% passing standard are codified within the regulation. In alignment with the NTSB, the FAA continues to believe that a test is an important step within the airman certification process; specifically, the written exam serves as a benchmark to determine if an applicant possesses the appropriate knowledge to obtain the privileges of a repairman certificate. In other words, the FAA finds that a written test establishes the requisite level of safety required of a certificated repairman today. As such, the FAA is proposing to add a requirement in proposed § 65.107(b), which is the new section for the general eligibility requirements, to require an applicant for an inspection or maintenance rating to pass a written exam administered by the training course provider that covers the content of the training course. Rather than memorializing an 80% pass rate as dictated by FAA policy, the minimum passing grade requirement (70 percent) that applies to all part 65 tests in § 65.17(b) would apply to § 65.107(b).

5. Basis for Training Course Acceptance

Pursuant to § 65.107(a)(2)(ii) and (a)(3)(iii), a training course must be acceptable to the FAA. When the FAA implemented these training courses, the 2004 final rule indicated that the FAA would look at five areas in the determination of acceptability. These

⁹⁷ The changes to § 65.107(a) are described in section V.F.2.

⁹⁸ Incorporation by reference is a mechanism that allows Federal agencies to comply with the requirements of the Administrative Procedure Act (APA) to publish rules in the **Federal Register** and the Code of Federal Regulations by referring to material published elsewhere. Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register**. Because 5 U.S.C. 552(a) requires the Director of the Federal Register to approve material to be incorporated by reference, incorporation by reference is governed by the Office of the Federal Register and as promulgated in its regulations: 1 CFR part 51. Specifically, 1 CFR part 51 provides certain requirements that a regulatory incorporation by reference must contain.

⁹⁹ Aviation Maintenance Technician Schools, Interim Final Rule, 87 FR 31391 (May 24, 2022).

¹⁰⁰ Section 552(a) of title 5, United States Code, requires that matter incorporated by reference be "reasonably available" as a condition of its eligibility. Further, 1 CFR 51.5(b)(2) requires that agencies seeking to incorporate material by reference discuss in the preamble of the final rule, the ways that the material it incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the material.

¹⁰¹ FAA Order 8000.84B.

¹⁰² 69 FR 44848. As discussed in the 2004 final rule, the FAA stated that a training course should contain a written test that the applicant should pass with a minimum score of 80%.

areas included: passing grade, adherence to training guidance in FAA advisory material, the provider's training course outline, and the final written test. Additionally, the FAA referenced the appendices, curriculum subjects, and level 3 training standard, as defined in part 147 at that time.¹⁰³ The FAA developed guidance materials that direct a prospective training course provider to submit specified information such as information regarding the provider, the course outline, a description of training aids used in the course, handbooks, sample certificates of completion, course tests, a description of the instructors' qualifications, a schedule of where and when training will be provided, and a description of the facilities if the course is provided at a fixed location. However, these desired components are not situated in the regulations.

The FAA believes it is crucial to set minimum standards for training course providers to provide quality training for those persons seeking a repairman certificate (light-sport) with associated ratings. FAA Advisory Circular 65–32A provides guidance to stakeholders on the acceptability of a training course, among other topics related to the certification of repairman (light-sport aircraft). The FAA proposes to codify provisions in AC 65–32A to add a requirement in new § 65.107(e) that requires the training course provider to deliver the course (1) using facilities, equipment, and materials appropriate to the training course content being taught and (2) by instructors who are appropriately qualified to teach the course content. The FAA interprets “appropriate” facilities, equipment, and materials to mean those elements are sufficiently suited to instruct in the curriculum the training course offered.¹⁰⁴ Similarly, the FAA interprets “appropriately qualified” to mean an instructor is demonstrably qualified to teach the course content. This demonstration may include educational credentials, certifications, or practical experience that aligns with the subject matter that the instructor teaches.

For either an inspection or maintenance rating, the training course

which must be completed to obtain a repairman certificate (light-sport) must be found acceptable to the FAA, including evaluation of these elements. Because the FAA uses these training courses as the basis for issuance of a repairman certificate, the FAA has determined each course must be reviewed and accepted by the FAA to facilitate issuance of repairman certificates by individual aviation safety inspectors. AC 65–32A provides information on how to submit training course materials to the FAA for acceptance. The FAA maintains a list of accepted courses that it makes available to the public. FAA personnel who issue repairman certificates use this list to verify an applicant for a repairman certificate (light-sport aircraft) has attended a training course found acceptable to the FAA.

Additionally, while one eligibility element for a repairman certificate (light-sport) is that a person complete a training course, the current regulatory text lacks the explicit steps between completing the training and receiving the certificate. Therefore, the FAA proposes two clarifying amendments. First, proposed § 65.107(c) and (d), which set forth the eligibility requirements, would require an applicant to successfully complete a training program and demonstrate completion of the training program. This demonstration is most logically done through a certificate of completion issued by the training provider.¹⁰⁵ Therefore, the FAA proposes to require in § 61.107(e) that training course providers issue each student a certificate of completion after the student has completed the training and passed the test. This documentation will ensure that an applicant has the means to demonstrate to the FAA that they have met the requirements for the certificate or rating. The training provider would be required to issue a certificate of completion that includes, at least, the name of the training provider, the FAA course acceptance number, the rating applicable to the training course (*i.e.*, inspection rating or maintenance rating), the category of aircraft the training was based on, and the date of completion of the training.

On November 28, 2017, the FAA published Notice N8900.444, “Meaning

of the Terms ‘Acceptable to’ and ‘Accepted by’ for Use by Aviation Safety Inspectors,” to explain how each of the terms are used, which has since been incorporated into FAA Order 8900.1.¹⁰⁶ Where the term “accepted by the FAA” is used, it means the item at issue must be submitted to the FAA for review and acceptance before use. Where the term “acceptable to the FAA” is used, it means the item is not normally privy to the FAA's active review and acceptance before its use, although the FAA will exercise its oversight responsibilities. While the current regulation requires the training course to be “acceptable to” the FAA, the FAA finds that in practice these training courses are instead “accepted by” the FAA through the previously discussed process. As such, the FAA proposes to change the term “acceptable to” to “accepted by” in proposed § 65.107(c) for inspection rating training courses and § 65.107(d) for maintenance rating training courses. The FAA notes that should a training course change, it would no longer be considered to be accepted by the FAA and, therefore, the training course provider would be required to resubmit the training course for acceptance by the FAA.

6. Repairman Certificate (Light-Sport) for Rotorcraft

Under current regulations the FAA may issue a repairman certificate (light-sport aircraft) with an inspection rating for aircraft in the gyroplane class; however, the FAA does not currently issue a maintenance rating applicable to gyroplanes. In the 2004 final rule, gyroplanes were included in the light-sport aircraft definition to permit a sport pilot to fly the small gyroplanes that were then available on the market. At the time, the FAA did not intend to certificate gyroplanes under § 21.190.¹⁰⁷ Because the primary purpose of the maintenance rating is to perform maintenance on aircraft certificated in accordance with § 21.190, the FAA concluded it would be unnecessary to issue a maintenance rating with gyroplane privileges. As a result, there are no gyroplane training course instruction hours requirements in § 65.107(a)(3)(ii). In effect, this means that, currently, it is not possible to attain a maintenance rating with gyroplane class privileges on a repairman certificate (light-sport aircraft). The FAA currently only issues the inspection rating with a gyroplane privilege/limitation, specific to aircraft

¹⁰³ 69 FR 44849.

¹⁰⁴ To illustrate, if the training course includes a skill requirement that an applicant must perform on a specific piece of equipment (as listed in the Mechanic ACS), the course provider must have that piece of equipment (*e.g.*, where the course requires a student to be able to perform a skill requirement to service a battery, the course provider must have an aircraft battery in a condition that will allow a student to demonstrate the appropriate servicing requirements to be considered to have equipment appropriate to the training course content being sought).

¹⁰⁵ The FAA notes that the regulatory text would not limit acceptable demonstration of completion to only a certificate of completion. While the FAA prefers an applicant to present a certificate of completion to demonstrate completion of the training program, the FAA intends to permit flexibility by accepting other documentary evidence without having to seek an exemption (*e.g.*, in a case where a person has lost their certificate).

¹⁰⁶ FAA Order 8900.1, Volume 3, Chapter 1, Section 1.

¹⁰⁷ 69 FR 44799.

owned by the applicant/holder of the repairman (light-sport aircraft) certificate.

The proposals in this rulemaking to expand aircraft certificated under § 21.190 to rotorcraft and powered-lift would facilitate the possibility to obtain a light-sport repairman certificate in the rotorcraft category and powered-lift category, which are not currently available pursuant to the existing definition of light-sport aircraft in § 1.1. Under this proposal, the new rotorcraft category encompasses both gyroplanes and helicopters. Because the FAA proposes to expand the aircraft certification parameters for a light-sport category aircraft, the FAA recognizes that both the gyroplane and helicopter would be able to enter the light-sport market in greater numbers,¹⁰⁸ and there would be a corresponding demand for the ability to safely maintain and inspect these aircraft. Therefore, the FAA proposes to permit the issuance of maintenance ratings to the rotorcraft category (*i.e.*, gyroplane and helicopter classes).

The FAA has determined that a rotorcraft category training course is sufficient, rather than establishing mutually exclusive helicopter and gyroplane courses. From a maintenance perspective, there is not a substantial difference in systems on gyroplanes and helicopters. For example, both gyroplanes and helicopters utilize an aircraft engine and main rotor system which, from a maintenance perspective, are of similar design and operation. Although there are other differences in operation and in design, such as use of a tail rotor or propeller, the FAA believes these differences can be covered in a single training course that includes both types of aircraft. Additionally, because these training courses require FAA acceptance, the FAA would verify in its review process that the training includes the class-specific differences within the rotorcraft category. Therefore, all persons seeking repairman certificates (light-sport) with a maintenance rating for rotorcraft category privileges (*i.e.*, gyroplane or helicopter) would be trained on both classes within the category.

Additionally, given the proposed change, as subsequently discussed, to differentiate between categories of light-sport category aircraft, the FAA proposes to permit the issuance of inspection ratings to the rotorcraft category (*i.e.*, gyroplane, which could

already be issued, and helicopter). The FAA has determined existing holders of a gyroplane inspection rating would already have the knowledge and skills for performing the annual condition inspection on aircraft in the rotorcraft category due to the aforementioned similarities and limited scope of privileges with the inspection rating. The FAA notes that current holders of a repairman certificate (light-sport aircraft) with an inspection rating with gyroplane class privileges would not need to be reissued a certificate. However, if the airman requested either a replacement certificate, or additional aircraft category privileges for the same certificate, the FAA would amend the “gyroplane” class privilege to a “rotorcraft” category privilege at the time the permanent certificate is issued.

7. Inspection Ratings Privileges and Limitations

Existing § 65.107(b)(2) establishes the privileges for repairman certificates (light-sport aircraft) with an inspection rating. Specifically, under § 65.107(b)(2), a person may perform the annual condition inspection if the aircraft has been issued an experimental certificate under § 21.191(i), with certain conditions.¹⁰⁹ Should this proposal be adopted as a final rule, the FAA finds that the language in § 65.107(b)(2) could result in a situation where an individual was issued a repairman certificate (light-sport aircraft) with an inspection rating specific for a former light-sport category aircraft (experimental purpose under proposed § 21.191(i)), and the aircraft could later be re-certificated as a light-sport category aircraft (special airworthiness certificate under § 21.190). In this scenario, if the aircraft was later re-certificated in accordance with § 21.190, that repairman’s certificate, which states the aircraft N-number and serial number could allow the repairman to continue to conduct the annual condition inspection on that aircraft. The FAA did not intend to allow for repairman with an inspection rating to conduct an annual condition inspection on aircraft certificated under § 21.190.

Therefore, the FAA proposes to remove the phrase “been issued” to clarify that to perform the annual condition inspection on an aircraft it must currently have an experimental certificate for the certain operating purposes, as set forth in § 65.109(a)(2)

(pursuant to the proposed reorganization of §§ 65.107 and 65.109, as previously discussed). This change would require that to exercise the privileges of the repairman certificate (light-sport) inspection rating, the aircraft must have the appropriate experimental certificate.

8. Duration of Repairman Certificates

Section 65.15 prescribes the duration of effectivity of certificates issued under part 65. Specifically, pursuant to § 65.15(a), a certificate or rating under part 65 is effective until surrendered, suspended, or revoked, but excludes repairman certificates from these duration parameters. Section 65.15(b) provides the duration for repairman certificates, which includes those issued in accordance with §§ 65.101, 65.104, and 65.107. Those certificates are effective, unless sooner surrendered, suspended, or revoked, until the holder is relieved from the duties for which the holder was employed and certificated.

Employment is a requirement specific to repairman certificates issued in accordance with § 65.101. Specifically, § 65.101(a) requires an applicant be employed for a specific job, and § 65.103(a) limits a repairman to conducting work only in connection with duties for the certificate holder by whom the repairman was employed and recommended. Different durations apply to certificates issued under § 65.104, repairman certificates (experimental aircraft builder), and under § 65.107, repairman certificates (light-sport aircraft). Section 65.101(b) excepts those certificates from the general eligibility requirements of § 65.101, which includes the employment requirement. In other words, there is no employment requirement for those certificates. Therefore, § 65.15(b) cannot be applied with respect to the aforementioned repairman certificates because eligibility, privileges, and limitations of these two types of repairman certificate do not have any association with an employer.

The FAA proposes to revise § 65.15(a) and (b) to distinguish the effective period of repairman certificates issued under § 65.101 from that of certificates issued under §§ 65.104 and 65.107. Specifically, proposed § 65.15(a) would except only those repairman certificates issued in accordance with § 65.101 from the stated duration. In other words, repairman certificates issued in accordance with §§ 65.104 and 65.107 would be effective until the certificate is surrendered, suspended, or revoked. Additionally, § 65.15(b) would specify the duration of repairman certificates

¹⁰⁸ Refer to preamble section IV.C. for discussion on the expansion of eligibility requirements (proposed § 22.100) providing for the certification of additional classes of aircraft.

¹⁰⁹ The aircraft must also be owned by the holder and must be in the same class of light-sport aircraft for which the holder completed the requisite training.

issued in accordance with § 65.101 to be the effective until the repairman is relieved from the duties for which the repairman was employed and certificated (unless the certificate is sooner surrendered, suspended, or revoked).

The FAA also proposes to remove the reference to March 31, 2013, in § 65.15. That date referenced a compliance date that has since passed and, as such, is no longer necessary. In July 2003, the FAA discontinued issuing paper airman certificates and began issuing counterfeit-resistant plastic permanent airman certificates. In 2008, the FAA issued a final rule that restricted airmen other than flight crewmembers (regulated under 14 CFR part 65) from exercising the privileges of a paper certificate five years from the effective date of the final rule.¹¹⁰ After the five-year period (*i.e.*, March 31, 2013), only an FAA-issued plastic airmen certificate could be used to exercise these privileges. Since March 31, 2013, has passed, the FAA is removing this grace period from the regulations as superfluous. Therefore, except for temporary certificates issued under § 65.13, the holder of a paper certificate issued under part 65 may not exercise the privileges of that certificate. Removing the March 31, 2013, date from the regulation simplifies the regulation and removes a date that no longer has significance; in other words, this is a non-substantive revision in nature with no practical repercussions.

9. Repairman Certificate: Privileges and Limitations

Section 65.103 provides the privileges and limitations for a repairman certificate issued under § 65.101. Currently, § 65.103(c) excepts holders of a repairman certificate (light-sport aircraft) from this requirement while that repairman is performing work under that certificate. Section 65.103(a) provides certificate privileges appropriate to the job for which the repairman was employed and certificated, limiting that repairman to duties only in connection with the certificate holder who employed and recommended the repairman. Section 65.103(b) further limits the repairman to only performing or supervising duties for which the repairman understands the current instructions of the certificate holder by whom the repairman is employed. This language indicates that paragraphs (a) and (b) are only applicable to repairman certificates issued in accordance with § 65.101,

which is the only repairman certificate type that has requirements relating to employment.¹¹¹ However, the FAA notes that § 65.103 also does not apply to a repairman certificate issued in accordance with § 65.104 (experimental aircraft builder repairman). Accordingly, the FAA is proposing to amend § 65.103(c) to state that § 65.103 does not apply to the holder of a repairman certificate issued in accordance with either § 65.104 (experimental aircraft builder) or § 65.107 (light-sport).

G. Maintenance

Currently, light-sport aircraft are subject to the maintenance requirements of § 91.327. This rule would revise the maintenance requirements for light-sport category aircraft in § 91.327 regarding safety directives and major and minor repairs and alterations, as described in the subsequently discussed proposals. Additionally, the FAA is proposing conforming changes to §§ 91.417, 65.85, and 65.87.

1. Safety Directives

Section 91.327(b)(4) states no person may operate an aircraft that has a special airworthiness certificate in the light-sport category unless the owner or operator complies with each safety directive applicable to the aircraft that corrects an existing safety-of-flight condition. The FAA considers that a separate regulatory requirement to comply with safety directives issued by the aircraft manufacturer is unnecessary, therefore the FAA proposes to remove this requirement. The FAA expects that manufacturers would still issue safety directives when necessary to correct a safety-of-flight condition because the applicable FAA-accepted consensus standards would continue to direct the aircraft manufacturer to issue safety directives to correct safety-of-flight conditions. Additionally, § 91.7 prohibits any person from operating a civil aircraft unless it is in an airworthy condition.¹¹² The FAA considers that where a manufacturer has issued a safety directive to correct a safety-of-flight condition, the condition would need to be corrected before the aircraft could be considered in airworthy condition. Similarly, if there is a safety-of-flight

condition that has not been corrected, the aircraft cannot pass its annual condition inspection required by § 91.327(b)(2).

Because this proposal removes § 91.327(b)(4) requiring compliance with safety directives, the FAA is proposing to remove the corresponding record keeping requirement for safety directives in § 91.417(a)(2)(v). Current § 91.417 specifies the records that must be kept by each registered owner or operator of an aircraft. Specifically, § 91.417(a)(2)(v) requires that records contain the current status of applicable safety directives, including, for each, the method of compliance, the safety directive number and revision date. If the safety directive involves recurring action, the record must also state the time and date when the next action is required. The safety directive record keeping requirement in § 91.417(a)(2)(v) exists because § 91.327(b)(4) currently requires owners and operators to comply with safety directives. Therefore, the FAA proposes to remove the record-keeping requirement to maintain records of safety directives. The FAA considers that a regulatory requirement under § 91.417 to document safety directives is unnecessary because maintenance performed on aircraft under § 43.9 or § 43.11 would still have record-keeping requirements.

2. Minor Repairs and Minor Alterations

Section 91.327(b)(5) currently requires that each alteration accomplished after the aircraft's date of manufacture meets the applicable and current consensus standard and has been authorized by either the manufacturer or a person acceptable to the FAA.¹¹³

The FAA has determined that the language in § 91.327(b)(5) does not allow for a certificated repairman (light-sport), an appropriately-rated mechanic, or an appropriately-rated part 145 certificated repair station to perform

¹¹³ 69 FR 44854. As discussed in the 2004 final rule, the FAA stated, for the purpose of § 91.327, "a person acceptable to the FAA" includes: (1) the manufacturer that issued the statement of compliance, (2) any person who has assumed, and is properly exercising, the original manufacturer's responsibility for carrying out the continued airworthiness procedures described in the consensus standard, (3) The holder of an FAA-approved technical standard order (TSO) authorization, parts manufacturer approval (PMA), type certificate (TC), or supplemental type certificate (STC) for a product or part installed on the aircraft, and (4) Any person authorized by the manufacturer to produce modification or replacement parts in accordance with the applicable consensus standard addressing "qualification of third-party modification or replacement parts."

¹¹¹ See § 65.101(a)(2).

¹¹² For example, see F3198–18—Standard Specification for Light Sport Aircraft Manufacturer's Continued Operational Safety (COS) Program and F2483–18e1 Standard Practice for Maintenance and the Development of Maintenance Manuals for Light Sport Aircraft and F2483–18e1—Standard Practice for Maintenance and the Development of Maintenance Manuals for Light Sport Aircraft.

¹¹⁰ Drug Enforcement Assistance, Final Rule, 73 FR 10662, (Feb. 28, 2008).

minor alterations as otherwise permitted in § 91.327(b)(1) without the authorization of the manufacturer or person acceptable to the FAA. Certificated persons who are already authorized under § 91.327(b)(1) and part 43 to perform minor alterations, may be prevented from doing so because of the language in § 91.327(b)(5).

The FAA proposes to revise § 91.327(b)(5) to require that minor repairs and minor alterations meet the applicable design and performance requirements, and allow the persons listed in § 91.327(b)(1) to perform minor repairs and minor alterations without obtaining authorization from the manufacturer or a person acceptable to the FAA.

This proposed change is consistent with part 43 governing minor repairs or minor alterations. For example, 14 CFR part 43 prescribes rules governing the maintenance, preventive maintenance, rebuilding, and alterations performed on aircraft and is applicable to any light-sport category aircraft. Under this proposal, minor repairs and minor alterations would not require specific authorization of the manufacturer or other person acceptable to the FAA, but rather must meet the performance requirements of part 43, including § 43.13. Additionally, since minor repairs and minor alterations must already be performed in accordance with the § 91.327(b)(1) requirement to use maintenance and inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA, the FAA considers it unnecessary to require additional authorization before minor repairs or minor alterations can be performed. Finally, this proposal provides some relief to aircraft owners and operators because they would not have to receive authorization from the aircraft manufacturer, or another person acceptable to the FAA to perform a minor repair or minor alteration.

The proposed § 91.327(b)(5) would also require that each minor repair and minor alteration meet the applicable consensus standards specified in the statement of compliance submitted to the FAA for the aircraft. Part 43 prescribes performance rules for these aircraft. Specifically, § 43.13(b) requires work to be performed in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (regarding aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

Requiring the aircraft meet the applicable and current consensus standards listed on the aircraft's statement of compliance after either a minor repair or a minor alteration would be consistent with § 43.13(b). Finally, the FAA proposes that § 91.327(b)(5) would no longer contain language concerning alterations being "accomplished after the aircraft's date of manufacture." By definition, an aircraft could only be operated after it has been manufactured. As such, including the phrase "accomplished after the aircraft's date of manufacture" is not necessary and could unintentionally cause confusion.

The FAA notes that this rule also proposes two changes to § 43.13. First, the FAA proposes to eliminate the use of gender-specific terminology that exists in § 43.13(a). Second, the FAA proposes to remove the paragraph heading that exists in current § 43.13(c) to ensure consistency with § 43.13(a) and (b), which do not use headings. The FAA also proposes minor editorial changes to § 43.13(c). These proposed changes would not alter the substantive requirements that are contained in § 43.13.

3. Major Repairs and Major Alterations

Section 91.327(b)(6) currently requires that each major alteration to an aircraft product produced under a consensus standard is authorized, performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. The FAA is proposing to revise this section by adding the term "major repair," removing the statement "to an aircraft produced under a consensus standard," and adding language to clarify that the required authorization to perform a major repair or major alteration must be provided by the manufacturer or a person acceptable to the FAA.

The proposed § 91.327(b)(6) text will require that each major repair or major alteration is authorized by the manufacturer or a person acceptable to the FAA. It will retain the existing requirement that each major alteration be performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. The proposal will add that same requirement to major repairs. The following discussion explains these changes in more detail.

First, § 91.327(b)(6) establishes requirements for major alterations but is silent on major repairs. The FAA is proposing to add "major repairs" to this

provision to require major repairs also be authorized by the manufacturer or a person acceptable to the FAA. The proposed rule would also require that major repairs be performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. The proposal is consistent with how major repairs are applied to type-certificated aircraft with one difference. Although a major repair on a type-certificated aircraft must be done in accordance with technical data approved by the Administrator (§ 65.95(a)(1)), such Administrator approved data does not exist for a light-sport category aircraft and so a major repair on a light-sport category aircraft built to a consensus standard that meets the requirements of part 22 should be done only after authorization from the manufacturer. Therefore, the proposal requires the major repair must be authorized by the manufacturer and performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer, or a person acceptable to the FAA. Additionally, related provisions in part 65, specifically §§ 65.85 and 65.87, reference both major alterations and major repairs.

Second, the FAA proposes to remove the language "to any aircraft produced under a consensus standard" from § 91.327(b)(6) as unnecessary. Section 91.327 applies to the operating requirements of aircraft that have a special airworthiness certificate in the light-sport category. Separately, pursuant to proposed § 21.190(d)(6) manufacturers must state that these aircraft are built to a consensus standard. Therefore, reading § 91.327(b)(6) and the proposed § 21.190 together, it is clear that aircraft in the light-sport category must be built to a consensus standard. As a result, the language referencing consensus standards is unnecessary because all aircraft subject to § 91.327(b)(6) would have to be produced under a consensus standard. Therefore, the FAA proposes to remove this language from § 91.327(b)(6).

Third, regarding the manufacturer authorizing major alterations, the FAA finds that current language could be clearer. Read strictly, the current § 91.327(b)(6) requires that each major alteration to an aircraft is authorized in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. However, such a reading points to authorizations being in accordance with maintenance and

inspection procedures. A major repair or major alteration must be authorized by the manufacturer or a person acceptable to the FAA because the aircraft is built to a consensus standard that meets the requirements of part 22. The manufacturer is best suited to determine if the aircraft will continue to meet the means of compliance with the consensus standard following a major repair or major alteration. Additionally, a major repair or major alteration must be performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA.

4. Changes to Certificated Mechanic Privileges

Currently, § 65.85(b) allows a certificated mechanic with an airframe rating to approve for return to service an airframe (or related part or appliance) of an aircraft with a special airworthiness certificate in the light-sport category, after a major repair or major alteration, provided the work done was performed in accordance with instructions developed by the manufacturer or a person acceptable to the FAA.¹¹⁴ Similarly, under § 65.87(b), the same privileges apply to a certificated mechanic with a powerplant rating for return to service a powerplant or propeller (or related part or appliance).

Under proposed § 91.327(b)(6), no person may operate an aircraft that has a special airworthiness certificate in the light-sport category unless each major repair or major alteration is authorized by the manufacturer or a person acceptable to the FAA and is performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. Sections 65.85(b) and 65.87(b) currently do not align with the proposed § 91.327(b)(6) in a way that would require that a mechanic does not approve an airframe or powerplant for return to service with an unauthorized major repair or alteration. Performing the major repair or major alteration in accordance with instructions developed by the manufacturer or a person acceptable to the FAA may not sufficiently verify the aircraft or engine meet the proposed § 91.327(b)(6) requirement. Therefore, the FAA is proposing to add language to §§ 65.85(b) and 65.87(b) that requires, in addition to the existing requirement

regarding instructions, the mechanic determine the major repair or major alteration is authorized by the manufacturer or a person acceptable to the FAA.¹¹⁵

H. Operations

1. Aircraft Holding a Special Airworthiness Certificate in the Light-Sport Category

In general, § 91.327 does not currently allow a person to operate an aircraft with a special airworthiness certificate in the light-sport category for compensation or hire. However, § 91.327(a) does include two exceptions to this general prohibition against operations for compensation and hire: conducting flight training and towing a glider or an unpowered ultralight vehicle in accordance with § 91.309 are both permissible.

The FAA has received several petitions for exemptions and numerous industry requests related to increased opportunities for using light-sport category aircraft for compensation or hire.¹¹⁶ These requests demonstrate significant public interest in expanding the use of light-sport category aircraft for compensation or hire.¹¹⁷ Industry groups argue that light-sport category aircraft for certain aerial work for compensation and hire would be in the interest of public safety. For example, industry groups state that some of the public safety interests involve the safety of people and structures on the ground due to light-sport category aircraft being generally quieter, slower, and more agile than aircraft with standard airworthiness certificates. The FAA has considered industry requests, as well as the use of FAA-accepted consensus standards that can provide an appropriate level of safety, and the FAA agrees that limited expansion of the use of light-sport category aircraft for compensation and hire is in the public interest.

As previously stated, the FAA does not explicitly define aerial work. The

FAA broadly interprets the term to mean work done from the air for compensation that does not involve the carriage of persons or property.¹¹⁸ The FAA proposes to add a new paragraph in § 91.327 to allow for operation of light-sport category aircraft for aerial work for compensation or hire. The proposed amendment will allow light-sport category aircraft to conduct limited aerial work operations. Additionally, the proposed changes to the rule would not waive or provide exception from any of the provisions required by 14 CFR part 119 or any other rule requiring an air operator certificate. To be allowed to operate under the proposed amendment, light-sport category aircraft would be required to meet applicable requirements under § 21.190 concerning aerial work.

The FAA proposes amending § 21.190 to address aerial work operations, which would be designated by the manufacturer in the consensus standards accepted by the Administrator for airworthiness certification of light-sport category aircraft. The FAA proposes the addition of § 21.190(c)(3), which requires the manufacturer to include a list in the pilot's operating handbook of any aerial work operations that may be safely conducted using the aircraft. The proposed § 21.190(c)(3) requires the aforementioned list to also be included in the manufacturer's statement of compliance. The proposed amendments applicable to light-sport category aircraft will result in aircraft that must meet consensus standards for aerial work operations. When a light-sport category aircraft meets an FAA-accepted consensus standard, including one specific to aerial work, a light-sport category aircraft should provide an equivalent level of safety in comparison to aircraft that undergo the type-certification processes that are currently allowed to conduct aerial work. As such, this proposed change will allow aerial work to be conducted in parallel with the proposed changes applicable to airworthiness certification of § 21.190 aircraft.

The FAA recognizes that this is an ever-evolving field and seeks to not inhibit future innovation. As such, the proposed approach would not prescribe types of aerial work but would rather provide a path for a proven risk-based assessment of current and future aerial tasks. The agency does not propose relaxation of any of the existing regulatory safeguards that relate to aerial work operations, such as the minimum safe altitude, minimum safe distance,

¹¹⁵ See section V.F.1 for additional changes, technical in nature, proposed to §§ 65.85 and 65.87.

¹¹⁶ See Exemption granted to Operation Migration from 14 CFR 61.113(a), 91.319(e), and 91.327(a), April 30, 2014, Exemption No. 10984, Docket No. FAA-2013-1075, available online at <https://www.regulations.gov/document/FAA-2013-1075-0004>.

¹¹⁷ Dan Johnson & Roy Beisswenger, *Modernizing Rules for Sport Pilots and Light Sport Aircraft: 1.0 Aerial Work for Light-sport Aircraft*, (June 2018), Retrieved from LAMA Report Modernizing LSA.pdf.

Dan Pimentel, "Will MOSAIC Allow LSAs To Do More: The industry has lobbied the FAA to allow light sport aircraft to perform more aerial work tasks," *Flying Magazine*, (May 20, 2022), <https://www.flyingmag.com/will-mosaic-allow-lsas-to-do-more/>.

¹¹⁴ 69 FR 44847. This rule change gives the airframe or powerplant-rated mechanic the same privilege to perform and inspect major repairs and major alterations on special light-sport aircraft that this rule grants a repairman (light-sport aircraft) with a maintenance rating.

¹¹⁸ See supra note 25 and accompanying text.

and minimum safe speed restrictions in part 91 and restrictions surrounding dispensing of chemicals in part 137. If an operator seeks to conduct aerial work operations that exceed existing rules, operators must obtain regulatory relief in the form of a Certificate of Waiver, Letter of Authorization, or an exemption.

The FAA anticipates that the proposed expansion of aerial work, along with the proposed amendments applicable to light-sport category aircraft, could lead to an increased interest in aerial work that involves carrying higher numbers of occupants. The FAA is proposing the addition of § 91.327(f)(1) and (2) to address these concerns. The proposed language states that no person may operate an airplane certificated as a light-sport category aircraft when carrying more than four occupants, including the pilot. Additionally, the proposed language states that no person may operate a light-sport category aircraft other than an airplane when carrying more than two occupants, including the pilot. The FAA does not have sufficient data for expanding the number of persons onboard an aircraft other than an airplane. The proposed addition of § 91.327(f)(1) and (2) does not change the restriction on certificated sport pilots not carrying more than two persons, including the pilot. Pilots with higher grades of certification will be able to operate light-sport category aircraft with the higher number of occupants allowed under the proposed § 91.327(f)(1) and (2).

The current definition of light-sport aircraft in 14 CFR 1.1 limits the seating capacity to no more than two persons, including the pilot. The proposed rules would expand this to a four-person occupancy limit for airplanes certificated as light-sport category aircraft and a two-person occupancy for light-sport category aircraft other than airplanes. The proposed rules are expected to lead to larger light-sport category aircraft. The larger size, along with the proposed expansion of aerial work, could result in situations where there are occupants who do not require a seat. The FAA has decided that a measured approach that limits the number of occupants on an aircraft is safest in the near term, as it will prevent situations where operators attempt to carry as many passengers that will physically fit in the aircraft. In light of the safety continuum, as discussed in section IV.C.5, the FAA has proposed a limit of four-person occupancy for light-sport category airplanes and two-person occupancy for light-sport category aircraft other than airplanes because

that is consistent with the maximum seating capacity in proposed § 22.100(a)(1) and (2). This is not a prohibition of persons being carried who are not in seats, but rather a limitation on the total number of occupants, including both those who are in seats and those who are otherwise restrained.

2. Aircraft Holding Experimental Airworthiness Certificates

Section 91.319(c) currently authorizes the Administrator to issue special operating limitations for particular aircraft holding experimental airworthiness certificates to conduct takeoffs and landings over densely populated areas or in congested airways. The terms and conditions specified in the authorization must be in the interest of safety in air commerce. The regulation only applies to takeoffs and landings; it does not currently authorize operating limitations to cover other flight segments. The current regulation presents difficulties for operators, as they can obtain special operating limitations for takeoff and landing, but not for any operations between takeoff and landing. Due to urban sprawl, it has become increasingly difficult for operators to avoid operating over densely populated areas.

To address inconsistencies and possible operator difficulties in the continuation of all flight segments, the FAA proposes to amend § 91.319(c) to allow the Administrator to grant operating limitations to certain aircraft with experimental certificates to conduct operations over densely populated areas or in congested airways, including, but not limited to, takeoffs and landings. This proposed amendment will allow the Administrator to issue special operating limitations that allow all phases of flight and expands the types of operations over densely populated areas or in congested airways.¹¹⁹ The FAA anticipates such operating limitations will only be issued in certain circumstances, as described in subsequent paragraphs. The general prohibition against experimental aircraft operating over densely populated areas or in congested airways will continue to apply under the proposed amendment to all aircraft that do not hold these special authorized operating limitations. When issuing such operating limitations, the FAA will consider several factors (discussed in subsequent paragraphs), including whether the aircraft in question is one of proven

design and has records for continued operational safety.

With consideration of the continual safety trend of aircraft holding experimental certificates, there are several reasons why an operator may seek special operating limitations for their aircraft to conduct operations over densely populated areas or in congested airways, including, but not limited to, takeoffs and landings. One example involves operators conducting flights and other operations to show compliance with airworthiness regulations under § 21.191(b). An operator may need to takeoff, land, and operate over densely populated areas or in congested airways to show compliance for the issuance of type and supplemental type certificates and to show compliance with the function and reliability requirements of the airworthiness regulations. Other examples of when operators may seek these operating limitations over densely populated areas or in congested airways is to conduct market surveys, sales demonstrations, or customer crew training for U.S. manufacturers of aircraft or engines. Lastly, operators conducting research and development of new equipment installations, operating techniques, or aircraft uses may seek special operating limitations to conduct those operations over densely populated areas or in congested airways.

The Administrator will consider many factors when determining which aircraft, certificated under § 21.191, may be issued the operating limitations to operate over a densely populated area or in congested airways. The Administrator may grant operating limitations to certain aircraft with experimental certificates that demonstrate significant safety attributes and records for continued operational safety, which enable them to operate over densely populated areas. Even though there is a broad variety of experimental aircraft with differing levels of safety and risk, the process of issuing experimental aircraft airworthiness certificates is an established process for all experimental aircraft. Not all aircraft that hold experimental certificates are true “experiments,” as that term is commonly understood. While the term “experimental” is used to describe these aircraft, that does not automatically mean they lack evidence of continued operational safety or a strong safety record. A significant number of aircraft hold experimental airworthiness certificates and, while some of these aircraft lack sufficient evidence of safety to be issued the proposed operating

¹¹⁹ 49 U.S.C. 44701 *et seq.*

limitations, many aircraft holding experimental certificates have consistently demonstrated safe operational records. For instance, there are large manufacturing companies performing market survey operations, in accordance with FAA certification processes and significant operating oversight.

The FAA recognizes that some aircraft holding experimental airworthiness certificates pose overly significant risk to the general public and will not consider extending the proposed operating limitations to those aircraft. At a minimum, the FAA expects that all aircraft who are issued the proposed operating limitations, including any attached appliances, will conform to airworthiness requirements and any applicable airworthiness directives. Additionally, the FAA anticipates that the proposed operating limitations would not be issued to experimental aircraft that have had alterations or appliances that have not been adequately tested by the original manufacturer. In order to determine whether an aircraft with alterations or appliances would be able to obtain this operating limitation, the FAA would consider all facts presented by the operator, as well as procedures described in FAA guidance, including FAA Order 8130.2. This is similar to the process used for issuing operating limitations currently. Such procedures would be developed following this rulemaking and would be made available for public comment prior to adoption.

Some amateur and kit-built aircraft may be able to obtain the proposed operating limitations to operate over densely populated areas or in congested airways, although the FAA currently has no intention of considering original or plans-built designs for issuance of these operating limitations. Depending upon the type of kit and the aircraft's similarity to its kit model, the FAA may consider granting these operating limitations to certain kit-built aircraft because of the high level of consistency among kit-built aircraft.

There are specific aircraft features that the FAA may consider before issuing operating limitations to operate over densely populated areas or in congested airways. First, the FAA is concerned about the increased risk that results from an aircraft that has a single point of failure. When an experimental aircraft has a single point of failure, such as the loss of a single hydraulic in an aircraft that uses that system for flight controls, flight will become unrecoverable. Such aircraft will not be eligible for the proposed operating

limitations, as they have a higher risk to persons and property on the ground. Having redundant systems increases safety for persons and property on the ground. Second, the FAA is concerned about the increased risk from allowing aircraft with ejection seats or detachable external stores to operate over densely populated areas. If an aircraft is equipped with an ejection seat, deployment of that seat over a densely populated area would significantly increase risk to persons on the ground. Similarly, if a detachable external store fails and detaches from the aircraft while operating over densely populated areas, there would be significant risk to persons on the ground. The aforementioned examples are some attributes that would cause the FAA to consider not issuing the proposed operating limitations, but the examples are not an exhaustive list.

Beyond the aircraft conforming to original airworthiness requirements and having adequately tested alterations and appliances, the FAA may also consider actions taken by the operator to decrease risk. For example, the FAA views an aircraft that has completed a structured, task-based phase I testing process as potentially posing a lower risk over densely populated areas and in congested areas. Therefore, these aircraft could be recipients of the proposed operating limitations. Phase I flight testing is the initial flight-testing period for a newly assembled aircraft. All experimental aircraft seeking an airworthiness certificate must complete initial flight testing. Structured "task-based" testing provides the operator and the agency with consistent and reliable data for these aircraft. Several methods of phase I testing are available. One method is to develop and execute a "task-based" phase I flight test plan to obtain an airworthiness certificate. Completing a successful task-based phase I flight test plan process results in a document specific to the aircraft, as compared to an aircraft that has not completed a structured phase I flight test plan process and has only completed the minimum required flight time option and maintenance record entry. Additionally, the completion of a task-based phase I flight test plan is one action the operator can take that may decrease risk to persons and property on the ground during operations over densely populated areas.¹²⁰ The FAA anticipates that aircraft granted the

proposed operating limitations may be subject to additional requirements, such as increased maintenance requirements, in order to establish an equivalent level of safety.

3. Space Support Vehicles

This rule would implement language in Section 581 of the FAA Reauthorization Act of 2018 (the Act), which authorizes certain aircraft holding experimental certificates to conduct space support vehicle flights. The Act provides definitions for "space support vehicle" and "space support vehicle flight." The Act also adopted 49 U.S.C. 44737, which provides the rules for space support vehicle flights. To maintain consistency with the congressional language, the FAA proposes to adopt the same language used in section 44737. The FAA is also proposing regulatory amendments necessary to integrate the statutory language into 14 CFR.

As defined in the Act, a space support vehicle is an aircraft that is a launch vehicle, a reentry vehicle, or a component of a launch or reentry vehicle. As stated in the statute, only aircraft holding experimental certificates that are also a launch vehicle, a reentry vehicle, or a component of a launch or reentry vehicle can be considered space support vehicles. Under this proposed rule, the definitions from the statute will be added to 14 CFR part 1 to facilitate implementation of that law. The FAA does not intend to create a new experimental purpose for space support vehicles to operate under in this rule. Instead, space support vehicles would conduct space support vehicle flights under an existing § 21.191 experimental purpose, such as research and development or crew training. Additionally, the Act requires that space support vehicles must be owned by or operated on behalf of a licensed launch or reentry vehicle operator.

Space support vehicle flights are distinct from licensed launch or reentry operations. Per the Act, an operator may conduct space support vehicle flights only to simulate space flight conditions in support of training for potential space flight participants, government astronauts, or crew; the testing of hardware to be used in space flight; or research and development tasks, which require the unique capabilities of the aircraft conducting the flight. Additionally, the aircraft conducting the space support vehicle flight is required to take off and land at a single site that is licensed for operation under 51 U.S.C. chapter 509.

¹²⁰ See FAA Order 8130.2J, *Airworthiness Certification of Aircraft*, Appendix D, Table D-1, Operating Limitations (July 21, 2017).

See FAA Advisory Circular 90-89C, *Amateur-Built Aircraft and Ultralight Flight Testing Handbook*. (February 14, 2023).

Per the Act, the operator of an aircraft may conduct space support vehicle flights under an experimental airworthiness certificate carrying persons or property for compensation or hire. These flights may include carriage of persons or property for compensation or hire without obtaining an exemption to operating rules or a certificate to conduct air carrier or commercial operations. In contrast, operators seeking to conduct such activities for other experimental purposes must obtain an exemption to operating rules or a certificate to conduct air carrier or commercial operations.

The FAA proposes to amend § 91.319 in two ways in order to integrate space support vehicle flights into the operations regulations for aircraft holding experimental certificates. First, to implement the statutory authorization for space support vehicles, the FAA proposes the addition of § 91.319(k). This proposed addition will allow the operator of an aircraft with an experimental airworthiness certificate to operate the aircraft for the purpose of conducting a space support vehicle flight. Second, the FAA proposes to amend § 91.319(a) to reflect the addition of paragraph (k).

To implement the statutory mandate in the Act, the FAA also proposes the addition of a new section addressing operating limitations for space support vehicle flights. This proposed new section, § 91.331, provides general operating requirements applicable to aircraft holding experimental certificates that will conduct space support vehicle flights. Section 91.331 would establish the same operating requirements as provided in the Act, which includes the requirements related to where takeoff and landing are to occur; who can conduct the operation; which vehicle can be used; and the purposes for which the vehicles can be used for. There will be only one change, as section 44740(b)(1)(A) refers to “a single site that is operated by an entity licensed for operation under chapter 509 of title 51.” Since the only sites licensed by the FAA under title 51 of the United States Code are launch and reentry sites, proposed § 91.331(a)(2)(1) would instead refer to “a single launch or reentry site that is operated by an entity licensed to operate the launch or reentry site under 51 U.S.C. chapter 509.”

Upon receipt of a request for an operating limitation to conduct a space support vehicle flight, the FAA would consider whether the requirements of proposed § 91.331 are met. While it would be relatively easy to determine if certain elements of proposed § 91.331

are met (such as whether the location of takeoff and landing is a qualifying launch or reentry site), others would require a more intensive, fact-specific approach. For example, if the operator wants to conduct space support vehicle flights for the purpose of research and development tasks, the FAA will analyze the specific facts proffered by the operator to determine whether the research and development tasks require the unique capabilities of the aircraft conducting the flight, as required by the proposed § 91.331. If the operator wants to conduct a space support vehicle flight for the purpose of training potential space flight participants, government astronauts, or crew, the operator would need to demonstrate that such persons have taken sufficient steps towards becoming space flight participants, government astronauts, or crew. The FAA would develop guidance to assist operators in developing their space support vehicle flight proposals, such as guidance related to what constitutes a unique capability of the aircraft and what documentation should be provided to support the status of a space flight participant, government astronaut, or crew. The FAA also proposes to amend § 119.1(e) by adding a new paragraph, paragraph (e)(12), to allow for the operation of such aircraft for the purpose of conducting a space support vehicle flight under the requirements of the proposed § 91.331. The proposed addition of § 119.1(e)(12) would add language to exclude space support vehicle flights from the requirements of part 119 relating to air carrier certificates. The addition of § 119.1(e)(12) is necessary in order to implement section 581 of the Act in the regulations.

4. Right-of-Way Rules

Section 91.113 provides the right-of-way rules for operations other than those conducted on water. The right-of-way rules instruct pilots on how they must respond to other aircraft they encounter and are based on the category of aircraft or the operational scenario. Pilots must be vigilant to see and avoid other aircraft; and as always, aircraft in distress have the right-of-way over all other air traffic. The current regulation outlines specific categories of aircraft that a balloon, a glider, or an airship have right-of-way over when converging at approximately the same altitude (except head-on, or nearly so). By explicitly naming specific categories of aircraft, the current § 91.113(d)(2) and (3) do not provide information for how operators of other categories of aircraft not listed in § 91.113 are expected to comply with the intent of the rule. This

may lead to confusion, especially for those operators of aircraft that are not explicitly included in the current § 91.113.

The FAA proposes to amend § 91.113(d)(2) and (3) to update the language by replacing the lists of aircraft in paragraphs (d)(2) and (3) with the broader term “powered aircraft.” These proposed amendments remove specific categories to include other powered aircraft not included in the existing rule, as the current rule is too narrow. The new language uses the term “powered aircraft” to include those categories. These amendments clarify the language in § 91.113(d) where aircraft are categorized for the purpose of describing which aircraft has the right-of-way when approaching another aircraft on a converging course. Right-of-way rules maintain the privilege of less maneuverable aircraft to safely proceed with priority over more maneuverable aircraft in the NAS. The proposed § 91.113(d)(2) continues to give gliders right-of-way over powered aircraft. Additionally, the proposed § 91.113(d)(3) continues to give airships right-of-way over all other powered aircraft, except for those powered aircraft that are towing or refueling another aircraft. Balloons will continue to have the right-of-way over any other aircraft category.

Finally, for consistency and clarity, the proposed language updates the previous language of the paragraph describing engine-driven aircraft to “powered aircraft.” The FAA chooses the term “powered aircraft” instead of “engine driven” to better convey the inclusion of aircraft that may have non-traditional forms of propulsion, including electric propulsion.

5. Operations at Airports in Class G Airspace

Section 91.126 provides requirements for operations on or in the vicinity of an airport in Class G airspace, including the direction of turns when approaching the airport, flap settings, and communications with air traffic control towers. Currently, § 91.126(b) requires that, when approaching to land at an airport without an operating control tower in Class G airspace, each pilot of a helicopter or a powered parachute must avoid the flow of fixed-wing aircraft. This requirement only addresses helicopters and powered parachutes. It does not currently consider other types of aircraft that may require access to these airports. Since its adoption, the current regulation has become inadequate in this regard, as it only addresses specific aircraft and does

not consider emerging aircraft technologies, such as powered-lift.

To address all other aircraft under these requirements, the FAA proposes to amend § 91.126(b)(1) to state that each pilot of a powered fixed-wing aircraft and powered-lift aircraft operating in wing-borne flight mode must make all turns of that aircraft to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot must make all turns to the right. The FAA is also proposing to amend § 91.126(b)(2) to require that each pilot of any other aircraft must avoid the flow of the types of aircraft listed in proposed § 91.126(b)(1), specifically powered fixed-wing aircraft and powered-lift aircraft operating in wing-borne flight mode. The term “any other aircraft” in proposed § 91.126(b)(2) would include, but would not be limited to, weight-shift aircraft, helicopters, and powered parachutes. When powered-lift aircraft are operating in wing-borne flight mode, they have similar flight characteristics as fixed-wing aircraft. As such, the proposed language explicitly treats powered-lift aircraft operating in wing-borne flight mode as fixed-wing aircraft. However, powered-lift aircraft operating in vertical-lift flight mode are not

equivalent to fixed-wing aircraft and will therefore not be treated the same. The purpose of this proposed amendment is to address all aircraft that could be involved in operations on or in the vicinity of an airport in Class G airspace.

The proposed change would improve aircraft separation in the interest of safety by considering operational needs, aircraft configurations, and speeds to enhance avoidance of dissimilar aircraft. While there are many kinds of aircraft that are now grouped together under the proposed rule, those aircraft have similar flight and maneuvering characteristics and therefore should be kept separate from powered fixed-wing aircraft. Currently, non-powered, non-fixed-wing aircraft (other than powered parachutes and helicopters, which are kept separate under the current rule) are expected to operate in the same traffic pattern as powered fixed-wing aircraft. By separating powered fixed-wing aircraft from all other aircraft, this proposal intends to reduce risk to all aircraft by limiting all non-powered, non-fixed-wing aircraft from operating in the same traffic pattern as powered fixed-wing aircraft.

6. Towing

Section 91.309(a)(2) currently prohibits civil aircraft from towing a

glider or unpowered ultralight vehicle unless it is equipped with a tow-hitch of a kind, and installed in a manner, which is approved by the Administrator. When the FAA issued the 2004 final rule, the FAA stated in the preamble that towing operations by light-sport aircraft would be allowed. However, the 2004 final rule failed to actually amend the regulation to address such operations. The FAA is proposing to amend § 91.309(a)(2) to clarify the addition of light-sport category aircraft for towing operations and remedy the oversight in the 2004 final rule.

The proposed language creates three paragraphs, each addressing a separate combination of the category of airworthiness certificate issued to an aircraft and whether that aircraft was issued a type certificate. Additionally, each paragraph of the proposed regulations addresses the certification requirements of the tow-hitch, as a product/article to be installed on an aircraft, as well as the manner of installation of the tow-hitch. The FAA uses the terms “approved by the Administrator,” “authorized by the Administrator,” and “acceptable to the Administrator” in the following paragraphs. Table 3 summarizes the differences among the terms used in § 91.309(a)(2).

TABLE 3—§ 91.309(a)(2) TERMINOLOGY

Where § 91.309(a)(2) uses . . .	The Proposal means . . .
Approved by the Administrator (i.e., FAA-approved).	Part/article approval may be done during the type-certification process under part 21, subpart B, the Supplemental Type Certificate (STC) process under part 21, subpart E, or the Parts Manufacture Approval (PMA) process under part 21, subpart K. Installation approval may be done during the type-certification process under part 21, subpart B, the Supplemental Type Certificate (STC) process under part 21, subpart E, or the FAA's field approval process.
Authorized by the Administrator	While there may be other methods of authorization, the FAA can authorize the installation of the tow-hitch in the operating limitations issued to the aircraft or using the FAA's field approval process.
Acceptable to the FAA	This term means the tow-hitch or installation is not necessarily privy to the FAA's review before its installation or use. FAA Advisory Circular (AC) 43.13–2B, <i>Acceptable Methods, Techniques, and Practices—Aircraft Alterations</i> contains acceptable methods for tow-hitch installations in Chapter 8. Consensus standards and manufacturers' maintenance manuals are also acceptable to the FAA.

First, for those aircraft that hold a standard airworthiness certificate, the proposed language requires that the tow-hitch is approved by the Administrator. Additionally, the tow-hitch is required to be installed in a manner approved by the Administrator. The proposed language maintains the current requirement for aircraft holding standard airworthiness certificates.

Second, for those type-certificated aircraft that hold a special airworthiness certificate, and for which the aircraft has

been previously issued a type certificate,¹²¹ the proposed language would require the tow-hitch be of a kind that is approved or otherwise authorized by the Administrator. Although these aircraft may have been issued a special airworthiness certificate, the fact that

¹²¹ For example, this could include aircraft in the limited, primary, restricted, or provisional category, or aircraft issued an experimental certificate for a purpose under § 21.191(a) through (f), when that aircraft has been previously issued a type certificate.

the aircraft was issued a type certificate means that the aircraft must continue to meet its type design after an alteration to install a tow-hitch. A tow-hitch installation for an aircraft issued a type certificate may be done after the installation is FAA approved. This is the same requirement that is currently imposed on aircraft with a standard airworthiness certificate engaged in towing gliders or unpowered ultralight vehicles. However, because these aircraft hold a special airworthiness

certificate and are issued associated operating limitations, the FAA is proposing an alternative to the tow-hitch and/or the installations having FAA approval. Under the proposal, these aircraft may have a tow-hitch and/or installation that is authorized by the Administrator using some other manner, such as in the operating limitations issued to the aircraft.¹²² In these instances, the FAA will verify that there will be an equivalent level of safety when the Administrator authorizes a tow-hitch or installation method.

Third, for those aircraft that hold a special airworthiness certificate, for

which the aircraft has not been previously issued a type certificate, the proposed language would allow for a tow-hitch of a kind that is FAA approved. As an alternative to installing an FAA-approved tow-hitch, the tow-hitch may instead be one that is acceptable to the FAA. However, regardless of whether the tow-hitch is approved by or acceptable to the FAA, the tow-hitch must be installed in a manner acceptable to the FAA. As noted in the 2004 final rule, there is historical precedent for towing operations by light-sport aircraft. The FAA has

determined that such operations can be conducted safely when using a tow-hitch approved by the Administrator, so long as the tow-hitch is installed in a manner acceptable to the Administrator. The proposed language allows the option to install a tow-hitch that does not have FAA approval because the aircraft itself was never subject to an FAA approval process, as were those aircraft that were issued a type certificate. Table 4 provides clarity of the proposed tow-hitch and tow-hitch installation requirements in § 91.309(a)(2).

TABLE 4—§ 91.309(a)(2) TOW-HITCH AND INSTALLATION REQUIREMENTS

Aircraft in proposed § 91.309(a)(2)	Tow-hitch certification	Tow-hitch manner of installation
(i) Aircraft holds a standard airworthiness certificate ..	FAA-approved	Approved by the Administrator.
(ii) Aircraft holds a special airworthiness certificate; and The aircraft design was issued a type certificate.	FAA-approved or Otherwise Authorized by the Administrator.	FAA-approved; or Otherwise Authorized by the Administrator.
(iii) Aircraft holds a special airworthiness certificate; and The aircraft design was not issued a type certificate.	FAA-approved; or Acceptable to the FAA	Acceptable to the FAA.

7. Section 91.409 Clarifying Amendment

Section 91.409 provides inspection requirements for aircraft operation. The language under § 91.409(c)(1) provides operational inspection exceptions for specific aircraft airworthiness certificates under § 91.409. The FAA proposes to amend § 91.409(c)(1) by removing the first “or” and adding the words “airworthiness certificate” following the word “light-sport” within the list of special airworthiness certificates. The proposed § 91.409(c)(1) states that an aircraft that carries a special flight permit, a current experimental certificate, a light-sport airworthiness certificate, or provisional airworthiness certificate. This amendment would provide better clarity, readability, and understanding for the operator for proper use of the exception.

I. Experimental Airworthiness Certificates

1. Duration of Light-Sport Category Airworthiness Certificates

Currently, § 21.181(a)(3) states that a special airworthiness certificate in the light-sport category will remain effective as long as the aircraft meets the definition of a light-sport aircraft and the aircraft conforms to its original configuration, except for those

alterations performed in accordance with an applicable consensus standard and authorized by the aircraft’s manufacturer or a person acceptable to the FAA. Additionally, the aircraft must not have any unsafe condition and not be likely to develop an unsafe condition. It also must be registered in the United States.

Under proposed § 21.181(a)(3)(i), an aircraft issued an airworthiness certificate in the light-sport category would have to meet the eligibility criteria specified in proposed § 21.190(b) for its airworthiness certificate to remain effective. The specific eligibility requirements would reflect the expanded scope and performance of aircraft that could be certificated in the light-sport category and are discussed in detail in sections IV.C. and IV.D. of this preamble.

Aircraft issued airworthiness certificates in the light-sport category before the effective date of the final rule may not be able to meet the requirements in proposed § 21.190(b), as these aircraft would have been designed and produced before the enactment of the proposed requirements. Accordingly, proposed § 21.181(a)(3)(iv) would allow these aircraft to maintain their special airworthiness certificates. The duration of airworthiness certificates issued for these aircraft would remain unaffected provided the

aircraft still meet the parameters of the definition of light-sport aircraft found in current § 1.1 and the other applicable requirements discussed in this section. The parameters that these aircraft would be required to meet would be specifically listed in the proposed paragraphs (a)(3)(iv)(A) through (M) and are identical to those contained in the current definition of light-sport aircraft found in § 1.1. They would be specifically listed in the proposed regulation since the current definition of light-sport aircraft containing those parameters would be removed from § 1.1.

Proposed § 21.181(a)(3)(ii) would revise the current requirement specifying that for an airworthiness certificate in the light-sport category to be effective the aircraft must conform to its original configuration, except for those alterations performed in accordance with an applicable consensus standard and authorized by the aircraft’s manufacturer or a person acceptable to the FAA. This requirement would be revised to specify the aircraft must conform to its original or properly altered configuration. The proposed revision would conform the provisions of proposed § 21.181(a)(3)(ii) to another proposal in this NPRM which would revise § 91.327 to no longer require that the performance of minor alterations be authorized by the manufacturer or a

¹²² For example, if a person were using an aircraft that had been issued a TC to test a tow-hitch design, the aircraft could be issued an experimental

certificate for the purpose of showing compliance with the regulations. The FAA would authorize the

installation of the tow-hitch in the operating limitations issued to the aircraft.

person acceptable to the FAA. Accordingly, minor repairs and minor alterations performed in accordance with acceptable methods, techniques and practices that meet the provisions of the applicable consensus standards and part 43 would result in an aircraft that would conform to a properly altered configuration. Any minor repair or minor alteration not performed in accordance with applicable consensus standards would result in the aircraft not conforming to a properly altered condition.

The proposal would also retain current provision in § 21.181(a)(3)(iii) specifying that for the airworthiness certificates of aircraft certificated in the light-sport category to remain effective the aircraft must have no unsafe condition and not be likely to develop an unsafe condition. The current requirement in § 21.181(a)(3)(iv) that these aircraft be registered in the United States for their airworthiness certificates to remain effective would also continue to remain applicable; however, since that requirement applies to all aircraft issued airworthiness certificates, the FAA proposes that the requirement is better placed in § 21.181(a), where it would be applicable to all airworthiness certificates.

2. Issue of Experimental Airworthiness Certificates

In this proposed rule, the regulatory wording of § 21.191 would be revised from “Experimental certificates are issued for the following purposes:” to “Experimental airworthiness certificates are issued for the following experimental purposes.” “Experimental certificates” would be changed to “Experimental airworthiness certificates” to clarify that experimental certificates are airworthiness certificates and that they are issued for the experimental purposes listed in § 21.191. The term “purposes” would be revised to “experimental purposes” to clarify that the purposes in § 21.191 are experimental. These changes are also being proposed to align with a change in § 21.175, which proposes to clarify that special airworthiness certificates are issued for aircraft operating for an experimental purpose.

This rule proposes to retain § 21.191(a) through (h), revise § 21.191(i), and add § 21.191(j) and (k).

3. Operating Former Light-Sport Category Aircraft

Currently § 21.191(i), Operating light-sport aircraft, consists of three sections. Each section was created for a particular type of aircraft. The first section, identified in § 21.191(i)(1), applies to

aircraft that have not been issued a U.S. or foreign airworthiness certificate and do not meet the provisions of 14 CFR 103.1. These aircraft are commonly referred to as “fat ultralights.” As provided in § 21.191(i)(1), an experimental certificate will not be issued under this paragraph for these aircraft after January 31, 2008. As such, the FAA is proposing to delete this requirement. The second section, identified in § 21.191(i)(2), applies to light-sport aircraft that have been assembled from a kit in accordance with manufacturer’s assembly instructions that meet an applicable consensus standard. The FAA is proposing to move this requirement to § 21.191(j) as discussed in section IV.I.3. The third section, identified in § 21.191(i)(3), applies to aircraft previously issued an airworthiness certificate in the light-sport category. This last section would be retained in § 21.191(i).

This rule proposes to revise the heading of § 21.191(i) from “Operating light-sport aircraft” to “Operating former light-sport category aircraft.” This section would contain the same experimental purpose as the current § 21.191(i)(3), which includes aircraft that have previously been issued a special airworthiness certificate in the light-sport category under § 21.190. Aside from the relocation from § 21.191(i)(3) to § 21.191(i) and the revision of the heading, this proposal would not further materially change this section.

This rule would eliminate § 21.191(i)(1) that allows for airworthiness certification of “fat ultralights.” These aircraft have not been issued a U.S. or foreign airworthiness certificate and do not meet the provisions of 14 CFR 103.1. These aircraft were provided a small timeframe in which they could be issued an airworthiness certificate under this experimental purpose and that timeframe closed on January 31, 2008, pursuant to § 21.191(i)(1). As such, this paragraph would be eliminated from this revised rule since these aircraft can no longer be issued an airworthiness certificate under this section.

4. Operating Light-Sport Category Kit-Built Aircraft

This rule would create a new experimental purpose, “Operating light-sport category kit-built aircraft” in § 21.191(j), specifically for light-sport category kit-built aircraft that are currently being certificated under § 21.191(i)(2). Aircraft certificated under this experimental purpose would continue to include those that have been

certificated under § 21.190 and assembled from an aircraft kit in accordance with the manufacturer’s assembly instructions that meet an applicable consensus standard.

The items the applicant must provide to apply for an experimental airworthiness certificate for a light-sport category kit-built aircraft currently exist in § 21.193(e). This rule would relocate these application items for light-sport category kit-built aircraft from § 21.193(e) to § 21.191(j) with minor changes. Section 21.193(e)(1) requires evidence that an aircraft of the same make and model was manufactured and assembled by the aircraft kit manufacturer and issued a special airworthiness certificate in the light-sport category. This proposed rule, in § 21.191(j)(1), would clarify that the issuance of a special airworthiness certificate in the light-sport category would occur under § 21.190.

Section 21.193(e)(2) requires the applicant to provide a copy of the aircraft’s operating instructions and § 21.193(e)(5) requires the applicant to provide a copy of the aircraft’s flight training supplement. These requirements would be relocated to § 21.191(j)(2) in this rule and would change “the aircraft’s operating instructions” and “the aircraft’s flight training supplement” to “the pilot’s operating handbook that includes a flight training supplement,” to standardize with terminology proposed for use throughout § 21.190 and part 22 of this proposal.

Section 21.193(e)(3) requires the applicant to provide a copy of the aircraft’s maintenance and inspection procedures. This requirement would be moved to § 21.191(j)(3) in this rule.

Section 21.193(e)(4) requires the applicant to provide the manufacturer’s statement of compliance for the aircraft kit used in the aircraft assembly that meets § 21.190(c), except that instead of meeting § 21.190(c)(7), the statement must identify assembly instructions for the aircraft that meet an applicable consensus standard. This proposed rule would move this requirement to § 21.191(j)(4) and clarify that the aircraft kit must comply with the applicable requirements of § 21.190 and part 22 in effect at the time the aircraft kit was manufactured, except the statement of compliance need not indicate compliance with § 22.100 for flight and ground testing in accordance with a production acceptance test procedure. This change is necessary because this rule would contain the applicable requirements throughout § 21.190 that an applicant would have to comply with in addition to the manufacturer’s

statement of compliance. Additionally, design, production, and airworthiness requirements that must be complied with would be in part 22 of this proposed rule.

Finally, current § 21.193(e)(6) requires an applicant for an aircraft kit

manufactured outside the United States to show evidence that the aircraft kit was manufactured in a country with which the United States has a Bilateral Airworthiness Agreement concerning airplanes or a Bilateral Aviation Safety Agreement with associated

Implementation Procedures for Airworthiness concerning airplanes, or an equivalent airworthiness agreement. This requirement would remain unchanged in the proposed rule and relocated to § 21.191(j)(5).

TABLE 5—PROPOSED CHANGES TO § 21.191(i) OPERATING LIGHT-SPORT AIRCRAFT

Current purpose:	Proposed purpose:
§ 21.191(i)(1) (“fat-ultralights”)	Removed from § 21.191; timeframe closed on January 31, 2008.
§ 21.191(i)(2) (light-sport kit)	§ 21.191(j) <i>Operating light-sport category kit-built aircraft</i> ; would include provisions from current § 21.193(e).
§ 21.191(i)(3) (former § 21.190) ..	§ 21.191(i) <i>Operating former light-sport category aircraft</i> .

5. Operating Former Military Aircraft

This rule would create a new experimental purpose for former military aircraft to be added as § 21.191(k). To be eligible for an experimental airworthiness certificate under the proposed rule, aircraft would have to be manufactured, purchased, or modified under contract by the U.S. Armed Forces or a foreign military. This proposed requirement would establish the military history of the aircraft as a prerequisite for eligibility under this section. The aircraft would have to have been a military aircraft before the FAA would consider the aircraft a former military aircraft. Under the proposed rule, unmanned aircraft (UA) would be excluded from eligibility for an airworthiness certificate under this purpose.

This additional purpose is necessary to allow for flights conducted by these aircraft between their public aircraft operations performed on behalf of the Department of Defense (DOD). Since fiscal year 2015, the DOD components have increased the use of air support contracts, including contracting for more flying hours and expanding the number of training locations, to address training requirements. DOD components awarded almost \$8.4 billion for air support contracts in fiscal years 2015 through 2021.¹²³ These contracts provide non-military aircraft and personnel to replicate the role of combat aircraft for various training activities. DOD has used contracts to meet training needs, address shortages in available military aircraft and crew members, and manage costs.

Many of these DOD operations involve contract air support operations that use civilian contractor aircraft and personnel. Some examples of contract air support operations are ordinance

delivery, target towing, aerial refueling, and aggressor training, in which military pilots are provided with simulated adversaries to replicate combat activities. Although contract air support aircraft have been issued experimental airworthiness certificates for the purpose of exhibition and crew training, there currently is no experimental purpose available that adequately addresses the DOD’s needs with regard to contract air support. Although the operations conducted under the contract with DOD may be conducted as public aircraft operations, any operations the aircraft may perform that do not meet the statutory requirements for public aircraft operations would be a civil aircraft operation subject to FAA airworthiness requirements.

Existing airworthiness requirements for experimental aircraft such as exhibition and crew training also may not include the mitigations appropriate to the operation of these aircraft. To date, former-military aircraft seeking to conduct contract air support operations typically have sought experimental airworthiness certificates for the purposes of exhibition and crew training which the FAA has issued accompanied by specific operating limitations developed for each purpose in accordance with § 91.319(i) and FAA Order 8130.2.¹²⁴ As the DOD has increased its use of contract air support operations over time, the FAA has become aware that issuing experimental airworthiness certificates under the current available purposes may result in a misalignment of the issued experimental purpose and the operations being conducted. The proposed experimental purpose will align the civil operations to be conducted and the purpose for which these certificates are sought.

To better allow these aircraft to operate as civil aircraft, the FAA proposes to establish a new experimental purpose for former military aircraft that would allow for three types of civil operation. First, aircraft with this purpose would be able to fly the aircraft to a base where repairs, alterations, or maintenance would be performed. Aircraft often need to be taken to specific locations to have requisite repairs, alterations, and maintenance, whether scheduled or unscheduled. Second, aircraft with this purpose would be able to fly the aircraft to a point of storage. When not being used for contract air support operations, these aircraft are typically not housed on military property and need to be kept in storage facilities that meet certain security, size, and environmental requirements. As such, allowing for flight between the contract air support operations and where the aircraft are housed is necessary. Third, aircraft with this purpose would be able to be repositioned for use under contract with the DOD. Contract air support operations occur at various DOD installations and within special use airspace, with the same aircraft often being used for contract air support operations at different locations. As the flight between the two locations would not be considered a public aircraft operation, this purpose will cover the relocation flight necessary for the aircraft to fulfill contractual requirements. These purposes are also aligned with the types of operations generally allowed under a special flight permit. Unlike a special flight permit, however, this rule would allow these aircraft to seek an experimental airworthiness certificate rather than get specific permission for each such operation. The proposed experimental purpose would enable the DOD to use contract air services more effectively and enable the FAA to oversee the civil use of these aircraft more efficiently. Such civil air support operations are

¹²³ Government Accountability Office, *Report to the Committee on Armed Services of the United States House of Representatives* (Dec. 2021), <https://www.gao.gov/assets/gao-22-104475.pdf>.

¹²⁴ FAA Order 8130.2], *Airworthiness Certification of Aircraft* (July 21, 2017).

critical to the defense readiness of the United States. The three authorizations proposed by the FAA provide a pathway for the DOD contractors to conduct limited civil operations.

6. Application for Special Airworthiness Certificates Issued for Experimental Purposes

With the documentation requirements for light-sport category kit-built aircraft proposed for relocation from § 21.193(e) to § 21.191(j), the remaining requirements in § 21.193(a) through (d) are those necessary for the application for an airworthiness certificate for an experimental purpose. In accordance with these proposed revisions, the heading of this section would be changed from “Experimental certificates: general” to “Application for special airworthiness certificates issued for experimental purposes.”

Section 21.193(a) requires a statement, in a form and manner prescribed by the FAA setting forth the purpose for which the aircraft is to be used. This rule would omit the first half of this requirement: “A statement, in a form and manner prescribed by the FAA . . .” In this proposed rule, § 21.193(a) would require an applicant to submit the experimental purpose for which the aircraft would be used and § 21.193(b) would require an applicant to submit enough information to describe the planned operation, equipment, or test, as applicable. Combined, these two requirements would necessitate more than a “statement” from the applicant, as currently required by § 21.193(a). The applicant would be required to provide the § 21.191 purpose(s) for which application is being made as well as provide enough data for the FAA to understand the scope, risks, and hazards of the planned operations, equipment, or test, as applicable.

Section 21.193(b) requires enough data (such as photographs) to identify the aircraft when making application for an airworthiness certificate for an experimental purpose. This proposed rule, in § 21.193(e), would change this requirement by removing the phrase “such as photographs” to clarify that other means of identification are permitted.

The FAA is not changing the requirement in § 21.193(c) stating that, upon inspection of the aircraft, any pertinent information found necessary by the FAA to safeguard the general public must be submitted by the applicant. In this proposal, this requirement would simply be moved to § 21.193(g).

Section 21.193(d)(2) requires the applicant to submit the estimated time

or number of flights required for the experiment. This proposed rule would keep this requirement in § 21.193(c) but would make it applicable only for an applicant seeking issuance of an experimental airworthiness certificate for those experimental purposes specified in § 21.191(a) through (f). This change is necessary because the other experimental purposes (*i.e.*, operating amateur-built aircraft, operating former light-sport-category aircraft, and operating light-sport category kit-built aircraft) are not dependent upon time or accomplishing a specific number of flights to validate their experimental purpose. The experimental purposes of research and development, showing compliance with regulations, crew training, and market survey would all be subject to a certificate duration of three years or less under this rule, or they could indicate the number of flights it will take to complete their experiment or operation. Applicants for the exhibition and air racing experimental purposes would identify the number of flights, typically planned at events such as airshows, movie or television productions, or air races. In this section, the word “experiment” in § 21.193(d)(2) would be changed to “operation” in § 21.193(c) of this rule to reflect that not all the experimental purposes in § 21.191(a) through (f) involve experiments. Replacing “experiment” with “operation” more accurately describes the flight operations of these experimental purposes.

The current requirement in § 21.193(d)(3) for applicants to submit the areas over which the experiment will be conducted when applying for an airworthiness certificate for an experimental purpose would move to § 21.193(d) in this proposed rule. Consistent with other requirements in this section in this proposed rule, the word “experiment” would be changed to “flight” to show that not all experimental purposes involve experiments.

Finally, current § 21.193(d)(4) requires applicants for an airworthiness certificate for an experimental purpose to provide three-view drawings or three-view dimensioned photographs of the aircraft, except for aircraft converted from a previously certificated type without appreciable change in the external configuration. This proposed rule, in § 21.193(f), would omit the words “aircraft converted from” to clarify that any previously type-certificated aircraft would be excepted from this requirement if there was no appreciable change in the external configuration.

Proposed § 21.193(h) would require applicants for an experimental certificate under § 21.191(i) operating former light-sport category aircraft, and § 21.191(j) operating light-sport category kit-built aircraft, to demonstrate compliance with the aircraft noise limits in 14 CFR part 36. If compliance cannot be demonstrated using analytical data (*i.e.*, the aircraft needs to be flight tested), an applicant for either of these experimental purposes would need to obtain an experimental airworthiness certificate for the purpose of showing compliance with regulations to complete noise testing before receiving airworthiness certification under the proposed § 21.191(i) or (j). Options for noise compliance are discussed in section IV.K.

7. Changes to the Experimental Purpose of Market Survey

Section 21.195(b) applies to manufacturers of aircraft engines and § 21.195(c) applies to persons who have altered the design of a type-certificated aircraft. Both § 21.195(b) and (c) have the requirement for an aircraft, before alteration, to have been type certificated in the normal, utility, acrobatic, commuter, or transport category. This proposed rule would add aircraft type certificated in the primary and restricted categories. This change would allow, for example, a manufacturer or person to alter an aircraft, such as by adding a new crop sprayer and install it in an aircraft that had been, before alteration, type certificated in the restricted category for the special purpose operation of crop spraying. This manufacturer or person could demonstrate the new crop sprayer on a restricted category aircraft to potential customers under the experimental purpose of market survey. Currently, § 21.195 does not contain requirements applicable to these types of demonstrations in the primary and restricted categories.

Section 21.195(d) states that an applicant for an experimental certificate under this section is entitled to that certificate if, in addition to meeting the requirements of § 21.193, the applicant has established an inspection and maintenance program for the continued airworthiness of the aircraft and showed that the aircraft has been flown for at least 50 hours, or for at least 5 hours if it is a type-certificated aircraft which has been modified. The FAA may reduce these operational requirements if the applicant provides adequate justification. This proposed rule would clarify that § 21.195(a), (b), or (c) determine the eligibility for the application of an airworthiness

certificate for the experimental purpose of market survey and that § 21.195(d) is not a stand-alone eligibility criterion. To remedy this common misconception, this rule would clarify that § 21.195(d) only applies when an applicant meets the requirements of § 21.193 and any of the three criteria in § 21.195(a), (b), or (c).

In addition to the changes previously discussed, this rule proposes to eliminate the use of gender-specific terminology that exists in this section.

8. Noise Requirements

a. New Experimental Light-Sport Category Aircraft and Acoustic Changes to Existing Experimental Light-Sport Aircraft

This rule proposes that new experimental light-sport aircraft and existing experimental light-sport aircraft that are altered in a manner that changes their noise generation would be required to demonstrate compliance with part 36. While the noise limits listed in the appendices to part 36 would apply, the FAA is proposing different methods of compliance depending on the complexity of the aircraft and the availability of noise consensus standards. A more comprehensive discussion of the need for this requirement and the options available for airworthiness certification is presented in section IV.K.

Aircraft certificated under current § 21.191(i)(1) would be excepted from meeting noise requirements, as discussed in section IV.K.

b. Experimental Light-Sport Category Kit-Built Aircraft

The FAA proposes to apply the noise requirements of part 36 to experimental light-sport aircraft kit-built aircraft when an airworthiness certificate is applied for under § 21.191(j). The applicability and methods of compliance with part 36 are fully discussed in section IV.K.

9. Aircraft Identification

In § 21.182(a), this rule would change the word “his” to “the” to make this sentence gender-neutral.

When combined, the current § 21.182(b) introductory text and (b)(2) contain double-negative language that is confusing. This rule would eliminate the double-negative language to add clarity. Section 21.182(b) currently states in part that paragraph (a) of this section does not apply to applicants for the following: an experimental certificate for an aircraft not issued for the purpose of operating amateur-built aircraft, operating primary kit-built aircraft, or operating light-sport aircraft.

To apply this double-negative language correctly, a person would have to determine the experimental purposes not listed in § 21.182(b)(2). These purposes include research and development, showing compliance with regulations, crew training, exhibition, air racing, and market survey. The proposed § 21.182(b)(2) would instead list these applicable experimental purposes, making comprehension much easier.

A new experimental purpose, operating former military aircraft, would be included under § 21.182(b)(2), thereby excluding these aircraft from compliance with the fireproof identification marking requirements of § 45.11. Former military aircraft were built under U.S. or foreign military requirements, and it would be impractical and extremely costly for them to have to retroactively comply with civil fireproof identification marking requirements. Also, most former military aircraft currently operating under FAA airworthiness certificates are already excluded from fire-proof marking requirements since they tend to operate under the experimental purposes of research and development, crew training, or exhibition.

J. Restricted Category

1. General Changes to Airworthiness Certification of Restricted Category Aircraft

For type certification in the restricted category, § 21.25(a)(1) currently requires an aircraft to meet the airworthiness requirements of an aircraft category, except those requirements that the FAA finds inappropriate for the special purpose for which the aircraft is to be used. This proposed rule would specify that the airworthiness regulations for primary or light-sport categories are not acceptable for type certification in the restricted category. These two categories were created after the restricted category regulations were established and were not intended to be included for type certification in the restricted category.

Additionally, the airworthiness requirements for primary and light-sport categories are not appropriate for use in restricted category type certification. The primary category airworthiness regulations are not designed to include all of the airworthiness standards in part 23 or 27, as applicable, while the airworthiness requirements for light-sport category aircraft, as proposed in this rule, are based on the design, performance, and production requirements in part 22. This revision would preclude owners of primary

category aircraft and light-sport category aircraft from seeking certification of their aircraft in the restricted category. Currently, the FAA is not aware of any owners of primary category aircraft or light-sport category aircraft that have requested their aircraft to be certificated in the restricted category. As such, this proposed rule would result in the airworthiness regulations for normal, utility, acrobatic, commuter, and transport categories to be acceptable for use under the proposed restricted category provisions in § 21.25(a)(1).

Also in this proposed rule, the term “special purpose” would be replaced with “special purpose operation” in § 21.25(a)(1) and (2). This change would standardize the use of this terminology throughout §§ 21.25, 21.185, and 91.313 and FAA Order 8110.56B, Restricted Category Type Certification, dated July 19, 2017 (“FAA Order 8110.56B”).

In general, § 21.25(a)(2) addresses requirements for military aircraft that could be type certificated in the restricted category. This proposed rule would restructure § 21.25(a)(2) by splitting this section into three requirements, of which the latter two are new. This restructuring would make this section easier to read. In this proposed rule, the phrase, “an Armed Force of the United States,” would be replaced with “the U.S. Armed Forces” to align with terminology used throughout 14 CFR part 21. Section 21.25(a)(2)(i) would contain the existing requirement that the aircraft type was manufactured in accordance with the requirements of, and accepted for use by, the U.S. Armed Forces.

To be eligible for restricted category type certificate under proposed § 21.25(a)(2)(ii), an aircraft type must have been operated by a U.S. Armed Force since this provision is intended for former aircraft types of a U.S. Armed Force. Aircraft that have only been manufactured for and accepted by a U.S. Armed Force, but never operated by that U.S. Armed Force, could have been manufactured and accepted on behalf of other operators such as under foreign military sales arrangements and, therefore, not truly be an aircraft type of a U.S. Armed Force.

Proposed § 21.25(a)(2)(iii) would clarify that an aircraft must be able to perform, or be modified to be able to perform, the special purpose operation for which the aircraft is to be approved. Under the current § 21.25(a)(2), the requirements for what modifications are permitted or required for type certification are not specified. This has produced misconceptions that the aircraft can only be modified for special purpose operation. Surplus military

aircraft may be type certificated to perform a special purpose operation without any modification. Alternatively, modifications may be made for other reasons, such as aircraft performance, reliability, or safety enhancements.

2. Codification of Special Purpose Operations

The existing list of special purpose operations in § 21.25(b)(1) through (7) that are authorized for restricted category aircraft have largely remained unchanged since 1964 (see 29 FR 14564, October 24, 1964). This proposed rule would revise § 21.25(b) by codifying the special purpose operations that have been approved by the FAA since 1964. Most of these special purpose operations have been published in FAA Order 8110.56B.

In this proposed rule, § 21.25(b)(1) through (7) would continue to contain the seven special purposes currently in § 21.25(b)(1) through (7) that include: agricultural, forest and wildlife conservation, aerial surveying, patrolling, weather control, aerial advertising, and other, as specified by the FAA. Additionally, the associated special purpose operations for each special purpose would be codified. For example, cloud seeding would be a special purpose operation under the special purpose of weather control. This change would align terminology in § 21.25(b) with that used by the FAA in the approvals for special purpose operations published in the **Federal Register**. This change would also align this terminology with that used in the certification basis section of type certificate data sheets and supplemental type certificates, as well as with FAA policy in Order 8110.56 for restricted category aircraft.

For § 21.25(b)(1), this rule would add three agricultural special purpose operations that have been previously approved by the FAA: insect control, dust control, and fruit drying and frost control. Frost control and fruit drying, also called protection of crops, involve the use of an aircraft to circulate air over a field or orchard to prevent frost from forming on the crops or to dry the fruit on the orchard trees.

For § 21.25(b)(2), this rule would codify forest and wildlife conservation special purpose operations that have been previously approved by the FAA. These include aerial dispensing of fire-fighting materials, fish spotting, wild animal survey, and oil spill response. The special purpose of aerial dispensing of fire-fighting materials was originally approved as “aerial dispensing of liquids” for fire-fighting aircraft. However, this rule proposes to change

the name to aerial dispensing of fire-fighting materials to more closely align with the regulatory language in 14 CFR 36.1.

For § 21.25(b)(3), this rule would codify aerial surveying special purpose operations that include: aerial imaging, gas exploration, atmospheric survey and research, geophysical and electromagnetic surveys, oceanic surveys, and airborne measurement of navigation signals. Gas exploration would be added as a special purpose operation since it uses the same processes as the special purpose operation of oil exploration, which has existed since 1964.

Aerial imaging would replace photography as an aerial surveying special purpose operation to clarify that specialized airborne sensing or measuring equipment on the aircraft is a key component to perform aerial surveying operations. Aerial imaging would permit new technologies used to perform aerial surveying operations, such as light detection and ranging, which is commonly known as LIDAR.

For § 21.25(b)(4), this rule would codify patrolling special purpose operations that include: patrolling of railroads, patrolling of harbors, and patrolling of data transmission lines and towers. Patrolling of data transmission lines and towers is a new special purpose operation that would be added to this rule because it involves a similar process used for the special purpose operation of patrolling power lines, which has existed since 1964.

Finally, for § 21.25(b)(7), this rule would codify other special purpose operations that have been previously approved by the FAA but are not categorized under the prior six special purposes. The following special purpose operations would be added to § 21.25(b)(7): rotorcraft external-load operations conducted under part 133, carriage of cargo incidental to the owner's or operator's business, target towing, search and rescue operations, glider towing, Alaskan fuel hauling, Alaskan fixed-wing external load operations, and space vehicle launch support. This rule would move the existing catchall, “any other special purpose operation specified by the FAA,” to become the last item in the list to indicate that the FAA may still add special purpose operations in the future.

3. Corrections to Original Issuance of Restricted Category Airworthiness Certificates

Section 21.185(a) states that an applicant for the original issue of a restricted category airworthiness certificate for an aircraft type

certificated in the restricted category, that was not previously type certificated in any other category, must comply with the appropriate provisions of § 21.183. In this proposed rule, § 21.185(a) would be revised to remove “original issue of” because “original” specifies compliance with the applicable requirements of § 21.183 only for the original issuance of a restricted category airworthiness certificate. This causes confusion in situations wherein a restricted category aircraft's airworthiness certificate has to be re-issued. For example, a restricted category aircraft may require re-issuance of the airworthiness certificate in situations where the airworthiness certificate was lost or had become unreadable due to damage. This proposed revision would account for both original and re-issuance of a restricted category airworthiness certificate.

Section 21.185(b) states that an applicant for a restricted category airworthiness certificate for an aircraft type certificated in the restricted category that was either a surplus aircraft of the Armed Forces or previously type certificated in another category is entitled to an airworthiness certificate if the aircraft has been inspected by the FAA and found to be in a good state of preservation and repair and in a condition for safe operation. Section 21.185(b), as proposed, would be restructured to provide clarity and implement terminology changes that align with the language used in other sections of this chapter. For example, this section would add “entitled to an airworthiness certificate” in the first sentence to align with other sections of part 21, subpart H. Consistent with the changes previously discussed in § 21.25, terminology such as “special purpose operation” and “U.S. Armed Forces” would be used in § 21.185(b)(1) and (b)(2)(i) respectively. Exclusion of aircraft previously type-certificated in categories other than primary and light-sport is proposed in § 21.185(b)(2)(ii) and would be similar to the exclusion proposed as discussed in the preamble for § 21.25(a)(1).

In addition to the changes previously discussed, this rule proposes to eliminate the use of gender-specific terminology that exists in this section.

4. Issuance of Multiple Airworthiness Certificates for Restricted Category Aircraft

This proposal would revise the heading of § 21.187 by adding “for restricted category aircraft” to clarify that this section applies only to restricted category aircraft.

K. Noise Certification of Aircraft That Do Not Conform to a Type Certificate

The FAA is proposing to amend the applicability of 14 CFR part 36 to make noise certification applicable to aircraft that do not conform to a type certificate. Since noise certification requirements have historically only been applied to type-certificated aircraft, this rulemaking proposes the addition of a new § 36.0 for aircraft that do not conform to a type certificate to keep the requirements clearly separated. Part 36 would apply on the effective date of the final rule. Compliance would be required when a new special airworthiness certificate is applied for, or by the continued use of a previously issued airworthiness certificate when an alternation is made to an aircraft that would affect the amount of noise it produces when operating. The noise certification requirements proposed for an aircraft that does not conform to a type certificate would not be retroactive for any aircraft currently operating.

1. Noise Certification Background

Pursuant to its authorizing legislation in 49 U.S.C. 44715, the FAA has the responsibility to “protect the public health and welfare from aircraft noise.” This responsibility came with broad authority to adopt regulations and noise standards to carry out this mandate. When promulgated in the 1970s, the FAA applied the part 36 noise certification regulations when the agency issued type certificates. This represented the provision in section 44715(a)(3) that acts as the “floor” for the FAA’s duty to exercise its authority. The agency’s much broader authority over aircraft noise remains discretionary.

Initially, the FAA determined that there was little value in assessing the noise from aircraft that did not receive type certificates. Those aircraft were originally found to be few in number, and in many cases may have been a single aircraft of its kind. The agency did not find value in requiring noise testing by single operators, nor any value in the test data from a single model of an aircraft that was allowed

only limited operations; these were often categorized under the general heading of experimental airworthiness certificates.

In the past two decades, the reality of the number of aircraft operating that do not conform to a type certificate has overtaken those historical presumptions. There are now tens of thousands of aircraft that do not conform to type certificates, many of them nearly identical, that have never been subject to noise testing or limits, including aircraft that may be similar to or larger than aircraft with type certificates that are already subject to the noise requirements. The FAA did not anticipate the growth of aircraft that do not conform to type certificates when the categories were created, and the noise requirements did not keep pace with this growth of these categories because they were based on historical use and expectations. The FAA can no longer justify the exclusion of these aircraft and their noise impact on communities under its statutory responsibility, nor can it let the growth continue by changing the names or the categories. The purpose of this rulemaking is to reorganize the issuance of special airworthiness certificates to reflect the current realities of certification, and it presents the opportunity to recognize and address the noise created by these aircraft. This proposed expansion of the applicability of part 36 acknowledges that noise certification is part of the overall certification scheme for aircraft and is appropriate for modernization as the agency modernizes its issuance of special airworthiness certificates.

The intent of this expansion of the applicability of part 36 is focused on those categories and classes of aircraft that represent the more recent expansion, rather than the aircraft that were traditionally excepted from noise regulations. Aircraft that would remain excepted from part 36 applicability include those traditionally determined experimental, for example the proposed categories of research and development, showing compliance, market survey, exhibition, air racing, and amateur-built

aircraft. Aircraft holding airworthiness certification or seeking a new special airworthiness certificate in these categories would not be included in part 36 applicability.

Part 36 would not apply to light-sport category aircraft or experimental light-sport category aircraft as long as their airworthiness certificate was issued before the effective date of the final rule and for as long as the aircraft remains unaltered. However, any aircraft that would be certificated for the first time under proposed § 21.190 would be subject to noise requirements of part 36 at all weights. Part 36 would also apply to a current light-sport category aircraft that incorporates an alteration that would routinely be considered as requiring evaluation of the change for noise in accordance with § 21.93(b). That regulation is known as the “acoustical change” provision. However, because § 21.93 only applies to type-certificated aircraft the FAA finds the provision would not be appropriate for aircraft that have no type certificate since they have no original noise basis from which to evaluate a change. In the proposed regulation, this type of change is referenced as an alteration that would result in an acoustical change. In the context of an aircraft that does not have a type certificate, such alteration would likely be made by the airworthiness certificate holder for their single aircraft. If an aircraft incorporates such an alteration, it would be the responsibility of the airworthiness certificate holder to comply with the requirements of part 36 for its aircraft, possibly for the first time. For the purposes of discussion here, such alterations almost always include a change in engine or propellers, a change in the wing structure or material, significant additions to the fuselage or fixed landing gear, increases in operating weight, and the attachment of external equipment. Those alterations that incorporate a change that would reduce the noise level created by the aircraft may also require a demonstration of compliance with part 36, as it would establish a new baseline for future changes.

TABLE 6—SUMMARY OF § 36.0 APPLICABILITY TO AIRCRAFT THAT DO NOT CONFORM TO A TYPE CERTIFICATE

Aircraft certificated under	Aircraft applicability	Applicable noise regulation	Means of compliance
14 CFR 21.190 (through § 22.175)	New aircraft or Acoustic alteration of aircraft.	Part 36 (§ 36.0)	FAA-approved consensus standard, applicable part 36 appendix, or other combination of requirements as approved by the FAA.

TABLE 6—SUMMARY OF § 36.0 APPLICABILITY TO AIRCRAFT THAT DO NOT CONFORM TO A TYPE CERTIFICATE—
Continued

Aircraft certificated under	Aircraft applicability	Applicable noise regulation	Means of compliance
14 CFR 21.191(i) Operating former light-sport category aircraft; or (j) Operating light-sport category kit-built aircraft (through § 21.193(h)).	New experimental light-sport category aircraft kits or Acoustic alteration of experimental light-sport category aircraft.	Part 36 (§ 36.0)	FAA-approved consensus standard, applicable part 36 appendix or other combination of requirements as approved by the FAA.

2. What Noise Certification Does and Does Not Mean

Although traditional noise certification of aircraft may evoke impressions of burdensome testing and the potential for noise operating limitations in certain areas, this is often not the case. Neither comprehensive testing nor operating limitations are automatic when part 36 applies. At present, the only noise operating limitations in the United States apply to jet aircraft.

The primary emphasis on controlling aircraft noise is done by assessing noise at its source, the aircraft itself, rather than operations generally. This assessment occurs when noise is measured at the time of type certification. Through the creation of noise limits for various aircraft types and the development of measurement procedures and methods that are relevant to day-to-day operation, the FAA meets its primary statutory obligation to protect the public health and welfare by assessing the noise profiles of aircraft as they are developed, and by setting a defined noise limit with which an aircraft must comply before it is given an airworthiness certificate and permitted to operate. The limits are set based on weight, design, and means of propulsion. There are a set of standards and limits for fixed wing small airplanes, one for jets, one for helicopters, and one for tiltrotors. As new aircraft types develop, the FAA gathers the appropriate data to determine what is acceptable for noise production by the aircraft type to fulfill the agency's statutory responsibilities. These standards and their adoption into regulations are how the FAA meets its obligation to protect public health and welfare from aircraft noise is appropriately and consistently administered.

The noise certification requirements of part 36 are integrated into the larger aircraft type and airworthiness certification processes that assess safety. However, there is one significant difference between safety and noise certification. Safety is maintained by

continual assessment of aircraft condition, and the FAA can address and require correction of an unsafe condition by means such as an airworthiness directive, which is a legally enforceable regulation adopted in accordance with 14 CFR part 39. No such monitoring or correction mechanism by the FAA exists for noise. This difference places significant emphasis on the comprehensive evaluation of noise on a level playing field at the one time the noise is measured at certification. Since nothing in the regulations specifies any particular means to control the noise of an individual aircraft, the level playing field is maintained by specific test measurements of aircraft noise at certification, one of demonstrating compliance and equal enforcement of the standards. Part 36 requires that the noise limits and reference conditions in part 36 be maintained when demonstrating compliance, even if varied procedures are approved.

Until now, noise certification has been required only for aircraft that conform to a type certificate, although it is considered an airworthiness characteristic of an individual aircraft. As discussed earlier, the expansion of the domestic fleet to include routine operations of aircraft that are not type certificated has caused the FAA to re-evaluate its statutory responsibility and respond to the increased noise burden from aircraft of all kinds. As is required by the FAA's statutory mandate, the existing limits and procedures for noise certification have been developed in a manner that considers the economic reasonableness, technological practicability, and appropriateness for the aircraft to which it would apply.¹²⁵ These criteria also guided the expansion of the noise certification requirements proposed here.

Noise certification is also a different and separate process from the FAA's assessment of the environmental impacts of noise when operating, especially in certain localities. Such considerations are assessed separately under different statutory and regulatory

criteria than noise certification, *e.g.*, the National Environmental Policy Act¹²⁶ and other special purpose laws. While these environmental impacts often refer to noise data gathered during part 36 noise testing, the noise measurements themselves are made under separate FAA authority as noted.

As stated earlier, the noise certification process does not itself create operational restrictions. Instead, each type of aircraft has a noise limit established in part 36. Noise certification is a two-step process used to test an individual aircraft (or model) using the procedures of part 36. The first step is to measure the noise levels created by an aircraft at different operating points. The second step is to determine whether the noise levels measured during testing are below the regulatory noise limit, demonstrating that the aircraft complies with part 36. Since it does not require any specific technology or equipment be installed on an aircraft, part 36 functions as a performance standard; the test shows that as configured, an aircraft is below or above the regulatory limit. Noise certification is considered part of the overall airworthiness of an aircraft (§ 21.183), even if the noise levels of an aircraft are, in many cases, established at the time of type certification for the convenience of the manufacturer (*e.g.*, § 21.17). The regulations require that each individual aircraft remains compliant with the noise standards, indicating that noise compliance is tied to the airworthiness certificate of an individual aircraft as it maintains compliance (see §§ 21.93, 21.183).

As noted, there are no specific aircraft equipment requirements to demonstrate compliance with part 36. An aircraft may incorporate any equipment desired to stay below the noise limit established for that aircraft. An aircraft that demonstrates compliance with part 36 must of course meet the airworthiness requirements for safety as configured when noise tested. Since aircraft noise is correlated to weight, noise certification tests are conducted at the maximum takeoff weight (MTOW)

¹²⁵ 49 U.S.C. 44715(b).

¹²⁶ 42 U.S.C. 4321 *et seq.*

allowed by the airworthiness regulations for an aircraft. When an aircraft at MTOW demonstrates that it remains below the noise limits in part 36, that maximum weight for safe operation becomes an inherent noise limitation (e.g., part 36, appendix B, section B36.7(b)(6)). If an aircraft is altered in a way that it becomes louder, it results in an acoustical change, and fairness requires that the aircraft be reassessed for its noise compliance because the noisiest certificated configuration has changed (§ 21.93(b)).

For large aircraft used in scheduled passenger flight operations, the requirements for noise testing cover various operating modes such as takeoff, flyover and approach. In essence, the noise certification regulations become more sophisticated for aircraft that are larger, heavier, more powerful, and more complex. But for aircraft that are smaller and lighter, the certification criteria are likewise simpler, such as a noise level measured at takeoff at maximum allowed weight, or at a level overflight condition. Part 36 uses such configurations during noise certification to represent the flight segments that generally have the most noise impact. Historically, these measurement points were adopted to represent aircraft flight segments that are most noticeable by people on the ground.

Noise certification is best viewed as a continuum, and despite that aircraft noise is assessed according to weight and measured noise output, the continuum has historically included only aircraft that sought type certification. That historical application is changing. The FAA's reassessment of its statutory obligations and the realities of how aircraft get certificated for operation has led to the expansion of part 36 applicability proposed here. This overall modernization of airworthiness qualifications and categories in part 21 present a unique opportunity for the FAA to modernize its noise responsibilities within the framework of the various aircraft certification processes that allow operation with or without type certificates. The FAA is aware that type certification has long been avoided in part to skirt the noise regulations. The FAA recognizes that its historical limitation of noise certification to type-certificated aircraft has come to represent a failing of the agency's duty to protect the public health and welfare from aircraft noise as Congress intended.

As noise certification expands to cover aircraft that do not have type certificates, the FAA is open to consideration of different procedures

and certification paths that will both meet its statutory obligations and allow for less burdensome and more streamlined compliance for newly affected airworthiness certificate holders. Those compliance mechanisms are proposed in § 36.0.

The first step in current noise certification process is the determination of the appropriate certification basis. Typically, the FAA determines which existing part 36 category applies to the aircraft, depending on its design and expected operation. Once the part 36 category is determined, the next step is to determine the noise limits and methods of compliance (reference conditions and test procedures) from the corresponding subpart and appendices of part 36. The applicant would then develop a noise certification test plan that includes these methods, get the plan approved by the FAA, conduct the required noise measurements, and submit its noise certification report for the FAA's review and approval. Together these steps constitute the applicant's demonstration of compliance.

For aircraft that do not conform to a type certificate, this proposed rule introduces more flexibility for the methods of compliance. Nothing has changed for aircraft that apply for a type certificate that are required to show compliance under existing regulations. Nothing about this proposal for aircraft that do not conform to a type certificate is intended to change the status of those that are type certificated. Type certification applicants should not expect that they will get a choice to use alternate regulatory procedures or industry consensus standards even though the name of an aircraft category in part 21 may change as part of this proposed rule. Nothing about these proposed regulations may be interpreted to alter the current noise certification limits or test requirements for type-certificated aircraft.

3. Aircraft Not Subject to Part 36 Noise Certification Requirements

Aircraft that historically have been designated experimental, that remain few in number, are of limited use, or an aircraft that represents an early stage of continuing design would continue to be excepted from part 36 applicability. These aircraft are issued special airworthiness certificates for experimental purposes as described in § 21.191(a) for research and development, § 21.191(b) for showing compliance, § 21.191(c) for crew training, § 21.191(d) for exhibition, § 21.191(e) for air racing, § 21.191(f) for market survey.

The FAA considered the inclusion of applying part 36 requirements to §§ 21.191(h) (primary category kit-built aircraft) and 21.191(g) (amateur-built aircraft). However, since this rulemaking is intended to streamline only the categories of aircraft discussed in this proposed rule, those aircraft are not among the proposed changes to airworthiness certification requirements and have not been included in this proposed application of part 36.

The FAA considered applying part 36 requirements to § 21.191(k) (former military aircraft). However, these aircraft are expected to remain few in number and of limited use, and their numbers are not expected to increase significantly in the future. Accordingly, this rule does not propose application of part 36 to these aircraft.

The FAA requests comment on whether any categories of aircraft should or should not be subject to part 36 noise requirements, including any technical or economic data that support the comment.

4. Proposed Applicability

Proposed § 36.0 would apply to all aircraft that do conform to a type certificate and apply for an airworthiness certificate in accordance with §§ 21.190, 21.191, or 21.193(h) or part 22 with exceptions listed in the rule. This rulemaking does not affect the noise certification or operation of unmanned aircraft and they are not included in the proposed applicability of part 36. Section 36.0(a) lists the general compliance requirements applicable to each aircraft that does not conform to a type certificate. That paragraph states that the noise regulations of part 36 would apply at the time an applicant submits an application for the first certificate of airworthiness for an aircraft. For an aircraft that already has an airworthiness certificate, noise compliance would take effect when an alteration to the aircraft is made that would affect the noise level it creates, as discussed earlier.

Section 36.0(b) states what an applicant must show to demonstrate noise compliance. First, an applicant must demonstrate the aircraft, usually in its noisiest operating configuration, produces less noise than the limit specified for an aircraft of its kind and weight in part 36. The number that results from the test is called the aircraft's noise level and it must be no louder than the part 36 noise limit. The second part of demonstrating compliance concerns the test procedures and analyses that may be required (depending on the aircraft),

and a determination that they conform to the requirements in part 36 for the aircraft type, meeting the level playing field referenced earlier in the noise background discussion. Each of these two requirements must be met during each configuration, flight profile or reference condition that is determined to apply to the noise certification plan for the aircraft. The simpler an aircraft is, the simpler the test plan would be expected to be.

Section 36.0(c) lists the first method of compliance that would be available to an aircraft that does not conform to a type certificate, the use of a noise consensus standard. This is the first time the FAA has proposed to allow a noise consensus standard to be used for initial noise certification.

In past noise type certification projects, industry has occasionally requested the use of equivalency procedures or methods, including modeling, as an alternative to the noise measurement procedures in part 36. These methods typically have been proposed to demonstrate “no acoustic change” rather than be used for an initial demonstration of compliance with a part 36 noise limit. These methods are heavily scrutinized by the FAA, especially if they are new and novel, and have only been accepted on a single project basis.

The FAA expects new noise consensus standards to be developed by the industry for use by manufacturers of aircraft and kits, and by individuals. Before a consensus standard could be used to demonstrate initial compliance with part 36 for an aircraft that does not conform to a type certificate, the standard would have to be approved by the FAA and use part 36 noise limits. The FAA expects that any consensus standards would not be limited to physical measurements of noise taken during test flights. They might instead be based on empirical data or analytical modeling if the underlying noise prediction methods are found to be robust.

In evaluating new noise consensus standards to be used to demonstrate compliance with § 36.0, the FAA expects to consider the following factors:

(1) The methods in the standard, whether based in physical noise testing or through validated and/or generally accepted noise prediction methods, must be environmentally responsible, economically reasonable, technologically practicable, and appropriate for the aircraft to which it would apply;

(2) The standard must consider developments in other associated fields

(such as research programs into quantification and control of aircraft noise) and participation by stakeholders;

(3) The noise levels generated from using the standard must be within 90 percent of confidence limits and must be within ± 2 decibels A (dBA) when compared to results from using the full noise measurement procedures in the corresponding appendix of part 36; and

(4) The standard must clearly document all assumptions used in the development, validation, results, and limitations of the methods presented.

A modeling-based consensus standard would be expected to significantly reduce the cost of noise compliance. Not only would there not be a need to physically test every model (or aircraft), it would also allow manufacturers to use the predictive capabilities to guide and support aircraft design decisions in earlier phases, avoiding costly future redesign or modifications.

Accordingly, proposed § 36.0(c) would allow the use of a consensus standard for an aircraft that does not conform to a type certificate when the standard has been approved by the FAA, and the FAA finds that the standard is appropriate for the aircraft and applies to the specific design. The agency anticipates that manufacturers of aircraft or kits will work to get such noise consensus standards developed as an added value for its products, and to facilitate compliance at an early stage. The FAA does not develop noise consensus standards. If there is no approved noise consensus standard available and appropriate to the aircraft of an applicant seeking a special airworthiness certificate, another means of demonstrating compliance with part 36 would be required.

Section 36.0(d) lists the methods of compliance with part 36 available for an aircraft that does not have an applicable noise consensus standard. The first determination is whether the aircraft is found by the FAA for noise purposes to be the same as or sufficiently similar to a type-certificated aircraft covered by § 36.1. If the FAA finds there is such a type-certificated aircraft, then (1) the applicant for a special airworthiness certificate may choose to retest its aircraft using the same part 36 standards that apply to the type-certificated aircraft, or (2) if the applicant's aircraft has had no modifications that would affect the noise levels measured for the same or similar type-certificated aircraft, the applicant can adopt the noise levels recorded for the type-certificated aircraft. These are the provisions found in proposed § 36.0(d)(1)(i) and (ii). In some cases, this may be an advantage to

an aircraft that does not conform to a type certificate. The FAA is aware that there are aircraft that once conformed to a type certificate but have been modified, or that the owner voluntarily chose to restrict their operation to qualify for a special airworthiness certificate. If the applicant can show that the aircraft had not been altered in a manner that would change its noise profile, the applicant would be able to use the noise certification for the type-certificated aircraft as its demonstration of compliance, and no further action would be necessary; this method is sometimes referred to as benchmarking. This would be true for jet airplanes, small propeller-driven airplanes, small helicopters, and tiltrotors that have been type certificated and demonstrated compliance with part 36.

Alternatively, if the FAA finds that the applicant's aircraft is not the same or similar to an aircraft noise certificated under § 36.1, the applicant can demonstrate noise compliance using the noise requirements determined by the FAA to be appropriate for the aircraft. This provision, § 36.0(d)(2), is intended to allow the agency the maximum flexibility in finding an acceptable combination of requirements that are appropriate for the aircraft presented. The FAA will be able to build a noise compliance basis for an aircraft using parts of current regulations in part 36, regulations in part 36 that are no longer used for new certifications, accepted noise compliance standards that are not published in part 36 (such as those applicable to single aircraft model), and portions of accepted noise consensus standards. The noise limits established in part 36 would still apply, but the method of compliance would consist of tests or analyses that work for a particular aircraft, while allowing for the whole of the noise compliance basis to be assessed according to the statutory mandate for economic reasonableness and technological practicability. This kind of flexibility is not available under § 36.1 for type-certificated aircraft. It is designed to assist applicants for special airworthiness certificates, especially for new aircraft designs that do not fit neatly into historical categories.

As an example, the FAA would allow the use of test procedures found in appendix F to part 36 for simple propeller-driven airplanes. The procedures in appendix F have not been available to type certification applicants since 1988, when the regulations were updated to account for larger and more sophisticated small airplanes, and for the technology available to measure their noise more accurately. Appendix F

contains simpler procedures and less sophisticated equipment, such as one tripod mounted microphone underneath a flight track.

5. Compliance With Part 36 Not Required

Aircraft issued an experimental airworthiness certificate in accordance with § 21.191(a) through (h) or (k) would be exempted from meeting the requirements of part 36. To account for balloons, gliders and possibly other specialized aircraft that have no or limited noise sources, proposed § 36.0(e)(2) exempts aircraft which, if type certificated, would not be required to demonstrate compliance with part 36.

Aircraft that were airworthiness certificated under § 21.191(i)(1) would be excepted from meeting noise requirements of part 36. These are aircraft that exceeded the scope of part 103, and for which § 21.191(i)(1) was created, providing a temporary window for obtaining an experimental airworthiness certificate. That window closed in 2008. Although treated as experimental light-sport category aircraft, these aircraft do not meet any accepted consensus standard for certification as light-sport category aircraft and were not delivered under a light-sport category aircraft manufacturer's statement of compliance. These aircraft have little in common with other light-sport category aircraft other than the name. No aircraft will be added to this group, and no demonstration of compliance with part 36 is considered necessary.

Overall, airworthiness certification for an aircraft that do not conform to a type certificate is intended to be simpler than for type-certificated aircraft. The process of noise certification for an aircraft that does not conform to a type certificate is intended to be simpler as well, with lower costs for manufacturers and for owners that introduce significant alterations to their aircraft. The traditional processes of demonstrating compliance to noise requirements can be complex, requiring technical skills and experience with acoustic measurement that most aircraft owners do not have. Conducting such testing using accredited professional services can also be expensive. Moreover, the best noise performance is often achieved by informed decisions early in the design process rather than by later design additions or modifications. Like the noise certification basis for type-certificated aircraft, the FAA must approve the applicable noise compliance standards for an aircraft before it is tested, or the applicant risks the tests and data being deemed

unusable for demonstrating compliance with part 36. But the addition of consensus standards and the application of other methods of demonstrating compliance proposed here are all intended to create a simpler, less restrictive process while maintaining the FAA's mandate to protect the public health and welfare. The FAA invites comments on the proposed expansion of noise applicability detailed here, including the exclusion of certain aircraft, including any data or economic impact information that supports the comment.

6. Other Amendments to Part 36

The FAA is proposing to amend other sections of part 36 to include references to aircraft that do not conform to a type certificate where the requirements would apply.

Section 36.3, Compatibility with airworthiness requirements, would be amended by breaking the applicability into two paragraphs for type-certificated aircraft and aircraft that do not conform to a type certificate. The balance of the current section would be designated as paragraph (b) and would apply to all aircraft in paragraph (a). No changes to any of the requirements are proposed.

Section 36.1501, Procedures, noise levels, and other information, would be amended by adding a sentence indicating that aircraft that does not conform to a type certificate would have to include the noise levels achieved during airworthiness certification in the Pilot's Operating Handbook rather than the flight manual required for type-certificated aircraft. No changes to the requirements of the section are proposed.

Section 36.1581, Manuals, markings, and placards, would be amended by adding a new paragraph (h) to describe the requirements for an aircraft that does not conform to a type certificate. The new paragraph indicates that for aircraft subject to § 21.190(e) or § 21.191, compliance with part 36 must be documented as described in those paragraphs. The section also includes a statement that no operating limitations are prescribed as part of part 36 certification, and that no other operating limitations designated for an aircraft by other regulations are affected. The actual operating limitations statement is included in the new paragraph (h) because the current paragraph of § 36.1581 where it appears applies only to type-certificated aircraft.

L. Proposed Effective and Compliance Dates

The FAA proposes to require compliance with all proposals on the

effective dates of the rule. Except for the following, the FAA proposes an effective date of 2 months after publication of the final rule. The FAA proposes an effective date 6 months after publication of the final rule for proposed amendments that would require new or revised consensus standards for compliance; this effective date would apply to amending—

- Section 1.1 removing the term “light-sport aircraft,”
- Section 21.190 concerning the issue of a special airworthiness certificate for light-sport category aircraft,
- Paragraph (j) of § 21.191 for the issuance of experimental airworthiness certificates for the experimental purpose of operating light-sport category kit-built aircraft,
- Paragraph (l) of § 91.319 for operating limitations applicable to experimental light-sport aircraft, and
- Section 91.327 for operating limitations applicable to light-sport category aircraft.

The FAA understands that, although development of these consensus standards may commence based on this NPRM, consensus standards bodies need final rule requirements to finalize means of compliance within their consensus standards. This effective date would also provide time for manufacturers to complete fabrication and assembly of light-sport category aircraft and experimental light-sport aircraft kits that started under current rules. The FAA also proposes an effective date 6 months after publication of the final rule for 14 CFR 65.107(d) to provide time for revision or development of training for certification of repairman (light-sport) to align with the Mechanic Airman Certification Standards. The FAA requests comments on whether the above proposal to establish an effective date 6 months after publication of the final rule for proposed amendments that would require new or revised consensus standards for compliance would appropriately balance enabling compliance to new provisions as soon as practical with the need for additional time to revise consensus standards, complete fabrication and assembly of aircraft that started under current rules, determine compliance with new requirements, and revise of training for certification of repairman (light-sport).

M. Amendments Concerning Import and Export of Aircraft

The FAA proposes to amend § 21.183(d)(2) to enable acceptance of an inspection performed by a foreign maintenance organization to support imports of used aircraft from countries

with which the United States has a bilateral agreement that includes acceptance of imported aircraft. This proposal would align regulatory text with the intent expressed in the preamble when § 21.183(d)(2) was last amended.

This proposal would revise § 21.327 to require that an applicant for an export certificate of airworthiness for an aircraft must be an owner of that aircraft and the aircraft must be registered in the U.S. The current regulation states that any person may apply for an export airworthiness approval and does not require that the aircraft be registered in the U.S. This proposal would preclude persons from exporting aircraft for which they are neither the owner nor the owner's agent. Furthermore, by requiring that the aircraft is registered in the U.S., this proposal would allow the aircraft to be under the regulatory authority of the U.S. before export.

The proposed revision to § 21.329(a)(1) concerning requirements for the issuance of an export certificate of airworthiness would remove the word "airworthiness" to clarify that a new or used aircraft manufactured under subpart F or G of the part would need to meet all applicable requirements under subpart H of the part, and not just those requirements that may apply to airworthiness. Subpart H contains requirements for items other than airworthiness, such as requirements for aircraft registration and identification.

N. Conforming Amendments

This proposed revision would restructure § 21.175(a) and (b) to improve readability. Also, proposed § 21.175(a) would be revised to simplify the existing regulatory text by individually listing specific categories of type-certificated aircraft. Proposed revisions to § 21.175(b) would clarify that aircraft receiving primary, restricted, provisional, and limited category airworthiness certificates are also type certificated in their respective categories. This section would also clarify that special airworthiness certificates are issued for aircraft operating for experimental purposes.

The FAA proposes amendments to parts 43 and 65 to make sure that existing text is consistent with the proposed changes in this NPRM. The first proposed change is to § 43.1. It updates the cross reference in § 43.1(b)(2) from § 21.191(i)(3) to proposed § 21.191(i) to retain the applicability of part 43 to aircraft issued an experimental airworthiness certificate for the purpose of operating former light-sport category aircraft. The

second change is to § 65.109. It updates the cross references in § 65.109(a)(2) and (b)(2) to proposed § 21.191(i) and (j) to identify the privileges and limitations of repairman (light-sport). The FAA notes that the requirements set forth in proposed § 65.109 are currently in § 65.107. The purpose of these changes is to make sure that the intent of the proposed amendments discussed in this NPRM carries through to parts 43 and 65. These amendments do not, in and of themselves, make substantive changes to the rule. Rather, they are conforming changes to effectuate the changes discussed earlier in this document.

V. Regulatory Notices

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 of 1979 (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. 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 \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$177,000,000, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a regulatory impact analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) may

have a significant economic impact on a substantial number of small entities; (4) will not create unnecessary obstacles to the foreign commerce of the United States; and (5) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

1. Baseline for the Analysis

The baseline for the analysis of incremental benefits and costs of the proposed rule includes existing regulations and standards, existing practices, affected entities, and current safety and environmental risks. The FAA promulgated the existing regulations for light-sport category aircraft in 2004. These specifications and certification requirements reflect small, simple, easy-to-fly aircraft for sport, recreation, and experimental purposes with small range. The FAA also works with industry in developing consensus standards for light-sport category aircraft, as well as reviews the consensus standards periodically.

The FAA amended its airworthiness standards for small type-certificated aircraft in 2016. The standards provide risk-based divisions for airplanes with a maximum seating capacity of 19 passengers or less and a maximum takeoff weight of 19,000 pounds or less. Type-certificated aircraft must meet existing standards for aircraft noise. Currently, noise standards are not applied to light-sport aircraft in the United States.

The proposed rule may affect aircraft manufacturers to the extent that they design and manufacture the types of aircraft for which the performance-based or noise standards would apply. The FAA identified 54 (25 U.S. and 29 foreign) active manufacturers of light-sport aircraft and 74 models produced since 2020 (35 from U.S. and 39 from foreign manufacturers). In 2022, there were also almost 7,000 active sport pilots and 250 new light sport repairman certificates.

In 2022, there were seven fatal accidents resulting in 10 fatalities, as well as 46 nonfatal accidents, involving previously defined special light-sport aircraft. There were also 28 fatal accidents and 97 nonfatal accidents, resulting in 43 fatalities and 23 serious injuries, involving amateur-built aircraft. The FAA does not have data on baseline noise profiles of light-sport aircraft; however, FAA noise standards are technology-following (*i.e.*, aircraft with current noise-reduction technology would successfully meet requirements).

2. Benefits

The benefits of the proposed rule would include the value of changes in safety and environmental risks, as well as recreational values. The proposed rule could reduce risks associated with light-sport category aircraft to the extent that the relaxation of certain requirements spurs changes that make these aircraft safer to fly. The performance-based rules could also enhance safety by enabling attractive alternatives to amateur-built aircraft that do not meet 14 CFR or consensus standards. Given the value of reducing fatalities (e.g., \$11.8 million Value of Statistical Life, or VSL) and injuries (e.g., fraction of VSL, or \$1.2 million for serious injury), a relatively small reduction in baseline risk could generate substantial benefits.

The proposed rule will likely not lead to significant noise reductions. Most current light-sport aircraft designs would not require modifications to meet the noise standards. The proposed rule will, however, prevent the introduction of obsolete, overly loud technology into

the light-sport aircraft fleet or modification of such existing aircraft that would increase noise above the limit. Because the FAA cannot predict the amount of technology backsliding that could occur in the absence of the rule, it cannot quantify these benefits.

The proposed rule could also increase recreational values associated with light-sport aircraft, either through increased value of current activity or increased activity levels. For example, greater access to newer technology, safer planes, or improved flying experience could increase unit values and the level of participation. Sport pilots would also be able to fly certain model planes that currently do not meet the definition of light-sport aircraft, including some that they may have used in training. However, the FAA does not have data on baseline recreational values or how they may increase under the proposed rule.

3. Costs

The FAA estimated that the proposed rule could result in incremental

compliance costs for design and production and noise certification (Table 7). The FAA does not have data to estimate incremental costs or cost savings for design and production. For noise certification, costs are most likely to be minimal under the assumption that manufacturers will comply using industry consensus standards employing modeling-based methods. This assumption is supported by FAA research showing that existing SAE standards for predicting light propeller-driven aircraft noise have a potential for further development into a modeling-based consensus standard tool. As an upper bound, the FAA also calculated costs using the test-based methods in the applicable 14 CFR part 36 appendix. Upper bound costs for the industry as a whole may be in the range of \$700,000 one-time and \$100,000 annually. One-time costs are to certify all existing light-sport category aircraft and experimental light-sport aircraft models; annual costs would depend on the number of new models developed in the future.

TABLE 7—SUMMARY OF TOTAL COMPLIANCE COSTS

Category	One-time (existing models)	Annual (new models)
Noise certification	Minimal ¹ to \$700,000. ²	Minimal ¹ to \$100,000. ²

¹ Reflects industry compliance using consensus standards. Costs inherent in design.

² Reflects industry compliance using the applicable 14 CFR part 36 appendix. One-time (nonrecurring) costs based on FAA Registry data on models produced since 2020 (although manufacturers may not continue production of all models). Annual costs based on new model development rate (models eligible to receive previously defined special light-sport aircraft airworthiness certificates) since 2004.

The FAA does not anticipate more than minimal incremental costs for other provisions of the proposed rule, such as training. For example, course providers of training for a light-sport repairman would need to revise courses so they contain content on aircraft that could be newly included in that class of aircraft. However, these providers already must update their training manuals every two years. The FAA's acceptance, however, would no longer expire after two years, and the FAA estimates that the net incremental impacts of these changes would likely be minimal. The FAA also does not have data to estimate any cost savings, such as could result from operating certain light-sport category aircraft in aerial work which may be less costly than the airplanes currently being used.

4. Summary

The proposed rule largely expands opportunities in the light-sport aircraft sector. These expansions may result in safety and recreational benefits; there may also be associated design and

production costs and cost savings. The proposed rule would also apply 14 CFR part 36 noise standards to this sector, preventing obsolete, overly loud technology from being introduced into the light-sport aircraft fleet. The FAA expects that compliance with the noise standards would be minimal using industry consensus standards. As an upper bound, the FAA also calculated costs using the applicable 14 CFR part 36 appendix. Upper bound costs for the U.S. industry as a whole may be in the range of \$700,000 to certify all existing models for continued production, and approximately \$100,000 per year to certify newly developed models based on the current model production rate. The FAA does not anticipate more than minimal incremental costs for other provisions of the proposed rule, such as training. The FAA also does not have data to estimate any cost savings, such as could result from operating certain light-sport category aircraft in aerial work for compensation.

Please see the Preliminary Regulatory Impact Analysis available in the docket for more details.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), 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.

The FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the

potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Analysis.

An IRFA must contain the following:

(1) A description of the reasons why the action by the agency is being considered;

(2) A succinct statement of the objective of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the proposed rule on small entities.

1. Reasons the Action Is Being Considered

As described elsewhere in this preamble, the FAA is considering this proposal to expand and enable innovation in the classes of aircraft that may be certificated using consensus standards as light-sport category aircraft,

including emerging aircraft types; remove prescriptive weight limits that hinder incorporation of safety-enhancing designs and equipage; enable more robust aircraft for the pilot training environment; enable increased capacities for passengers, fuel, and cargo; enable electric propulsion; and enable faster, higher-performing aircraft more suitable for personal travel.

Together, the FAA intends for these proposals to enhance safety by enabling attractive alternative to amateur-built aircraft that do not meet 14 CFR or consensus standards. As also described elsewhere in this preamble, the FAA is requiring that light-sport category aircraft and experimental light-sport aircraft (except amateur-built) comply with 14 CFR part 36 noise standards because it has reconsidered its responsibility to protect the public health and welfare from aircraft noise.

The FAA is proposing to expand privileges for sport pilots and light-sport repairmen, and update limitations for experimental aircraft, to align with these changes. There are also smaller amendments to related rules for experimental aircraft, restricted category aircraft, and aircraft marking.

The FAA is also codifying statutory language in section 44740 to enable certain aircraft with an experimental certificate to conduct space support vehicle flights without an air carrier certificate or exemption.

2. Objectives and Legal Basis of the Proposed Rule

As also described elsewhere in this preamble, the objectives of the proposed rule are to enhance the safety, performance, and operating privileges for light-sport category aircraft, including increasing suitability for flight

training, limited aerial work, and personal travel, while continuing to enable the manufacture of safe and economical certificated aircraft. This NPRM also includes proposals to amend the special purpose operations for restricted category aircraft; amend the duration, eligible purposes, and operating limitations for experimental aircraft; and add operating limitations applicable to experimental aircraft engaged in space support vehicle flights to codify statutory language. Section III of this preamble describes the FAA's authority to issue rules on aviation safety.

3. Description and Estimate of the Number of Small Entities

FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines "small business" to have the same meaning as "small business concern" under section 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define "small business" by issuing regulations.

SBA has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS). These size standards generally define small businesses based on the number of employees or annual receipts. Table 8 shows the SBA size standards for example industrial classification codes relevant for the proposed rule. Note that the SBA definition of a small business applies to the parent company and all affiliates as a single entity.

TABLE 8—SMALL BUSINESS SIZE STANDARDS: AIR TRANSPORTATION

NAICS code	Description	Size standard (employees)
336411	Aircraft Manufacturing	1,500
336412	Aircraft Engine and Engine Parts Manufacturing	1,500
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing	1,250

NAICS = North American Industry Classification System.

As described in the Regulatory Impact Analysis, the FAA estimated that there may be approximately 25 active US manufacturers of light-sport category aircraft and experimental light-sport aircraft that would have to comply with noise standards under the proposed rule. These entities may meet the size standard for a small business.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Section V.E of this preamble discusses the recordkeeping and reporting requirements of the proposed rule. As described in that section, these requirements represent only minor revisions of existing requirements. Section IV.K. of the preamble describes the requirements for compliance with

noise standards. As described in that section, and the Regulatory Impact Analysis, the FAA expects that compliance costs will be minimal through use of industry consensus standards. As an upper bound, the FAA also estimated the cost of noise certification testing under applicable appendices to 14 CFR part 36. There may also be incremental costs for design and production, depending on the

model and needed changes. The FAA does not have data to estimate these impacts.

Using industry consensus standards, the FAA estimates that per manufacturer costs for noise certification would be minimal. In the event that manufacturers pursue noise certification testing, the estimated costs

for U.S. manufacturers to certify existing models represent an average of one model per manufacturer. Based on the estimated upper bound testing cost of \$20,000 per model, Table 9 shows these costs as a percentage of average receipts for companies of different small sizes. Because the one-time costs are

nonrecurring, any impacts would occur only in the testing year. Not all manufacturers will develop new models every year, but impacts associated with new model development would be the same as shown in the table for existing models and only occur in the testing year.

TABLE 9—EXAMPLE COMPLIANCE COSTS

Entity size category (number of employees)	Average annual receipts per entity (millions) ¹	Ratio of noise certification costs/receipts ²
<5	\$0.7	Minimal to 2.9%.
5–9	1.9	Minimal to 1.1%.
10–14	3.1	Minimal to 0.6%.
50–74	28.3	Minimal to 0.1%.
150–199	49.4	Minimal to 0.04%.
500–749	131.3	Minimal to 0.02%.

¹ Source for receipts: 2017 County Business Patterns and Economic Census (https://www2.census.gov/programs-surveys/susb/tables/2017/us_state_naics_detaileddetails_2017.xlsx). Adjusted for inflation using the Consumer Price Index. Based on NAICS 336411.

² Minimal estimate based on compliance using industry consensus standards. Upper bound estimate based on noise certification testing for an average of 1 model per entity (\$20,000).

5. All Federal Rules That May Duplicate, Overlap, or Conflict

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives Considered

The FAA considered two alternatives to applying the noise standards in 14 CFR part 36 to light-sport category aircraft. The FAA considered the no action alternative in which noise standards do not apply to light-sport category aircraft. The FAA determined, however, that this alternative is not consistent with its responsibility to “protect the public health and welfare from aircraft noise.”

The FAA also considered applying the noise standards to operating amateur-built aircraft [experimental certificates issued per 14 CFR 21.191(g)]. Manufacturers of kits for experimental amateur-built aircraft have no requirement to meet any FAA design or manufacturing standard or industry consensus standards. This alternative could potentially have required additional manufacturers ¹²⁷ to undergo noise testing. The FAA did not select this alternative.

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 it would respond to a domestic safety objective and would not be considered an unnecessary obstacle to trade.

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 1 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 \$177 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 valid Office of Management and Budget (OMB) control number.

This proposed rule contains amendments to the existing information collection requirements approved under OMB Control Numbers 2120–0018, 2120–0022, 2120–0690, and 2120–0730. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

1. Summary

The FAA is proposing to amend rules for the manufacture, certification, operation, maintenance, and alteration of light-sport category aircraft. Certificate holders required to comply would experience the following conforming revisions to existing information collection activities:

¹²⁷ Only one manufacturer since 2020 has requested that the FAA evaluate their aircraft kit for

eligibility in meeting the “major portion” requirement of 14 CFR 21.191(g) (see [faa.gov/](https://www.faa.gov/)

[aircraft/gen_av/ultralights/amateur_built/kits/media/amateur_built_kit_listing.pdf](https://www.faa.gov/gen_av/ultralights/amateur_built/kits/media/amateur_built_kit_listing.pdf)).

TABLE 10—SUMMARY OF CONFORMING REVISIONS

Control No.	Revisions
2120–0018	FAA Form 8130–6, Application for U.S. Airworthiness Certificate: • Update the “LIGHT–SPORT” field to accommodate any aircraft class. • Update the “RESTRICTED” field to add newly codified operations. • Update the “EXPERIMENTAL” field to add new purpose for operating former military aircraft. • Add provision for attaching evidence of compliance with 14 CFR part 36 and include the tested noise levels of the aircraft and include the following statement: “No determination has been made by the Federal Aviation Administration that the noise levels of this aircraft are or should be acceptable or unacceptable for operation in any location.” FAA Form 8130–15, Light Sport Aircraft Statement of Compliance: • Update the “Check applicable items” field to change the 14 CFR reference for kits, accommodate any aircraft class, and indicate whether the aircraft meets eligibility requirements in part 61 for a sport pilot. • Update the “FAA Applicable Accepted Standard(s)” and corresponding “Manufacturer’s Documentation” fields to reflect new requirements for noise, manufacturer’s training requirements, optional simplified flight controls, and optional aerial work. • Add a statement concerning acceptable aerial work operations. • Revise statement(s) to remove references to 14 CFR definition of light-sport aircraft and include new statements required by this rule. • Include new requirements of § 21.190(f)(3), (4), and (5) for an amended statement of compliance. • Update the certifying statement field to add training/certification credentials for the person signing the form. • Add provision for the manufacturer of light-sport category aircraft to notify the FAA and owners of aircraft it manufactured in advance of discontinuance of its continued operational safety program or transfer of its execution to another responsible party.
2120–0022	FAA Form 8610–3, Airman Certificate and/or Rating Application—Repairman: • Change the certificate title from repairman certificate (light-sport aircraft) to repairman certificate (light-sport). • Use the term “Aircraft Category” in place of “LSA Class” and list the following aircraft categories: airplane, rotorcraft, glider, lighter-than-air, powered-lift, powered parachute, and weight-shift control aircraft.
2120–0690	FAA Form 8710–11, Airman Certificate and/or Rating Application (previously part of OMB Control Number 2120–0690): • Update the “Application Information” field to accommodate any aircraft class, and to specify whether the aircraft meets requirements for simplified flight controls. • Update the “Record of Pilot Flight Time” field to accommodate any aircraft class.
2120–0730	14 CFR 91.417, Maintenance Records—Status of SLSA Safety Directives: • Cancelled (compliance no longer mandatory).

2. Use

The FAA will use the revised information collections for oversight activities in relation to the proposed rule including compliance and data analysis.

3. Respondents (Including Number of)

Revisions to OMB Control Numbers 2120–0018, 2120–0022, and 2120–0069 reflect minor form revisions (Table 1) that would have no impact on the number of respondents in the approved collections.

The cancellation of OMB Control Number 2120–0730 would remove the burden from 3,224 respondents as identified in the approved collection.

4. Frequency

The revisions to OMB Control Numbers 2120–0018, 2120–0022, and 2120–0069 would also have no impact on the frequency of collection requirements in the approved collections.

The cancellation of OMB Control Number 2120–0730 would remove this information collection activity entirely.

5. Annual Burden Estimate

The annual burden estimates in the OMB Control Numbers 2120–0018, 2120–0022, and 2120–0069 are unchanged from the approved collections.

The burden estimated for OMB Control Number 2120–0730 would be eliminated (6,488 annual burden hours).

The agency is soliciting comments to—

(a) 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;

(b) Evaluate the accuracy of the agency’s estimate of the burden;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) 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 October 23, 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 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. However, proposals in this NPRM concern aircraft that are issued special airworthiness certificates for domestic operations. As such, these aircraft are not required to be found to meet ICAO standards and recommended practices as required for aircraft that engage in international air navigation. The FAA notes that multiple

aviation authorities have established provisions for the certification of light-sport category aircraft. Requirements among these authorities share similarities for enabling the certification of small aircraft for recreation. However, the specific eligibility parameters for certification as light-sport category aircraft; design, performance, and production requirements; and certification procedures are not harmonized among these authorities. The FAA understands that European Aviation Safety Agency requires the use of the noise standards in ICAO Chapter 16 Volume I. This rule would not require the use of ICAO Chapter 16 Volume I for these aircraft. Regardless of particular differences among national civil aviation authorities for the certification of light-sport category aircraft, proposals in this NPRM generally align with recent rulemaking in Brazil and the European Community in enabling increased safety and performance of these aircraft.

G. Environmental Analysis

FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, identifies FAA actions that may be categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. In accordance with FAA Order 1050.1F, paragraph 5–6.6(f), the FAA has determined that this notice of proposed rulemaking qualifies for a categorical exclusion and does not involve extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule 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 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,¹²⁸ and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation

Policy and Procedures,¹²⁹ the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. Currently, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). 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.

D. Executive Order 13609, Promoting International Regulatory 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 will 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 FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. Additionally, the FAA requests comment on whether the FAA should remove the definition of *consensus standard* from § 1.1 altogether or revise the definition as proposed. 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 in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

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 [regulations.gov](https://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be viewed at [dot.gov/privacy](https://www.dot.gov/privacy).

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at [regulations.gov](https://www.regulations.gov) using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365

¹²⁹ FAA Order No. 1210.20 (Jan. 28, 2004), available at [faa.gov/documentLibrary/media/1210.pdf](https://www.faa.gov/documentLibrary/media/1210.pdf).

¹²⁸ 65 FR 67249 (Nov. 6, 2000).

days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at [federalregister.gov](https://www.federalregister.gov) and the Government Publishing Office's website at [govinfo.gov](https://www.govinfo.gov). A copy may also be found at the FAA's Regulations and Policies website at [faa.gov/regulations_policies](https://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.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit [faa.gov/regulations_policies/rulemaking/sbre_act/](https://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Parts 21 and 22

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements, Voluntary standards.

14 CFR Part 36

Agriculture, Aircraft, Noise control.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Signs and symbols.

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Incorporation by reference, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements.

14 CFR Part 91

Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Noise control, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the forgoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

- 2. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], amend § 1.1 by revising the definition of “Consensus standard,” removing the definition of “Light-sport aircraft,” and adding the definitions of “Space support vehicle” and “Space support vehicle flight” in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Consensus standard means any industry-developed standard that applies to aircraft design, operation, production, maintenance, or airworthiness, which—

- (1) Has been adopted and promulgated by a standards-producing organization under procedures which provide an opportunity for input by persons interested and affected by the scope or provisions of the standard;
- (2) Has been reached through substantial agreement on its adoption; and
- (3) Has been accepted as a consensus standard by the FAA.

* * * * *

Space support vehicle means an aircraft that is a launch vehicle, reentry vehicle, or a component of a launch or reentry vehicle.

Space support vehicle flight means a flight in the air that is not a launch or

reentry, but is conducted by a space support vehicle.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND ARTICLES

- 3. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

- 4. Revise § 21.25 to read as follows:

§ 21.25 Issue of type certificate: restricted category aircraft.

(a) An applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if the applicant shows compliance with the applicable noise requirements of part 36 of this chapter, and if the applicant shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use, and the aircraft—

(1) Meets the airworthiness requirements of an aircraft category, other than primary category or light-sport category, except those requirements that the FAA finds inappropriate for the special purpose operation for which the aircraft is to be used; or

(2) Is of a type that—

(i) Has been manufactured in accordance with the requirements of, and accepted for use by, the U.S. Armed Forces;

(ii) Has a service history with the U.S. Armed Forces acceptable to the FAA; and

(iii) Has been found capable by the FAA of performing, or has been modified to perform, the special purpose operation for which the aircraft is to be used.

(b) Restricted category aircraft can be approved for:

(1) Agricultural use, for one or more of the following special purpose operations, including—

(i) Crop spraying, dusting, and seeding;

(ii) Livestock and predatory animal control;

(iii) Insect control;

(iv) Dust control; or

(v) Fruit drying and frost control.

(2) Forest and wildlife conservation, for one or more of the following special purpose operations, including—

(i) Aerial dispensing of firefighting materials;

(ii) Fish spotting;

(iii) Wild animal survey; or

(iv) Oil spill response.

(3) Aerial surveying, for one or more of the following special purpose operations, including—

- (i) Aerial imaging and mapping;
- (ii) Oil, gas, and mineral exploration;
- (iii) Atmospheric survey and research;
- (iv) Geophysical and electromagnetic survey;

(v) Oceanic survey; or

(vi) Airborne measurement of navigation signals.

(4) Patrolling, for one or more of the following special purpose operations, including

- (i) Patrolling of pipelines;
- (ii) Patrolling of power lines;
- (iii) Patrolling of data transmission lines and towers;
- (iv) Patrolling of railroads;
- (v) Patrolling of canals; or
- (vi) Patrolling of harbors.

(5) Weather control, including the special purpose operation of cloud seeding.

(6) Aerial advertising, for one or more of the following special purpose operations, including—

- (i) Skywriting;
 - (ii) Banner towing;
 - (iii) Displaying airborne signs; or
 - (iv) Public address systems.
- (7) Other special purpose operations, including—

(i) Rotorcraft external-load operations conducted under part 133 of this chapter;

(ii) Carriage of cargo incidental to the owner's or operator's business;

- (iii) Target towing;
- (iv) Search and rescue operations;
- (v) Glider towing;
- (vi) Alaskan fuel hauling;
- (vii) Alaskan fixed-wing external load operations;

(viii) Space vehicle launch support; or

(ix) Any other special purpose operation specified by the FAA.

■ 5. Revise § 21.175 to read as follows:

§ 21.175 Airworthiness certificates: classification.

(a) Standard airworthiness certificates are airworthiness certificates issued for aircraft type certificated:

- (1) In the normal, utility, acrobatic, commuter, or transport category;
- (2) As manned free balloons; or
- (3) As special classes of aircraft.

(b) Special airworthiness certificates are airworthiness certificates issued for:

- (1) Aircraft type-certificated in the primary, restricted, provisional, or limited categories;
- (2) Aircraft certificated in the light-sport category;
- (3) Aircraft operating for an experimental purpose; or
- (4) Aircraft operating under a special flight permit.

■ 6. Amend § 21.181 by revising paragraph (a) to read as follows:

§ 21.181 Duration.

(a) Unless sooner surrendered, suspended, revoked, or a termination date is otherwise established by the FAA, airworthiness certificates are effective as long as the aircraft is registered in the United States and as follows:

(1) Standard airworthiness certificates and special airworthiness certificates issued for aircraft certificated in the primary, restricted, or limited category are effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with parts 43 and 91 of this chapter.

(2) A special flight permit is effective for the period of time specified in the permit.

(3) A special airworthiness certificate in the light-sport category will remain effective as long as all of the following conditions are met:

(i) Except as specified in paragraph (a)(3)(iv) of this section, the aircraft meets the eligibility criteria for the issuance of an airworthiness certificate in the light-sport category specified in § 21.190(b).

(ii) The aircraft conforms to its original or properly altered configuration.

(iii) The aircraft has no unsafe condition and is not likely to develop an unsafe condition.

(iv) For aircraft originally certificated prior to [EFFECTIVE DATE OF THE FINAL RULE], and for which an amended manufacturer's statement of compliance has not been submitted to the FAA in accordance with § 21.190(e) on or after [EFFECTIVE DATE OF THE FINAL RULE], the aircraft meets all of the following conditions:

(A) A maximum takeoff weight of not more than 1,320 pounds (600 kilograms) for aircraft not intended for operation on water or 1,430 pounds (650 kilograms) for an aircraft intended for operation on water.

(B) A maximum airspeed in level flight with maximum continuous power (V_H) of not more than 120 knots CAS under standard atmospheric conditions at sea level.

(C) A maximum never-exceed speed (V_{NE}) of not more than 120 knots CAS for a glider.

(D) A maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{SI}) of not more than 45 knots CAS at the aircraft's maximum certificated takeoff weight and most critical center of gravity.

(E) A maximum seating capacity of no more than two persons, including the pilot.

(F) A single, reciprocating engine, if powered.

(G) A fixed or ground-adjustable propeller if a powered aircraft other than a powered glider.

(H) A fixed or feathering propeller system if a powered glider.

(I) A fixed-pitch, semi-rigid, teetering, two-blade rotor system, if a gyroplane.

(J) A nonpressurized cabin, if equipped with a cabin.

(K) Fixed landing gear, except for an aircraft intended for operation on water or a glider.

(L) Fixed or retractable landing gear, or a hull, for an aircraft intended for operation on water.

(M) Fixed or retractable landing gear for a glider.

(4) The duration of an experimental certificate issued for research and development, showing compliance with regulations, crew training, or market survey is effective for 3 years from the date of issue or renewal unless the FAA prescribes a shorter period.

(5) The duration of an experimental certificate issued for operating amateur-built aircraft, exhibition, air-racing, operating primary kit-built aircraft, operating former light-sport category aircraft, operating light-sport category kit-built aircraft, and operating former military aircraft is unlimited, unless the FAA establishes a specific period for good cause.

* * * * *

■ 7. Amend § 21.182 by revising paragraphs (a) and (b)(2) to read as follows:

§ 21.182 Aircraft identification.

(a) Except as provided in paragraph (b) of this section, each applicant for an airworthiness certificate under this subpart must show that the aircraft is identified as prescribed in § 45.11 of this chapter.

(b) * * *

(2) An experimental certificate issued for the purposes of research and development, showing compliance with regulations, crew training, exhibition, air racing, market surveys, or operating former military aircraft.

* * * * *

■ 8. Amend § 21.183 by:

■ a. Removing the word “or” the end of paragraph (d)(2)(iii);

■ b. Removing the word “and” and adding “or” in its place at the end of paragraph (d)(2)(iv); and

■ c. Adding paragraph (d)(2)(v).

The addition reads as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

- (d) * * *
(2) * * *

(v) A foreign maintenance organization appropriately certificated by an exporting authority with whose country the United States has a bilateral agreement that includes acceptance of this aircraft category by the United States for import. An acceptable inspection must have been completed while the aircraft was operated on the registry of the exporting authority and within 60 days of submitting the application for a United States airworthiness certificate; and

* * * * *

■ 9. Amend § 21.185 by revising paragraphs (a) and (b) to read as follows:

§ 21.185 Issue of airworthiness certificates for restricted category aircraft.

(a) *Aircraft manufactured under a production certificate or type certificate.* An applicant for a restricted category airworthiness certificate for an aircraft type certificated in the restricted category, that was not previously type certificated in any other category, must comply with the appropriate provisions of § 21.183.

(b) *Other aircraft.* An applicant for an airworthiness certificate in the restricted category is entitled to an airworthiness certificate if—

(1) The aircraft is type certificated for a special purpose operation in the restricted category;

(2) The aircraft was—

(i) Manufactured in accordance with the requirements of, and accepted for use by, the U.S. Armed Forces and has a service history with the U.S. Armed Forces acceptable to the FAA; or

(ii) Previously type certificated in another category (other than primary category or light-sport category); and

(3) The aircraft has been inspected by the FAA and found to be in a good state of preservation and repair and in a condition for safe operation.

* * * * *

■ 10. Amend § 21.187 by revising the section heading to read as follows:

§ 21.187 Issue of multiple airworthiness certifications for restricted category aircraft.

* * * * *

■ 11. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], revise § 21.190 to read as follows:

§ 21.190 Issue of a special airworthiness certificate for a light-sport category aircraft.

(a) *Purpose.* The FAA issues a special airworthiness certificate in the light-sport category to operate an aircraft, other than an unmanned aircraft, that meets the requirements of this section.

(b) *Eligibility.* To be eligible for a special airworthiness certificate in the light-sport category, an aircraft must meet the applicable requirements of § 22.100 of this chapter.

(c) *Application for special airworthiness certificate in the light-sport category.* Except as provided in paragraph (e) of this section, an applicant for a special airworthiness certificate under this section must provide the FAA with:

(1) The manufacturer's statement of compliance as described in paragraph (d) of this section.

(2) A pilot's operating handbook that includes—

(i) Recommended operating instructions and limitations to safely accommodate all environmental conditions and abnormal procedures likely to be encountered in the aircraft's intended operations; and

(ii) A flight training supplement to enable safe operation of the aircraft within the intended flight envelope under all foreseeable conditions.

(iii) A listing of any aerial work operations that may be safely conducted using the aircraft and any instructions and limitations that are necessary to safely conduct those operations.

(iv) A statement that the aircraft has demonstrated compliance with part 36 of this chapter, the tested noise levels of the aircraft, and the following statement: "No determination has been made by the Federal Aviation Administration that the noise levels of this aircraft are or should be acceptable or unacceptable for operation in any location."

(3) A maintenance and inspection program containing procedures necessary to ensure continued safe operation of the aircraft.

(4) Evidence that the aircraft has demonstrated compliance with the applicable requirements of part 36 of this chapter.

(d) *Manufacturer's statement of compliance.* The manufacturer's statement of compliance specified in paragraph (c)(1) of this section must —

(1) Be signed by the manufacturer's authorized representative or agent who is certified and trained on the requirements associated with the issuance of a statement of compliance by an organization that certifies and trains quality assurance staff in accordance with a consensus standard that has been accepted by the FAA.

(2) Identify the aircraft by make, model, serial number, class, and date of manufacture.

(3) State whether this aircraft meets the requirements specified in subpart J of part 61 of this chapter for the exercise of privileges by a sport pilot.

(4) Specify those aerial work operations the manufacturer has determined may be safely conducted, and state that the aircraft has been ground and flight tested to ensure that it can be operated to safely conduct those operations in accordance with the instructions and limitations provided by the manufacturer.

(5) State whether the aircraft meets the requirements of § 22.180 of this chapter for simplified flight controls.

(6) Specify the consensus standards used to determine the aircraft's compliance with subpart B of part 22 of this chapter and state that the aircraft meets the eligibility, design, production, and airworthiness requirements of subpart B of part 22 of this chapter in accordance with those consensus standards. The specified consensus standards must be accepted by the FAA for the airworthiness certification of light-sport category aircraft.

(7) State that the aircraft conforms to the manufacturer's design data, using the manufacturer's quality assurance system that meets the specified consensus standard.

(8) State that the manufacturer will make available to any interested person the documents specified in paragraph (c) of this section.

(9) State that the manufacturer will support the aircraft by implementing and maintaining a documented continued operational safety program that—

(i) Addresses monitoring and resolving in-service safety of flight issues;

(ii) Includes provisions for the issuance of safety directives;

(iii) Includes a process for notifying the FAA and all owners of all safety of flight issues; and

(iv) Includes a process for advance notice to the FAA and all owners of a continued operational safety program discontinuance or provider change.

(10) State that the manufacturer will monitor and correct safety-of-flight issues through the issuance of safety directives and a continued operational safety program that meets the specified consensus standard.

(11) State that at the request of the FAA, the manufacturer will provide unrestricted access to its facilities and to all data necessary to determine compliance with this section or other applicable requirements of this chapter.

(12) State that the manufacturer has established and maintains a quality assurance system that meets the requirements of § 22.185 of this chapter.

(e) *Special provisions for aircraft certificated in the light-sport category before* [EFFECTIVE DATE OF THE FINAL RULE]. The owner of an aircraft issued a light-sport category airworthiness certificate before [EFFECTIVE DATE OF THE FINAL RULE], may submit an amended manufacturer's statement of compliance to the FAA listing those aerial work operations that may be conducted using the aircraft. The amended statement of compliance must—

(1) Identify the aircraft by make, model, serial number, and date of manufacture.

(2) Be made by the original manufacturer of the aircraft.

(3) Reference and reaffirm the statements made in the original manufacturer's statement of compliance.

(4) State that the design and construction of the aircraft provides sufficient structural integrity to enable safe operation of the aircraft during the performance of the specified aerial work operations and that the aircraft is able to withstand any foreseeable flight and ground loads.

(5) Specify the FAA-accepted consensus standard used to make the determination required by paragraph (a) of this section.

(6) Is accompanied by revisions to the aircraft's operating instructions to indicate those aerial work operations that may be conducted using the aircraft, and any applicable revisions to the aircraft's maintenance and inspection procedures, and flight training supplement.

■ 12. Amend § 21.191 by revising the section heading, introductory text, and paragraph (i) and adding reserved paragraph (j) and paragraph (k) to read as follows:

§ 21.191 Issue of experimental airworthiness certificates.

Experimental airworthiness certificates are issued for the following experimental purposes:

* * * * *

(i) *Operating former light-sport category aircraft.* Operating an aircraft that previously has been issued a special airworthiness certificate in the light-sport category under § 21.190.

(j) [Reserved]

(k) *Operating former military aircraft.* Operating a former military aircraft that meets the following requirements:

(1) The aircraft is not an unmanned aircraft.

(2) The aircraft was manufactured, purchased, or modified under contract by the U.S. Armed Forces or a foreign military.

(3) The aircraft is operated for one of the following purposes:

(i) Flying the aircraft to a base where repairs, alterations, or maintenance are to be performed;

(ii) Flying to a point of storage; or

(iii) Repositioning the aircraft for use under contract with the U.S. Armed Forces.

■ 13. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], amend § 21.191 further by adding paragraph (j) to read as follows:

§ 21.191 Issue of experimental airworthiness certificates.

* * * * *

(j) *Operating light-sport category kit-built aircraft.* Operating an aircraft of a type that has been certificated under § 21.190 and assembled from an aircraft kit in accordance with manufacturer's assembly instructions that meet an applicable FAA-accepted consensus standard. An applicant must provide the following:

(1) Evidence that an aircraft of the same make and model was manufactured and assembled by the aircraft kit manufacturer and issued a special airworthiness certificate in the light-sport category under § 21.190.

(2) The pilot's operating handbook that includes a flight training supplement.

(3) The aircraft's maintenance and inspection procedures.

(4) The manufacturer's statement of compliance for the aircraft kit used in the aircraft assembly that meets the applicable requirements of § 21.190 in effect at the time the aircraft kit was manufactured, except the statement need not indicate compliance with § 22.175 of this chapter. The statement must identify assembly instructions for the aircraft that meet an applicable consensus standard.

(5) For an aircraft kit manufactured outside the United States, evidence that the aircraft kit was manufactured in a country with which the United States has a Bilateral Airworthiness Agreement concerning airplanes or a Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness concerning airplanes, or an equivalent airworthiness agreement.

* * * * *

■ 14. Revise § 21.193 to read as follows:

§ 21.193 Application for special airworthiness certificates issued for experimental purposes.

An applicant for an experimental airworthiness certificate must submit the following information in a form and manner prescribed by the FAA:

(a) The experimental purpose for which the aircraft is to be used.

(b) Enough information to describe the operation, equipment, or test as applicable.

(c) The estimated time or number of flights required for the operation, for an applicant seeking issuance of an experimental airworthiness certificate for those experimental purposes specified in § 21.191(a) through (f).

(d) The areas over which flights will be conducted.

(e) Enough data to identify the aircraft.

(f) Except for a previously type certificated aircraft without an appreciable change in its external configuration, three-view drawings or three-view dimensional photographs of the aircraft.

(g) Upon inspection of the aircraft, any pertinent information found necessary by the FAA to safeguard the general public.

(h) For applicants seeking certification of an aircraft for the purpose of operating former light-sport category aircraft or for the purpose of operating light-sport category kit-built aircraft, evidence of compliance with the applicable aircraft noise limits in part 36 of this chapter.

■ 15. Amend § 21.195 by revising paragraphs (b) through (d) to read as follows:

§ 21.195 Experimental certificates: Aircraft to be used for market surveys, sales demonstrations, and customer crew training.

* * * * *

(b) A manufacturer of an aircraft engine manufactured within the United States, that has altered a type certificated aircraft by installing an engine it has manufactured, may apply for an experimental certificate for that aircraft to be used for market surveys, sales demonstrations, or customer crew training, if the basic aircraft, before alteration, was type certificated in the normal, utility, acrobatic, commuter, transport, primary, or restricted category.

(c) A person who has altered the design of a type certificated aircraft may apply for an experimental certificate for an altered aircraft to be used for market surveys, sales demonstrations, or customer crew training if the basic aircraft, before alteration, was type

certificated in the normal, utility, acrobatic, commuter, transport, primary, or restricted category.

(d) An applicant for an experimental certificate under paragraph (a), (b), or (c) of this section is entitled to that certificate if, in addition to meeting the requirements of § 21.193, the applicant—

(1) Has established an inspection and maintenance program for the continued airworthiness of the aircraft; and

(2) Shows that the aircraft has been flown for at least 50 hours, or for at least 5 hours if it is a type certificated aircraft which has been altered. The FAA may reduce these operational requirements if the applicant provides adequate justification.

■ 16. Revise § 21.327 to read as follows:

§ 21.327 Application.

(a) Any owner of a U.S.-registered aircraft may apply for an export certificate of airworthiness for that aircraft.

(b) Any person may apply for an export airworthiness approval for an aircraft engine, propeller, or article.

(c) Each applicant must apply in a form and manner prescribed by the FAA.

■ 17. Amend § 21.329 by revising paragraph (a)(1) introductory text to read as follows:

§ 21.329 Issuance of export certificates of airworthiness.

(a) * * *

(1) A new or used aircraft manufactured under subpart F or G of this part meets the requirements under subpart H of this part for a—

* * * * *

■ 18. Add part 22 to read as follows:

PART 22—DESIGN, PRODUCTION, AND AIRWORTHINESS REQUIREMENTS FOR NON-TYPE CERTIFICATED AIRCRAFT

Subpart A—General

Sec.

22.1 Applicability.

Subpart B—Light-Sport Category Aircraft

22.100 Eligibility.

22.105 Control and maneuverability.

22.110 Structural integrity.

22.115 Powered-lift: minimum safe speed.

22.120 Special requirements for light-sport aircraft used for aerial work operations.

22.125 Environmental conditions.

22.130 Suitability and durability of materials.

22.135 Instruments and equipment.

22.140 Controls and displays.

22.145 Propulsion system.

22.150 Fuel system.

22.155 Fire protection.

22.160 Visibility.

22.165 Emergency evacuation.

22.170 Placards and markings.

22.175 Noise.

22.180 Special requirements for light-sport category aircraft with simplified flight controls.

22.185 Quality assurance system.

22.190 Finding of compliance by trained compliance staff.

22.195 Ground and flight testing.

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

PART 22—DESIGN, PRODUCTION, AND AIRWORTHINESS REQUIREMENTS FOR NON-TYPE CERTIFICATED AIRCRAFT

Subpart A—General

§ 22.1 Applicability.

(a) Except as provided in paragraph (c) of this section, this part prescribes design, production, and airworthiness requirements for the issue of special airworthiness certificates, and changes to those certificates, for non-type certificated aircraft applying for an airworthiness certificate.

(b) Each person who applies under part 21 of this chapter for such a certificate or change must comply with the applicable requirements in this part.

(c) This part does not apply to aircraft issued an experimental airworthiness certificate, aircraft operating under a special flight permit, or unmanned aircraft.

Subpart B—Light-Sport Category Aircraft

§ 22.100 Eligibility.

(a) *Aircraft manufactured in the United States.* To be eligible for a special airworthiness certificate in the light-sport category issued under § 21.190 of this chapter, an aircraft must—

(1) Except for an airplane, have a maximum seating capacity of not more than two persons, including the pilot.

(2) For an airplane, have a maximum seating capacity of not more than four persons, including the pilot.

(3) Have a maximum stalling speed or minimum steady flight speed, without the use of lift-enhancing devices (V_{SI}) at the aircraft's maximum certificated takeoff weight and most critical center of gravity of 54 knots CAS for an airplane, or 45 knots CAS for a glider or weight-shift-control aircraft.

(4) Have a maximum speed of 250 knots CAS at maximum available power under standard atmospheric conditions at sea level.

(5) Have a non-pressurized cabin, if equipped with a cabin.

(6) Not have been previously issued a standard, primary, restricted, limited, or provisional airworthiness certificate, or an equivalent airworthiness certificate by a foreign civil aviation authority.

(7) Meet the aircraft design, production, and airworthiness requirements specified in this subpart using a means of compliance consisting of consensus standards accepted by the FAA.

(8) Be inspected by the FAA and found to be in a condition for safe operation.

(b) *Aircraft manufactured outside the United States.* For aircraft manufactured outside the United States to be eligible for a special airworthiness certificate in the light-sport category under § 21.190 of this chapter, an applicant must provide the FAA evidence that—

(1) The aircraft meets the requirements of this subpart;

(2) The aircraft was manufactured in a country with which the United States has a Bilateral Airworthiness Agreement concerning airplanes or Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness concerning airplanes, or an equivalent airworthiness agreement; and

(3) The aircraft is eligible for an airworthiness certificate, flight authorization, or other similar certification in its country of manufacture.

§ 22.105 Control and maneuverability.

A light-sport category aircraft must—

(a) Be consistently and predictably controllable and maneuverable through the normal use of primary flight controls at all loading conditions during all phases of flight; and,

(b) Not have a tendency to inadvertently depart controlled flight or require exceptional piloting skill, alertness, or strength.

§ 22.110 Structural integrity.

(a) The design and construction of the aircraft must provide sufficient structural integrity to enable safe operations within the aircraft's flight envelope throughout the aircraft's intended life cycle; and,

(b) The aircraft must be able to withstand all anticipated flight and ground loads when operated within its operational limits.

§ 22.115 Powered-lift: minimum safe speed.

To be certificated in the light-sport category, powered-lift aircraft must have a known minimum safe speed for each flight condition encountered in normal operations, including applicable sources

of lift and phases of flight, to maintain controlled safe flight. The minimum safe speed determination must account for the most adverse conditions for each configuration.

§ 22.120 Special requirements for light-sport aircraft used for aerial work operations.

If the aircraft is designated by the manufacturer as suitable for the performance of any aerial work operation, the design and construction of the aircraft must provide sufficient structural integrity to enable safe operation of the aircraft during the performance of that operation and ensure that the aircraft is able to withstand any foreseeable flight and ground loads.

§ 22.125 Environmental conditions.

The aircraft must have design characteristics to safely accommodate all environmental conditions likely to be encountered during its intended operations.

§ 22.130 Suitability and durability of materials.

The suitability and durability of materials used for products and articles must account for the likely environmental conditions expected in service, the failure of which could prevent continued safe flight and landing.

§ 22.135 Instruments and equipment.

(a) The aircraft must have all instruments and equipment necessary for safe flight, to include those instruments necessary for systems control and management. The aircraft must also include all instruments and equipment required for the kinds of operations for which it is authorized.

(b) The aircraft, instruments, equipment, and systems must perform their intended functions under all operating conditions specified in the pilot's operating handbook. Likely failure or malfunction of a system or component must not cause loss of control of the aircraft. Systems and components must be considered separately and in relation to each other.

§ 22.140 Controls and displays.

The aircraft must be designed and constructed so that the pilot has the ability to reach all controls and displays in a manner that provides for smooth and positive operation of the aircraft.

§ 22.145 Propulsion system.

The aircraft propulsion system must—

- (a) Have controls that are simple, intuitive and not confusing;
- (b) Be designed so that the failure of any product or article does not prevent

continued safe flight and landing or, if continued safe flight and landing cannot be ensured, the hazard has been minimized;

(c) Not exceed safe operating limits under normal operating conditions; and

(d) Have the necessary reliability, durability, and endurance for safe flight without failure, malfunction, excessive wear, or other anomalies.

§ 22.150 Fuel system.

The aircraft fuel system must—

(a) Provide a means to safely remove or isolate the fuel stored in the system from the aircraft; and

(b) Be designed to retain fuel under all likely operating conditions.

§ 22.155 Fire protection.

The hazards of fuel or electrical fires following a survivable emergency landing must be minimized by incorporating design features to sustain static and dynamic deceleration loads without structural damage to fuel or electrical system components or their attachments that would leak fuel to an ignition source or allow electrical power to become an ignition source.

§ 22.160 Visibility.

The aircraft must be designed and constructed so that the pilot has—

(a) Sufficient visibility of controls, instruments, equipment, and placards; and

(b) Sufficient vision outside the aircraft necessary to conduct safe aircraft operations.

§ 22.165 Emergency evacuation.

(a) The aircraft must be designed and constructed—

(1) So that all occupants have the ability to rapidly conduct an emergency evacuation; and

(2) Except as provided in paragraph (b) of this section, to account for all conditions likely to occur following an emergency landing.

(b) Aircraft not intended for operation on water are not required to account for ditching in an emergency landing.

§ 22.170 Placards and markings.

The aircraft must display all placards and instrument markings necessary for safe operation and occupant warning. Markings or graphics must clearly indicate the function of each control, other than primary flight controls.

§ 22.175 Noise.

The aircraft must meet the applicable noise standards of part 36 of this chapter.

§ 22.180 Special requirements for light-sport category aircraft with simplified flight controls.

An aircraft that meets the following requirements may be designated by the manufacturer as having simplified flight controls—

(a) The aircraft allows the pilot to only control the flight path of the aircraft or intervene in its operation without direct manipulation of individual aircraft control surfaces or adjustment of the available power;

(b) The aircraft is designed to inherently prevent loss of control, regardless of pilot input; and

(c) The aircraft has a means to enable the pilot to quickly and safely discontinue the flight and prevent any inadvertent activation of this feature.

§ 22.185 Quality assurance system.

The aircraft must have been designed, produced, and tested under a documented quality assurance system to ensure each product and article conforms to its design and is in a condition for safe operation.

§ 22.190 Finding of compliance by trained compliance staff.

The aircraft must have been found compliant with the provisions of the applicable FAA-accepted consensus standards by individuals who have been trained on determining compliance with those consensus standards.

§ 22.195 Ground and flight testing.

The aircraft must have been ground and flight tested under documented production acceptance test procedures to—

(a) Validate aircraft performance data.

(b) Ensure the aircraft has no hazardous operating characteristics or design features.

(c) Ensure the aircraft is in a condition for safe operation.

(d) Ensure the aircraft can safely conduct any aerial work operation designated by the manufacturer in accordance with § 22.120.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

■ 19. The authority for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

■ 20. Add § 36.0 to read as follows:

§ 36.0 Applicability; aircraft that do not conform to a type certificate.

(a) *General applicability.* Except as provided in paragraph (e) of this

section, for aircraft described in § 21.190, § 21.191, § 21.193(h), or part 22 of this chapter, that does not conform to a type certificate, the requirements of this part apply at the time of application for a first airworthiness certificate, or when an aircraft previously issued an airworthiness certificate incorporates an alteration that would result in an acoustical change.

(b) *Compliance requirements.*

Compliance with this part requires—

(1) A determination that the applicable noise limits specified in this part are not exceeded for any configuration, flight profile, or reference condition required for an aircraft to demonstrate compliance; and,

(2) When applicable, a determination that any test procedures and analyses contained in a related appendix to this part have been met for any configuration, flight profile, or reference condition required.

(c) *Use of a noise consensus standard.*

An aircraft that does not conform to a type certificate may demonstrate compliance using a noise consensus standard that meets the following conditions:

(1) The noise consensus standard has been approved by the FAA; and

(2) The noise consensus standard has been determined by the FAA to be appropriate for the aircraft and applicable to the aircraft's specific design.

(d) *No noise consensus standard available.* For an aircraft that does not conform to a type certificate, and for which no noise consensus standard has been approved or determined by the FAA to be appropriate for the aircraft, the following apply:

(1) *Aircraft similar to a type-certificated aircraft.* An aircraft that is determined by the FAA for noise purposes to be the same as or sufficiently similar in design to a type certificated aircraft described in § 36.1 may demonstrate compliance with this part by—

(i) Using the same requirements as the type certificated aircraft that is the same or sufficiently similar in design to the aircraft; or

(ii) Adopting the noise levels for the type certificated aircraft that is the same or sufficiently similar in design to the aircraft when the aircraft has not been altered to result in an acoustical change.

(2) *Aircraft with no similar type-certificated aircraft.* If the FAA determines that for noise purposes, there is no type certificated aircraft of the same or sufficiently similar design described in § 36.1, an applicant may demonstrate compliance with this part using the noise requirements

determined by the FAA to be appropriate for the aircraft.

(e) *Exceptions.* The following aircraft that do not conform to a type certificate are excepted from demonstrating compliance with the requirements of this part:

(1) Aircraft issued an experimental airworthiness certificate in accordance with § 21.191(a) through (h) or (k) of this chapter;

(2) Aircraft which, if type certificated, would not be required to demonstrate compliance with this part; and

(3) Aircraft issued an experimental airworthiness certificate in accordance with § 21.191(i)(1) of this chapter on or before January 31, 2008, for the purpose of operating a light-sport aircraft.

■ 21. Amend § 36.1 by adding reserved paragraph (a)(6) and paragraph (a)(7) to read as follows:

§ 36.1 Applicability and definitions.

(a) * * *

(6) [Reserved]

(7) Aircraft that do not conform to a type certificate, in accordance with § 36.0.

* * * * *

■ 22. Revise § 36.3 to read as follows:

§ 36.3 Compatibility with airworthiness requirements.

(a) Each applicant for certification under this part must demonstrate that:

(1) For type certificated aircraft, that the aircraft complies with the airworthiness regulations in this chapter that constitute the type certification basis of the aircraft under all conditions in which compliance with this part is shown; or

(2) For aircraft without a type certificate, that the aircraft complies with all airworthiness requirements in this chapter applicable to the design of the aircraft under all conditions in which compliance with this part is shown.

(b) Each applicant for certification under this part must show that any procedure used to demonstrate compliance with this part, and any procedure and information for the flight crew developed under this part, are consistent with the requirements of paragraph (a)(1) or (2) of this section.

■ 23. Amend § 36.1501 by revising paragraph (a) to read as follows:

§ 36.1501 Procedures, noise levels and other information.

(a) All procedures, weights, configurations, and other information or data employed for obtaining the certified noise levels prescribed by this part, including equivalent procedures used for flight, testing, and analysis,

must be developed by the applicant and approved by the FAA. For type certificated aircraft, noise levels achieved during type certification must be included in the aircraft's approved flight manual. For aircraft without a type certificate, noise levels achieved during airworthiness certification must be included in the Pilot's Operating Handbook.

* * * * *

■ 24. Amend § 36.1581 by adding paragraph (h) to read as follows:

§ 36.1581 Manuals, markings, and placards.

* * * * *

(h) For aircraft subject to § 36.0, no noise operating limitations are prescribed under this part, and this part does not affect any operating limitations for these aircraft described elsewhere in this chapter. Noise compliance with this part must be documented as specified in § 21.190(e) or § 21.191 of this chapter, as applicable. The noise information must:

(1) State that the aircraft has demonstrated compliance with this part;

(2) Include the demonstrated noise levels of the aircraft; and

(3) Include the following statement: No determination has been made by the Federal Aviation Administration whether the noise levels of this aircraft are or should be acceptable for operation in any location.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 25. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 26. Amend § 43.1 by revising paragraph (b)(2) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) * * *

(2) Any aircraft for which the FAA has issued an experimental certificate under the provisions of § 21.191(i) of this chapter, and the aircraft was previously issued a special airworthiness certificate in the light-sport category under the provisions of § 21.190 of this chapter; or

* * * * *

■ 27. Amend § 43.13 by revising paragraphs (a) and (c) to read as follows:

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the

methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. That person must use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, that person must use that equipment or apparatus or its equivalent acceptable to the Administrator.

* * * * *

(c) Unless otherwise notified by the Administrator, the methods, techniques, and practices contained in the maintenance manual or the maintenance part of the manual of the holder of an air carrier operating certificate or an operating certificate under part 121 or 135 of this chapter and operators under part 129 of this chapter holding operations specifications (that is required by its operating specifications to provide a continuous airworthiness maintenance and inspection program) constitute acceptable means of compliance with this section.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 28. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

■ 29. Amend § 45.23 by revising paragraph (b) to read as follows:

§ 45.23 Display of marks; general.

* * * * *

(b) Except for unmanned aircraft, when marks include only the Roman capital letter “N” and the registration number is displayed on limited, restricted, experimental, or provisionally certificated aircraft, the operator must also display on that aircraft near each entrance to the cabin, cockpit, or pilot station, in letters not less than 2 inches nor more than 6 inches high, the words “limited,” “restricted,” “experimental,” or “provisional,” as applicable.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 30. 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, 45301–45302; sec. 2307, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note).

■ 31. Amend § 61.3 by revising the section heading and adding paragraph (m) to read as follows:

§ 61.3 Requirement for certificates, ratings, privileges, and authorizations.

* * * * *

(m) *For a person who possesses a sport pilot certificate.* No person may exercise sport pilot privileges under § 61.313 unless that person receives a qualifying logbook endorsement under § 61.317 or § 61.321 for the appropriate category and class privilege. The requirement in this paragraph (m) does not apply to a person who already holds the appropriate category and class rating on their pilot certificate.

■ 32. Add § 61.9 to read as follows:

§ 61.9 Inapplicability of simplified flight controls aircraft experience credit.

Notwithstanding the requirements specified in § 61.51(c), any pilot time acquired while operating an airplane or helicopter with a simplified flight controls design and designation may not be used to satisfy the following aeronautical experience requirements for a private, commercial, or airline transport pilot certificate, except for private pilot applicants who present an aircraft with the simplified flight controls design and designation to conduct the practical test—

(a) The solo flight time requirements in § 61.109(a)(5) or (c)(4);

(b) The PIC flight time requirements in § 61.129(a)(2)(i) and (c)(2)(i);

(c) The PIC flight time requirements in § 61.159(a)(5); and

(d) The PIC flight time requirements in § 61.161(a)(3).

■ 33. Amend § 61.31 by redesignating paragraph (l) as paragraph (m) and adding a new paragraph (l) to read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(l) *Additional aircraft model-specific flight training.* No person may act as pilot in command of an aircraft with a simplified flight controls designation unless that person has—

(1) Received and logged model-specific flight training in that aircraft, or in a full flight simulator or flight training device that is representative of that model-specific aircraft with the simplified flight controls designation; and

(2) Received a logbook endorsement from an authorized instructor who has found the person proficient in the safe operation of that model-specific aircraft and the associated simplified flight control system.

* * * * *

■ 34. Amend § 61.45 by revising the introductory text in paragraph (f) and adding paragraphs (g) and (h) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

* * * * *

(f) *Conduct of a sport pilot practical test in an aircraft with a single seat.* A practical test for a sport pilot certificate may be conducted in an aircraft having a single seat provided that the—

* * * * *

(g) *Aircraft with a simplified flight controls designation.* An applicant for a pilot certificate, rating, or privilege may use an aircraft with a simplified flight controls designation for a practical test if—

(1) The examiner agrees to conduct the test;

(2) The examiner holds the appropriate category and class rating or privilege, the simplified flight controls model-specific aircraft endorsement, and an appropriate FAA designation to conduct the test;

(3) The examiner is able to assume control of the aircraft at any time, except if paragraph (f) of this section applies; and

(4) After successful completion of the practical test, the applicant is issued a pilot certificate with the appropriate category and class privilege and model specific limitation.

(h) *Simplified flight controls limitation.* A person who receives a category and class rating or privilege with a simplified flight controls limitation may operate only the specified make and model of aircraft set forth by the limitation unless the person satisfies the following requirements, as applicable:

(1) If seeking to operate another make and model of aircraft with a simplified flight controls designation in the same category and class, the person must receive training and an endorsement in accordance with § 61.31(l).

(2) If seeking to operate a different category and class of aircraft with a simplified flight controls designation or any aircraft without a simplified flight controls designation, the person must successfully complete a practical test for that category and class of aircraft.

■ 35. Amend § 61.195 by adding paragraph (m) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

* * * * *

(m) *Training in an aircraft with a simplified flight controls designation.*

(1) For purposes of this paragraph (m), instructor pilot means a pilot employed or used by a manufacturer of an aircraft with a simplified flight controls designation to conduct operations of that aircraft for the purpose of providing crew training.

(2) A flight instructor may conduct flight training in an aircraft with a simplified flight controls designation without satisfying the training and endorsement requirements under § 61.31(l), provided the flight instructor—

(i) Holds a flight instructor certificate with the appropriate aircraft category, class, and type rating (if a class or type rating is required);

(ii) Has received and logged model-specific training in that aircraft from an

instructor pilot for the manufacturer of the aircraft; and

(iii) Has received a logbook or training record endorsement from the instructor pilot certifying that the flight instructor is proficient in the safe operation of that model-specific aircraft and the associated simplified flight control system.

(3) Notwithstanding the requirements in § 61.3(d)(2)(ii), an instructor pilot may provide the training and endorsement specified in paragraph (m)(2) of this section in lieu of an authorized instructor.

■ 36. Amend § 61.303 by revising the section heading and paragraphs (a) and (b)(4) to read as follows:

§ 61.303 If I want to operate an aircraft that satisfies the limitations identified in § 61.316, what operating limits and endorsement requirements in this subpart must I comply with?

(a) Use the following table to determine what operating limits and

endorsement requirements in this subpart, if any, apply to you when you operate an aircraft that satisfies the limitations identified in § 61.316. The medical certificate specified in this table must be in compliance with § 61.2 in regards to currency and validity. If you hold a recreational pilot certificate, but not a medical certificate, you must comply with cross country requirements in § 61.101(c), even if your flight does not exceed 50 nautical miles from your departure airport. You must also comply with requirements in other subparts of this part that apply to your certificate and the operation you conduct. In the following table, when the word “aircraft” is used, it refers to aircraft that satisfy the limitations identified in § 61.316.

If you hold	And you hold	Then you may operate	And
(1) A medical certificate	(i) A sport pilot certificate, ...	Any aircraft for which you hold the endorsements required for its category and class,	You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a recreational pilot certificate with a category and class rating,	Any aircraft in that category and class,	You do not have to hold any of the endorsements required by this subpart, nor do you have to comply with the limitations in § 61.315.
	(iii) At least a recreational pilot certificate but not a rating for the category and class of the aircraft you operate,	That aircraft, only if you hold the endorsements required for § 61.321 for its category and class,	You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).
(2) Only a U.S. driver's license	(i) A sport pilot certificate, ...	Any aircraft for which you hold the endorsements required for its category and class	You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a recreational pilot certificate with a category and class rating,	Any aircraft in that category and class,	You do not have to hold any of the endorsements required by this subpart, but you must comply with the limitations in § 61.315.
	(iii) At least a recreational pilot certificate but not a rating for the category and class of aircraft you operate,	That aircraft, only if you hold the endorsements required in § 61.321 for its category and class,	You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).
(3) Neither a medical certificate nor a U.S. driver's license.	(i) A sport pilot certificate, ...	Any glider or balloon for which you hold the endorsements required for its category and class,	You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a private pilot certificate with a category and class rating for glider or balloon,	Any glider or balloon in that category and class.	You do not have to hold any of the endorsements required by this subpart, nor do you have to comply with the limitations in § 61.315.
	(iii) At least a private pilot certificate but not a rating for glider or balloon,	Any glider or balloon, only if you hold the endorsements required in § 61.321 for its category and class	You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).

(b) * * *

(4) Not know or have reason to know of any medical condition that would make that person unable to operate an aircraft in a safe manner.

■ 37. Revise § 61.305 to read as follows:

§ 61.305 What are the age and language requirements for a sport pilot certificate?

To be eligible for a sport pilot certificate you must:

(a) Be at least 17 years old (or 16 years old if you are applying to operate a glider or balloon).

(b) Be able to read, speak, write, and understand English. If you cannot read, speak, write, and understand English because of medical reasons, the FAA may place limits on your certificate as are necessary for the safe operation of aircraft.

■ 38. Amend § 61.307 by adding paragraphs (b)(1) and (2) to read as follows:

§ 61.307 What tests do I have to take to obtain a sport pilot certificate?

* * * * *

(b) * * *

(1) For persons seeking a sport pilot certificate with a rotorcraft-helicopter privilege, the applicant must complete a practical test satisfactorily

demonstrating the knowledge, risk management, and skill elements for each area of operation as specified in the Sport Pilot for Helicopter—Simplified Flight Controls Airman Certification Standards, referenced in paragraph (b)(2) of this section.

(2) FAA–S–ACS–26, Sport Pilot for Helicopter—Simplified Flight Controls Airman Certification Standards, [date to be included], is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Federal Aviation Administration (FAA) and the National Archives and Records Administration (NARA). Contact FAA at: Airman Testing Standards Branch/Regulatory Support Division, 405–954–4151, AFS630Comments@faa.gov, faa.gov/training_testing. For information on the availability of this material at NARA, visit archives.gov/federal-register/cfr/ibr-locations.html, or email: fr.inspection@nara.gov. The material

may be obtained from FAA, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, faa.gov/training_testing.

■ 39. Revise § 61.311 to read as follows:

§ 61.311 What flight proficiency requirements must I meet to apply for a sport pilot certificate?

To apply for a sport pilot certificate, you must receive and log ground and flight training from an authorized instructor on the following areas of operation, as appropriate, for airplane single-engine land or sea, glider, gyroplane, helicopter, airship, balloon, powered parachute land or sea, weight-shift-control aircraft land or sea privileges:

- (a) Preflight preparation.
- (b) Preflight procedures.
- (c) Airport, heliport, seaplane base, and gliderport operations, as applicable.
- (d) Hovering maneuvers (applicable only to helicopters).
- (e) Takeoffs (or launches), landings, and go-arounds.

(f) Performance maneuvers and, for gliders, performance speeds.

(g) Ground reference maneuvers (not applicable to gliders, helicopters, and balloons).

(h) Soaring techniques (applicable only to gliders).

(i) Navigation.

(j) Slow flight (not applicable to lighter-than-air aircraft, helicopters, and powered parachutes).

(k) Stalls (not applicable to lighter-than-air aircraft, gyroplanes, helicopters, and powered parachutes).

(l) Emergency operations.

(m) Post-flight procedures.

■ 40. Revise § 61.313 to read as follows:

§ 61.313 What aeronautical experience must I have to apply for a sport pilot certificate?

(a) *Aeronautical experience.* Use the following table to determine the aeronautical experience you must have to apply for a sport pilot certificate:

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(1) Airplane category and single-engine land or sea class privileges,	20 hours of flight time, including at least 15 hours of flight training from an authorized instructor in a single-engine airplane and at least 5 hours of solo flight training in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training; (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (iii) One solo cross-country flight of at least 75 nautical miles total distance, with a full-stop landing at a minimum of two points and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (iv) 2 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(2) Glider category privileges, and you have not logged at least 20 hours of flight time in a heavier-than-air aircraft,	10 hours of flight time in a glider, including 10 flights in a glider receiving flight training from an authorized instructor and at least 2 hours of solo flight training in the areas of operation listed in § 61.311,	(i) Five solo launches and landings; and (ii) at least 3 training flights with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(3) Glider category privileges, and you have logged 20 hours flight time in a heavier-than-air aircraft,	3 hours of flight time in a glider, including five flights in a glider while receiving flight training from an authorized instructor and at least 1 hour of solo flight training in the areas of operation listed in § 61.311,	(i) Three solo launches and landings; and (ii) at least 3 training flights with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(4) Rotorcraft category and gyroplane class privileges,	20 hours of flight time, including 15 hours of flight training from an authorized instructor in a gyroplane and at least 5 hours of solo flight training in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training; (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (iii) One solo cross-country flight of at least 50 nautical miles total distance, with a full-stop landing at a minimum of two points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (iv) 2 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(5) Lighter-than-air category and airship class privileges,	20 hours of flight time, including 15 hours of flight training from an authorized instructor in an airship and at least 3 hours performing the duties of pilot in command in an airship with an authorized instructor in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training; (ii) Three takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (iii) One cross-country flight of at least 25 nautical miles between the takeoff and landing locations; and (iv) 2 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(6) Lighter-than-air category and balloon class privileges,	7 hours of flight time in a balloon, including three flights with an authorized instructor and one flight performing the duties of pilot in command in a balloon with an authorized instructor in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training; and (ii) 1 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(7) Powered parachute category land or sea class privileges,	12 hours of flight time in a powered parachute, including 10 hours of flight training from an authorized instructor in a powered parachute, and at least 2 hours of solo flight training in the areas of operation listed in § 61.311	(i) 1 hour of cross-country flight training; (ii) 20 takeoffs and landings to a full stop in a powered parachute with each landing involving flight in the traffic pattern at an airport; (iii) 10 solo takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (iv) One solo flight with a landing at a different airport and one segment of the flight consisting of a straight-line distance of at least 10 nautical miles between takeoff and landing locations; and (v) 1 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(8) Weight-shift-control aircraft category land or sea class privileges,	20 hours of flight time, including 15 hours of flight training from an authorized instructor in a weight-shift-control aircraft and at least 5 hours of solo flight training in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training; (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (iii) One solo cross-country flight of at least 50 nautical miles total distance, with a full-stop landing at a minimum of two points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between takeoff and landing locations; and (iv) 2 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(9) Rotorcraft category and helicopter class, only if that helicopter is certificated under § 21.190 of this chapter and obtains the simplified flight controls design designation,	30 hours of helicopter flight time, including at least 15 hours of flight training from an authorized instructor in a helicopter, and at least 5 hours of solo flight training in the areas of operation listed in § 61.311, as appropriate,	(i) 2 hours of flight training en route to an airport that is located more than 25 nautical miles from the airport where the applicant normally trains; (ii) 3 takeoffs and landings at the airport located more than 25 nautical miles from the airport where the applicant normally trains; (iii) 3 hours of solo flying in the aircraft for the privilege sought, on the areas of operation listed in § 61.98 that apply to the aircraft category and class privilege sought; and (iv) 3 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.

(b) *Flight simulation training device and aviation training device credit.* (1) Sport pilot applicants can use up to 2.5 hours of training credit in a qualified flight simulation training device and aviation training device representing the appropriate category and class of aircraft to meet the experience requirements of this part.

(2) The training must be provided by an authorized instructor who possesses the appropriate aircraft rating or privilege sought by the applicant.

■ 41. Amend § 61.315 by revising paragraph (a), the introductory text of paragraph (c), and paragraph (c)(5) and adding paragraph (c)(20) to read as follows:

§ 61.315 What are the privileges and limits of my sport pilot certificate?

(a) If you hold a sport pilot certificate you may act as pilot in command of an aircraft that meets the provisions of § 61.316, except as specified in paragraph (c) of this section.

* * * * *

(c) You may not act as pilot in command of an aircraft:

* * * * *

(5) At night, except as provided in § 61.329.

* * * * *

(20) If the aircraft—

(i) Has retractable landing gear, unless you have met the requirements of § 61.331(a).

(ii) Has a controllable pitch propeller, unless you have met the requirements of § 61.331(b).

■ 42. Add § 61.316 to read as follows:

§ 61.316 What are the performance limits and design requirements for the aircraft that a sport pilot may operate?

(a) If you hold a sport pilot certificate, you may act as pilot in command of an aircraft that, since its original certification, meets the following requirements:

(1) A maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{S1}) of not more than 45 knots CAS, except for airplanes, which must have a V_{S1} speed of not more than 54 knots CAS at the aircraft's maximum certificated takeoff weight and most critical center of gravity.

(2) A maximum seating capacity of two persons, except for airplanes, which may have a maximum seating capacity of four persons.

(3) A non-pressurized cabin, if equipped with a cabin.

(4) For powered aircraft other than powered gliders, a fixed or ground-adjustable propeller, except as provided in paragraph (b) of this section.

(5) For powered gliders, a fixed or feathering propeller system.

(6) For gyroplanes, a fixed-pitch, semi-rigid, teetering, two-blade rotor system.

(7) For powered aircraft other than balloons or airships, the loss of partial power would not adversely affect directional control of the aircraft and the aircraft design must allow the pilot the capability of establishing a controlled descent in the event of a partial or total powerplant failure.

(8) For helicopters, they must be certificated with the simplified flight controls design and designation.

(9) For a glider, fixed or retractable landing gear.

(10) For an aircraft intended for operation on water, fixed or retractable landing gear or a hull.

(11) For powered-aircraft other than a glider or an aircraft intended for operation on water, fixed landing gear except as provided in paragraph (b) of this section.

(b) If you hold a sport pilot certificate, you may act as pilot in command of an airplane that, since its original certification, has retractable landing gear or a controllable pitch propeller if you have met the training and endorsement requirements specified in § 61.331.

■ 43. Amend § 61.321 by:

- a. Revising the section heading and introductory text;
- b. Removing the phrase “light-sport aircraft” and adding the word “aircraft” in their place in paragraph (a);
- c. Revising paragraph (b);
- d. Removing the phrase “light-sport aircraft” and adding the word “aircraft” in their place in paragraph (d); and
- e. Adding paragraph (e).

The revision and addition read as follows:

§ 61.321 How do I obtain privileges to operate an additional category or class of aircraft that satisfy the limitations identified in § 61.316?

If you hold a sport pilot certificate and seek to operate an additional category or class of aircraft that satisfy the limitations identified in § 61.316, you must—

* * * * *

(b) Except as provided in paragraph (e) of this section, successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the aeronautical knowledge areas and areas of operation specified in §§ 61.309 and 61.311 for the additional aircraft privilege you seek;

* * * * *

(e) If you are seeking to add an airplane single-engine land or sea or a rotorcraft-helicopter privilege to your pilot certificate, successfully accomplish a knowledge and practical test for that category and class privilege as specified in § 61.307.

■ 44. Amend § 61.325 by revising the section heading and introductory text to read as follows:

§ 61.325 How does a sport pilot obtain privileges to operate an aircraft at an airport within, or in airspace within, Class B, C, and D airspace, or in other airspace with an airport having an operational control tower?

If you hold a sport pilot certificate and seek privileges to operate an aircraft in Class B, C, or D airspace, at an airport located in Class B, C, or D airspace, or at an airport having an operational control tower, you must receive and log ground and flight training. The authorized instructor who provides this training must provide a logbook endorsement that certifies you are proficient in the following aeronautical knowledge areas and areas of operation:

* * * * *

■ 45. Add § 61.329 to read as follows:

§ 61.329 How do I obtain privileges to operate an aircraft at night?

You may act as pilot in command with a sport pilot certificate during night operations if you:

- (a) Receive three hours of flight training at night from an authorized instructor and receive a logbook endorsement from an authorized instructor certifying that you are proficient in the operation of the aircraft at night;
- (b) Conduct at least one cross-country flight during the flight training under paragraph (a) of this section at night, with a landing at an airport of at least 25 nautical miles from the departure airport, except for powered parachutes;
- (c) Accomplish at least ten takeoffs and landings at night with an authorized instructor; and
- (d) Either hold a medical certificate issued under part 67 of this chapter or, provided the pilot holds a valid U.S. driver's license, meet the requirements of § 61.23(c)(3) and conduct the operation consistently with § 61.113(i). If you are satisfying this by meeting the requirements of § 61.23(c)(3), if there is a conflict between the requirements of this section and § 61.113(i), this section controls.

■ 46. Add § 61.331 to read as follows:

§ 61.331 How do I obtain privileges to operate an aircraft with retractable landing gear or an airplane with a controllable pitch propeller?

(a) If you hold a sport pilot certificate and seek privileges to operate an aircraft with retractable landing gear, you must either—

- (1) Satisfy the training and endorsement requirements specified in § 61.31(e); or
- (2) Receive and log ground and flight training from an authorized instructor in an airplane that has retractable landing gear and receive an endorsement from the instructor certifying that you are proficient to operate the aircraft.

(b) If you hold a sport pilot certificate and seek privileges to operate an airplane with a controllable pitch propeller, you must either—

- (1) Satisfy the training and endorsement requirements specified in § 61.31(e); or
- (2) Receive and log ground and flight training from an authorized instructor in an airplane that has a controllable pitch propeller and receive an endorsement from the instructor certifying that you are proficient to operate the aircraft.

■ 47. Amend § 61.405 by adding paragraphs (b)(3) and (4) to read as follows:

§ 61.405 What tests do I have to take to obtain a flight instructor certificate with a sport pilot rating?

* * * * *

(b) * * *

(3) For persons seeking a rotorcraft-helicopter privilege, the applicant must complete a practical test and satisfactorily demonstrate the knowledge, risk management, and skill elements for each area of operation specified in the Sport Flight Instructor for Helicopter—Simplified Flight Controls Airman Certification Standards, referenced in paragraph (b)(4) of this section.

(4) FAA—S—ACS—31, Sport Flight Instructor for Helicopter—Simplified Flight Controls Airmen Certification Standards, [date to be included], is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Federal Aviation Administration (FAA) and the National Archives and Records Administration (NARA). Contact FAA at: Airman Testing Standards Branch/Regulatory Support Division, 405–954–4151, AFS630Comments@faa.gov, faa.gov/training_testing. For information on the availability of this material at NARA, visit: archives.gov/federal-register/cfr/ibr-locations.html, or email: fr.inspection@nara.gov. The material may be obtained from FAA, 800 Independence Avenue SW, Washington, DC 20591, 866–835–5322, faa.gov/training_testing.

■ 48. Revise § 61.409 to read as follows:

§ 61.409 What flight proficiency requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?

You must receive and log ground and flight training from an authorized instructor on the following areas of operation for the aircraft category and class in which you seek flight instructor privileges:

- (a) Technical subject areas.
- (b) Preflight preparation.
- (c) Preflight lesson on a maneuver to be performed in flight.
- (d) Preflight procedures.
- (e) Airport, heliport, seaplane base, and gliderport operations, as applicable.
- (f) Hovering maneuvers (applicable only to helicopters).
- (g) Takeoffs (or launches), landings, and go-arounds.
- (h) Fundamentals of flight.
- (i) Performance maneuvers and, for gliders, performance speeds
- (j) Ground reference maneuvers (except for gliders, helicopters, and lighter-than-air).

(k) Soaring techniques (gliders only). (l) Slow flight (not applicable to lighter-than-air, helicopters, and powered parachutes). (m) Stalls (not applicable to lighter-than-air, powered parachutes, helicopters, and gyroplanes).	(n) Spins (applicable to airplanes and gliders). (o) Emergency operations. (p) Tumble entry and avoidance techniques (applicable to weight-shift-control aircraft). (p) Special operations (helicopter only).	(q) Post-flight procedures. ■ 49. Amend § 61.411 by adding paragraph (h) to read as follows: § 61.411 What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating? * * * * *
If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
(h) Rotorcraft category and helicopter class, only if that helicopter is certificated under § 21.190 of this chapter and obtains the simplified flight controls design and designation,	(1) 150 hours of flight time as a pilot,	(i) 100 hours of flight time as pilot in command in powered aircraft; (ii) 50 hours of flight time in a helicopter; (iii) 25 hours of cross-country flight time; (iv) 10 hours of cross-country flight time in a helicopter; and (v) 15 hours of flight time as pilot in command in a helicopter.

■ 50. Amend § 61.415 by adding paragraphs (k) through (n) to read as follows:

§ 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?

* * * * *

(k) You cannot carry more than one person.

(l) You may not provide training in an airplane with a controllable pitch propeller or an aircraft with a retractable landing gear unless you have received training and an instructor endorsement validating proficiency in the safe operation of these types of aircraft.

(m) You may not provide training in an aircraft that has the simplified flight controls design and designation unless you have received the model-specific flight training and an endorsement from an authorized instructor validating proficiency in the safe operation of these aircraft.

(n) You may not provide training in an aircraft at night unless you have completed the night experience and instructor endorsement requirements listed in § 61.329.

■ 51. Amend § 61.419 by:

- a. Revising the section heading;
- b. Removing the phrase “light-sport aircraft” and adding the word “aircraft” in their place from the introductory text;
- c. Revising paragraph (b); and
- d. Adding paragraph (e).

The revisions and addition read as follows:

§ 61.419 How do I obtain privileges to provide training in an additional category or class of aircraft?

* * * * *

(b) Except as provided in paragraph (e) of this section, successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the areas specified in

§ 61.409 for the additional category and class flight instructor privilege you seek;

* * * * *

(e) If you are seeking to add an airplane single-engine land or sea or a rotorcraft-helicopter privilege to your flight instructor certificate, successfully accomplish a knowledge and practical test for that category and class privilege as specified in § 61.405.

■ 52. Amend § 61.429 by adding paragraph (d) to read as follows:

§ 61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?

* * * * *

(d) If you want to exercise the privileges of your flight instructor certificate in a model-specific aircraft that has a simplified flight controls designation, you must meet the training and endorsement requirements specified in § 61.31(l) prior to providing any flight training in that aircraft.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 53. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 54. Amend § 65.15 by revising paragraphs (a), (b), and (d) to read as follows:

§ 65.15 Duration of certificates.

(a) Except for repairman certificates issued in accordance with § 65.101, a certificate or rating issued under this part is effective until it is surrendered, suspended, or revoked.

(b) Unless it is sooner surrendered, suspended, or revoked, a repairman

certificate issued in accordance with § 65.101 is effective until the holder is relieved from the duties for which the holder was employed and certificated.

* * * * *

(d) Except for temporary certificates issued under § 65.13, the holder of a paper certificate issued under this part may not exercise the privileges of that certificate.

■ 55. Amend § 65.23 by revising paragraph (a)(2) to read as follows:

§ 65.23 Incorporation by reference.

* * * * *

(a) * * *

(2) FAA–S–ACS–1, Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards, November 1, 2021; IBR approved for §§ 65.75, 65.79, and 65.107.

* * * * *

■ 56. Revise § 65.81 to read as follows:

§ 65.81 General privileges and limitations.

(a) A certificated mechanic may perform or supervise the maintenance, preventive maintenance or alteration of an aircraft or appliance, or a part thereof, for which that person is rated (but excluding major repairs to, and major alterations of, propellers, and any repair to, or alteration of, instruments), and may perform additional duties in accordance with §§ 65.85, 65.87, and 65.95. However, a certificated mechanic may not supervise the maintenance, preventive maintenance, or alteration of, or approve for return to service, any aircraft or appliance, or part thereof, for which that person is rated unless that person has satisfactorily performed the work concerned at an earlier date. If that person has not so performed that work at an earlier date, that person may show the ability to do it by performing it to the satisfaction of the Administrator or

under the direct supervision of a certificated and appropriately rated mechanic, or a certificated repairman, who has had previous experience in the specific operation concerned.

(b) A certificated mechanic may not exercise the privileges of that person's certificate and rating unless that person understands the current instructions of the manufacturer, and the maintenance manuals, for the specific operation concerned.

■ 57. Revise § 65.85 to read as follows:

§ 65.85 Airframe rating; additional privileges.

(a) Except as provided in paragraph (b) of this section, a certificated mechanic with an airframe rating may approve for return to service an airframe, or any related part or appliance, after that person has performed, supervised, or inspected its maintenance or alteration (excluding major repairs and major alterations). In addition, a certificated mechanic with an airframe rating may perform the 100-hour inspection required by part 91 of this chapter on an airframe, or any related part or appliance, and approve for return to service.

(b) A certificated mechanic with an airframe rating can approve for return to service an airframe, or any related part or appliance, of an aircraft with a special airworthiness certificate in the light-sport category after performing and inspecting a major repair or major alteration for products that are not produced under an FAA approval provided the major repair or major alteration was authorized by, and performed in accordance with instructions developed by, the manufacturer or a person acceptable to the FAA.

■ 58. Revise § 65.87 to read as follows:

§ 65.87 Powerplant rating; additional privileges.

(a) Except as provided in paragraph (b) of this section, a certificated mechanic with a powerplant rating may approve for return to service a powerplant or propeller or any related part or appliance, after that person has performed, supervised, or inspected its maintenance or alteration (excluding major repairs and major alterations). In addition, a certificated mechanic with a powerplant rating may perform the 100-hour inspection required by part 91 of this chapter on a powerplant or propeller, or any part thereof, and approve and for return it service.

(b) A certificated mechanic with a powerplant rating can approve for return to service a powerplant or propeller, or any related part or

appliance, of an aircraft with a special airworthiness certificate in the light-sport category after performing and inspecting a major repair or major alteration for products that are not produced under an FAA approval, provided the major repair or major alteration was authorized by, and performed in accordance with instructions developed by, the manufacturer or a person acceptable to the FAA.

■ 59. Amend § 65.103 by revising paragraph (c) to read as follows:

§ 65.103 Repairman certificate: Privileges and limitations.

* * * * *

(c) This section does not apply to the holder of a repairman certificate (experimental aircraft builder) issued in accordance with § 65.104 or to the holder of a repairman certificate (light-sport) issued in accordance with § 65.107, while that repairman is performing work under that certificate.

■ 60. Revise § 65.107 to read as follows:

§ 65.107 Repairman certificate (light-sport): Eligibility and training courses.

(a) *Ratings.* The following ratings may be issued on a repairman certificate (light-sport) under this section:

(1) Inspection rating.

(2) Maintenance rating.

(b) *Eligibility requirements: General.* To be eligible for a repairman certificate (light-sport), a person must:

(1) Be at least 18 years old;

(2) Be able to read, speak, write, and understand English;

(3) Be a citizen of the U.S. or a citizen of a foreign country who has been lawfully admitted for permanent residence in the U.S.;

(4) Demonstrate the requisite skill to determine whether the aircraft is in a condition for safe operation;

(5) Complete a training course pursuant to paragraph (c) or (d) of this section, as applicable to the rating sought; and

(6) Pass a written test administered by the training course provider that covers the contents of the course pursuant to paragraph (c) or (d) of this section, applicable to the rating sought.

(c) *Eligibility requirements: Repairman certificate (light-sport) with an inspection rating.* To obtain an inspection rating on a repairman (light-sport) certificate, a person must satisfactorily complete, and present documentary evidence satisfactory to the Administrator of, a 16-hour training course accepted by the Administrator on inspecting the category of experimental aircraft for which the person intends to exercise the privileges of the rating.

(d) *Eligibility requirements: Repairman certificate (light-sport) with a maintenance rating.* To obtain a maintenance rating on a repairman (light-sport) certificate, a person must satisfactorily complete, and present documentary evidence satisfactory to the Administrator of completion of, a training course accepted by the Administrator appropriate to the category of aircraft for which the person intends to exercise the privileges of the rating.

(1) Until [DATE SIX MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], the training course must provide the following number of hours of instruction for the applicable privileges:

(i) For airplane privileges—120-hours;

(ii) For weight-shift control aircraft privileges—104 hours;

(iii) For powered parachute privileges—104 hours;

(iv) For lighter than air privileges—80 hours; and

(v) For glider privileges—80 hours; or

(2) The training course must include, at a minimum, the knowledge, risk management, and skill elements for each subject contained in the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (incorporated by reference, see § 65.23), as appropriate to the category of aircraft for which the person intends to exercise the privileges of the rating.

(e) *Training course providers.* The training course described in paragraphs (c) and (d) of this section must be delivered using facilities, equipment, and materials appropriate to the training course content taught and must be delivered by instructors that are appropriately qualified to teach the course content. After a student completes the training and passes the written test, the training course provider must provide a certificate of completion to the student indicating the name of the training provider, the FAA course acceptance number, the rating applicable to the training course, the category of aircraft the training was based on, and the date of training completion.

■ 61. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], amend § 65.107 further by revising paragraph (d) to read as follows:

§ 65.107 Repairman certificate (light-sport): Eligibility and training courses.

* * * * *

(d) *Eligibility requirements: Repairman certificate (light-sport) with a maintenance rating.* To obtain a

maintenance rating on a repairman (light-sport) certificate, a person must satisfactorily complete, and present documentary evidence satisfactory to the Administrator of, a training course accepted by the Administrator appropriate to the category of aircraft for which the person intends to exercise the privileges of the rating. The course must include, at a minimum, the knowledge, risk management, and skill elements for each subject contained in the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (incorporated by reference, see § 65.23).

* * * * *

■ 62. Add § 65.109 to subpart E to read as follows:

§ 65.109 Repairman certificate (light-sport): Privileges and limitations.

(a) The holder of a repairman certificate (light-sport) with an inspection rating may perform the annual condition inspection on an aircraft:

- (1) That is owned by the holder;
- (2) That has an experimental certificate for the purpose of operating light-sport category aircraft under § 21.191(i) of this chapter or operating light-sport category kit-built aircraft under § 21.191(j) of this chapter, or an aircraft that does not meet the provision of § 103.1 of this chapter and that has an experimental certificate for the purpose of operating light-sport that was issued on or before January 31, 2008; and

(3) That is in the same category of aircraft for which the holder has completed the training specified in § 65.107(c).

(b) The holder of a repairman certificate (light-sport) with a maintenance rating may—

(1) Approve for return to service an aircraft that has been issued a special airworthiness certificate in the light-sport category under § 21.190 of this chapter, or any part thereof, after performing or inspecting maintenance (to include the annual condition inspection and the 100-hour inspection required by § 91.327 of this chapter), preventive maintenance, or an alteration (excluding a major repair or a major alteration on a product produced under an FAA approval);

(2) Perform the annual condition inspection on an aircraft that has an experimental certificate for the purpose of operating light-sport category aircraft under § 21.191(i) of this chapter or operating light-sport category kit-built aircraft under § 21.191(j) of this chapter, or an aircraft that does not meet the provision of § 103.1 of this chapter and

that has an experimental certificate for the purpose of operating light-sport that was issued on or before January 31, 2008; and

(3) Only perform maintenance, preventive maintenance, and an alteration on an aircraft that is in the same category of aircraft for which the holder has completed the training specified in § 65.107(d). Before performing a major repair, the holder must complete additional training acceptable to the FAA and appropriate to the repair performed.

(c) The holder of a repairman certificate (light-sport) with a maintenance rating may not approve for return to service any aircraft or part thereof unless that person has previously performed the work concerned satisfactorily. If that person has not previously performed that work, the person may show the ability to do the work by performing it to the satisfaction of the FAA, or by performing it under the direct supervision of a certificated and appropriately rated mechanic, or a certificated repairman, who has had previous experience in the specific operation concerned. The repairman may not exercise the privileges of the certificate unless the repairman understands the current instructions of the manufacturer and the maintenance manuals for the specific operation concerned.

PART 91—GENERAL OPERATING REQUIREMENTS AND FLIGHT RULES

■ 63. 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, 44740, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation, 61 Stat. 1180; Pub. L. 112–95, 126 Stat. 11.

■ 64. Amend § 91.113 by:

■ a. Revising paragraphs (d)(2) and (3); and

■ b. Removing the undesignated paragraph following paragraph (d)(2).

The revisions read as follows:

§ 91.113 Right-of-way rules: Except water operations.

* * * * *

(d) * * *

(2) A glider has the right-of-way over powered aircraft.

(3) An airship has the right-of-way over all other powered aircraft. However, an aircraft towing or refueling

other aircraft has the right-of-way over all other powered aircraft.

* * * * *

■ 65. Amend § 91.126 by revising paragraphs (b)(1) and (2) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

* * * * *

(b) * * *

(1) Each pilot of a powered fixed wing aircraft and powered-lift aircraft operating in wing-borne flight mode must make all turns to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot must make all turns to the right; and

(2) Each pilot of any other aircraft must avoid the flow of the aircraft specified in paragraph (b)(1) of this section.

* * * * *

■ 66. Amend § 91.309 by revising paragraph (a)(2) to read as follows:

§ 91.309 Towing: Gliders and unpowered ultralight vehicles.

(a) * * *

(2) The towing aircraft has:

(i) A standard airworthiness certificate and is equipped with a tow-hitch of a kind, and installed in a manner, that is approved by the Administrator;

(ii) A special airworthiness certificate for which a type certificate has been issued, and is equipped with a tow-hitch of a kind, and installed in a manner, that is approved or otherwise authorized by the Administrator; or

(iii) A special airworthiness certificate, for which the aircraft has not been previously issued a type certificate, and is equipped with a tow-hitch of a kind that is approved or otherwise acceptable to, and is installed in a manner acceptable to, the Administrator;

* * * * *

■ 67. Amend § 91.319 by revising paragraphs (a) introductory text and (c) and adding paragraph (k) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) Except as specified in paragraph (k) of this section, no person may operate an aircraft that has an experimental certificate—

* * * * *

(c) Unless otherwise authorized by the Administrator in operating limitations, no person may operate an aircraft that has a certificate issued under § 21.191 of

this chapter over a densely populated area.

* * * * *

(k) A person may operate an aircraft issued an experimental certificate to conduct a space support vehicle flight carrying persons or property for compensation or hire provided the operation is conducted in accordance with § 91.331.

* * * * *

■ 68. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], amend § 91.319 further by adding paragraph (l) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

* * * * *

(l) No person may operate an aircraft issued an experimental certificate under § 21.191(i) or (j) of this chapter after the performance of an alteration accomplished after [EFFECTIVE DATE OF THE FINAL RULE], unless that aircraft has demonstrated compliance with the applicable requirements of part 36 of this chapter.

* * * * *

■ 69. Effective [DATE 6 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], amend § 91.327 by:

■ a. Revising the section heading and paragraphs (a), (b)(1), (4), (5), and (6), (c) introductory text, and (c)(1);

■ b. Redesignating paragraph (f) as paragraph (g); and

■ c. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 91.327 Aircraft issued a special airworthiness certificate in the light-sport category: Operating limitations.

(a) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category for compensation or hire except—

(1) To tow a glider or an unpowered ultralight vehicle in accordance with § 91.309;

(2) To conduct flight training; or

(3) To conduct any aerial work operations specified in the aircraft's pilot operating handbook or operating limitations, as applicable, and specified in the aircraft's statement of compliance, in accordance with § 21.190 of this chapter.

(b) * * *

(1) The aircraft is maintained by a certificated repairman (light-sport aircraft) with a maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station in accordance with the applicable provisions of part 43 of this chapter and

maintenance and inspection procedures developed by the aircraft manufacturer or other maintenance and inspection procedures acceptable to the FAA;

* * * * *

(4) The aircraft has demonstrated compliance with the applicable requirements of part 36 of this chapter;

(5) Each minor repair or minor alteration to an aircraft meets the applicable and current FAA-accepted consensus standards specified in the statement of compliance submitted to the FAA for the aircraft;

(6) Each major repair or major alteration is authorized by the manufacturer or a person acceptable to the FAA, and is performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA; and

* * * * *

(c) No person may operate an aircraft issued a special airworthiness certificate in the light-sport category to tow a glider or unpowered ultralight vehicle for compensation or hire or conduct flight training for compensation or hire in an aircraft which that person provides unless within the preceding 100 hours of time in service the aircraft has—

(1) Been inspected by a certificated repairman (light-sport) with a maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station in accordance with inspection procedures developed by the aircraft manufacturer or maintenance and inspection procedures acceptable to the FAA and been approved for return to service in accordance with part 43 of this chapter; or

* * * * *

(f) No person may operate an aircraft certificated in the light-sport category to carry—

(1) More than four occupants, including the pilot, if the aircraft is an airplane; or

(2) More than two occupants, including the pilot, if the aircraft is other than an airplane.

* * * * *

■ 70. Add § 91.331 to read as follows:

§ 91.331 Space support vehicle flights: Operating limitations.

(a) A person may operate an aircraft to conduct a space support vehicle flight carrying persons or property for compensation or hire provided—

(1) The aircraft has a special airworthiness certificate issued under § 21.191 of this chapter to operate the aircraft for the purpose of conducting a space support vehicle flight.

(2) The aircraft conducting the space support vehicle flight—

(i) Takes flight and lands at a single launch or reentry site that is operated by an entity licensed to operate the launch or reentry site under 51 U.S.C. chapter 509;

(ii) Is owned or operated by a launch or reentry vehicle operator licensed under 51 U.S.C. chapter 509, or on behalf of a launch or reentry vehicle operator licensed under 51 U.S.C. chapter 509;

(iii) Is a launch vehicle, a reentry vehicle, or a component of a launch or reentry vehicle licensed for operations pursuant to 51 U.S.C. chapter 509; and

(iv) Is used only to simulate space flight conditions in support of—

(A) Training for potential space flight participants, government astronauts, or crew (as those terms are defined in 51 U.S.C. chapter 509);

(B) The testing of hardware to be used in space flight; or

(C) Research and development tasks, which require the unique capabilities of the aircraft conducting the flight.

(b) The Administrator may prescribe additional operating limitations that the Administrator considers necessary in the interest of safety.

■ 71. Amend § 91.409 by revising paragraph (c)(1) to read as follows:

§ 91.409 Inspections

* * * * *

(c) * * *

(1) An aircraft that carries a special flight permit, a current experimental certificate, a light sport, or provisional airworthiness certificate;

* * * * *

■ 72. Amend § 91.417 by revising paragraph (a)(2)(v) to read as follows:

§ 91.417 Maintenance records.

* * * * *

(a) * * *

(2) * * *

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number and revision date. If the AD involves recurring action, the time and date when the next action is required.

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATIONS

■ 73. The authority citation for part 119 continues to read as follows:

Authority: Pub. L. 111–216, sec. 215 (August 1, 2010); 49 U.S.C. 106(f), 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

- 74. Amend § 119.1 by:
- a. Removing the word “or” at the end of paragraph (e)(10);
- b. Removing the period at the end of paragraph (e)(11) and adding “; or” in its place; and
- c. Adding paragraph (e)(12).
The addition reads as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(12) Space support vehicle flights conducted under the provisions of § 91.331 of this chapter.

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

Lirio Liu,

Executive Director, Aircraft Certification Service.

[FR Doc. 2023–14425 Filed 7–19–23; 11:15 am]

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