



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 185

September 26, 2023

Pages 65777–66268

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, an interim final rule published in the **Federal Register** on July 10, 2023, with a correction published on July 12, 2023. The rule permits parties to proceedings before the Federal Labor Relations Authority's (FLRA's) three-Member, decisional component (the Authority) to voluntarily request—in individual cases filed through the FLRA's electronic-filing (eFiling) system—that the Authority use electronic mail (email) to serve the requesting parties any decisions, orders, and notices (Authority documents) issued in those individual cases.

DATES: This final rule is effective on September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Erica Balkum, Chief, Office of Case Intake and Publication at ebalkum@flra.gov or at: (771) 444-5805.

SUPPLEMENTARY INFORMATION: On July 10, 2023, the FLRA published an interim final rule in the **Federal Register** at 88 FR 43425, amending its regulations to permit parties to proceedings before the Authority to voluntarily request—in individual cases filed through the FLRA's eFiling system—that the Authority use email to serve the requesting parties any Authority documents issued in those individual cases. The **Federal Register** notice: stated that it had an effective date of July 11, 2023; solicited written comments; and requested that any such comments be submitted by August 10, 2023.

Then, on July 12, 2023, the **Federal Register** issued a correction in 88 FR 44191, changing (1) the interim final rule's effective date to July 10, 2023, and (2) the due date for comments to August 9, 2023.

The FLRA has received only two comments on the interim final rule, both of which were submitted after the corrected, August 9, 2023 due date for comments. The FLRA has nonetheless opted to consider both comments. *Cf. Reyblatt v. NRC*, 105 F.3d 715, 723 (D.C. Cir. 1997) (stating that “[a]gencies are free to ignore . . . late filings,” but not holding that agencies are required to do so) (emphasis added) (quoting *Personal Watercraft Indus. Ass'n v. Dep't of Com.*, 48 F.3d 540, 543 (D.C. Cir. 1995)).

One commenter, a federal agency, fully supported the rule but suggested a specific technical change in the FLRA's eFiling system outside the scope of the rule. The other commenter, the owner and chief executive officer of a government-contracting company, did not directly address the rule but generally discussed document-based business processes.

Neither comment warrants changing the rule. Therefore, based on the rationale set forth in the interim final rule and this document, the FLRA is adopting the provision of the interim final rule as a final rule with no changes. The FLRA appreciates the comments submitted in response to the interim final rule, and will take under advisement the recommended change to the eFiling system.

Administrative Procedure Act

On July 10, 2023, the FLRA published an interim final rule (88 FR 43425) and determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. On July 12, 2023, the **Federal Register** issued a correction (88 FR 44191). The FLRA has considered all relevant input and information contained in the comments submitted in response to the interim final rule and has concluded that no changes to the interim final rule are warranted. The FLRA is adopting the provisions of the interim final rule as a final rule with no changes.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C.

605(b), the Chairman of the FLRA has determined that this final rule will not have a significant impact on a substantial number of small entities, because this final rule applies only to Federal agencies, Federal employees, and labor organizations representing those employees.

Executive Order 12866, Regulatory Review

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 12866 (58 FR 51735, Sept. 30, 1993).

Executive Order 13132, Federalism

The FLRA is an independent regulatory agency and thus is not subject to the requirements of E.O. 13132 (64 FR 43255, Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor management relations.

■ Accordingly, the interim final rule published in the **Federal Register** on July 10, 2023, at 88 FR 43425—and corrected on July 12, 2023, at 88 FR 44191—is adopted as a final rule without change.

Approved: September 21, 2023.

Rebecca J. Osborne,
Federal Register Liaison, Federal Labor Relations Authority.

[FR Doc. 2023–20892 Filed 9–25–23; 8:45 am]

BILLING CODE 7627–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[FNS–2022–0044]

RIN 0584–AE93

Child Nutrition Programs: Community Eligibility Provision—Increasing Options for Schools

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

ACTION: Final rule.

SUMMARY: This final rule amends the Community Eligibility Provision (CEP) regulations by lowering the minimum

identified student percentage (ISP) from 40 percent to 25 percent. Lowering the minimum ISP will give States and schools greater flexibility to offer meals to all enrolled students at no cost when financially viable. As a result of this rule, more schools are eligible to participate in CEP and experience the associated benefits, such as increasing students’ access to healthy, no-cost school meals; eliminating unpaid meal charges; reducing stigma; and streamlining Program administration and meal service operations.

DATES: This rule is effective October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Frey, Branch Chief, Policy Design Branch, School Meals Policy Division—4th Floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Community Eligibility Provision (CEP) is an option for eligible schools to offer meals at no cost to all enrolled students without collecting household applications. Authorized by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) and codified in regulations at 7 CFR 245.9(f), CEP is a reimbursement

alternative for eligible local educational agencies (LEAs) and schools participating in both the National School Lunch Program (NSLP) and School Breakfast Program (SBP).¹ CEP eliminates the need for schools to collect household income applications by sharing eligibility data between specific Federal assistance programs, which can reduce administrative burden for both schools and families.

To be eligible for CEP, an individual school, group of schools, or LEA must meet or exceed the established, minimum identified student percentage (ISP) in the school year prior to implementing CEP. The ISP is the percentage of enrolled students who are certified for free school meals without submitting a household application, such as those directly certified through specific Federal benefits programs (e.g., the Supplemental Nutrition Assistance Program (SNAP) and the Food Distribution Program on Indian Reservations (FDPIR)). For CEP, students who are certified for free meals without a household application are “identified students” (42 U.S.C. 1759a(a)(1)(F)(i); 7 CFR 245.9(f)(1)(ii))² The ISP is calculated by dividing the total number of identified students by the total number of enrolled students:

$$\text{Identified Student Percentage} = \frac{\# \text{ Identified Students}}{\# \text{ Enrolled Students}}$$

Under current regulations, the minimum ISP is 40 percent; therefore, to be eligible for CEP, an individual school, group of schools, or LEA must have an ISP greater than, or equal to, 40 percent (ISP ≥40 percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)).

The ISP determines eligibility to participate in CEP and is also the basis of Federal reimbursements for meals served to students in CEP schools. The National School Lunch Act (NSLA) gives the Secretary discretion to establish a CEP “multiplier” between 1.3 and 1.6 that is used to determine the

percentage of meals that CEP schools claim at the free and paid reimbursement rate levels (42 U.S.C. 1759a(a)(1)(F)(vii)(II)(aa)). To promote CEP financial viability, USDA codified a multiplier of 1.6 (7 CFR 245.9(f)(4)(vi)). The ISP is multiplied by 1.6 to calculate the percentage of meals reimbursed at the Federal free rate. Any remaining meals, up to 100 percent, are reimbursed at the Federal paid rate.³

$$\begin{aligned} \text{\% Meals reimbursed at Federal free rate} &= \text{ISP} \times 1.6 \\ \text{\% Meals reimbursed at Federal paid rate} &= 100 - \text{\% meals reimbursed at Federal free rate} \end{aligned}$$

CEP requires that LEAs must pay, with non-Federal funds, any costs of offering free meals to all students that exceed the Federal assistance provided. If all operating costs are covered by the Federal assistance provided, then LEAs are not required to contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)).

On March 23, 2023, USDA published a proposed rule in the **Federal Register** (88 FR 17406), seeking to lower the minimum ISP to 25 percent, and make related, conforming changes to CEP regulatory text at 7 CFR 245.9(f).

¹ On July 29, 2016, the U.S. Department of Agriculture (USDA) published the final rule, National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010 [81 FR 50194, July 29, 2016], which codified CEP requirements that were implemented through statute and policy guidance, at § 245.9(f).

² Identified students include students living in households participating in SNAP, Temporary Assistance for Needy Families, and FDPIR. Identified students also include those who are homeless, migrant, runaway, in foster care, or enrolled in Head Start. In some States, students are directly certified through Medicaid direct certification demonstration projects. Students in States participating in the Medicaid direct

certification demonstration projects are only included in the ISP if they are certified for free meals (not reduced price meals).

³ CEP schools only claim meals at the free and paid reimbursement rates. CEP schools do not claim reduced price meals.

As described in detail in the proposed rule, CEP benefits children, families, schools, and communities. Schools participating in CEP often experience an increase in the number of students accessing the SBP and NSLP, resulting in more children benefiting from the advantages these Programs offer.⁴ Research demonstrates that access to school meals at no cost improves students' diet quality and academic performance and can reduce social stigma and food insecurity.⁵ Researchers have observed that "CEP exposure is associated with an almost five percent decline in households classified as food insecure."⁶ LEAs have also reported that CEP reduces administrative burden and eliminates unpaid meal debt in schools.⁷ Lastly, CEP improves Program integrity by simplifying administration and lowering error rates in certifying students.^{8,9}

This final rule lowers the minimum ISP from 40 percent to 25 percent and makes conforming changes to ISP-

⁴ USDA's first comprehensive study since CEP became available nationwide compared the impact of CEP participation in school districts that elected CEP to similar non-participating school districts. The study showed about 7% and 12% higher student participation in NSLP and SBP, respectively, in schools under CEP compared to eligible but non-participating schools. U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at: <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

⁵ Cohen JFW, Hecht AA, McLoughlin GM, Turner L, Schwartz MB. Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review. *Nutrients*. 2021 Mar 11;13(3):911. Diet quality and food security (pp. 6–9); Academic performance (p. 10). Available at: <https://pubmed.ncbi.nlm.nih.gov/33799780/>.

⁶ National Bureau of Economics. (2022). The Effect of Free School Meals on Household Food Purchases: Evidence from the Community Eligibility Provision. Available at: <https://www.nber.org/papers/w29395>. "CEP exposure" is the probability that a household has a child enrolled at a CEP school, based on schools' CEP participation, household zip codes, and school attendance areas.

⁷ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at: <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> (p. 43).

⁸ U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf> (p. 127–135).

⁹ Milfort et al. (2021). Third Access, Participation, Eligibility, and Certification Study. Prepared by Westat, Inc., Contract No. AG–3198–K–15–0054. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Conor McGovern. Available online at: <https://fns-prod.azureedge.us/sites/default/files/resource-files/APECHIII-Vol1.pdf> (p. 8–14 through 9–3).

related requirements (*i.e.*, grace year eligibility and identification/notification requirements). Electing CEP is a voluntary decision made by LEAs based on their unique student populations. Prior to participating in CEP, LEA decisionmakers should consider student nutrition, educational, administrative, and financial factors. This rule does not impose any new requirements on LEAs or schools. Through this final rule an increased number of LEAs, schools, and groups of schools will be eligible to offer all students lunches and breakfasts at no-cost when it is financially viable. This final rule supports State and local choices to expand the availability of no-cost school meals for all students through programs supported by State or local funding.

USDA solicited public comments on the proposed change to lower the minimum ISP to 25 percent. In addition, USDA requested public comments on the following questions:

(1) To what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?

(2) What sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?

(3) In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (*e.g.*, processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?

(4) To what extent are administrative cost savings a factor in determining whether to elect CEP?

(5) How do State policies related to offering free school meals for all students influence the likelihood of CEP election among newly eligible LEAs?

Public comments received in response to the proposed rule helped inform the development of this final rule.

II. Public Comments and USDA Response

During the 45-day comment period (March 23-May 8, 2023), USDA received a total of 10,625 comments, including 849 unique submissions and four form letters representing 8,689 submissions. Of the 10,625 comments, 1,087 were duplicate or non-germane submissions, resulting in 9,538 relevant comments. All comments, except non-germane comments, are posted online at www.regulations.gov (see docket FNS–2022–0044, *Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools*). Relevant comments were submitted by Members of Congress, State and local government entities and elected

officials, school districts and school staff, advocacy organizations, nongovernmental organizations, and other stakeholders, including food banks, healthcare and health insurance organizations and healthcare professionals, professional and trade associations, the research community, faith-based organizations, and individual commenters and members of the public. USDA greatly appreciates the thoughtful comments provided. These comments were essential to the development of this final rule.

Overall, including the form letters, almost 97 percent of comments supported the proposed rule (9,220 of 9,538) and less than 1 percent opposed it (14 of 9,538); the remaining comments were mixed, offered conditional support, or were neutral, in that they were generally supportive of lowering the minimum ISP to 25 percent, but also discussed additional considerations for school meals and school nutrition departments.

Comments in favor of lowering the minimum ISP to 25 percent cited benefits to children, families, schools, communities, and Program operators. Supporters noted that lowering the minimum ISP would increase student access to school meals and improve children's food security, health, and academic performance. Many comments also supported the proposal for its administrative benefits to school districts and schools.

Comments opposed to lowering the minimum ISP primarily focused on concerns about school finances and funding to support CEP or argued that the proposed 25 percent threshold was chosen arbitrarily and could expand CEP to schools serving communities that do not need assistance.

Comments offering mixed or conditional support generally agreed with lowering the threshold, but also urged USDA to take additional measures to support and expand CEP (*e.g.*, increase the CEP multiplier or make school meals available at no cost to students nationwide). The following discussion is a detailed summary of public comments by topic.

Minimum ISP

Proposed Change

Under current regulations, the minimum ISP required to elect CEP is 40 percent; therefore, to be eligible for CEP, an LEA, group of schools, or school must have an ISP greater than, or equal to, 40 percent (ISP \geq 40 percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)). USDA proposed to amend 7 CFR

245.9(f)(3)(i) to require an LEA, group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the prior school year, to participate in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Public Comments

USDA received 9,220 comments that were generally supportive of lowering the minimum ISP threshold to 25 percent. Commenters supporting the lower threshold included: Members of Congress; State and local agencies; school districts and school staff; advocacy groups, trade associations, and individuals. Many commenters reasoned that the proposed change would expand CEP, allowing more students access to free, nourishing school meals. Further, commenters highlighted that expanding CEP could benefit numerous stakeholders by reducing hunger and food insecurity, improving students' academic performance, increasing equity, reducing families' financial burdens, and streamlining school meal operations.

Many commenters who supported the rule discussed the importance of feeding schoolchildren equitably and supporting families. Numerous commenters, including advocacy groups, a food bank, trade associations, and individuals, noted that access to nutritious school meals is important to ensure educational equity, improve learning outcomes, and advance children's intellectual and physical development. Some individual commenters asserted that student hunger has a significant impact on academic performance and outcomes. A form letter campaign emphasized that hungry schoolchildren cannot learn effectively, and that CEP helps to alleviate the negative impact of hunger on learning. Several commenters, including an advocacy group and individuals, expressed support for the proposed rule because, for many children, school meals are the only nutritious meals they have access to each day. Similarly, an advocacy group commented that CEP helps feed schoolchildren, while also increasing attendance and improving academic outcomes. Another advocacy group asserted that, without CEP, thousands of students would go hungry at school. One advocacy group cited research which found that universal school meals improved academic performance, reduced suspension among students, reduced household spending on

groceries, and improved dietary quality at home. Similarly, some commenters, including a trade association and individuals, stated that lowering the minimum ISP would decrease children's and families' food insecurity.

School staff and a few individual commenters said that lowering the minimum ISP to 25 percent would benefit their school districts because they are unable to participate in CEP at the 40 percent threshold, but they know students in their communities experience widespread food insecurity. A school district reported that 69 percent of their students receive free and reduced price meals, but only three of 18 schools in the district qualify for CEP (two of which barely meet the 40 percent threshold). Further, commenters, including a school board, suggested that lowering the minimum ISP would improve communities' attitudes toward school meals and school nutrition programs.

A couple of commenters, including a State and a local agency, noted that reducing the minimum ISP increases access and makes school meals more equitable among rural, Tribal, and underserved communities. Many commenters discussed the historical disadvantages, particularly food insecurity, faced by rural and underserved communities. For example, an advocacy group emphasized that "Black and Brown communities experience food insecurity at higher rates" than their White counterparts due to systemic racial injustice. Some commenters reasoned that CEP has been useful in minimizing these disadvantages through access to free meals, especially among Latino and Black children. Additionally, a few commenters with first-hand CEP experience, including a school and an advocacy group, stated that when meals were available at no cost to all students, significantly more students opted to participate in school meals and the school culture improved. Notably, a form letter campaign said that expanding access to CEP is a "great step forward" to improve equity, accessibility, and nutrition in school meals.

Many commenters, including a State agency, an advocacy group, a professional association, and individuals, stated that CEP helps reduce the prevalence of unpaid meal debt, and some commenters, including a school and individual commenters, cited the elimination of unpaid meal charges and student meal debt as a primary reason they support lowering the minimum ISP. Many commenters, including a local government, school

districts, a trade association, individuals, and a form letter campaign, expressed support for decreasing the minimum ISP, as it would provide "peace of mind" to parents and children by eliminating the cost of school meals.

Commenters also support lowering the minimum ISP because it reduces administrative burden and gives school districts more options for operating school meal programs to best serve their communities. Several commenters, including a State agency and local agency, school districts and schools, a trade association and an individual, supported lowering the minimum ISP because it would significantly reduce administrative burden. A couple of State agencies said that the proposed change would help their States' small and rural schools, which serve many critical roles for isolated, rural communities and often struggle with higher per-meal administrative costs because of their small size. Commenters also recognized that expanding CEP would help schools and school nutrition staff operate the SBP and NSLP more efficiently and would allow them to focus more on local purchasing, farm-to-school initiatives, and scratch cooking. Additionally, many commenters, including a local agency, schools and school staff, advocacy groups, a trade association, and individuals, expressed support for the proposal because lowering the minimum ISP would give schools greater flexibility in operational decisions, in addition to providing more enrolled students with no-cost meals.

While still supportive, commenters discussed how funding to operate school meal programs via CEP at the proposed 25 percent minimum ISP would be challenging. Several commenters asserted that the proposed lower minimum ISP will not be financially viable for many school districts without a concurrent increase in the CEP multiplier. A few commenters suggested that to offset the burden of costs, USDA should allow statewide CEP participation so that CEP administration and any costs can be shared among school districts within a State and are not placed on individual school districts.

In addition, several supportive commenters expressed concerns about the loss of free and reduced price eligibility data—frequently used for education funding—that occurs in CEP schools when applications are eliminated. For example, an advocacy group commented that schools that do not process school meal applications will need to navigate how to adjust policies that previously relied on household application data but

reasoned that this is true at any ISP level. Other commenters recommended that USDA work with other Federal partners to assess alternative poverty measures.

Despite overwhelming support for lowering the minimum ISP to 25 percent, approximately 300 commenters, including a State agency, advocacy groups, and individuals, provided mixed feedback or conditional support. Many noted that successful implementation of CEP in schools with lower ISPs requires additional funding. A school staff commenter expressed concern that the proposed change to CEP would lead communities and school boards to believe it is financially viable for districts with a 25 percent ISP to elect CEP. Some commenters suggested increasing the CEP multiplier, while others thought the rule did not go far enough, suggesting further lowering the minimum ISP, eliminating the minimum ISP completely in States where there is identified State funding to support CEP, and providing universal school meals at no cost to all students nationwide.

Though most commenters supported lowering the minimum ISP to 25 percent, 14 commenters expressed opposition to the proposed change. Many commenters opposed to lowering the minimum ISP expressed concern that expanding CEP might financially burden schools and school nutrition programs in cases where Federal reimbursements fall short of Program operating costs. Of these, about half expressed that the proposed lower minimum ISP would not be financially viable without increasing the CEP multiplier. Opposing commenters, including a school district and individual commenters, remarked that the proposed change would not encourage more schools to implement CEP because of its economic infeasibility. Similar to commenters with mixed feedback on the rule, a school district asserted that the CEP multiplier needs to be increased from 1.6 to at least 2.0 or higher. The district added that lowering the minimum ISP, without increasing the multiplier, would only assist schools that have the financial means to help pay the “nutrition bills.” An individual commenter expressed concern that the lower minimum ISP would not simplify determinations for severe need payments in the SBP or allow more schools to participate in CEP. The commenter concluded by expressing

concern that the 25 percent minimum ISP was chosen arbitrarily. One commenter expressed concern about government overreach and suggested that State and local agencies are better suited to address free meals. Another individual stated that the proposed rule promotes socialism, adding that social services should be involved to provide meals while simultaneously assessing students’ home environments. Finally, a school nutrition director stated that expanding CEP to a student population that does not have an economic need is not an efficient use of funds, and an advocacy group asserted that lowering the minimum ISP significantly expands CEP in a way that is inconsistent with the intent of the Federal meal programs because it could result in more middle- and upper-income students receiving taxpayer-funded meals.

Thirty commenters responded to the question, “to what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?” Of these, the majority provided estimates of the number of schools expected to be newly eligible. Some commenters shared that, although more schools would be eligible, they would likely not elect CEP without an increase to the CEP multiplier. Other commenters responded that newly eligible schools in their States would elect CEP due to the availability of State funding to cover any costs that exceed Federal assistance. One State agency did not indicate how many more schools would participate in CEP, but expressed concern that many newly eligible schools may not initially understand the financial impacts of electing CEP at a lower ISP threshold.

Additionally, approximately 15 commenters responded to the question, “what sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?” The majority of commenters responding to this question indicated there is State or local funding available to help cover costs. A State agency said that non-Federal sources in their State include angel funds (local or community donations). Another State reported there are no State funds available to pay for the cost of meals not covered by Federal assistance. Finally, an advocacy group emphasized that, for their area, the availability of State and local funds varies greatly based on school-level factors, such as enrollment and student participation in school meal programs.

USDA Response

USDA concurs with commenters who stated that lowering the minimum ISP is expected to significantly benefit students, families, schools, and communities. USDA’s CEP Characteristics Study found that LEAs participating in CEP reported multiple perceived benefits, including increased student participation, decreased financial burden on families, elimination of unpaid meal debt, reduced administrative burden, and decreased stigma for students in need.¹⁰ USDA also understands that lowering the minimum ISP to 25 percent is expected to result in more schools being eligible for CEP; yet, without additional State or local funding, electing CEP at lower ISPs may not be financially viable for many schools.

Non-CEP LEAs and schools that serve high proportions of low-income children are expending already-constrained resources to collect and process school meal applications to ensure low-income students have access to free or reduced price meals. Lowering the minimum ISP to 25 percent provides an opportunity for more LEAs with high proportions of low-income students—especially those with non-Federal funds available to support school meals—to capitalize on CEP’s administrative and operational benefits, while maintaining CEP’s intent to provide schools serving high poverty areas with opportunity to offer healthy, no-cost school meals to all students. This is particularly applicable to LEAs and schools in States with healthy school meals for all initiatives; in these States, students already have access to meals at no cost and now the lower minimum ISP will allow more schools to experience the administrative and operational benefits of CEP.

Healthy school meals for all initiatives, supported by State funding, are gaining momentum across the nation. Currently, eight States have permanent policies in place, more than 20 States are actively pursuing healthy school meals for all legislation, and 63 percent of voters nationwide support legislation that would make school meals permanently available to all

¹⁰ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017. OMB #0584–0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

students at no cost.¹¹ These initiatives align with USDA's priority to tackle food and nutrition insecurity: USDA is leveraging all resources to ensure consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.¹² Expanding schools' access to CEP—and providing students access to a nourishing breakfast and lunch each school day—is an important action USDA can take to support those efforts.

USDA acknowledges that lowering the minimum ISP is not accompanied by additional funding and that, for the most part, school districts and schools that are newly eligible under the 25 percent threshold may need additional non-Federal funds for CEP to be financially viable. However, USDA supports CEP expansion in States and localities where non-Federal funding is available to support healthy school meals at no charge for all students.

As detailed earlier, the CEP multiplier is used to calculate the percentage of breakfasts and lunches to be claimed and reimbursed at the Federal free rate at CEP schools. Section 11(a)(1)(F)(vii)(II) of the NSLA provides the Secretary the option to establish the CEP multiplier between 1.3 and 1.6. Accordingly, USDA established 1.6 as the multiplier to be used to determine CEP claiming percentages for an entire 4-year CEP cycle (7 CFR 245.9(f)(4)(vi)). Increasing the multiplier to provide more funding to CEP schools (in the form of a higher free claiming percentage) would require Congressional action; USDA does not have statutory authority to increase the multiplier any further. Similarly, USDA does not have the authority to allow a statewide CEP option. Section 11(a)(1)(F)(x) of the NSLA requires CEP to be elected at the LEA-level.

Electing CEP is a local decision, not a Federal mandate; as a result, the financial viability of participating in CEP must be evaluated based on the unique circumstances of each individual school district. If the total amount of Federal assistance available does not fully cover the cost of offering all students meals at no charge, LEAs must contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)). The use of non-Federal funds is not required if all operating costs are covered by the Federal reimbursement and other

assistance provided under the NSLA and the Child Nutrition Act of 1966 (42 U.S.C. 1759a (a)(1)(F)(ii)(I)(bb)). Additionally, school food authorities (SFAs) may use excess funds in the non-profit school food service account to support CEP (7 CFR 210.14(a)).

When deciding whether to elect CEP, eligible schools must consider their ability to provide meals at no cost and cover their operating costs with Federal assistance and any other available funds, including State and/or local funds. USDA has an updated estimator tool to help LEAs determine if CEP is financially viable, and to help assess LEA groupings to optimize Federal reimbursements. The estimator tool is available at the CEP Resource Center (<https://www.fns.usda.gov/cn/community-eligibility-provision-resource-center>).

With respect to concerns regarding the loss of free and reduced price eligibility data, USDA understands that many entities have historically relied on data from free and reduced price school meal applications as a school- or school district-based poverty measure and/or means of allocating education funding. Since CEP's inception in 2011, USDA has worked extensively to ensure that State agencies and eligible LEAs are aware of alternative means of assessing socioeconomic status. USDA has coordinated meetings and webinars to share best practices related to assessing socioeconomic status in the absence of household applications.¹³ In addition, USDA worked with the National Forum on Education Statistics to develop a guide on alternative measures of socioeconomic status for use in education data systems.¹⁴ USDA continues to work with the U.S. Department of Education's National Center for Education Statistics, on an ongoing basis, to discuss and identify school-based poverty measures that have potential to serve as alternatives to free and reduced price application data. USDA encourages stakeholders at the State and local levels to pursue similar conversations to ensure that electing CEP, and the loss of application data, does not result in reduced education funding or benefits to CEP school districts, schools, or students.

¹³ Visit the CEP Resource Center for more information: Community Eligibility Provision Resource Center | Food and Nutrition Service ([usda.gov](https://www.fns.usda.gov/cep)).

¹⁴ National Forum on Education Statistics (2015). *Forum Guide to Alternative Measures of Socioeconomic Status in Education Data Systems* (NFES 2015–158). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Available at: <http://nces.ed.gov/pubs2015/2015158.pdf>.

USDA has discretion to establish a minimum ISP that is lower than 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(II)). In addition to public comments, to determine an appropriate threshold, USDA considered operational factors, including characteristics of LEAs currently eligible and near eligible to elect CEP, and analyzed the composition of the ISP and the proportion of free and reduced price students at varying ISP levels. Based on these analyses, a minimum ISP of 25 percent results in at least 40 percent of meals reimbursed at the free rate (25 percent \times 1.6 = 40 percent). Schools where at least 40 percent of the lunches served to students in the second preceding school year were free or reduced price qualify as severe need schools and receive an additional reimbursement (42 U.S.C. 1773(d)(1)(A); 7 CFR 220.9(d)(2)). Aligning the CEP threshold with the severe need payments threshold provides consistency because all CEP-eligible schools will qualify for severe need reimbursements. In addition, CEP's positive impact on school breakfast participation further supports the SBP.¹⁵

Given the broad stakeholder support for lowering the minimum ISP to 25 percent—and the potential benefit to children, families, schools, and communities—USDA is adopting the lower, 25 percent minimum ISP in this final rule. Accordingly, this final rule amends the CEP provisions at 7 CFR 245.9(f)(3)(i) to reflect a 25 percent minimum ISP.

Conforming Amendments to Grace Year and Identification/Notification Requirements

Proposed Change

To conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3), USDA proposed to amend 7 CFR 245.9(f)(4)(ix), the regulations governing grace years, to allow an LEA, group of schools, or school in the fourth year of the 4-year CEP cycle with an ISP of less than 25 percent but equal to or greater than 15 percent (as of April 1 of the fourth year of a CEP cycle) to continue using CEP for an additional “fifth year” or a “grace year” beyond the 4-year CEP cycle. In addition, USDA

¹⁵ USDA's CEP Characteristics Study found that SBP participation increased by about 12 percent in LEAs operating CEP (compared to similar, eligible LEAs that did not elect CEP). U.S. Department of Agriculture (2022). *USDA Community Eligibility Provision Characteristics Study, School Year 2016–2017*. OMB #0584–0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

¹¹ Food Research and Action Center, *Healthy School Meals for All* website. Available at: <https://frac.org/healthy-school-meals-for-all>.

¹² U.S. Department of Agriculture, *Priorities website*. Available at: <https://www.usda.gov/priorities#:~:text=Tackling%20Food%20and%20Nutrition%20Insecurity,-At%20USDA%2C%20we>.

proposed to amend 7 CFR 245.9(f)(5) and (6), the regulations governing LEA and State agency identification and notification requirements, and 7 CFR 245.9(f)(7)(i) and (ii), the regulations governing State agency public notification requirements. USDA only proposed changes to the numbers (*i.e.*, 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold and statutory requirements (42 U.S.C. 1759a(a)(1)(F)(v)(I), (a)(1)(F)(x)); no additional substantive changes were proposed.

Public Comments

USDA received eight comments pertaining to these conforming changes and all comments were supportive. A State agency noted that the grace year flexibility would allow schools an extra year to attempt to meet the 25 percent ISP threshold to remain on CEP. In addition, an advocacy group suggested that USDA should require States to use the actual counts of identified students as opposed to proxy data to ensure more accurate lists and notifications.

USDA Response

USDA appreciates one commenter's suggestion to change requirements related to the data that States use for notification purposes. However, this rulemaking only changes the numbers (*e.g.*, 40 percent to 25 percent, 30 percent to 15 percent) consistent with the lower ISP threshold and statutory requirements (42 U.S.C. 1759a(a)(1)(F)(v)(I), (a)(1)(F)(x)); no additional substantive changes are made by this rulemaking. Therefore, under this final rule, USDA will continue to allow States to use proxy data for CEP notification purposes. Consistent with current requirements, actual counts of identified students must be used for CEP elections.

Given the support for these changes and the statutory requirement that these provisions conform to the final threshold, this final rule modifies the following regulations to align with the 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- 7 CFR 245.9(f)(4)(ix), the regulations governing the use of CEP for a grace year;
- 7 CFR 245.9(f)(5) and (6), the regulations governing LEA and State agency identification and notification requirements; and
- 7 CFR 245.9(f)(7)(i) and (ii), the regulations governing State agency public notification requirements.

Comments on Other CEP-Related Items Healthy School Meals for All Public Comments

Approximately 330 commenters discussed healthy school meals for all initiatives; many of those commenters, including a professional association and individuals, expressed general support for providing all students with no-cost, healthy school meals. Several commenters, including a trade association and a form letter campaign, stated that the proposed rule is an improvement on existing CEP requirements and represents a positive step toward universal, no-cost meals for all students. A form letter campaign applauded the proposed CEP expansion and its potential to enable more schools and districts across the country to provide school meals at no charge to all students, closing a gap in healthy food access for many children and families, especially those in need. However, some commenters, including school staff, advocacy groups, and individuals, noted that a nationwide program making school meals available at no charge for all students would be preferable over lowering the minimum ISP.

Several commenters highlighted that the proposed change to CEP would support the growing number of States choosing to invest funding to provide no-cost school meals to all children. A few commenters, including a school district and individuals, commented that lowering the minimum ISP to 25 percent would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. An individual representing a non-profit organization stated that the proposed change creates an "easier entry point" for States to adopt their own universal, no-cost meals policies in a more balanced and sustainable way. The commenter continued, declaring that a lower minimum ISP would support the growing number of States that are choosing to invest their own funds to provide free school meals to all students, through maximizing LEA use of CEP in combination with State-specific initiatives. Conversely, one State agency shared that, in their State, State funding is not available to encourage lower ISP schools to adopt CEP, and concerns exist regarding whether some schools have sufficient financial support to be able to implement CEP at lower ISPs.

Approximately 15 commenters responded to the question, "how do State policies related to offering free school meals for all students influence

the likelihood of CEP election among newly eligible LEAs?" A couple of commenters stated that the proposed rule provides more options to LEAs and State agencies in those States that incentivize CEP adoption through State legislation. Some commenters, including State agencies and advocacy groups, asserted that LEAs in States with existing healthy school meals for all legislation, or significant non-Federal funding sources, will see an increase in CEP participation because they do not have to reconcile significant budgetary gaps. One State agency commented that the State's policies neither require nor discourage districts to participate in CEP, and another State agency noted that LEAs will need to assess how current application-based reimbursements compare to CEP's direct certification-based reimbursements because eliminating applications may affect school districts and States differently, depending on their policies. Additionally, one State agency asserted that without State funding to support free school meal programs, newly eligible LEAs would not be likely to participate in CEP because it would not be financially viable.

USDA Response

USDA anticipates that LEAs most likely to elect CEP at the 25 percent ISP are those in States that have committed to offering healthy school meals for all through State funding. Numerous public comments submitted by States support this assumption. The Colorado Department of Education confirmed that, to opt-in to the State's Healthy School Meals for All Program and receive additional State funding, qualifying schools are required to elect CEP. In its comment, the Minnesota Department of Education noted that, while the State will not require school districts to participate in CEP under the recently passed Minnesota Free School Meals Program, it anticipates "schools will be interested in adopting CEP at a lower threshold to have the option to streamline meal counting and claiming." A recent publication from the Food Research and Action Center has also found that States offering free meals to all students in school year (SY) 2022–23 experienced significant increases in CEP uptake.¹⁶

USDA estimates that as many as 2,090 schools in 471 LEAs across California, Colorado, Maine, Minnesota, and New Mexico, all of which have implemented

¹⁶ Food Research & Action Center. Community Eligibility: The Key to Hunger-Free Schools, School Year 2022–23 (May 2023). Available at: <https://frac.org/wp-content/uploads/cep-report-2023.pdf>.

healthy school meals for all policies for SY 2023–24, would elect to participate in CEP under the 25 percent ISP.¹⁷ Estimates are based on the School Food Authority Verification Collection Report, found at: <https://www.fns.usda.gov/form/school-food-authority-sfa-verification-collection-report>. Specifically, the analysis used 2023 data related to student enrollment, direct certification, free and reduced price claiming percentages, and CEP participation status.¹⁸

A recent report on CEP uptake showed that the number of students in schools participating in CEP has increased annually since 2014, with the greatest increases occurring more recently.¹⁹ In SY 2021–22, there were 16.2 million students in CEP schools; in SY 2022–23, there were 19.9 million. California was the greatest contributor, adding more than 1.3 million students to the total enrolled in CEP schools. The percentage of eligible schools adopting CEP also increased from 75.3 percent to 99.5 percent in California during this time. In all but one of the seven States offering free meals to all students during SY 2022–23 through State funding (California, Connecticut, Maine, Nevada, New Mexico, Vermont), the percentage of eligible schools participating in CEP was 92 percent or higher. The percentage of participating eligible CEP schools in Massachusetts, the remaining State, was 87 percent. High CEP participation rates in States providing free school meals to all students is consistent with the feedback submitted in public comments and supports USDA's assumption that school districts in these States are most likely to benefit from, and take advantage of, the 25 percent ISP.

USDA is fully committed to ensuring all children have access to healthy school meals. Lowering the minimum ISP provides States and LEAs greater flexibility to combine CEP with State initiatives to simplify Program administration, reduce burden, and offer meals to all students at no charge.

Costs & Cost Savings

Public Comments

LEAs assume significant responsibility to administer school meal programs and, in response to the

¹⁷ USDA only included States with permanent legislation at the time of the analysis.

¹⁸ Data from FNS–742: School Food Authority Verification Collection Report, available at: <https://www.fns.usda.gov/form/school-food-authority-sfa-verification-collection-report>.

¹⁹ Community Eligibility: The Key to Hunger-Free Schools (School Year 2022–2023). May 2023. Food Research and Action Center. Available at: <https://frac.org/cep-report-2023>.

proposed rule, respondents submitted several comments and questions related to costs and cost savings. One advocacy group stated that reducing the minimum ISP—even to zero—will not appreciably drive up Federal costs because reimbursements are tied to the ISP, and that schools or districts with lower ISPs will receive lower Federal reimbursements and will have to cover remaining costs with non-Federal funds. Another advocacy group commented that the lower minimum ISP would result in additional government spending annually.

Numerous commenters stated that, in general, CEP helps reduce administrative costs. Many commenters, including Members of Congress, a State agency, a local government, school districts, advocacy groups, and form letter campaigns, said that CEP helps reduce administrative and paperwork costs, and streamlines Program operations for LEAs and schools. Some commenters, including advocacy groups and a form letter campaign, added that administrative cost savings allow school officials to focus resources on core SBP and NSLP mission-oriented tasks, such as planning and preparing healthy meals for students. Similarly, some commenters, including State and local agencies, advocacy groups, and a trade association, remarked that the reduced administrative burden from CEP helps schools focus on investing in operations and meal program improvements, such as scratch cooking or farm-to-school programs. One staff member of a public charter school noted that if the school were eligible for CEP, the school would save a minimum of \$50,000 per year in administrative staff costs. Commenters remarked that CEP reduces costs for schools because, as a result of increased student participation, it leverages economies of scale in food purchasing and preparation. An advocacy group and a trade association concluded that administrative savings resulting from CEP help schools combat rising food prices, focus on serving quality meals, and invest in school nutrition programs. Furthermore, a State explained that by reducing administrative costs, CEP helps ensure a greater share of each meal reimbursement is spent directly on food and food preparation. Some commenters, including an advocacy group and a trade association, asserted that lowering the minimum ISP would reduce State costs associated with expanding school meal access and would help sustain recently enacted healthy school meals for all programs, if State fiscal conditions change.

An advocacy group suggested that schools with higher ISPs can adopt CEP

without relying on non-Federal funds because administrative savings often offset the loss of revenue from student payments but recognized that may not be the case for districts with lower ISPs. Another advocacy group stated that expansion of CEP will pay for itself by reducing administrative burden and increasing Program efficiency. A school district warned that access to CEP may not reduce paperwork as much as expected because paperwork will still be required for other Federal programs.

Six commenters responded to the question: “In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (e.g., processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?” Two State agencies commented generally that CEP would reduce LEAs' time spent on processing applications and verification activities. In addition, two State agencies acknowledged that the time spent on applications varies by school district size, with one estimating the number of hours would vary from as few as 12 hours per school year to almost 50 percent of a full-time equivalent. One school district reported that hundreds of hours of work are spent each year processing free and reduced price applications, including dealing with unpaid meal debt and other activities. Similarly, another school district estimated that 490 hours per year are dedicated to the application process. One school district reported that, after adopting CEP at several (but not all) schools, time spent on processing applications was cut “nearly in half.”

Six commenters responded to the question, “to what extent are administrative cost savings a factor in determining whether to elect CEP?” Some of the commenters stated that administrative cost savings were a determining factor, while others depended more on cafeteria operations or the capacity to serve no-cost meals as a primary factor in deciding to elect CEP.

USDA Response

USDA analyzed administrative data and relied on information from public comments and stakeholder engagement, to examine the economic impacts (i.e., costs) of lowering the minimum ISP to 25 percent. Historically, CEP has not been a significant driver of Federal costs. CEP became available nationwide in SY 2014–15; during that school year and in subsequent school years, the number of schools electing CEP—and, as a result, students in CEP schools—

grew significantly. However, since the CEP multiplier is designed to, on average, mirror the free and reduced price percentage, claiming meals merely shifted from free and reduced price-based claiming to ISP-based claiming with no significant impact on Federal costs.

The number of students in CEP schools more than doubled, from 6.5 million in SY 2014–2015 to 13.7 million in SY 2018–2019. During this same time period, the annual growth rate in school meal earnings (*i.e.*, costs) was about 3 percent.²⁰ Most of the annual growth was due to an annual inflation rate of 2.2 to 3 percent during this period. USDA anticipates that CEP uptake as a result of the 25 percent minimum ISP will be significantly smaller than typical, historical year-over-year CEP increases due to the financial considerations LEAs must weigh when deciding to elect CEP at lower ISPs. Therefore, based on these analyses, USDA does not agree with the commenter that indicated there would be large increases in Federal Government spending from this CEP expansion.

The decision to elect CEP is the result of a cost-benefit analysis specific to eligible LEAs. State initiatives, such as healthy school meals for all, make it easier for LEAs to elect CEP due to the additional State funding. Administrative cost savings associated with CEP are a significant factor that may make CEP economically viable for many LEAs, as indicated in several comments.

USDA estimates administrative cost savings of \$103,869, based on a total annual reduction of 5,679 burden hours and a \$18.29 median hourly rate for Office and Administrative Support Occupations in Educational Services.²¹ Actual decreases in administrative burden will vary by LEA based on factors such as student enrollment, current percentage of students eligible for free and reduced price meals, local wage rates, and current mode of operation before electing CEP (*e.g.*, Provision 2 or 3). Though some commenters indicated that systems may need to be updated or reprogrammed to accommodate the new minimum ISP for CEP, USDA expects that these costs

would be limited to one-time, system modification costs.

USDA understands that newly eligible school districts and schools may have questions about implementing CEP at a lower ISP. USDA plans to issue guidance related to the lower minimum ISP to help LEAs and schools make informed decisions about electing CEP. USDA, in collaboration with Federal and State agency partners, stands ready to provide support, customer service, and technical assistance to school districts interested in electing CEP at all eligibility levels.

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This final rule has been designated as not significant by the Office of Management and Budget. Therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this final rule would not have a significant impact on a substantial number of small entities. The provisions of this final rule are intended to reflect the operational needs of LEAs of all sizes. No specific additional burdens are placed on small LEAs seeking to operate CEP. USDA's 2022 CEP Characteristics Study found that 36 percent of LEAs participating in CEP in SY 2016–17 were single-school LEAs; 32 percent of participating LEAs were in rural areas; and 83 percent served fewer than 5,000 students.²² For

smaller LEAs, the decision to elect CEP may be a simpler process and/or involve gaining approvals from fewer governing bodies. Additionally, CEP is an optional provision, and there is no requirement for LEAs to participate.

Currently, many small LEAs participate in CEP; in SY 2016–17, 1,939 of the 4,263 school districts (45 percent) electing CEP had enrollments of 999 or less.²³

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of \$146 million or more (when adjusted for inflation; gross domestic product (GDP) deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of URMA) for State, local and Tribal governments, or the private sector, of \$146 million or more in any one year. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12372

The NSLP and SBP are assigned Assistance Listing Numbers—NSLP (10.555) and SBP (10.553)—and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).²⁴ Since the child nutrition programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with

²⁰ USDA limited its analysis to fiscal year (FY) 2015–FY 2019 due to the impacts of nationwide child nutrition waivers, which were provided to ensure access to meals through the Child Nutrition Programs as communities responded to the COVID-19 pandemic. Cash payments for NSLP and SBP were \$15.6 billion in FY 2015 and \$17.4 billion in FY 2019.

²¹ For a full discussion of the impacts of this final rule on information collection requirements, please refer to the Paperwork Reduction Act section.

²² U.S. Department of Agriculture (2022). USDA Community Eligibility Provision Characteristics

²³ *Ibid.*

²⁴ Assistance listings are detailed public descriptions of Federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards. More information is available at: <https://sam.gov/content/home>.

State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132.

The Department has determined that this final rule does not have federalism implications. Electing CEP is a local decision, not a Federal mandate, and lowering the minimum ISP from 40 percent to 25 percent does not limit State or local policymaking discretion. Furthermore, this final rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. However, USDA does not expect significant inconsistencies between this final rule and existing State or local regulations regarding the provision of school food service operations under CEP. This final rule would permit schools to elect CEP if their ISP is greater than or equal to 25 percent. Per statutory requirements outlined in the NSLA, State agencies operating the Federal school meal programs may not bar an eligible LEA from CEP participation. Additionally, States may not set an eligibility threshold lower than an ISP of 25 percent for participation in CEP. This final rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

USDA has reviewed the final rule, in accordance with Departmental Regulation 4300-004, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the final rule might have on participants on the basis of age, race, color, national origin, sex, and disability. The FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to participants' ability to participate in the NSLP and SBP. The promulgation of this final rule will expand access to no-cost meals for all enrolled students at participating CEP schools by lowering the minimum participation threshold. As previously outlined, the final rule is likely to impact the growing number of minority students and families attending participating schools that face a greater risk of food insecurity and health disparities by providing sustained nutritious food and reducing families' paperwork burdens. The changes implemented by this final rule are likely to impact participating LEAs and SFAs by providing greater flexibility to offer no-cost meals to students, which would further support eliminating unpaid meal debt, minimizing stigma, streamlining meal service operations, and reducing paperwork for school nutrition staff.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. USDA provides regularly scheduled consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. This rule was discussed during the consultation on May 23, 2023. Tribal members supported this rule and indicated their belief that lowering the minimum ISP will increase access to the program. USDA is unaware of any current Tribal laws that could be in conflict with the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chap. 35; 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number. This rulemaking expands access to the Community Eligibility Provision (CEP) by lowering the minimum identified student percentage (ISP) participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools will have an opportunity to experience the benefits of CEP, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations.

In accordance with the PRA, this final rule would revise existing information collection requirements, which are subject to review and approval by the Office of Management and Budget. These existing information collection requirements are currently approved under OMB Control Number 0584-0026, *7 CFR Part 245—Determining Eligibility for Free & Reduced Price Meals and Free Milk in Schools*, which expired on July 31, 2023 (a renewal of OMB Control Number 0584-0026 has been submitted to OMB for review). Revisions to the currently approved information collection requirements will result in a decrease in burden on State and local program operators, as well as participating households. To ensure that the review of this final rule does not interfere with the renewal of OMB Control Number 0584-0026, FNS is requesting a new OMB Control Number for the existing information requirements that are impacted by this final rule. Therefore, the provisions outlined in this rule will initially be shown as increases to the information collection inventory. After OMB has approved the information collection requirements submitted in conjunction with the final rule and after the renewal of OMB Control Number 0584-0026 is completed, FNS will merge these requirements and their burden into OMB Control Number 0584-0026. When the two information collection requests are merged, the decrease in burden

noted above will be fully captured in OMB Control Number 0584–0026.

In connection to this final rule, USDA published a proposed rule, *Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools*, on March 23, 2023, which provided notice to the public of the forthcoming changes to CEP. In addition, a notice for the proposed rule's impact on information collection requirements and their associated burden was embedded in the proposed rule. The proposed rule solicited public comments on the proposed changes to the existing information collection requirements that are being finalized via this final rule. In response to the notice, FNS did not receive any comments specific to the estimated number of respondents or burden hours associated with the collection of information requirements addressed in the PRA section of the proposed rule, yet a few general comments submitted indicated that State agencies may have to update or reprogram systems to accommodate the proposed minimum ISP.

FNS recognizes that State agencies have systems in place that may maintain CEP data, such as ISP data for LEAs under their jurisdiction. Systems may be used to assist program administrators to efficiently meet the collection of information requirements that are impacted by this rulemaking. For example, systems may be used to help State agencies meet the reporting requirement to inform LEAs of their CEP eligibility status, as well as meet the recordkeeping requirement that requires State agencies to review ISP documentation that is submitted by LEAs (7 CFR 245.9(f)(6) and (f)(4)(ii), respectively). When estimating the burden associated with information collection requirements, FNS takes into consideration the various methods that may be used to meet such requirements, including the use of information technology. FNS did not change the estimated burden associated with meeting CEP information collection requirements in response to the comments received about system updates or reprogramming; however, FNS expects and acknowledges some State agencies may experience a one-time cost associated with system modifications. The estimated cost associated with such modifications is included in the *One Time Annual Cost* subsection below.

The estimated numbers of respondents, responses, and burden hours for the information collection requirements that were included in the March 23, 2023, proposed rule are being revised via this final rule. Revisions are

not due to public comments received on the proposed rule; instead, they are based on more recent data that became available after publication of the proposed rule. Using more recent data, FNS re-evaluated the number of schools in States that have committed to offering healthy school meals for all children that would be eligible to elect CEP in accordance with the lowered identified student percentage threshold. FNS also analyzed a recent publication from the Food Research and Action Center that indicated States offering free meals to all students in SY 2022–2023 experienced significant increases in CEP uptake and analyzed trends in CEP participation in recent years. As a result, FNS has obtained more accurate and recent data that better reflects the number of respondents that will comply with the collection of information requirements that are impacted by this final rule. Accordingly, FNS updated the estimated number of respondents, responses, and burden hours associated with the collections of information that are included in this final rule to reflect the most recent and accurate data available.

In addition to updating the estimated number of respondents, responses, and burden hours for the information collection requirements addressed in this rulemaking with the use of more recent data, FNS is making a technical correction to a typographical error that was identified in the proposed rule's PRA section. Specially, the table that represented the reporting requirements impacted by this rulemaking and their associated burden indicated an estimated 628,673 burden hours were currently approved under OMB Control Number 0584–0026. The correct number of burden hours currently approved under OMB Control Number 0584–0026 for the reporting requirements impacted by this rulemaking is approximately 643,824 burden hours. FNS has made the correction in the reporting table below by replacing 628,673 burden hours with 643,824 burden hours for the number of currently approved burden hours associated with the reporting requirements impacted by this rulemaking.

FNS now estimates that this final rule will have an estimated 3,454,060 respondents, 12,064,195 responses, and 624,833 burden hours. This is a decrease of 31,128 respondents, 107,072 responses, and 5,374 burden hours in comparison to the estimations included in the proposed rule.

The burden estimates associated with the collections of information addressed in this final rule are contingent upon OMB approval under the PRA. When

the information collection request associated with the final rule is approved, the USDA will publish a separate notice in the **Federal Register** announcing OMB's approval.

Comments on the information collection requirements addressed in this final rule may be submitted. Comments must be received by October 26, 2023. Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20403, Fax: 202–395–7285, or email to oira_submission@omb.eop.gov. Please also send a copy of your comments to School Meals Policy Division, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. For further information, please contact Wesley Gaddie at wesley.gaddie@usda.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Community Eligibility Provision: Increasing Options for Schools.

Form Number: None.

OMB Control Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: This is a new information collection that revises the existing information collection request approved under OMB Control Number 0584–0026. Below is a summary of the changes in the final rule and the accompanying reporting and recordkeeping requirements that will impact the burden that program requirements have on state administering agencies, local education agencies (LEAs), and participating households. FNS has updated the number of respondents, responses, and burden hours associated with the collection of information requirements included in the final rule since publication of the proposed rule *Child Nutrition Programs: Community*

Eligibility Provision-Increasing Options for Schools, published on March 23, 2023. Revisions are based on more recent and accurate data that became available after the publication of the proposed rule. In addition, because FNS received comments on the proposed rule indicating that State agencies may experience a one-time cost associated with system modifications, an estimated cost for updating and reprogramming State systems is included in the *One Time Annual Cost* subsection below.

Participating in the CEP is a voluntary decision made by local school districts. To be eligible for CEP under current program regulations, an LEA, group of schools, or school must ensure that at least 40 percent of enrolled students are identified students, participate in both the National School Lunch Program and the School Breakfast Program, and serve lunches and breakfasts to all enrolled students at no charge.

Identified students are certified for free school meals without submitting a household application, such as those directly certified through the Supplemental Nutrition Assistance Program (SNAP). This final rule will expand access to CEP by lowering the required identified student percentage. This will provide more schools with an additional option for offering no-cost meals to students without requiring households to submit applications for free or reduced price meals.

This final rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA, group of schools, or school to have an identified student percentage of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Reporting

State Agencies

The changes in this final rule impact the existing reporting requirement currently approved under OMB Control Number 0584-0026 and found at 7 CFR 245.9(f)(6), that requires State agencies to notify LEAs of their CEP status. USDA expects that the number of LEAs that must be notified will increase by 5,131, based on the finalized changes and more recent and accurate data that became available after publication of the proposed rule.

USDA estimates the 54 State agency respondents will be required to notify approximately 95 additional LEAs each year, and that it takes approximately three minutes (.050 hours) to complete

this reporting requirement for each record. The reporting requirement adds a total of 257 annual burden hours and 5,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 257 hours and 5,131 responses will be added to the collection.

LEAs

The changes in this rule will impact the existing reporting requirements currently approved under OMB Control Number 0584-0026 for LEAs.

USDA estimates that 471 additional LEAs will elect CEP and will be required to fulfill the reporting requirement at 7 CFR 245.9(f)(4)(i), that requires LEAs to submit to the State agency documentation of an acceptable identified student percentage of the LEA/school electing the provision. This collection of information requirement is currently approved under OMB Control Number 0584-0026. This estimation is being updated from what was published in the proposed rule on March 23, 2023, to reflect more recent and accurate data that became available after publication of the proposed rule, along with the other estimations regarding the impact of PRA requirements in this section.

For this final rule, USDA estimates that the 471 LEA respondents will be required to submit identified student percentage data when electing CEP each year and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The reporting requirement adds an estimated total of 118 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 118 hours and 471 responses will be added to the collection.

USDA expects that as a result of the changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to process free and reduced price meal applications and conduct verification.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(i), that requires LEAs to notify households of approval of meal benefit applications. USDA estimates that 14,869 LEA respondents will be required to notify 219 households of approval of meal benefit applications each year and that it takes

approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 65,126 annual burden hours and 3,256,311 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 2,288 hours and 114,364 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(ii), that requires LEAs to notify households in writing that children are eligible for free meals based on direct certification and that no application is required. USDA estimates that 14,869 LEA respondents will be required to notify 332 households in writing that children are eligible for free meals based on direct certification and that no application is required each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 98,730 annual burden hours and 4,936,508 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 3,186 hours and 159,268 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(7), that requires LEAs to provide written notice to each household of denied free or reduced price benefits. USDA estimates that 14,869 LEA respondents will be required to provide written notice to approximately 12 households denied free or reduced price benefits each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 3,438 annual burden hours and 171,886 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 110 hours and 5,518 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6a(f), that requires LEAs to notify households of selection for verification. USDA estimates that 14,869 LEA respondents will be required to notify

approximately seven households of selection for verification and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 24,162 annual burden hours and 96,649 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 930 hours and 3,720 responses.

USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6a(j), that requires LEAs to provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefit. USDA estimates that 14,869 LEA respondents will be required to provide approximately three households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits and that it takes approximately six minutes (.1 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 3,940 annual burden hours and 39,403 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 131 hours and 1,304 responses.

USDA estimates that 5,131 more LEAs than currently approved under OMB Control Number 0584–0026 will fulfill the requirement at 7 CFR 245.9(f)(5), that requires LEAs to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status, unless otherwise exempted by the State agency. USDA estimates that 5,131 LEA respondents will be required to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status each year and that it takes approximately five minutes (.08 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 410 annual burden hours and 5,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that 410 hours and 5,131 responses will be added to the collection.

USDA estimates that 471 more LEAs than currently approved under OMB Control Number 0584–0026 will fulfill the requirement at 7 CFR 245.9(g), that

requires LEAs to amend free and reduced policy statements and certify that schools meet the eligibility criteria when electing CEP and that it takes approximately six minutes (.1 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 47 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 47 hours and 471 responses will be added to the collection.

Households

Since households attending schools participating in CEP are not required to submit applications, USDA estimates that, with the changes, 108,941 fewer households than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 245.6(a)(1), that requires households to complete an application form for free or reduced price meal benefits. USDA estimates that 3,439,137 household respondents will be required to submit applications and that it takes approximately seven minutes (.110 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 378,305 annual burden hours and 3,439,137 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 11,984 hours and 108,941 responses.

Households attending schools participating in CEP are also not required to assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 3,082 fewer households than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at § 245.6a (a)(7)(i), that requires households to assemble written evidence for verification of eligibility for free and reduced price meals and send to the LEA. USDA estimates that 97,287 household respondents will be required to assemble written evidence for verification of eligibility for free and reduced price meals and that it takes approximately 30 minutes (.5 hours) to complete this reporting requirement for each record. The reporting requirement adds a total of 48,644 annual burden hours and 97,287 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an

approximate decrease of 1,542 hours and 3,082 responses.

Recordkeeping

State Agencies

The changes in this final rule will impact the existing recordkeeping requirement currently approved under OMB Control Number 0584–0026 and found at 7 CFR 245.9(f)(4)(ii), that require State agencies to review and confirm LEAs' eligibility to participate in CEP. USDA expects that State agencies will need to review an additional 471 LEAs with schools newly electing CEP, based on the changes in this rule and after analyzing more recent and accurate CEP participation data that became available after USDA published the proposed rule. USDA estimates that 54 State Agency respondents will be required to review and confirm LEAs' eligibility to participate in Provision 1, 2, or 3 or the Community Eligibility Provision for approximately 471 LEAs electing CEP each year and that it takes approximately five minutes (.08 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total of 38 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 38 hours and 471 responses will be added to the collection.

LEAs

The changes in this final rule will impact the existing reporting requirements currently approved under OMB Control Number 0584–0026 for LEAs. USDA expects that as a result of the changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to maintain documentation substantiating eligibility determinations. USDA estimates 471 fewer LEAs than currently approved under OMB Control Number 0584–0026 will be required to fulfill the requirement at 7 CFR 245.6(e) to maintain documentation substantiating eligibility determinations for three years after the end of the fiscal year. USDA estimates that 14,869 LEA respondents will be required to maintain documentation related to substantiating eligibility determinations for three years after the end of the fiscal year and that it takes approximately 5 minutes (.08 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total

of 1,190 annual burden hours and 14,869 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that there will be an approximate decrease of 37 hours and 471 responses.

USDA expects that as a result of the changes, 471 more LEAs than currently approved under OMB Control Number 0584–0026 will elect CEP and be required to fulfill the recordkeeping requirement at 7 CFR 245.9(h)(3) that LEAs maintain documentation related to the methodology used to calculate the identified student percentage and determine eligibility for the CEP. USDA estimates that 471 LEA respondents will be required to maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility and that it takes approximately 55 minutes (.910 hours) to complete this recordkeeping requirement for each record. The recordkeeping requirement adds a total of 429 annual burden hours and 471 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584–0026, USDA expects that an additional 429 hours and 471 responses will be added to the collection.

USDA does not expect lowering the threshold to participate in CEP to an ISP of 25 percent to impact the approved public notification requirements at 7 CFR 245.9(f)(7). While this rule will increase the number of schools eligible for the CEP, the burden for states to notify LEAs of their community eligibility status due to the increased number of eligible schools is already captured above in the reporting requirements at 7 CFR 245.9(f)(6). Making these lists publicly available will not take any additional time than is currently approved under OMB

Control Number 0584–0026. Accordingly, this requirement is not addressed in this information collection.

One Time Annual Cost

In recognition that State agencies may have to update or reprogram systems to accommodate the proposed minimum ISP, FNS is adding an estimated one-time, system modification cost, which will be included in the information collection request associated with this final rule. FNS received 2 comments that State agencies may modify existing systems in response to this rulemaking. In addition, FNS met with another State agency on August 16, 2023, and discussed how lowering the minimum ISP would impact that State's system. FNS received feedback indicating updates to State systems could be done efficiently and in time to allow LEAs the opportunity to implement CEP at the lower ISP threshold soon after the final rule was effective, and encouraged FNS to allow mid-year election.

Given the wide variation of systems in place, programming and maintenance costs across State agencies varies. After considering feedback and analyzing different systems States have in place, FNS is including an estimated one-time cost of \$2,000 per State agency to make system modifications in response to the lowered ISP. As a result of the proposals outlined in this final rule, FNS estimates that this collection is expected to have \$108,000 in costs related to system modifications, which will be added as a one-time, annual cost to the information collection requirements associated with the final rule, OMB Control Number 0584–00XX.

Summary

As a result of the proposals outlined in this final rule, FNS estimates that this new information collection will have 3,454,060 respondents, 12,064,195 responses, and 624,833 burden hours.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection requirement (ICR) for the final rule is approved and the requirements and associated burden for this new information collection are merged into the existing collection, FNS estimates that the burden for OMB Control Number 0584–0026 will decrease by 384,522 responses and 18,908 burden hours. The collection will also have a one-time increase of \$108,000 in annual costs related to system modifications.

Reporting

Respondents (Affected Public): Individual/Households; and State, Local and Tribal Government. The respondent groups identified include households, State Agencies and LEAs.

Estimated Number of Respondents: 3,454,060.

Estimated Number of Responses per Respondent: 3.49.

Estimated Total Annual Responses: 12,048,384.

Estimated Time per Response: 0.052 (approximately 3 minutes).

Estimate Total Annual Burden on Respondents: 623,177 hours.

Recordkeeping

Respondents (Affected Public): State, Local and Tribal Government. The respondent groups identified include State Agencies and LEAs.

Estimated Number of Respondents: 14,923.

Estimated Number of Responses per Respondent: 1.06.

Estimated Total Annual Responses: 15,811.

Estimated Time per Response: .105 (approximately 6 minutes).

Estimate Total Annual Burden on Respondents: 1,656 hours.

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Reporting									
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Final Rulemaking	Hours Currently Approved Under OMB# 0584-0026	Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB# 0584-00xx	Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking
State agency to notify LEAs of their community eligibility status as applicable	245.9(f)(6)	54	95.02	5,131	0.050	257	436	693	257
Total State Agency Reporting		54	95.02	5,131	0.050	257	436	693	257
LEAs submit to State agency documentation of acceptable identified student percentage of LEA/school electing the provision	245.9(f)(4)(i)	471	1.00	471	0.250	118	125	243	118
LEAs notify households of approval of meal benefit applications	245.6(c)(6)(i)	14,869	219.00	3,256,311	0.020	65,126	67,414	65,126	-2,288
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required	245.6(c)(6)(ii)	14,869	332.00	4,936,508	0.020	98,730	101,916	98,730	-3,186
LEAs provide written notice to each household of denied free or reduced price benefits	245.6(c)(7)	14,869	11.56	171,886	0.020	3,438	3,548	3,438	-110
LEAs notify households of selection for verification	245.6a(f)	14,869	6.50	96,649	0.250	24,162	25,092	24,162	-930

LEAs must provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefits	245.6a(j)	14,869	2.65	39,403	0.100	3,940	4,071	3,940	-131
LEA to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency	245.9(f)(5)	5,131	1.00	5,131	0.080	410	698	1,108	410
LEAs to amend free and reduced policy statement and certify that schools meet eligibility criteria	245.9(g)	471	1.00	471	0.100	47	50	97	47
Total Local Education Agency Reporting		14,869	572.12	8,506,829	0.023	195,972	202,914	196,845	-6,069
Total State and Local Agency Level Total		14,923	667.14	8,511,960	0.073	196,228	203,350	197,537	-5,813
Households complete application form for free or reduced price meal benefits	245.6(a)(1)	3,439,137	1.00	3,439,137	0.110	378,305	390,289	378,305	-11,984
Households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA	245.6a(a)(7)(i)	97,287	1.00	97,287	0.500	48,644	50,185	48,644	-1,542
Total Household Reporting		3,439,137	1.03	3,536,424	0.121	426,949	440,474	426,949	-13,525
Total Reporting		3,454,060	3.49	12,048,384	0.052	623,177	643,824	624,486	-19,338

Recordkeeping									
Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Rulemaking	Hours Currently Approved Under OMB# 0584-0026	Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB #0584-00xx	Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking
State Agency to review and confirm LEAs eligibility to participate in Provisions 1, 2, or 3 or the Community Eligibility Provision	245.9(f)(4)(ii)	54	8.72	471	.080	38	40	78	38
Total State Agency Recordkeeping		54	8.72	471	0.080	38	40	78	38
LEA must maintain documentation substantiating eligibility determinations for 3 years after the end of the fiscal year	245.6(e)	14,869	1	14,869	0.080	1,190	1,227	1,190	-37
LEA to maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility	245.9(h)(3)	471	1	471	.910	429	455	884	429
Total Local Education Agency Recordkeeping		14,869	1.03	15,340	0.105	1,618	1,682	2,073	391

Total Recordkeeping	14,923	1.06	15,811	0.105	1,656	1,722	2,151	429
	OMB# 0584-00xx Due to Rule				OMB # 0584-0026 Once Merged with OMB# 0584-00xx			
TOTAL NO. RESPONDENTS	3,454,060				3,462,370			
AVERAGE NO. RESPONSES PER RESPONDENT	3.493				3.514			
TOTAL ANNUAL RESPONSES	12,064,195				12,165,673			
AVERAGE HOURS PER RESPONSE	0.052				.053			
TOTAL BURDEN HOURS	624,833				645,818			
CURRENT OMB INVENTORY	0				664,726			
TENTATIVE DIFFERENCE DUE TO RULEMAKING	624,833				-18,908			

BILLING CODE 3410-30-C

E-Government Act Compliance

The Department 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.

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR part 245 is amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for 7 CFR part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

§ 245.9 [Amended]

■ 2. In § 245.9, in paragraph (f), remove “40 percent” and “30 percent” wherever they appear and add in their

places “25 percent” and “15 percent”, respectively.

Cynthia Long,
Administrator, Food and Nutrition Service.

[FR Doc. 2023-20294 Filed 9-25-23; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2023-1479; Airspace Docket No. 23-ASO-26]

RIN 2120-AA66

Amendment of Class D and Class E Airspace; Palm Coast, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace extending upward from 700 feet above the surface for Flagler Executive Airport, Palm Coast, FL. This action will increase the radius, update the airport’s geographic coordinates, and amend verbiage in the Class D description.

DATES: Effective 0901 UTC, November 30, 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 7400.11H 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 D and Class E airspace in Palm Coast, FL, to support instrument flight rules (IFR) operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–1479 in the **Federal Register** (88 FR 45825; July 18, 2023), amending Class D and Class E airspaces extending upward from 700 feet above the surface for Flagler Executive Airport, Palm Coast, FL. 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 D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 19, 2023, and effective September 15, 2023. FAA Order JO 7400.11H 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 7400.11H 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 D airspace and Class E airspace extending upward from 700 feet above the surface for Flagler Executive Airport, Palm Coast, FL, by increasing the Class D radius to 4.2 miles (previously 4.0 miles). The Class E airspace extending upward from 700 feet above the surface to 6.7 miles (previously 6.5 miles), and the geographic coordinates for this airport coincide with the FAA’s database. This action also updates the airport name to Flagler Executive Airport (previously Flagler County Airport) and the city name to Palm Coast (previously Bunnell), as well as replacing the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the Class D airspace description. Controlled airspace is necessary for the safety and management of IFR operations in the area.

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 7400.11H, Airspace Designations and Reporting Points, dated August 19, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Palm Coast, FL [Amended]

Flagler Executive Airport, FL
(Lat 29°27’55” N, long 81°12’28” W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4.2-mile radius of the Flagler Executive Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASO FL E5 Palm Coast, FL [Amended]

Flagler Executive Airport, FL
(Lat 29°27’55” N, long 81°12’28” W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Flagler Executive Airport.

* * * * *

Issued in College Park, Georgia, on September 20, 2023.

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

[FR Doc. 2023–20784 Filed 9–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1295; Airspace Docket No. 23–AEA–04]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route Q–445; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route Q–445 by removing segments of the route from the PAACK, NC, waypoint (WP) to the SHAUP, OA, WP (*i.e.*, OA means Offshore Atlantic). This amendment is required because those route segments are unused due to multiple other routes in the same area.

DATES: Effective date 0901 UTC, November 30, 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 7400.11H, 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: Brian Vidis, 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a NPRM for Docket No. FAA-2023-1295 in the **Federal Register** (88 FR 37184; June 7, 2023), proposing to amend RNAV Q-route Q-445 in the eastern United States. 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's description of Q-445, the FAA incorrectly listed the route segments being removed between the PAACK, NC, WP to the BRIGS, NJ, Fix. The actual route segments being removed are between the PAACK, NC, WP and the SHAUP, OA, WP, (*i.e.*, OA

means Offshore Atlantic). This action corrects the error.

Incorporation by Reference

United States Area Navigation Routes (Q-routes) are published in paragraph 2006 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 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H 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 7400.11H 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 Q-445 and removing the segments from the PAACK, NC, WP, to the SHAUP, OA, WP. The FAA is retaining the two remaining existing route segments from the SHAUP, OA, WP, to the KYSKY, NY, WP. This retention will provide aircraft arriving to airports on Cape Cod, MA; Martha's Vineyard, MA; and Nantucket, MA with efficient arrival routing by bypassing the heavy air traffic in the Philadelphia and New York City areas. The amended Q-445 description reads: SHAUP, OA, WP; VALPO, OA, WP; KYSKY, NY, WP.

Full description of the amended route is listed the amendments to part 71 set forth below.

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 Department of Transportation (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 Q-445 in the eastern United States 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 5-6.5b, which categorically excludes from further environmental impact review "Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .". 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 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 part 71 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area
Navigation Routes.

* * * * *

Q-445 SHAUP, OA to KYSKY, NY [Amended]

SHAUP, OA	WP	(Lat. 39°44'23.91" N, long. 073°34'33.84" W)
VALCO, OA	WP	(Lat. 40°05'29.86" N, long. 073°08'22.91" W)
KYSKY, NY	WP	(Lat. 40°46'52.75" N, long. 072°12'21.45" W)

* * * * *

Issued in Washington, DC, on September 20, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023-20723 Filed 9-25-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2023-1785; Amendment No. 71-55]

RIN 2120-AA66

Airspace Designations; Incorporation by Reference Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, administrative correction.

SUMMARY: This action incorporates certain airspace designation amendments into FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023, for incorporation by reference.

DATES: Effective date 0901 UTC September 26, 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 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 7400.11H, 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: Sarah A. Combs, 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 makes the necessary updates for airspace areas within the National Airspace System.

History

Federal Aviation Administration Airspace Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1, is published yearly. Amendments referred to as "effective date straddling amendments" were published under Order JO 7400.11G (dated August 19, 2022, and effective September 15, 2022) but became effective under Order JO 7400.11H (dated August 11, 2023, and effective September 15, 2023). This action incorporates these rules into the current FAA Order JO 7400.11H.

Accordingly, as this is an administrative correction to update final rule amendments into FAA Order JO 7400.11H, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Also, to bring these rules and legal descriptions current, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

Incorporation by Reference

This document amends FAA Order JO 7400.11H, 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 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H 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 7400.11H 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 incorporating certain final rules into the current FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, which are depicted on aeronautical charts.

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.

Corrections

■ 1. For Docket No. FAA-2023-0443; Airspace Docket No. 22-AGL-21 (88 FR 36935; June 6, 2023).

Correction

■ a. In the final rule amending 14 CFR part 71 published on June 6, 2023 (88 FR 36935) for each instance of the words "FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022" remove those words and add in their place "FAA Order JO 7400.11H, Airspace Designations and Reporting Points,

■ 56. For Docket No. FAA–2023–1010; Airspace Docket No. 23–AGL–15 (88 FR 54225, August 10, 2023).

Correction

■ a. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54225) for each instance of the words “FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023”.

■ b. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54225) for each instance of the words “FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023”.

■ c. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54225) for each instance of the words “FAA Order JO 7400.11G” remove those words and add in their place “FAA Order JO 7400.11H”.

■ 57. For Docket No. FAA–2023–0735; Airspace Docket No. 23–ASW–11 (88 FR 54233, August 10, 2023).

Correction

■ a. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54233) for each instance of the words “FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023”.

■ b. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54233) for each instance of the words “FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023”.

■ c. In the final rule amending 14 CFR part 71 published on August 10, 2023 (88 FR 54233) for each instance of the words “FAA Order JO 7400.11G” remove those words and add in their place “FAA Order JO 7400.11H”.

■ 58. For Docket No. FAA–2023–1389; Airspace Docket No. 23–AGL–19 (88 FR 62460, September 12, 2023).

Correction

■ a. In the final rule amending 14 CFR part 71 published on September 12, 2023 (88 FR 62460) for each instance of the words “FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023”.

■ b. In the final rule amending 14 CFR part 71 published on September 12, 2023 (88 FR 62460) for each instance of the words “FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022” remove those words and add in their place “FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023”.

■ c. In the final rule amending 14 CFR part 71 published on September 12, 2023 (88 FR 62460) for each instance of the words “FAA Order JO 7400.11G” remove those words and add in their place “FAA Order JO 7400.11H”.

Issued in Washington, DC, on September 19, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–20615 Filed 9–25–23; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–98437; PA–60; File No. S7–03–23]

RIN 3235–AN21

The Commission’s Privacy Act Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is adopting amendments to the Commission’s regulations under the Privacy Act of 1974, as amended (“Privacy Act”). The amendments revise the Commission’s regulations under the Privacy Act to clarify, update, and streamline the language of several procedural provisions.

DATES: *Effective:* October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Ray McInerney, FOIA/PA Officer, Office of FOIA Services, (202) 551–6249;

Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 14, 2023, the Commission proposed amendments to its existing regulations under the Privacy Act, 5 U.S.C. 552a,¹ to reflect changes to clarify, update, and streamline the language of several procedural provisions. The Commission received sixteen comments on the proposed amendments, eleven of which were unrelated to the proposed rule. After consideration of the comments received, the Commission is adopting the amendments to its Privacy Act regulations as proposed. This final rule replaces the Commission’s existing Privacy Act regulations in their entirety (17 CFR 200.301 through 200.313).

II. Amendments

A. Amendments To Update, Clarify, and Streamline the Privacy Act Regulations

The Commission is adopting amendments to certain procedural provisions to clarify, update, and streamline the Commission’s Privacy Act regulations.² The final rule, among other things: clarifies the purpose and scope of the regulations (Section 200.301); updates definitions so that the processes set forth in the regulations are more plainly described (17 CFR 200.302); simplifies the processes for submitting and receiving responses to Privacy Act inquiries, requests, and administrative appeals (17 CFR 200.303, 305, 306, 307, and 308); allows for requesters to electronically verify their identities, including by facsimile, email, or an online Commission form (17 CFR 200.303); provides for a shorter Commission response time to Privacy Act inquiries as to whether a specific system of records maintained by the Commission contains a record pertaining to the requester, which aligns with other relevant time lines (17 CFR 200.304); updates agency contact information (*e.g.*, office names, facsimile numbers, email addresses, and physical addresses) (17 CFR 200.303, 305, 308, and 309); and updates the list of Commission systems of records that have promulgated rules exempting certain records from certain provisions of the Privacy Act (17 CFR 200.310).

¹ See Release No. 34–96906 (Feb. 14, 2023), 88 FR 10483 (Feb. 21, 2023) (“Proposing Release”).

² These amendments are discussed in greater detail in Section IV. Economic Analysis.

B. Revisions to Fee Provisions

The final rule updates the fee provisions to reflect existing practice with respect to charging fees for duplicating documents. Duplication rates are available on the Office of FOIA Services' fee page on the Commission's website. The duplication fees currently posted on the website reflect the direct costs to the Commission of producing a copy, whether in paper or electronic format, taking into account various factors including the salary of the employee(s) performing the work and the cost of materials. The Office of FOIA Services does not charge for providing existing electronic records because such a production does not require duplication processes, such as scanning or commercial copying of hard copies that impose direct costs on the Commission. The duplication fee posted on the Commission's website is adjusted as appropriate to reflect current costs.

The final rule also codifies the existing practice of charging requesters the direct costs associated with making records available on electronic storage devices, as presently reflected on the Commission's FOIA fee website. Further, the final rule allows for providing requesters with one free copy of each record amended or corrected pursuant to a request for amendment or correction.

C. Elimination of Certain Provisions

The amendments eliminate certain provisions from the existing regulations, as well as two Sections in their entirety. The deleted provisions either restate language in the Privacy Act, and thus do not require elaboration in the Commission's regulations; have been incorporated into other provisions within the final rule; or are otherwise unnecessary. The amendments remove the following provisions of the existing rule:

Title 17, section 200.305: This provision, which provides special procedures for requests for medical records, is unnecessary as the medical records the Commission typically maintains, whether about Commission staff or other individuals, are generally available to those individuals through other means, and the Commission has never used special procedures for medical records in connection with Privacy Act requests.

Title 17, section 200.307(b): This provision restates the standards applied in reviewing requests for amendment or correction of records. These standards are set forth in the Privacy Act. Therefore, it is unnecessary to restate them in the Commission's regulations.

Title 17, section 200.309(a): This provision describes the standards for extending time to respond to requests. This section uses language from the Freedom of Information

Act (5 U.S.C. 552(a)(6)(B)(iii)) rather than the Privacy Act. Title 17, sections 200.304(d)(1), 304(d)(2)(ii), 307(b), and 309(a)(3) of the final rule contain information about extensions of time based on the requirements of the Privacy Act.

Title 17, sections 200.309(b), (c), (d), and (e): These provisions are unnecessary as they are not contemplated by the statute, are covered elsewhere in the final rule, or are obsolete due to changes in technology affecting how Privacy Act requests are processed.

Title 17, section 200.311: This provision restates the statutory penalties set forth in the Privacy Act (5 U.S.C. 552a(i)). Accordingly, recitation within Commission regulations is unnecessary.

D. Addition of Provisions

The final amendments add a provision for processing requests by individuals for an accounting of certain record disclosures about the requester, to include the date, nature, and purpose of each disclosure, that the Commission has made available to another person, organization, or agency (17 CFR 200.307 of the final rule). While the statute allows for individuals to request such an accounting (5 U.S.C. 552a(c)(3)), the Commission's existing rule has no such provision. The final rule also includes a provision that formally implements a 90-day time period for requesters to file administrative appeals (17 CFR 200.308 of the final rule). The 90-day period is appropriate because Privacy Act requests for access to records are concurrently processed as Freedom of Information Act ("FOIA") requests and the FOIA sets forth a 90-day deadline to file an administrative appeal. Because of the overlap with FOIA, Privacy Act requesters are currently informed they have 90 days to file an administrative appeal in response to an adverse decision. The final rule codifies this current procedure.

E. Public Comments

The Commission received 16 comments in response to the proposed rulemaking. Eleven of the comments concerned subjects that were unrelated to the proposed rule and the Privacy Act in general.³ Four comments approved of the proposed rule in its entirety.⁴

³ See, e.g., comments from Anonymous, dated Feb. 22, 2023; comments from Vince Navarro, dated Feb. 23, 2023; comments from Jonathan Dinkel, dated Mar. 1, 2023; comments from Household Harry, dated Mar. 1, 2023; comments from Chris Carrington, dated Mar. 5, 2023; comments from Curtis Higgins, dated Mar. 6, 2023; comments from D Skewis, dated Mar. 7, 2023; comments from Nick, dated Mar. 19, 2023; comments from Curtis, dated Mar. 23, 2023; comments Nathaniel Moraton, dated Apr. 7, 2023; and comments from Alexander MacCartney, dated Apr. 17, 2023.

⁴ See, e.g., comments from Nick Ahlers, dated Feb. 24, 2023; comments from Angel Rodriguez,

One commenter supported several provisions in the proposed rule, but expressed concern regarding revisions to the fee provisions.⁵ Specifically, the commenter indicated that charging requesters the direct costs associated with making records available on electronic storage devices might "potentially discourage individuals from exercising their rights under the Privacy Act, particularly those who may not have the financial means to pay for the direct costs associated with obtaining records."⁶ The overwhelming majority of records that are responsive to Privacy Act requests are provided in electronic format. The Office of FOIA Services does not charge for providing existing electronic records unless the volume of electronic records is such that production requires an electronic storage device. Although the Office of FOIA Services requires fees for production of records on an electronic storage device, no such fees were charged from 2015 through 2022. Typically, production of voluminous electronic records can be accomplished with secure file sharing platforms. Electronic storage devices would only be used at the election of the requester, and we expect such a request would be made only if the cost would not be a significant impediment. The Commission collected no fees for processing Privacy Act requests during fiscal years 2015 through 2022, whether electronic or otherwise. The Commission is not making any changes in response to this comment because it anticipates that it will generally be able to produce even voluminous electronic records with file sharing platforms.

The same commenter also expressed concern that the deletion of certain provisions within the existing regulations would eliminate protections to individuals' privacy rights.⁷ As an example, the commenter stated that the deletion of 17 CFR 200.305 might make it more difficult for individuals to access their records.⁸ Under the existing rule at 17 CFR 200.305, the Commission may require the requester to submit a signed statement by a physician or a mental health professional or the Commission may initially disclose the records to a physician or a mental health professional for their review. Obtaining a statement from a physician or mental health professional and/or

dated Feb. 27, 2023; comments from Richard Russell, dated Mar. 1, 2023; and comments from Bernie Bankman Griffin, dated Mar. 6, 2023.

⁵ See Gillmore comment, dated Feb. 24, 2023.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

having a physician or mental health professional review an individual's records prior to disclosure would result in additional processing time. Deletion of existing 17 CFR 200.305 will make it easier for a requester to obtain their records. Therefore, the Commission is not making any changes from its proposal in response to this comment.

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as not a "major rule," as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

The Commission is sensitive to the economic effects, including the costs and benefits that result from its rules. Section 23(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition and prohibits any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁹ Further, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁰

As explained in the Proposing Release and discussed further below, the Commission believes that the economic effects of the final rule will be limited. The Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the final amendments. In some cases, however, the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate. Additionally, some of the potential

benefits of the amendments are inherently difficult to quantify.

The final amendments fall into four categories: (1) revisions to procedural provisions; (2) revisions to certain fee provisions; (3) the elimination of certain unnecessary provisions; and (4) the addition of a new provision for requesting an accounting of record disclosures. We discuss each of these in turn below.

First, we are amending certain procedural provisions. Most of these changes codify existing practice, including: (1) adding methods for submitting Privacy Act inquiries, requests, and administrative appeals; (2) clarifying the procedures for submitting requests for information or records about oneself; (3) clarifying certain procedures for verification of identity, including options available for in-person or not in-person verification and necessary documentation; (4) clarifying procedures for submitting an administrative appeal; (5) codifying the existing practice of providing requesters 90 days to file an administrative appeal; and (6) correctly identifying the Commission systems of records that are exempt under the Privacy Act.¹¹ We believe that adoption of the final rule will have minimal impact on Privacy Act requesters because it largely codifies existing practices. Adoption of the final rule could benefit the public and improve efficiency by decreasing the time in which the Commission responds to inquiries, requests, and appeals.

Furthermore, these amendments may reduce potential confusion among Privacy Act requesters with regard to certain existing procedures, which could further benefit the public. In particular, because Privacy Act requests for access to records are also processed as FOIA requests and the FOIA sets forth a 90-day deadline to file an administrative appeal, Privacy Act requesters are currently informed they have 90 days to file an administrative appeal in response to an adverse decision. We believe that codifying this existing practice would benefit requesters by removing any uncertainty as to when appeals must be filed. In addition, with respect to the provisions on verification of identity, the amendments also explicitly provide for an alternative electronic identification option through processes made available on the Commission's website. By clarifying and supplementing the available options for verification, these

amendments may allow requesters to more efficiently choose a verification process that is most appropriate for them. We do not expect the amendments to the procedural provisions to result in additional costs to any member of the public.

Second, we are revising the provision concerning fees charged for duplication. This includes: (1) determining duplication fees based on the direct cost to the Commission as set forth on the FOIA fee page on the Commission's website; (2) codifying the existing practice of charging requesters the direct costs associated with making records available on electronic storage devices; and (3) clarifying that requesters will receive one free copy of each record corrected or amended pursuant to a request for amendment.

The amendments to the fee procedures would benefit Privacy Act requesters by removing potential confusion about the cost of obtaining records and the cost of making records available on electronic storage devices. We do not anticipate that any of the changes to the fee procedures would impose significant new costs on Privacy Act requesters or have any other economic impact.

Prior to July 2018, duplication costs for FOIA and Privacy Act requesters were 24 cents per page as set by contract with a commercial copier. Since that time, duplication costs have been set at 15 cents per page, which reflects the direct cost to the Commission. Duplication fees may change in the future, to the extent that the Commission's direct costs for duplicating materials increase or decrease.

The table below shows the number of Privacy Act requests processed by the Commission during fiscal years 2015 through 2022 and that, during those years, the Commission collected no fees for processing requests received under the Privacy Act.

Fiscal year	Requests processed	Fees collected for processing requests
2015	134	\$0.00
2016	155	0.00
2017	95	0.00
2018	283	0.00
2019	162	0.00
2020	159	0.00
2021	255	0.00
2022	261	0.00

From fiscal years 2015 through 2022 requesters were not charged fees because either no records were provided or the requester was provided with

¹¹ One of the systems of records identified in the existing rule is obsolete. Another system of records had its name changed, and a new system of records was added.

⁹ 15 U.S.C. 78w(a).

¹⁰ 15 U.S.C. 78c(f).

existing electronic records, for which a fee is not charged. There were no requests processed that required production of hard copy records, the scanning of hard copies, or production in another media, such as an electronic storage device, and, consequently, no requests that would have imposed direct costs on the Commission.

Given the lack of chargeable duplication fees in recent years, the Commission anticipates that the changes to duplication fees (including fees for producing materials in electronic format) would not result in significant additional costs for requesters. Further, these amendments largely codify existing practices regarding fees for duplication and production on other types of media and, like the existing regulations, do not charge fees for searching or retrieving records. As noted, one commenter indicated that charging requesters the direct costs associated with making records available on electronic storage devices might “potentially discourage individuals from exercising their rights under the Privacy Act, particularly those who may not have the financial means to pay for the direct costs associated with obtaining records.”¹² However, as discussed, this amendment codifies existing practice. Moreover, from 2015 to 2022, no such fees were charged. Accordingly, we do not expect significant changes in incentives for requesters to make a request under the Privacy Act.

The final rule clarifies that requesters will receive one free copy of each record corrected or amended pursuant to a request for amendment. This revision codifies an existing practice and would therefore not impose any additional burden on requesters.

Third, the Commission is eliminating certain provisions in its Privacy Act regulations. The Commission does not anticipate that the removal of 17 CFR 200.305 will have any meaningful economic effects. The existing provision provides special procedures for requests for medical records, but the medical records the Commission typically maintains, whether about Commission staff or other individuals, are generally available to those individuals through other means, and the Commission has never used special procedures for medical records in connection with Privacy Act requests. One commenter indicated that the deletion of this provision might make it more difficult for requesters to obtain medical records;¹³ however, as noted above,

requestors would still be able to access these records directly, which would involve less time than using the process outlined in existing 17 CFR 200.305. The Commission does not expect the elimination of 17 CFR 200.307(b) and 200.311 to result in any economic effects because they restate language in the Privacy Act.

There would also be minimal economic effects from the elimination of 17 CFR 200.309(a), which describes the standards for extending time to respond to requests, because other provisions in the final rule (17 CFR 200.304(d), 200.306(b), and 200.307(d)) address the procedures and reasons for extending the time to respond to inquiries and requests. Similarly, the Commission does not expect the elimination of 17 CFR 200.309(c) and 200.309(d) to result in meaningful economic effects. These provisions require giving notice to a requester when delay will result from the fact that the subject records are in use by a member of the Commission or its staff and when records are lost. The final rule would require the Office of FOIA Services to notify requesters of reasons for delay and of the fact that a record does not exist, so the specific information in 17 CFR 200.309(c) and 200.309(d) is duplicative.

The elimination of 17 CFR 200.309(b) would remove the concept of an “effective date of action” as it relates to mailing acknowledgements or responses by the Commission. This amendment could increase the Commission’s flexibility in acknowledging or responding to requests while also potentially increasing uncertainty for requesters, but these effects would only be realized to the extent that requesters and the Commission rely on mail to make and respond to requests, and the Commission expects that use of mail will be infrequent going forward because most communications with requesters occur by email.

The elimination of 17 CFR 200.309(e)(1), which prohibits oral requests, would have no substantive effect, because the existing regulations, like the final rule, elsewhere require Privacy Act requests to be made in writing. The elimination of 17 CFR 200.309(e)(2), which states that a misdirected request will be deemed received only once it is received by a Privacy Act Officer and that an appeal will not be considered unless the request was in fact received by a Privacy Act Officer, removes an unnecessary provision because the final rule at 17 CFR 200.303(a) and 200.305(a) has the same effect by requiring that requesters use the methods described in the final

rule to submit a Privacy Act inquiry or request.

Finally, the Commission is adding a provision outlining the procedure for making requests for an accounting of record disclosures. The existing rules do not provide for such a procedure, although the Commission is obligated, by statute, to provide such information upon request.¹⁴ This provision would reduce the potential confusion among Privacy Act requesters about the exact procedure that they would have to follow with regard to this type of request, and therefore this provision would generally benefit the public. Furthermore, by providing clarity about the procedure that would have to be followed when requesting an accounting of record disclosures, the provision would likely reduce the cost to the public of submitting this type of request.

The Commission requested comments on all aspects of the benefits and costs of the proposal. After evaluating all comments, the Commission continues to believe that the amendments to the Commission’s Privacy Act regulations will not have any significant impact on competition or capital formation and may result in a slight improvement in operational efficiency.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980,¹⁵ the Commission certified that, when adopted, the amendments to 17 CFR 200.301 through 200.313 would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was included in the proposing release. The Commission solicited comments on the appropriateness of its certification, but received none. The Commission is adopting the final rules in the form published in the Proposing Release.

VI. Paperwork Reduction Act

The Commission stated in the Proposing Release that the proposed amendments to the Privacy Act regulations do not contain any collection of information as defined by the Paperwork Reduction Act of 1995 (“PRA”).¹⁶ The Commission also determined that the proposed amendments would not create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, the Commission did not submit the proposed amendments to the

¹⁴ 5 U.S.C. 552a(c)(3).

¹⁵ 5 U.S.C. 605(b).

¹⁶ 44 U.S.C. 3501 *et seq.*

¹² See Gillmore comment, dated Feb. 24, 2023.

¹³ *Id.*

Office of Management and Budget for review under the PRA.¹⁷ The Commission solicited comments on whether its conclusion that there are no new collections of information is correct, and it did not receive any comments.

Statutory Authority

The amendments contained herein are being adopted under the authority set forth in 5 U.S.C. 552a(f), 552a(j), 552a(k); and 15 U.S.C. 78d-1 and 78w(a).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Privacy Act.

Text of Amendments

For the reasons stated in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, and 557; 11 U.S.C. 901 and 1109(a); 15 U.S.C. 77c, 77e, 77f, 77g, 77h, 77j, 77o, 77q, 77s, 77u, 77z-3, 77ggg(a), 77hhh, 77sss, 77uuu, 78b, 78c(b), 78d, 78d-1, 78d-2, 78e, 78f, 78g, 78h, 78i, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o-4, 78q, 78q-1, 78w, 78t-1, 78u, 78w, 78ll(d), 78mm, 78eee, 80a-8, 80a-20, 80a-24, 80a-29, 80a-37, 80a-41, 80a-44(a), 80a-44(b), 80b-3, 80b-4, 80b-5, 80b-9, 80b-10(a), 80b-11, 7202, and 7211 *et seq.*; 29 U.S.C. 794; 44 U.S.C. 3506 and 3507; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt); sec. 8G, Pub. L. 95-452, 92 Stat. 1101 (5 U.S.C. App.); sec. 913, Pub. L. 111-203, 124 Stat. 1376, 1827; sec. 3(a), Pub. L. 114-185, 130 Stat. 538; E.O. 11222, 30 FR 6469, 3 CFR, 1964-1965 Comp., p. 36; E.O. 12356, 47 FR 14874, 3 CFR, 1982 Comp., p. 166; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Information Security Oversight Office Directive No. 1, 47 FR 27836; and 5 CFR 735.104 and 5 CFR parts 2634 and 2635, unless otherwise noted.

* * * * *

■ 2. Subpart H is revised to read as follows:

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

- Sec.
- 200.301 Purpose and scope.
- 200.302 Definitions.
- 200.303 Procedures for making inquiries and requests for access.
- 200.304 Responses to inquiries and requests for access.
- 200.305 Requests for amendment or correction of records.

- 200.306 Review of requests for amendment or correction.
- 200.307 Requests for an accounting of record disclosures.
- 200.308 Administrative appeals.
- 200.309 Fees.
- 200.310 Specific exemptions.
- 200.311 Inspector General exemptions.
- 200.312 [Reserved]

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

§ 200.301 Purpose and scope.

(a) This subpart contains the rules of the Securities and Exchange Commission implementing the Privacy Act of 1974, as amended (Pub. L. 93-579, 5 U.S.C. 552a). These rules are applicable to all records in systems of records maintained by the Commission. They set forth the procedures by which individuals may make an inquiry regarding or request access to records about themselves, request an amendment or correction of those records, and request an accounting of disclosures of those records by the Commission.

(b) This subpart also lists the Commission systems of records that are exempt from some of the provisions of the Privacy Act of 1974. These exemptions are authorized under the Privacy Act, 5 U.S.C. 552a(j) and (k).

§ 200.302 Definitions.

In addition to the definitions contained in 5 U.S.C. 552a(a), the following definitions apply in this subpart:

Commission means the Securities and Exchange Commission.

Inquiry means a request described in Privacy Act section (f)(1).

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Request for access to a record means a request made under Privacy Act section (d)(1).

Request for amendment or correction of a record means a request made under Privacy Act section (d)(2).

Request for an accounting means a request made under Privacy Act section (c)(3).

Requester means an individual who makes an inquiry, a request for access, a request for amendment or correction, or a request for an accounting.

§ 200.303 Procedures for making inquiries and requests for access.

Requesters seeking to know if a specific system of records maintained by the Commission contains a record pertaining to them may submit an inquiry to the Commission. Requesters

may also request access to records pertaining to them in a system of records maintained by the Commission.

(a) *How to make an inquiry or request for access.* An inquiry or request for access must be in writing and may be submitted by email (foiapa@sec.gov) or online at the Commission's website at https://www.sec.gov/forms/request_public_docs. A requester may alternatively submit an inquiry or request for access by mail to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549 or other mailing address or facsimile number published on the Commission's website at <https://www.sec.gov/oso/help/foia-contact.html>. Inquiries and requests for access that are submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope.

(b) *Information to be included in an inquiry or request for access.* Each inquiry or request for access must include information that will assist the Commission in identifying those records the requester is seeking information about or access to. The following information, as relevant, should be submitted with the request: name of the individual whose record is sought; identifying data that will help locate the record (e.g., maiden name and period or place of employment); and the requester's name, address, telephone number, and email address. Where practicable, the requester should identify the system of records that is the subject of the inquiry or request for access by reference to the Commission's systems of records notices, which are published in the **Federal Register**. The Commission's systems of records notices can also be found on the Commission's website at <https://www.sec.gov/oit/system-records-notices>. If additional information is required before a request can be processed, the requester will be so advised.

(c) *Verification of identity.* A requester making an inquiry or requesting access to a record must verify his or her identity before information is given or access is granted unless the information is required to be disclosed under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(1) *In-person verification.* A requester may appear at any of the Commission offices, which are listed on the Commission's website at <https://www.sec.gov/divisions.shtml>, and furnish documentation to establish his or her identity. Such documentation might include a valid driver's license, passport, birth certificate, employee or

¹⁷ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

military identification card, or Medicare card. Sufficiency of the documentation in verifying identity will be determined by the Commission staff member reviewing such documentation.

(2) *Not in-person verification.* A requester who does not appear in person must verify his or her identity using one of the following methods:

(i) A requester may use electronic identity proofing and authentication processes as made available through the Commission's website; or

(ii) A requester may submit a copy of documentation to establish the requester's identity (examples of such documentation are noted in paragraph (c)(1) of this section).

(3) *Submission of signed statement.* For all verification methods, a requester must also submit a statement attesting to the requester's identity and a statement that the requester understands that a knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a \$5,000 fine. Sample statements and the requirements for completing them are available through the Commission's website.

(4) *Additional procedures for verifying identity.* When it appears appropriate, the Commission's Office of FOIA Services may make such other arrangements for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

§ 200.304 Responses to inquiries and requests for access.

(a) *Initial review.* Inquiries and requests for access will be referred to the Commission's Office of FOIA Services which will make the initial determination as to whether the inquiry or request for access will be granted.

(b) *Grant of inquiry or request for access.* If it is determined that an inquiry or request for access will be granted, the requester will be advised in writing. When a request for access is granted, in full or in part, a requester may elect to receive a copy of the requested record electronically, by mail, or in person, and the Office of FOIA Services will comply with that election to the extent practicable.

(c) *Denial of an inquiry or request for access.* If it is determined that no response will be given to an inquiry or that a request for access will not be granted, the requester will be notified of that fact in writing and given the reasons for the denial. The requester also will be advised of his or her right to seek review by the Office of the General Counsel of the initial decision

in accordance with the procedures set forth in § 200.308.

(d) *Time for acting on inquiries and requests for access—(1) Responses to inquiries.* The Office of FOIA Services will endeavor to inform a requester making an inquiry as to whether the named system of records contains a record pertaining to him or her within 10 days (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a request. Whenever a response to an inquiry cannot be made within the 10 days, the Office of FOIA Services will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

(2) *Acknowledgement of and responses to requests for access.* (i) Except where the requester appears in person, the Office of FOIA Services will endeavor to acknowledge, in writing, receipt of a request for access within 10 days (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a request.

(ii) The Office of FOIA Services will endeavor to respond to a request for access to a record pertaining to a requester within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request. If, for good cause shown, a longer period of time is required, the Office of FOIA Services will inform the requester in writing of the reasons for the delay, and indicate when access is expected to be granted or denied.

(3) *Appearance in person.* When a requester appears in person at the Commission to make a request for access and the requester provides the required information and verification of identity, the Office of FOIA Services' staff, if practicable, will indicate whether it is likely that the requester will be given access to the records and, if so, when and under what circumstances such access will be given.

(e) *Exclusion for certain records.* Nothing contained in these rules allows a requester to obtain access to any records or information compiled in reasonable anticipation of a civil action or proceeding.

§ 200.305 Requests for amendment or correction of records.

(a) *How to make request for amendment or correction.* A written request for amendment or correction of records may be submitted by email (foiapa@sec.gov) or online at the Commission's website at https://www.sec.gov/forms/request_public_docs. A requester may alternatively submit a request for amendment or correction by mail to the Securities and Exchange Commission, Office of FOIA

Services, 100 F Street NE, Washington, DC 20549 or other mailing address or facsimile number published on the Commission's website at <https://www.sec.gov/oso/help/foia-contact.html>. Requests that are submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope.

(1) *Information to be included in requests for amendment or correction.* Each request for amendment or correction must reasonably describe the record sought to be amended or corrected. Such description should include, for example, relevant names, dates, and subject matter to permit the record to be located among the records maintained by the Commission. The requester will be advised promptly if the record cannot be located on the basis of the description given and if further identifying information is necessary before the request can be processed. Verification of the requester's identity as set forth in § 200.303(c) will also be required before an amendment or correction is undertaken.

(2) *Basis for amendment or correction.* A requester seeking an amendment or correction to a record must specify the substance of the amendment or correction and set forth facts and provide such materials that would support the contention that the record as maintained by the Commission is not accurate, timely, or complete or, where a request seeks deletion of information, that the record is not necessary and relevant to accomplish a statutory purpose of the Commission as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment or correction.* Receipt of a request for amendment or correction will be acknowledged in writing within 10 days (excluding Saturdays, Sundays, and Federal holidays) after such request has been received. When a request for amendment or correction is made in person, the requester will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request.

§ 200.306 Review of requests for amendment or correction.

(a) *Initial review.* Requests for amendment or correction to records pertaining to that individual will be referred to the Commission's Office of FOIA Services for an initial determination.

(b) *Time for acting on requests.* Initial review of a request for amendment or correction will be completed promptly and the Office of FOIA Services will endeavor to respond to a request within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the requester will be advised in writing of the delay and the reasons for the delay, and also advised when action is expected to be completed.

(c) *Grant of requests for amendment or correction.* If a request for amendment or correction is granted in whole or in part, the Office of FOIA Services will:

(1) Advise the requester in writing of the extent to which it has been granted;

(2) Amend or correct the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended or corrected and the substance of the amendment or correction.

(d) *Denial of requests for amendment or correction.* If the request for amendment or correction is denied in whole or in part, the Office of FOIA Services will:

(1) Promptly advise the requester in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures to appeal the denial of the request for amendment or correction, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the requester that the Office of FOIA Services will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§ 200.307 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept or provided (as stated in paragraph (e) of this section), requesters may ask the Commission to provide an accounting of a disclosure of a record about the requester that the Commission has made to another person, organization, or agency. The request for an accounting should identify each particular record in question and must be made in writing. The request may be submitted by email (foiapa@sec.gov) or online at the

Commission's website at https://www.sec.gov/forms/request_public_docs. A requester may alternatively submit a request for an accounting by mail to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549 or other mailing address or facsimile number published on the Commission's website at <https://www.sec.gov/oso/help/foia-contact.html>. Requests for accounting that are submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope.

(b) *Verification of identity.*

Verification of the requester's identity as set forth in section 202.303(c) will be required before an accounting is given.

(c) *Acknowledgement of requests for an accounting of record disclosures.* The Office of FOIA Services will endeavor to acknowledge, in writing, receipt of a request for an accounting of record disclosures within 10 days of receipt of such a request (excluding Saturdays, Sundays, and Federal holidays). When a request for an accounting of record disclosures is made in person, the requester will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request.

(d) *Time for acting on requests.* The Office of FOIA Services will endeavor to respond to a request for an accounting of record disclosures within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless the requester is notified in writing within the 30-day period that, for good cause shown, a longer period of time is required. In such cases, the requester will be informed in writing of the reasons for the delay and an indication will be given as to when it is anticipated that an accounting may be granted or denied.

(e) *Grant of request of accounting.* If it is determined that a request for an accounting will be granted, the requester will be advised in writing. When a request for access is granted, in full or in part, the information will be provided electronically, by mail, or in person at the requester's election.

(f) *Denial of a request for accounting.* If it is determined that the request will not be granted, the requester will be notified of that fact in writing and given the reasons for the denial. The requester also will be advised of his or her right to seek review by the Office of the General Counsel of the initial decision

in accordance with the procedures set forth in § 200.308.

(g) *Where accountings of record disclosures are not required.* The Commission is not required to provide accountings of disclosures to requesters where they relate to:

(1) Disclosures made to officers and employees within the Commission and disclosures made under the FOIA, 5 U.S.C. 552;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

§ 200.308 Administrative appeals.

(a) *Administrative review.* A requester who has been notified pursuant to § 200.304(c), § 200.306(d), or § 200.307(d) that his or her inquiry or request has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays, and Federal holidays) after his or her request was received by the Office of the FOIA Services, may appeal to the Office of the General Counsel the adverse determination.

(1) Appeals must be received within 90 calendar days of the date of the written denial of an inquiry or request and must be received no later than 11:59 p.m., eastern time, on the 90th day.

(2) The appeal should be in writing and should provide the assigned request number, a copy of the original request, and the adverse determination. The appeal should also explain why the requester contends any adverse determination was in error. The requester may state such facts and cite such legal or other authorities as the requester may consider appropriate in support of the appeal. If only a portion of the adverse determination is appealed, the requester should specify which part is being appealed.

(3) The appeal may be submitted by email (foiapa@sec.gov) or online at the Commission's website at https://www.sec.gov/forms/request_public_docs. A requester may alternatively submit an appeal by mail to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549 or other mailing address or facsimile number published on the Commission's website at <https://www.sec.gov/oso/help/foia-contact.html>.

(4) The Office of the General Counsel will endeavor to make a determination with respect to an appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays) unless, for good cause shown, the Office of the General Counsel extends that period. If such an extension is made, the individual who is appealing will be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) If the Office of the General Counsel concludes that an inquiry or request for access, amendment or correction, or an accounting should be granted, it will issue a decision granting the inquiry or request and instructing the Office of FOIA Services to comply with § 200.304(b), § 200.306(c), or § 200.307(c), as applicable.

(6) If the Office of the General Counsel affirms the initial decision denying an inquiry or request for access or an accounting, it will issue a decision denying the inquiry or request and advising the requester of:

- (i) The reasons for the denial; and
- (ii) The requester's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B) or (g)(1)(D), as applicable.

(7) If the Office of the General Counsel determines that the decision of the Office of FOIA Services denying a request for amendment or correction should be upheld, it will issue a decision denying the request and the individual will be advised of:

- (i) The decision refusing to amend or correct the record and the reasons therefor;
- (ii) The requester's right to file a concise statement setting forth his or her disagreement with the decision not to amend or correct the record;
- (iii) The procedures for filing such a statement of disagreement;
- (iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Office of the General Counsel deems it appropriate, a brief statement setting forth the Office of the General Counsel's reasons for refusing to amend or correct;
- (v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Office of the General Counsel's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The requester's right to seek judicial review of the Office of the General Counsel's refusal to amend or

correct, pursuant to 5 U.S.C. 552a(g)(1)(A).

(8) In appropriate cases the Office of the General Counsel may, in its sole discretion, refer matters requiring administrative review of initial decisions to the Commission for determination and the issuance, where indicated, of decisions.

(b) *Statements of disagreement.* As noted in paragraph (a)(6)(ii) of this section, a requester may file a statement setting forth his or her disagreement with the Office of the General Counsel's denial of the request for amendment or correction.

(1) Such statement of disagreement may be submitted by email (foiapa@sec.gov) or online at the Commission's website at https://www.sec.gov/forms/request_public_docs. A requester who is not able to submit a statement of disagreement by email or online may submit a request by mail to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549 or other mailing address or facsimile number published on the Commission's website at <https://www.sec.gov/oso/help/foia-contact.html>. A requester must submit a statement of disagreement within 30 days after receipt of the Office of the General Counsel's decision denying the request for amendment or correction. For good cause shown this period can be extended for a reasonable time.

(2) Statements of disagreement should be concise and must clearly identify each part of any record that is disputed and state the basis for the requester's disagreement. The Office of the General Counsel will return unduly lengthy or irrelevant materials to the individual for appropriate revisions before they become a permanent part of the requester's record. Statements of disagreement will be placed in the system of records in which the disputed record is maintained. The disputed record will be marked to indicate that a statement of disagreement has been filed and where in the system of records it may be found.

(3) If a requester has filed a statement of disagreement, the Office of FOIA Services will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request for amendment or correction.

(4) In appropriate cases, the Office of the General Counsel may, in its sole discretion, refer matters concerning statements of disagreement to the Commission for disposition.

§ 200.309 Fees.

(a) The only fee to be charged to a requester under this part is for the duplication of records to be disclosed to the requester. No fee will be charged or collected for: search, retrieval, or review of records; or duplication at the initiative of the Commission without a request from the requester. Fees for duplication will be charged at rates set forth on the FOIA web page of the Commission's website at www.sec.gov. Fees for duplication include any costs incurred in making records available on electronic storage devices.

(b) With regard to requests for amendment or correction, the Commission will provide the requester one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) Whenever the Office of FOIA Services determines that good cause exists to grant a request for reduction or waiver of fees for duplication costs, it may reduce or waive any such fees.

§ 200.310 Specific exemptions.

(a) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the following systems of records maintained by the Commission are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f), and §§ 200.303, 200.305, and 200.307, insofar as they contain investigatory materials compiled for law enforcement purposes:

- (1) Enforcement Files;
- (2) Office of the General Counsel Working Files;
- (3) Office of the Chief Accountant Working Files;
- (4) Correspondence Response System;
- (5) Tips, Complaints, and Referrals (TCR) Records; and
- (6) SEC Security in the Workplace Incident Records.

(b) Pursuant to 5 U.S.C. 552a(k)(5), the systems of records containing the Commission's Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f), and §§ 200.303 through 200.309, insofar as they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied

promise that the identity of the source would be held in confidence.

§ 200.311 Inspector General exemptions.

(a) Pursuant to, and limited by 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of Inspector General of the Commission that contains investigative files is exempt from the provisions of 5 U.S.C. 552a, except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), and (e)(11), and (i), and §§ 200.303 through 200.309, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of Inspector General of the Commission that contains investigative files is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) and §§ 200.303 through 200.309, insofar as it contains investigatory materials compiled for law enforcement purposes.

§ 200.312 [Reserved]

By the Commission.

Dated: September 20, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023–20690 Filed 9–25–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2014–N–0053]

RIN 0910–A144

Requirements for Additional Traceability Records for Certain Foods; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is correcting the final rule on requirements for additional traceability records for certain foods that published in the **Federal Register** of November 21, 2022. The final rule published with some editorial and inadvertent errors. This document corrects those errors.

DATES: Effective September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Vierk, Center for Food Safety

and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2122, *Katherine.Vierk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 21, 2022 (87 FR 70910), FDA published the final rule “Requirements for Additional Traceability Records for Certain Foods” with some editorial and inadvertent errors in the preamble to the final rule and in the provisions added to the Code of Federal Regulations. We are taking this action to correct those errors and to improve the accuracy of the regulatory text.

1. On page 70991, in Response 275, “As noted in Response 450, we have deleted as unnecessary the use of ‘(s)’ (indicating pluralization of terms as applicable) from all provisions in which we had proposed to include it (except with respect to the definition of ‘retail food establishment,’ where we have retained it so that the definition is the same as in other FDA regulations)” is corrected to read “As noted in Response 396, we have deleted as unnecessary the use of ‘(s)’ (indicating pluralization of terms as applicable) from all provisions in which we had proposed to include it (except with respect to the definition of ‘retail food establishment,’ where we have retained it so that the definition is the same as in other FDA regulations).”

2. On page 71001, in the second paragraph of Response 321, “KDEs for a CTE could be ‘linked’ in different ways, including by being listed together in single row of an electronic sortable spreadsheet, stored together as a record in a database, shared to a subsequent recipient as an electronic message, or printed on the same commercial document (e.g., BOL).” is corrected to read “KDEs for a CTE could be ‘linked’ in different ways, including by being listed together in a single row of an electronic sortable spreadsheet, stored together as a record in a database, shared to a subsequent recipient as an electronic message, or printed on the same commercial document (e.g., BOL).”

3. On page 71033, in the second paragraph of Response 429, the following sentence is deleted: “If the apples are sliced before initial packing, then, as specified under § 1.1350(b), the entity who transforms the whole apples into sliced apples would be required to keep the initial packing records specified under § 1.1330(a) or (c), and would not be required to keep transformation records under § 1.1350(a) (see Response 444 (434 (creation CTE requirements would not apply to the creation of an FTL food solely for the

purpose of being transformed into another food in continuous processing)).” We are deleting this sentence because § 1.1350(b) does not apply to this situation. Section 1.1350(b) applies when a traceability lot is produced through “transformation of a *raw agricultural commodity* (other than a food obtained from a fishing vessel) *on the Food Traceability List* that was not initially packed prior to your transformation of the food” (emphasis added). The situation described in the second paragraph of Response 429 relates to the transformation of a raw agricultural commodity that is not on the Food Traceability List (whole apples) into a food (sliced apples) that is on the Food Traceability List. Once this sentence is deleted, the remainder of the paragraph correctly explains which provisions apply to this situation.

4. The exemption in § 1.1305(d)(4) is revised to contain new parenthetical language. We have added this parenthetical language to clarify that the partial exemption in § 1.1305(d)(6), when applicable, exempts a person who changes food such that it is no longer on the Food Traceability List from the requirement to maintain records containing the information specified in § 1.1345 for their receipt of the food that they change. This parenthetical aligns with § 1.1305(d)(3)(i).

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342, 343, 350c, 350d, 350j, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 374, 381, 382, 384a, 387, 387a, 387c, 393, and 2223; 42 U.S.C. 216, 241, 243, 262, 264, 271.

■ 2. In § 1.1305, revise paragraph (d)(4) to read as follows:

§ 1.1305 What foods and persons are exempt from this subpart?

* * * * *

(d) * * *

(4) Food that you change such that the food is no longer on the Food Traceability List, provided that you maintain records containing the information specified in § 1.1345 for your receipt of the food you change (unless you have entered into a written agreement concerning your changing of the food such that the food is no longer

on the Food Traceability List in accordance with paragraph (d)(6) of this section);

* * * * *

Dated: September 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20746 Filed 9–25–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 42

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Venezuela Sanctions Regulations: GL 42, which was previously made available on OFAC's website.

DATES: GL 42 was issued on May 1, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov/>.

Background

On May 1, 2023, OFAC issued GL 42 to authorize certain transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591. GL 42 was made available on OFAC's website (<https://ofac.treasury.gov/>) when it was issued. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 42

Authorizing Certain Transactions Related to the Negotiation of Certain Settlement Agreements With the IV Venezuelan National Assembly and Certain Other Persons

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the negotiation of settlement agreements with the IV Venezuelan National Assembly seated on January 5, 2016 (“IV National Assembly”), its Delegated Commission, any entity established by, or under the direction of, the IV National Assembly to exercise its mandate (“IV National Assembly Entity”), or any person appointed or designated by, or whose appointment or designation is retained by, an IV National Assembly Entity, relating to any debt of the Government of Venezuela, Petróleos de Venezuela, S.A. (PdVSA), or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest are authorized.

Note 1 to paragraph (a). The authorization in paragraph (a) of this general license includes the negotiation of settlement agreements with persons appointed or designated by, or whose appointment or designation is retained by, an IV National Assembly Entity to the board of directors (including any ad hoc boards of directors), or as an executive officer of a Government of Venezuela entity (including entities owned or controlled, directly or indirectly, by the Government of Venezuela).

(b) This general license does not authorize:

(1) Any transaction involving the Venezuelan National Constituent Assembly convened by Nicolas Maduro or the National Assembly seated on January 5, 2021, including their respective members and staff; or

(2) Any transaction otherwise prohibited by the VSR, including transactions involving any person blocked pursuant to the VSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 1, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Note: This document was received for publication by the Office of the Federal Register on September 20, 2023.

[FR Doc. 2023–20797 Filed 9–25–23; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0933; FRL–11004–02–R9]

Air Plan Revisions; California; Placer County Air Pollution Control District; General Permit Requirements, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final 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 finalizing an approval of one rule 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 or “Act”). This final action stops all sanction and federal implementation plan clocks started by our April 20, 2020 limited approval and limited disapproval. This action also adds regulatory text to clarify that Placer County is no longer subject to the Federal Implementation Plan related to protection of visibility.

DATES: This rule is effective on October 26, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2021–0933. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Po-Chieh Ting, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105. By phone at (415) 972-3191 or by email at ting.pochieh@epa.gov.

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

Table of Contents

- I. Proposed Action
- II. Public Comments
- III. EPA Action

- IV. Incorporation by Reference
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I. Proposed Action

On July 24, 2023, the EPA proposed approval of Rule 501 and limited approval and limited disapproval of Rule 502, listed in Table 1, as a revision to the California SIP.¹ These rules constitute part of the District’s 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 requirements under part D of title I of the Act (“Nonattainment NSR” or “NNSR”) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“Minor NSR”).

TABLE—SUBMITTED RULES

Rule No.	Rule title	Amended date	Submitted date
501	General Permit Requirements	4/8/2021	10/6/2021
502	New Source Review	8/12/2021	10/6/2021

We proposed to approve Rule 501 and to issue a limited approval of Rule 502 because we determined that Rule 501 complies, and Rule 502 mostly complies, with the relevant CAA requirements. Our proposal identified the following deficiencies in Rule 502:

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.

As described in our proposal, the EPA’s final approval of Rule 501 and limited approval of 502 addresses our

April 20, 2020 limited disapproval action.²

II. Public Comments

The EPA’s proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of Rule 501 and limited approval of Rule 502. This action incorporates the submitted rules into the California SIP and replaces the versions of these rules previously approved into the SIP.³ The approval of Rule 501 stops all sanction and federal implementation plan clocks started by our April 20, 2020 limited approval and limited disapproval action. 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 also revises 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.

Additionally, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is simultaneously finalizing a limited disapproval of Rule 502. Our limited disapproval final action triggers 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) will 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) will 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 that we have identified in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the rules described in Section I of this preamble, which pertain to new source review permit programs, and set forth below in the amendments to 40 CFR 52. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

¹ 88 FR 47409.
² 85 FR 21777.

³ As described in the EPA’s July 24, 2023 proposed action, the EPA previously issued a limited approval of Rule 501 on April, 20, 2020 (85

FR 21777) and previously approved Rule 502 on September 29, 2014 (79 FR 58263). See 88 FR 47409, 47410, Table 2.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 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 final action is finalizing 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 is merely finalizing 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 Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address

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

The State did not evaluate environmental justice (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 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.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 18, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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.*

Subpart F—California

■ 2. Section 52.220 is amended by:

■ a. Adding paragraphs (c)(389)(i)(B)(7) and (c)(441)(i)(B)(4);

■ b. Revising paragraph (c)(595) introductory text; and

■ c. Adding paragraph (c)(595)(i) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

- (c) * * *
- (389) * * *
- (i) * * *
- (B) * * *

(7) Previously approved on April 20, 2020, in paragraph (c)(389)(i)(B)(1) of this section and now deleted with replacement in (c)(595)(i)(A)(1) of this section: Rule 501, “General Permit Requirements,” adopted on August 12, 2010.

* * * * *

- (441) * * *
- (i) * * *
- (B) * * *

(4) Previously approved on September 29, 2014, in paragraph (c)(441)(i)(B)(1) of this section and now deleted with replacement in (c)(595)(i)(A)(2) of this section: Rule 502, “New Source Review,” amended on August 8, 2013.

* * * * *

(595) The following rules and additional materials were submitted on October 6, 2021, by the Governor’s designee as an attachment to a letter dated October 6, 2021.

(i) *Incorporation by reference.* (A) Placer County Air Pollution Control District.

(1) Rule 501, “General Permit Requirements,” amended on April 8, 2021.

(2) Rule 502, “New Source Review,” amended on August 12, 2021.

(B) [Reserved]

* * * * *

■ 3. Section 52.281 is amended by adding paragraph (d)(12) to read as follows:

§ 52.281 Visibility protection.

* * * * *

- (d) * * *
- (12) Placer County Air Pollution Control District.

* * * * *

[FR Doc. 2023–20673 Filed 9–25–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230920–0228]

RIN 0648–BL93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 49

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 49 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For greater amberjack, this final rule revises the sector annual catch limits (ACLs), the commercial minimum size limit, the commercial seasonal trip limits, and the April spawning season closure. In addition, Amendment 49 revises the overfishing limit (OFL), acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations of the total ACL, as well as removes the recreational annual catch targets (ACTs) for species in the FMP. The purpose of this final rule and Amendment 49 is to ensure catch limits are based on the best scientific information available and to ensure overfishing does not occur for the South Atlantic greater amberjack stock, while increasing social and economic benefits.

DATES: This final rule is effective October 26, 2023.

ADDRESSES: An electronic copy of Amendment 49, which includes a

fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/node/150641>.

FOR FURTHER INFORMATION CONTACT: Mary Vara, telephone: 727–824–5305, or email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery includes greater amberjack and is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and the regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

On June 21, 2023, NMFS published a notice of availability for Amendment 49 and requested public comment (88 FR 40190). On July 12, 2023, NMFS published a proposed rule for Amendment 49 and requested public comment (88 FR 44244). NMFS approved Amendment 49 on September 15, 2023. The proposed rule and Amendment 49 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 49 and implemented by this final rule is described below.

In 2008, a stock assessment for greater amberjack was completed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 15), and it was determined that the stock was not overfished or undergoing overfishing. As a result of that stock status, the Comprehensive ACL Amendment to the FMP (77 FR 15915, March 16, 2012) established the current total ACL and annual OY.

The most recent SEDAR stock assessment for South Atlantic greater amberjack (SEDAR 59) was completed in 2020. The assessment included data through 2018 and used revised

estimates for recreational catch from the Marine Recreational Information Program (MRIP) based on the Fishing Effort Survey (FES). In 2018, the MRIP fully transitioned its estimation of recreational effort from the Coastal Household Telephone Survey (CHTS) to the mail-based FES. Estimates of recreational catch for greater amberjack included in the previous assessment were made using the Marine Recreational Fisheries Statistics Survey (MRFSS) methodology. As explained in Amendment 49, total recreational fishing effort estimates generated from MRIP FES are different than those from the MRIP CHTS and MRFSS because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden change in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's Scientific and Statistical Committee (SSC), the Council, and NMFS, and more robust compared to the MRFSS method previously used to estimate recreational catches for greater amberjack. The SSC reviewed SEDAR 59 (2020) and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the 2020 assessment indicated that the South Atlantic greater amberjack stock is not overfished or undergoing overfishing.

Updated catch and data changes incorporated in the assessment provided information to update the OFL, ABC, annual OY, and ACLs. In response to the results of SEDAR 59 (2020), the Council subsequently developed Amendment 49.

In addition to the revisions to the sector ACLs and seasonal commercial quotas, the Council determined that further modifications to greater amberjack management measures are needed to ensure that overfishing does not occur, while increasing social and economic benefits through sustainable harvest of greater amberjack in the South Atlantic exclusive economic zone (EEZ). Amendment 49 also makes changes to the FMP by removing recreational ACTs from the FMP to make administrative efforts more efficient, since the Council has not used, and does not anticipate using, recreational ACTs for snapper-grouper management.

Management Measures Contained in This Final Rule

This final rule revises the sector annual ACLs, seasonal commercial

quotas, commercial minimum size limit, commercial Season 2 trip limit, and the April spawning closure for South Atlantic greater amberjack.

Total ACLs

The current total ACL and annual OY for greater amberjack are equal to the current ABC of 1,968,001 lb (892,670 kg), round weight. The current ABC includes recreational estimates from the MRFSS. In Amendment 49, the Council revised the ABC based on SEDAR 59 and the recommendation of their SSC.

The fishing year for greater amberjack is March 1 through the end of February, requiring that ACL values are described as a combination of years. This final rule revises the total ACL and annual OY equal to the recommended ABC of 3,233,000 lb (1,466,464), round weight, for 2023–2024; 2,818,000 lb (1,278,223 kg), round weight, for 2024–2025; 2,699,000 lb (1,224,246), round weight, for 2025–2026; and 2,669,000 lb (1,210,638), round weight, for 2026–2027 and subsequent fishing years.

Sector Allocations and ACLs

Amendment 49 revises the commercial and recreational allocations of the total ACL for greater amberjack. The current sector ACLs for greater amberjack are based on the current commercial and recreational allocations of the total ACL at 40.66 percent and 59.34 percent, respectively. The current allocations were established by applying the formula of sector ACL = ((mean landings 2006–2008) * 0.5) + ((mean landings 1986–2008) * 0.5) to the landings dataset that were used in the Comprehensive ACL Amendment.

The revised greater amberjack sector allocations in Amendment 49 result in commercial and recreational allocations of 35.00 percent and 65.00 percent, respectively. The Council based the revised allocations on the current allocation equation, updated estimates of recreational landings from the MRIP FES method, and a consideration of economic and social impacts to the commercial and recreational sectors. The revised sector allocations are approximate midpoints between the current allocations, and the allocations that result from applying the current allocation formula to a revised dataset that is inclusive of MRIP–FES, which results in commercial and recreational allocations of the total ACL at 29.84 percent and 70.16 percent, respectively. While the Council increased the recreational allocation percentage to account for the increase in recreational catch estimates under the new MRIP FES estimation method, the Council chose to increase the recreational

allocation to 65.00 percent, instead of 70.16 percent to account for potential adverse economic and social impacts to the commercial sector. Several recently completed stock assessments for other snapper-grouper species have indicated poor stock status and necessitated reduced harvest of these stocks, making greater amberjack potentially more important to the commercial sector. The revised greater amberjack sector allocation percentages also approximate the average annual total landings percentages for each sector from 2010–2019.

NMFS has determined that the sector allocations in Amendment 49 will result in an appropriate balance between the needs of the commercial and recreational sectors to maximize harvest opportunities and is fair and equitable to fishery participants in both sectors. This allocation is also reasonably calculated to promote conservation and is a wise use of the resource, since it achieves OY and is based upon an ABC that incorporates the best scientific information available. NMFS acknowledges that the recreational sector will benefit with an increase to their allocation, and that the recreational sector management measures and accountability measures (AMs) are in place to prevent overages of the recreational ACL.

The commercial quota for greater amberjack is equivalent to the commercial ACL. The final rule for Regulatory Amendment 27 to the FMP established two commercial fishing seasons and divided the commercial quota between the seasons to lengthen the greater amberjack commercial season and allow for a more equitable distribution and price stability of the greater amberjack resource throughout the South Atlantic (85 FR 4588, January 27, 2020). Regulatory Amendment 27 allocated 60 percent of the commercial quota to Season 1 (March through August), and 40 percent of the quota to Season 2 (September through February). Any remaining commercial quota from Season 1 is added to the commercial quota in Season 2. Any remaining quota from Season 2 is not carried forward into the next fishing year. This final rule does not alter the current fishing seasons or seasonal allocations of the commercial ACL.

Currently, the commercial ACL is 769,388 lb (348,989 kg), gutted weight. The commercial Season 1 quota is 461,633 lb (209,393 kg), gutted weight. The commercial Season 2 quota is 307,755 lb (139,595 kg), gutted weight.

This final rule revises the commercial ACLs to be 1,088,029 lb (493,522 kg), gutted weight, for 2023–2024; 948,365

lb (430,171 kg), gutted weight, for 2024–2025; 908,317 lb (412,006 kg), gutted weight, for 2025–2026; and 898,221 lb (407,426 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The commercial Season 1 quotas will be 652,817 lb (296,113 kg), gutted weight, for 2023–2024; 569,019 lb (258,103 kg), gutted weight, for 2024–2025; 544,990 lb (247,203 kg), gutted weight, for 2025–2026; and 538,933 lb (244,456 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The commercial Season 2 quotas will be 435,212 lb (197,409 kg), gutted weight, for 2023–2024; 379,346 lb (172,068 kg), gutted weight, for 2024–2025; 363,327 lb (164,802 kg), gutted weight, for 2025–2026; and 359,288 lb (162,970 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The current recreational ACL is 1,167,837 lb (529,722 kg), round weight. The recreational ACLs in this final rule are 2,101,450 lb (953,202 kg), round weight, for 2023–2024; 1,831,700 lb (830,845 kg), round weight, for 2024–2025; 1,754,350 lb (795,760 kg), round weight, for 2025–2026; and 1,734,850 lb (786,915 kg), round weight, for 2026–2027 and subsequent fishing years.

Commercial Minimum Size Limit

The final rule for Amendment 4 to the FMP (56 FR 56016, October 31, 1991) implemented the current minimum size limit for the commercial sector of 36 inches (91.4 cm), fork length (FL).

This final rule reduces the commercial minimum size limit to 34 inches (86.4 cm), FL. NMFS has determined that reducing the minimum size limit should reduce regulatory discards, reduce the risk of shark depredation, and more align with the greater commercial desirability for smaller fish. A reduction to 34 inches (86.4 cm), FL, is not likely to jeopardize the current positive stock status, given other management constraints on the commercial sector such as in-season AMs, trip limits, and split season quotas.

Seasonal Commercial Trip Limits

The final rule for Regulatory Amendment 27 revised the commercial trip limit for greater amberjack to the current limits of 1,200 lb (544 kg) during Season 1, and 1,000 lb (454 kg) during Season 2 (in round or gutted weight).

This final rule increases the Season 2 trip limit for greater amberjack to 1,200 lb (544 kg), which should provide more regulatory consistency by having the same commercial trip limit throughout the year. NMFS acknowledges that the analyses considered in Amendment 49 indicate that under the 1,200 lb (544 kg)

trip limit, the commercial sector is not expected to experience a closure in Season 2. Having the same trip limit throughout the fishing year will best meet the purpose of revising the commercial trip limit to increase the efficiency of commercial fishing for greater amberjack, while minimizing adverse social and economic effects.

April Spawning Closure

The peak spawning month for greater amberjack is during April and spawning aggregations are vulnerable to fishing effort during that time of the year. As a result of concerns of high catch rates of greater amberjack in spawning aggregations, the final rule for Amendment 4 implemented a spawning season closure for the commercial harvest of greater amberjack during April, in which commercial fishermen were restricted to a 3 fish per person per day limit (the same as the recreational bag limit at the time). To further enhance the protection to spawning greater amberjack, the final rule for Amendment 9 to the FMP revised those commercial possession limits and the sale and purchase restrictions (64 FR 3624, February 24, 1999). Currently, during April each year, for both the commercial and recreational sectors, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ and the harvest and possession limit is one per person per day or one per person per trip, whichever is more restrictive.

This final rule revises the April spawning closure restrictions for both the commercial and recreational sectors from April 1 through April 30, to not allow any person to fish for, harvest, or possess a greater amberjack from the South Atlantic EEZ and the harvest and possession limits will be zero. The sale or purchase of greater amberjack will continue to be prohibited in April. The additional protections will be beneficial for greater amberjack during this portion of their peak spawning period (April–May), and NMFS agrees that both sectors should be included in this effort by not allowing either sector to harvest greater amberjack.

Management Measures in Amendment 49 Not Codified by This Final Rule

In addition to the measures within this final rule, Amendment 49 revises the OFL for greater amberjack and sets the total ACL and annual OY equal to the ABC. The amendment also revises the sector allocations as described above. Additionally, the use of the recreational ACT is removed for species managed under the FMP.

OFL, ABC, and Annual OY

As implemented through the Comprehensive ACL Amendment, the current OFL for greater amberjack is 2,005,000 lb (909,453 kg), round weight. The current total ACL and annual OY are equal to the ABC of 1,968,001 lb (892,670 kg), round weight. All of these current values include recreational landings for greater amberjack tracked using MRFSS estimation methods, and these values were based on the SEDAR 15 stock assessment (2008).

In 2021, the Council's SSC recommended to the Council new OFL and ABC levels based on SEDAR 59 (2020). As discussed above, SEDAR 59 and the associated OFL and ABC recommendations for greater amberjack incorporated the revised estimates for recreational catch and effort from the MRIP FES. The Council accepted the SSC's recommendations, and the Council's choice of new OFL and ABC values within Amendment 49 also represent the best scientific information available as determined by the Council's SSC and NMFS.

As described in Amendment 49, the revised OFL values are 3,283,000 lb (1,489,144 kg), round weight, for 2023; 2,839,000 lb (1,287,749 kg), round weight, for 2024; 2,719,000 lb (1,233,318 kg), round weight, for 2025; and 2,691,000 lb (1,220,617 kg), round weight, for 2026.

The Council chose to specify OY for greater amberjack on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Recreational ACTs

Recreational ACTs for the species in the FMP were established through the Comprehensive ACL Amendment to account for uncertainty in recreational catch estimates. They are calculated using the formula: $ACT = ACL * [(1 - PSE) \text{ OR } 0.5, \text{ whichever is greater}]$, where ACL is the recreational ACL and PSE is the average of percent standard errors for recreational harvest estimates from the 5 most recent years of data. Recreational ACTs for snapper-grouper are not codified in the regulations, and are not currently used for management purposes. However, because the recreational ACT is derived from the recreational ACL, the recreational ACT values have continued to be updated in the FMP when ACLs are changed.

This final rule removes recreational ACTs for species managed under the FMP, from both individual species and complexes. Removing recreational ACTs

from the FMP will make administrative efforts by the Council more efficient, since the Council has not actively used the ACTs, and does not anticipate using them for management in the FMP.

Comments and Responses

NMFS received three comments from the public during the comment period on the notice of availability and the proposed rule for Amendment 49. NMFS agrees with the one comment in favor of the actions in Amendment 49 and the proposed rule. Comments that were outside the scope of Amendment 49 and the proposed rule, including comments about shark management, are not addressed further in this final rule. One comment which opposed some actions in Amendment 49 and the proposed rule is summarized below, along with NMFS' response. No changes were made to this final rule as a result of public comment.

Comment 1: The commercial minimum size limit should not be reduced while the commercial catch limits are simultaneously increased. There is not enough scientific evidence to support these proposed changes in Amendment 49.

Response: NMFS disagrees that implementing a commercial size minimum limit reduction and a catch limit increase should not occur. Amendment 49 is based on the most recent stock assessment for South Atlantic greater amberjack (SEDAR 59, 2020). NMFS has determined that the assessment was conducted using the best scientific information available and was adequate for determining stock status and supporting fishing level recommendations. As described in Amendment 49, SEDAR 59 determined that the South Atlantic greater amberjack stock is not overfished or undergoing overfishing. Catch level and data changes incorporated in the assessment provided information to update the OFL, ABC, annual OY, and ACLs. The new OFL and ABC are based on results of the stock assessment, and the total ACL and annual OY are also revised based on the assessment. Therefore, NMFS determines that Amendment 49 and this final rule that increases the harvest levels for greater amberjack in the South Atlantic based on SEDAR 59 is consistent with the best scientific information available. NMFS considers these harvest levels to be sustainable and will not negatively impact the health of the stock.

The action to reduce the commercial minimum size limit was included in Amendment 49 in response to public feedback received during the development of the amendment and

also from the Council's Snapper-Grouper Advisory Panel. The reduction of the commercial minimum size limit from 36 inches (91.4 cm), FL, to 34 inches (86.4 cm), FL, is expected to increase commercial harvest but also reduce regulatory discards by allowing a larger amount of smaller fish that would be discarded to be kept, reduce the risk of shark depredation, and align with the greater commercial desirability for smaller fish.

NMFS has determined that reducing the commercial minimum size limit while also increasing catch limits is appropriate and meets the purpose of increasing efficiency of commercial fishing for greater amberjack while helping to minimize adverse social and economic effects. NMFS believes that these changes are not likely to jeopardize the positive stock status, given other management constraints on the commercial sector such as in-season AMs, trip limits, and split season quotas.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 49, the FMP, the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY and SUPPLEMENTARY INFORMATION** sections of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Greater amberjack, Recreational, South Atlantic.

Dated: September 20, 2023.

Samuel D. Rauch, III

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, add paragraph (b)(10) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(10) *Greater amberjack spawning season closure.* From April 1 through April 30, each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any greater amberjack. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing apply in the South Atlantic, *i.e.*, in state or Federal waters. Such greater amberjack are also subject to the prohibition on sale or purchase, as specified in § 622.192(g).

§ 622.184 [Removed and Reserved]

■ 3. Remove and reserve § 622.184.

■ 4. In § 622.185, revise paragraph (c)(5) to read as follows:

§ 622.185 Size limits.

* * * * *

(c) * * *

(5) *Greater amberjack*—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.187(b)(1) and 34 inches (86.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

■ 5. In § 622.190, revise paragraph (a)(3) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(3) *Greater amberjack*—(i) For the period of March 1 through August 31 each year.

(A) For the 2023–2024 fishing year, 652,817 lb (296,113 kg).

(B) For the 2024–2025 fishing year, 569,019 lb (258,103 kg).

(C) For the 2025–2026 fishing year, 544,990 lb (247,203 kg).

(D) For the 2026–2027 and subsequent fishing years, 538,933 lb (244,456 kg).

(ii) For the period of September 1 through the end of February each year.

(A) For the 2023–2024 fishing year, 435,212 lb (197,409 kg).

(B) For the 2024–2025 fishing year, 379,346 lb (172,068 kg).

(C) For the 2025–2026 fishing year, 363,327 lb (164,802 kg).

(D) For the 2026–2027 and subsequent fishing years, 359,288 lb (162,970 kg).

* * * * *

■ 6. In § 622.191, revise paragraph (a)(5) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(5) Until the applicable commercial quota specified in § 622.190(a)(3) is reached—1,200 lb (544 kg). See § 622.190(c)(1) for the limitations regarding greater amberjack after the applicable commercial quota is reached.

* * * * *

■ 7. In § 622.193, revise the section heading and paragraph (k) to read as follows:

§ 622.193 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(k) *Greater amberjack*—(1) *Commercial sector.*

(i) If commercial landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL (commercial quota) specified in § 622.190(a)(3), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that portion of the fishing year applicable to the respective quota. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) If commercial landings for greater amberjack, as estimated by the SRD, exceed the commercial ACL, and the combined commercial and recreational ACL as specified in paragraph (k)(3) of this section is exceeded during the same fishing year, and the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL in the following fishing year by the amount of the commercial ACL overage in the

prior fishing year. The total commercial ACL is 1,088,029 lb (493,522 kg), gutted weight, for the 2023–2024 fishing year; 948,365 lb (430,171 kg), gutted weight, for the 2024–2025 fishing year; 908,317 lb (412,006 kg), gutted weight, for the 2025–2026 fishing year; and 898,221 lb (407,426 kg), gutted weight, for the 2026–2027 and subsequent fishing years.

(2) *Recreational sector.* (i) If recreational landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the recreational ACL, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless of whether the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for greater amberjack in or from the South Atlantic EEZ are zero. The recreational ACL is 2,101,450 lb (953,202 kg), round weight, for the 2023–2024 fishing year; 1,831,700 lb (830,845 kg), round weight, for the 2024–2025 fishing year; 1,754,350 lb (795,760 kg), round weight, for the 2025–2026 fishing year; and 1,734,850 lb (786,915 kg), round weight, for the 2026–2027 and subsequent fishing years.

(ii) If recreational landings for greater amberjack, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings, and if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season and recreational ACL by the amount of the recreational ACL overage, if the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, and if the combined commercial and recreational ACL specified in paragraph (k)(3) of this section, is exceeded during the same fishing year. The AA will use the best scientific information available to determine if reducing the length of the recreational season and recreational ACL is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season and ACL, the bag and possession limits for greater amberjack in or from the South Atlantic EEZ are zero.

(3) *Combined commercial and recreational ACLs.* The combined commercial and recreational ACL for greater amberjack is 3,233,000 lb

(1,466,464 kg), round weight, for the 2023–2024 fishing year; 2,818,000 lb (1,278,223 kg), round weight, for the 2024–2025 fishing year; 2,699,000 lb (1,224,246 kg), round weight, for the 2025–2026 fishing year; and 2,669,000 lb (1,210,638 kg), round weight, for the 2026–2027 and subsequent fishing years.

* * * * *

[FR Doc. 2023–20798 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221223–0282; RTID 0648–XD393]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From North Carolina to Virginia

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2023 commercial summer flounder quota to the Commonwealth of Virginia. This adjustment to the 2023 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial quotas for North Carolina and Virginia.

DATES: Effective September 25, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2023 allocations were published on January 3, 2023 (88 FR 11).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as

published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: the transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 20,441 lb (9,272 kg) to Virginia through a mutual agreement between the states. This transfer was requested to repay landings made by out-of-state permitted vessels under safe harbor agreements. The revised summer flounder quotas for 2023 are North Carolina, 3,281,083 lb (1,488,274 kg), and Virginia, 2,764,904 lb (1,254,139 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: September 20, 2023.

Kelly Denit,

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

[FR Doc. 2023-20874 Filed 9-25-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230508-0124; RTID 0648-XD334]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Action #19-26

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

ACTION: Inseason modification of 2023 management measures.

SUMMARY: NMFS announces eight inseason actions for the 2023–2024 ocean salmon fishing season. These inseason actions modify the recreational and commercial salmon fisheries in the area from the U.S./Canada border to Cape Falcon, Oregon.

DATES: The effective dates for these inseason actions are set out in this document under the heading “Inseason Actions” and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, 562-980-4239, Shannon.Penna@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2023 and early 2024 ocean salmon fisheries (88 FR 30235, May 11, 2023) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2023, until the effective date of the 2024 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south

of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the NOF commercial salmon troll and recreational fisheries, as set out under the heading Inseason Actions below.

Consultation with the Council Chairman on these inseason actions occurred on July 26, 2023, August 15, 2023, August 17, 2023, and August 25, 2023. These consultations included representatives from NMFS, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Wildlife. Representatives from the Salmon Advisory Subpanel and Salmon Technical Team (STT) were also present. A Council representative was present on August 15, 2023.

These inseason actions were announced on NMFS’ telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #19

Description of the action: Inseason action #19 modifies the NOF ocean salmon recreational fishery from the Queets River to Leadbetter Point (Westport Subarea—Marine Area 2). Retention of Chinook salmon is prohibited on Fridays and Saturdays. Possession of Chinook salmon is illegal when retention is prohibited in the area.

Effective dates: Inseason action #19 takes effect on July 28, 2023, at 12:01 a.m., and remains in effect until superseded.

Reason and authorization for the action: Inseason action #19 was necessary to not exceed the Chinook salmon guideline due to high Chinook salmon catch and preserve the length of the season while continuing to allow access to coho salmon. The NMFS West Coast Regional Administrator (RA) determined that this inseason action is necessary to meet management and conservation goals for the 2023–2024 management measures after considering the best available information on the 2023 abundance forecasts for Chinook salmon stocks, landings and effort patterns to date, anticipated fishery effort and projected catch, the timing of the action relative to the length of the season, and the other factors and considerations set forth in 50 CFR 660.409. This inseason action modified recreational bag limits under 50 CFR 660.409(b)(1)(iii).

Inseason Action #20

Description of the action: Inseason action #20 modifies the NOF

commercial salmon troll fishery. The area between the U.S./Canada border and Cape Falcon is open, the landing and possession limit decreased from 20 Chinook salmon and 150 adipose marked coho salmon per vessel per landing week (Thursday–Wednesday) to 7 Chinook salmon and 100 adipose marked coho salmon per vessel per landing week (Thursday–Wednesday).

Effective dates: Inseason action #20 takes effect on August 17, 2023, at 12:01 a.m., and remains in effect until September 30, 2023, at 11:59 p.m.

Reason and authorization for the action: Inseason action #20 was necessary to avoid exceedance of the Chinook salmon guideline and maximize catch of the available coho salmon quota. The RA determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures after considering the best available information on the 2023 abundance forecasts for Chinook salmon stocks, landings and effort patterns to date, anticipated fishery effort and projected catch, the timing of the action relative to the length of the season, and the other factors and considerations set forth in 50 CFR 660.409. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Action #21

Description of the action: Inseason action #21 modifies the NOF ocean recreational salmon fishery. The area from the Queets River to Leadbetter Point (Marine Area 2—Westport Subarea) is open with a daily limit of two salmon, only one of which may be a Chinook salmon. All coho salmon must be marked with a healed adipose fin clip.

Effective dates: Inseason action #21 takes effect on August 18, 2023, at 12:01 a.m., and remains in effect until September 30, 2023, at 11:59 p.m.

Reason and authorization for the action: Due to larger than expected Chinook salmon catch, inseason action #21 was necessary to manage Chinook salmon catch to preserve the length of the season while avoiding exceedance of the Chinook salmon guideline and maximizing catch of the available coho salmon quota. The RA determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures after considering the best available information on the 2023 abundance forecasts for Chinook salmon stocks, landings and effort patterns to date, anticipated fishery effort and projected catch, the timing of the action relative to the length of the season, and the other

factors and considerations set forth in 50 CFR 660.409. This inseason action modified recreational bag limits under 50 CFR 660.409(b)(1)(iii).

Inseason Action #22

Description of the action: Inseason action #22 modifies the NOF commercial salmon troll fishery from the U.S./Canada border to Cape Falcon. The coho salmon quota is adjusted, on an impact neutral basis, from mark-selective to non-mark-selective. The adjusted non-mark-selective coho salmon quota is 9,070. The landing and possession limit for coho salmon is modified to 100 coho salmon (marked or unmarked) per vessel per landing week (Thursday–Wednesday). The landing and possession limit for Chinook salmon remains 7 Chinook salmon per vessel per landing week (Thursday–Wednesday).

Effective dates: Inseason action #22 takes effect on August 26, 2023, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #22 was necessary to avoid exceedance of the Chinook salmon guideline and maximize catch of the available coho salmon quota. The RA determined that this inseason action is necessary to meet management and conservations goals for the 2023–2024 management measures after considering the best available information on the 2023 abundance forecasts for Chinook salmon stocks, landings and effort patterns to date, anticipated fishery effort and projected catch, the timing of the action relative to the length of the season, and the other factors and considerations set forth in 50 CFR 660.409. This inseason action modified quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

Inseason Actions #23–#26

Descriptions of the actions: Inseason actions #23–#26 modify the NOF recreational salmon fisheries.

• Inseason action #23, the coho salmon quota in the area from Cape Falcon to Leadbetter Point (Columbia River subarea—Marine Area 1) is adjusted on an impact neutral basis, from mark-selective to non-mark-selective. The non-mark-selective coho salmon quota is 21,740. The daily limit is modified to two salmon per day, only one of which may be a Chinook salmon.

• Inseason action #24, the coho salmon quota in the area from the Queets River to Leadbetter Point (Westport subarea—Marine Area 2) is adjusted on an impact neutral basis, from mark-selective to non-mark-selective. The non-mark-selective coho

salmon quota is 16,010. The daily limit is modified to two salmon per day, only one of which may be a Chinook salmon.

• Inseason action #25, the coho salmon quota in the area from Cape Alava to the Queets River (La Push subarea—Marine Area 3) is adjusted on an impact neutral basis, from mark-selective to non-mark-selective. The non-mark-selective coho salmon quota is 1,210. The daily limit is modified to two salmon per day; retention of chum salmon is prohibited.

• Inseason action #26, the coho salmon quota in the area from the U.S./Canada border to Cape Alava (Neah Bay subarea—Marine Area 4) is adjusted on an impact neutral basis, from mark-selective to non-mark-selective. The non-mark-selective coho salmon quota is 4,800. The daily limit is modified to two salmon per day; retention of chum salmon is prohibited. The portion of the subarea east of the Bonilla-Tatoosh line is closed to fishing for salmon.

Effective dates: Inseason actions #23–#26 take effect on August 26, 2023, at 12:01 a.m. and remain in effect until superseded.

Reason and authorization for actions #23–#26: Inseason actions #23–#26 were necessary to allow for increased access to the coho salmon quota, which had not been fully used, while not exceeding the impact limits for protected Chinook salmon stocks. Quotas have been adjusted downward in a manner to ensure that impacts to non-mark-selective coho salmon are not increased from preseason expected rates. The annual management measures (88 FR 30235, May 11, 2023) provide for inseason action to modify the regulations that restrict retention of unmarked coho salmon fishery while still achieving management objectives, including not exceeding allowable impacts on constraining Chinook and coho salmon stocks. The STT calculated the necessary adjustments to the coho salmon quota on an impact neutral basis for the constraining stocks in the NOF area.

The RA determined that these inseason actions are necessary to meet management and conservations goals for the 2023–2024 management measures after considering the best available information on the 2023 abundance forecasts for Chinook salmon stocks, landings and effort patterns to date, anticipated fishery effort and projected catch, the timing of the action relative to the length of the season, and the other factors and considerations set forth in 50 CFR 660.409. These inseason actions modified recreational bag limits authorized by 50 CFR 660.409(b)(1)(iii).

All other restrictions and regulations remain in effect as announced for the 2023 ocean salmon fisheries (88 FR 30235, May 11, 2023; 88 FR 44737, July 13, 2023; 88 FR 51250, August 3, 2023; 88 FR 53813, August 9, 2023; 88 FR 58522, August 28, 2023) except as previously modified by inseason actions.

The states and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the States of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and are exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific

information available. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotlines and radio notifications. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (88 FR 30235, May 11, 2023), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: September 20, 2023.

Kelly Denit,

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

[FR Doc. 2023–20796 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 185

Tuesday, September 26, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1228

RIN 2590–AB30

Exception to Restrictions on Private Transfer Fee Covenants for Loans Meeting Certain Duty To Serve Shared Equity Loan Program Requirements

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its regulation that restricts its regulated entities—the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and the Federal Home Loan Banks (Banks)—from purchasing, investing in, accepting as collateral, or otherwise dealing in mortgages on properties encumbered by certain types of private transfer fee covenants (PTFCs), and in related securities, subject to certain exceptions (PTFC Regulation). The proposed rule would establish an additional exception to the restrictions for loans on properties with PTFCs, and related securities, if the loans meet certain shared equity loan program requirements for Resale Restriction Programs in FHFA’s Duty to Serve Underserved Markets Regulation (Duty to Serve Regulation).

DATES: Written comments on the proposed rule must be received on or before November 27, 2023.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB30, by any one of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also

send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB30.

- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB30, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street SW entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB30, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For time sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Office of Housing and Community Investment (OHCI), 202–649–3157, ted.wartell@fhfa.gov; or Sara L. Todd, Assistant General Counsel, Office of General Counsel (OGC), 202–649–3527, sara.todd@fhfa.gov; Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. These are not toll-free numbers. The mailing address for each contact is: Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Public Comments and Access

FHFA invites comments on all aspects of the proposed rule, and will take all comments into consideration before issuing a final rule. Commenters do not need to answer each of the specific questions asked below. Copies of all comments received will be posted on the FHFA website at <http://www.fhfa.gov>, and will include any personal information you provide, such as your name, address, email address, and telephone number. In addition,

copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule, also located on the FHFA website.

II. Background

A. Statutory and Regulatory Background: Enterprises

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (Safety and Soundness Act), provides that the Director of FHFA has a duty to ensure that the operations and activities of the Enterprises foster liquid, efficient, competitive, and resilient national housing finance markets.¹ To achieve these goals, the Enterprises purchase residential mortgages that fall within the conforming loan limits established pursuant to 12 U.S.C. 1717 and 12 U.S.C. 1454, and issue guaranteed mortgage-backed securities backed by those loans.

In addition, the Safety and Soundness Act provides generally that the Enterprises “have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families.”² Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets (Duty to Serve) in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.³ Specifically, the Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.⁴ FHFA’s Duty to Serve Regulation,⁵ which implements these

¹ 12 U.S.C. 4513(a)(1)(B)(ii).

² 12 U.S.C. 4501(7).

³ 12 U.S.C. 4565.

⁴ 12 U.S.C. 4565(a). The terms “very low-income,” “low-income,” and “moderate-income” are defined in 12 U.S.C. 4502.

⁵ 12 CFR part 1282, subpart C.

Duty to Serve statutory requirements, is discussed further below.

B. Statutory and Regulatory

Background: Federal Home Loan Banks

The eleven Banks are wholesale financial institutions organized under the Federal Home Loan Bank Act to support housing finance and further affordable housing and community development.⁶ The Banks are cooperatives and carry out their mission primarily by providing products and services to their member institutions. Bank members and eligible housing associates (nonmember mortgagee borrowers such as state housing finance agencies) may obtain access to secured loans, known as advances.⁷ These must be fully secured by eligible collateral at the time of issuance or renewal, which may include, among other forms of collateral, residential mortgages and mortgage-backed securities.⁸ In addition, the Banks issue standby letters of credit on behalf of members and housing associates, which may be secured by residential mortgages and mortgage-backed securities.

Most Banks also offer Acquired Member Assets (AMA) programs, under which they acquire eligible mortgages from participating members and housing associates, subject to parameters set forth in FHFA's AMA regulation.⁹ The Banks are also authorized to invest in mortgage-backed securities and other mortgage-related investments meeting applicable requirements.¹⁰ Finally, the Banks may serve as pass-through entities for mortgage loans acquired by another purchaser.

III. PTFC Regulation

The current PTFC Regulation prohibits the Enterprises and Banks from purchasing, investing in, or otherwise dealing in any mortgages encumbered by PTFCs or related securities, and prohibits the Banks from accepting such mortgages or securities as collateral for advances, unless such PTFCs are "excepted transfer fee covenants."¹¹ Under the PTFC Regulation, "PTFCs" mean obligations that purport to "run with the land" in the records of title to real property or to bind current owners of, and successors in title to, such real property, and that obligate a transferee or transferor to pay a private transfer fee upon transfer of

the property.¹² A "private transfer fee" is defined in the PTFC Regulation as a transfer fee, including a charge or payment, imposed by a covenant, and required to be paid in connection with or as a result of a transfer of title to real estate, and payable on a continuing basis each time a property is transferred (except for transfers specifically excepted) for a period of time or indefinitely.¹³

In adopting the PTFC Regulation, FHFA was concerned that private transfer fees would: (1) be used to fund purely private continuous streams of income for select market participants, either directly or through securitized investment vehicles; (2) not benefit homeowners or the properties involved; and (3) interfere with accurate determination of property values. Therefore, FHFA concluded that mortgages on properties with PTFCs might impair the safety and soundness of the Enterprises and the Banks that purchase, invest in, or otherwise deal in, or in the case of the Banks, that accept as collateral, such mortgages.¹⁴

The prohibition in the PTFC Regulation does not apply where the PTFC is an "excepted transfer fee covenant," which is defined as a covenant that requires payment to a "covered association" and that limits the use of such payment to purposes that provide a "direct benefit" to the real property.¹⁵ A "covered association" is defined as "a nonprofit mandatory membership organization comprising owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant or other applicable law; or an organization described in section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."¹⁶ The PTFC Regulation defines a "direct benefit" as meaning that the proceeds of a PTFC "are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit."¹⁷ This may include "cultural, educational, charitable, recreational,

environmental, conservation, or other similar activities that (1) are conducted in or protect the burdened community or adjacent or contiguous property, or (2) are conducted on other property that is used primarily by residents of the burdened community."¹⁸

IV. Interaction Between the PTFC Regulation and the Enterprise Duty To Serve Regulation and Activities

Approximately four years after the adoption of the PTFC Regulation, FHFA adopted the Duty to Serve Regulation, which applies only to the Enterprises.¹⁹ Under the Duty to Serve Regulation, each Enterprise is required to prepare an Underserved Markets Plan (Plan), which is subject to Non-Objection by FHFA, and which describes the specific activities and objectives the Enterprise will undertake over a three-year period to fulfill its Duty to Serve in each underserved market.²⁰ The regulation identifies specific types of activities that are eligible to receive Duty to Serve credit and that an Enterprise may include in its Plan under each underserved market.²¹ An Enterprise may also include additional activities in its Plan, subject to FHFA determination of whether they are eligible to receive Duty to Serve credit.²²

Under the Duty to Serve Regulation, one of the activities eligible for Duty to Serve credit under the affordable housing preservation market is Enterprise support for shared equity programs for affordable homeownership preservation in the form of resale restriction programs administered by community land trusts, other nonprofit organizations, or state or local governments or instrumentalities (collectively, Resale Restriction Programs).²³ The Duty to Serve Regulation further specifies the following criteria for an eligible Resale Restriction Program:

- (a) Provides homeownership opportunities to very low-, low-, or moderate-income households (100 percent or less of area median income (AMI));
- (b) Utilizes a ground lease, deed restriction, subordinate loan, or similar legal mechanism that includes provisions stating that the program will

¹⁸ *Id.*

¹⁹ 12 CFR part 1282, subpart C; 81 FR 96242 (Dec. 29, 2016).

²⁰ 12 CFR 1282.32(a), (b).

²¹ See 12 CFR 1282.33(c) for eligible activities in the manufactured housing market; 12 CFR 1282.34(c), (d) for eligible activities in the affordable housing preservation market; and 12 CFR 1282.35(c) for eligible activities in the rural housing market.

²² 12 CFR 1282.32(d)(2).

²³ 12 CFR 1282.34(d)(4)(i)(A).

¹² 12 CFR 1228.1.

¹³ 12 CFR 1228.1. The definition excludes fees imposed by or payable to the Federal, State, or local government, and fees that defray actual costs of the transfer of the property, neither of which would be modified by the proposed rule.

¹⁴ See 77 FR 15566, 15567 (Mar. 16, 2012).

¹⁵ 12 CFR 1228.1.

¹⁶ *Id.*

¹⁷ *Id.*

⁶ See 12 U.S.C. 1421 *et seq.*

⁷ See 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

⁸ See 12 U.S.C. 1430(a)(3), 1430(b); 12 CFR 1266.7, 1266.17, part 1269.

⁹ See 12 CFR part 1268.

¹⁰ See 12 CFR 1267.3(a)(4)(iv), (v).

¹¹ 12 CFR 1228.2.

keep the home affordable for subsequent very low-, low-, or moderate-income families, the affordability term is at least 30 years after recodation, a resale formula applies that limits the homeowner's proceeds upon resale, and the program administrator or its assignee has a preemptive option to purchase the homeownership unit from the homeowner at resale; and

(c) Supports homebuyers and homeowners to promote sustainable homeownership, including reviewing and pre-approving refinances and home equity lines of credit.²⁴

The preamble to the 2015 proposed Duty to Serve rule noted that many shared equity loan programs allow the sponsors to charge modest fees that cover the cost of operating the program.²⁵ However, the preamble to the final Duty to Serve rule did not reiterate this discussion of fees and did not include a reference to fees in the regulatory text. The final Duty to Serve rule also did not refer to or amend the PTFC Regulation specifically to provide an exception to the restriction on PTFCs for loans that meet Resale Restriction Program requirements in the Duty to Serve Regulation.

Between 2018 (the first year of Duty to Serve program implementation) and 2022, the Enterprises, collectively, purchased 595 shared equity loans for Duty to Serve credit. Both Enterprises' 2022–2024 Duty to Serve Plans include plans to purchase shared equity loans under Resale Restriction Programs in 2023 and 2024.

The loans purchased by the Enterprises under many of the Resale Restriction Programs are on properties encumbered by PTFCs that fall within the PTFC Regulation's prohibition because they bind current owners and successors to pay a fee to the program administrator (often a community land trust) on a continuing basis each time the property is transferred. The loans do not meet the definition of an "excepted transfer fee covenant" in the PTFC Regulation because they are used by the program administrator to pay for its operating costs, including costs of enforcing the long-term affordability requirements, but they are not limited to costs and activities that are specific to the "burdened community" in which the subject property is located, nor are they otherwise required to be used for the purpose of providing a "direct benefit" to the property (as these quoted terms are defined in the PTFC Regulation).²⁶

During the Enterprises' efforts to implement the shared equity loan objectives in their Duty to Serve Plans, the Enterprises reviewed model organizational documents that were proposed to be used as templates by Resale Restriction Programs. In preparing to establish approved templates, the Enterprises determined that, while Resale Restriction Programs using the templates would meet the criteria for Resale Restriction Programs in the Duty to Serve Regulation (except for the 100 percent of AMI limit), the programs' possible inclusion of private transfer fee payment requirements could cause any loans issued under the terms of the model organizational documents to be ineligible for purchase by the Enterprises pursuant to the PTFC Regulation.

V. Regulatory Waiver for the Enterprises; Proposed § 1228.1

In response to the Enterprises' identification of PTFCs in shared equity loans under Resale Restriction Programs that otherwise could be purchased and qualify for Duty to Serve credit, FHFA reviewed these types of loans and determined that the private transfer fees in these programs are not the types of fees that prompted the concern underlying the PTFC Regulation. Unlike fees paid to the select market participants that concerned FHFA when the PTFC Regulation was adopted, the fees in Resale Restriction Programs reimburse the program administrators, which are typically community land trusts, nonprofits, or local governments, for their ongoing operating expenses related to the purchase and sale of affordable homes under the program. They are not used as a method to provide a continuous income stream to the program administrators with no continuing affordable housing-related services provided. For example, fees in Resale Restriction Programs may be used to pay for: maintaining a list of, and qualifying, prospective program-eligible homebuyers; providing seller representation and outreach to prospective buyers; ensuring that repairs are incorporated into the sale transaction; providing potential homebuyers with homeownership counseling or similar education; exercising the program administrator's option to purchase the home if the homeowner defaults on the first lien or the affordability restriction; enforcing the long-term affordability requirements (such as calculating the maximum resale price according to the resale formula); and executing legal documents with subsequent homebuyers.

Accordingly, FHFA issued a temporary prospective waiver of the private transfer fee restrictions in § 1228.2 of the PTFC Regulation for Enterprise purchases or securitizations of shared equity loans on properties with PTFCs that meet the Duty to Serve shared equity loan program criteria for Resale Restriction Programs in the Duty to Serve Regulation other than the Duty to Serve 100 percent of AMI limit,²⁷ through the remaining term of the Enterprises' 2022–2024 Duty to Serve Plans, *i.e.*, through December 31, 2024. The waiver did not include an income limit, based on input from the Enterprises and other practitioners familiar with shared equity programs who indicated that these programs typically set income limits up to 140 percent of AMI (which is above the Duty to Serve 100 percent of AMI limit), especially in communities where housing costs are high relative to incomes. Limiting eligibility for the waiver to loans that meet the Duty to Serve 100 percent of AMI limit would require lenders and shared equity program administrators to use a differentiated approach with borrowers above and below this income threshold. Further, it would require lenders to review each loan to ensure eligibility for purchase by the Enterprises and the Banks. This would undermine the objective of standardizing the shared equity homeownership market and increasing the number of Enterprise shared equity loan purchases under the Duty to Serve program.

The waiver also included a retrospective component that waived the restrictions in the PTFC Regulation for shared equity loans on properties with private transfer fees purchased or securitized by the Enterprises with note dates prior to July 1, 2023, regardless of whether the loans met the Duty to Serve shared equity loan program criteria for Resale Restriction Program loans.

Finally, the waiver provided notice of FHFA's intention to promptly engage in notice-and-comment rulemaking to propose amending the PTFC Regulation to codify the waiver provisions. This proposed rule implements that intent. Specifically, the proposed rule would amend the definition of "excepted transfer fee covenant" in § 1228.1 of the PTFC Regulation to add as an exception a PTFC that encumbers a property for which a shared equity loan meets the requirements of a Duty to Serve Resale Restriction Program (§ 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter) other than the 100 percent of AMI limit.

²⁷ 12 CFR 1282.34(d)(4)(i)(A), (d)(4)(ii).

²⁴ 12 CFR 1282.34(d)(4)(ii).

²⁵ 80 FR 79181, 79203 (Dec. 18, 2015).

²⁶ See 12 CFR 1228.1.

VI. Interaction Between the PTFC Regulation and the Banks' Activities; Proposed § 1228.1

The current PTFC Regulation also prohibits the Banks from purchasing, investing in, or otherwise dealing in mortgages on properties encumbered by PTFCs, and related securities, and prohibits the Banks from accepting such mortgages or securities as collateral for advances, subject to the exceptions in the regulation.²⁸ The Banks have indicated that, to their knowledge, they have not purchased, or accepted as collateral, shared equity loans. The same considerations discussed above for the Enterprises (regarding differences in the uses of fees payable at resale to administrators of Resale Restriction Programs and the fees that FHFA was concerned about when the PTFC Regulation was adopted) also apply to the Banks. However, because the waiver for the Enterprises derived from their activities under the Duty to Serve regulation (which does not apply to the Banks), the waiver did not address activities of the Banks with respect to shared equity loans. Because the Banks might decide in the future to purchase, invest in, or otherwise deal in shared equity loans or related securities under Resale Restriction Programs, or accept them as collateral, to facilitate increased liquidity for affordable homeownership, FHFA believes the exception provided in the proposed rule for the Enterprises should also apply for the Banks.

Accordingly, the definition of "excepted transfer fee covenant" in § 1228.1 of the PTFC Regulation would continue to apply to both the Enterprises and the Banks, as amended by the proposed rule to add as an exception a PTFC that encumbers a property for which a shared equity loan meets the requirements of a Duty to Serve Resale Restriction Program (§ 1282.34(d)(4)(i)(A) and (d)(4)(ii) of that chapter) other than the 100 percent of AMI limit.

VII. Limitation on Applicability; Proposed § 1228.3

The proposed rule would remove the prospective application and effective date in current § 1228.3 of the PTFC Regulation. Current § 1228.3 includes a grandfather provision for mortgages on certain properties encumbered by PTFCs if those PTFCs were created pursuant to an agreement entered into before the effective date of the PTFC regulation. The regulated entities have been operating under the terms of the current regulation since July 16, 2012,

and the Enterprises subsequently have been operating under the terms of the regulatory waiver since July 1, 2023. If this proposed PTFC rule is adopted as a final rule, the prospective application date (*i.e.*, the effective date) of the final rule would be 60 days after the date of its publication in the **Federal Register**. This date will precede December 31, 2024, which is the conclusion of the 2022–2024 Duty to Serve Plan cycle and the date on which the temporary prospective component of the waiver will expire.

Proposed § 1228.3 would include the retrospective component of the waiver by allowing the Enterprises to retain in their portfolios any of the 595 shared equity loans on properties with private transfer fees that were purchased or securitized by the Enterprises with note dates prior to the effective date of the waiver (July 1, 2023), regardless of whether the loans met the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter.

VIII. Requests for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

1. Should the proposed rule apply to the Banks in addition to the Enterprises? Do differences between the Banks and the Enterprises warrant additional or other revisions to the proposed rule as it relates to the Banks?

2. Should all of the Duty to Serve Resale Restriction Program criteria, including the 100 percent of AMI limit, apply to the determination of whether a mortgage loan that is subject to PTFCs, or a related security, is eligible for purchase, investment, otherwise dealing in, or acceptance as collateral by the Banks and Enterprises? If not, which of those specific criteria should apply?

3. Should criteria other than the Duty to Serve Resale Restriction Program criteria, such as an income limit different from 100 percent of AMI, apply to the determination of eligibility?

4. Should criteria in addition to the Duty to Serve Resale Restriction Program criteria apply to the determination of eligibility?

IX. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement. Thus, it would not require approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act and FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

XI. Consideration of Differences Between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Safety and Soundness Act requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members and housing associates; affordable housing and community development mission; capital structure; and joint and several liability. In preparing this proposed rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the proposed rule is appropriate as it would have no impact on four of the five factors and could have a modest, positive impact on the fifth factor—the mission of providing liquidity to members and housing associates. FHFA requests comments regarding whether differences related to those factors should result in any additional or other revisions to the proposed rule.

List of Subjects in 12 CFR Part 1228

Banks, Banking, Condominiums, Cooperatives, Federal Home Loan Banks, Government-sponsored enterprises, Investments, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Real property acquisition, Securities.

For the reasons stated in the Preamble, and under the authority of 12 U.S.C. 4526, FHFA proposes to amend

²⁸ 12 CFR 1228.2.

part 1228 of chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1228—RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN, MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES

■ 1. The authority citation for part 1228 is revised to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4526, 4565, 4616, 4617, 4631.

■ 2. Amend § 1228.1 by revising the definition of “Excepted transfer fee covenant” to read as follows:

§ 1228.1 Definitions.

* * * * *

Excepted transfer fee covenant means a private transfer fee covenant that:

(1) Requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants; or

(2) Requires payment of a private transfer fee under a program meeting the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter other than the Duty to Serve 100 percent of area median income limit.

* * * * *

■ 3. Revise § 1228.3 to read as follows:

§ 1228.3 Limitation on applicability.

This part is not applicable to shared equity loans, or related securities, that were purchased or securitized by the Enterprises with note dates prior to July 1, 2023, regardless of whether the loans met the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2023–20818 Filed 9–25–23; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1887; Project Identifier MCAI–2023–00543–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–24–12, which applies to certain Airbus SAS Model A350–941 airplanes. AD 2020–24–12 requires replacing certain center wing box (CWB) fasteners with fasteners having improved friction efficiency. Since the FAA issued AD 2020–24–12, additional work was introduced to ensure the correct application of the fuel vapor barrier structure paint on the outside of the CWB. This proposed AD would continue to require the actions in AD 2020–24–12 and would require the additional work, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 13, 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–2023–1887; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–1887.

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

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7317; email *dat.v.le@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–2023–1887; Project Identifier MCAI–2023–00543–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 Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228-7317; email dat.v.le@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020-24-12, Amendment 39-21342 (85 FR 76949, December 1, 2020) (AD 2020-24-12), for certain Airbus SAS Model A350-941 airplanes. AD 2020-24-12 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020-0123, dated May 29, 2020 (EASA AD 2020-0123), to correct an unsafe condition.

AD 2020-24-12 requires replacing certain CWB fasteners with fasteners having improved friction efficiency. The FAA issued AD 2020-24-12 to address CWB fastener rotation. This condition, if not corrected, could lead to cracking of the fastener head sealant cover, followed by fuel vapor leakage inside the cabin, possibly resulting in injury to airplane occupants.

Actions Since AD 2020-24-12 Was Issued

Since the FAA issued AD 2020-24-12, EASA superseded AD 2020-0123 and issued EASA AD 2023-0068, dated March 30, 2023 (EASA AD 2023-0068) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350-941 airplanes. The MCAI states that during flight and fatigue testing it was discovered that some fasteners can rotate inside their CWB fastener holes. Further investigation identified insufficient friction for the application. After EASA issued AD 2020-0123, it was determined that additional work is

necessary to ensure the correct application of the fuel vapor barrier structure paint on the outside of the CWB. CWB fastener rotation, if not corrected, can lead to a crack of the fastener head sealant cover, followed by fuel vapor leakage inside the cabin, possibly resulting in injury to airplane occupants.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2023-1887.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020-24-12, this proposed AD would retain all of the requirements of AD 2020-24-12. Those requirements are referenced in EASA AD 2023-0068, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023-0068 specifies procedures for replacing the affected CWB fasteners with fasteners having improved friction efficiency, and for doing additional work on previously modified airplanes to ensure the correct application of the fuel vapor barrier structure paint from outside the CWB. 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.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2020-24-12. This proposed AD would also require accomplishing the applicable actions specified in EASA AD 2023-0068 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023-0068 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023-0068 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023-0068 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 2023-0068. Service information required by EASA AD 2023-0068 for compliance will be available at regulations.gov under Docket No. FAA-2023-1887 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020-24-12	307 work-hours × \$85 per hour = \$26,095	\$5,900	\$31,995	\$415,935
New proposed actions	174 work-hours × \$85 per hour = \$14,790	900	15,690	203,970

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:

■ a. Removing Airworthiness Directive (AD) 2020–24–12, Amendment 39–21342 (85 FR 76949, December 1, 2020); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1887; Project Identifier MCAI–2023–00543–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 13, 2023.

(b) Affected ADs

This AD replaces AD 2020–24–12, Amendment 39–21342 (85 FR 76949, December 1, 2020) (AD 2020–24–12).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0068, dated March 30, 2023 (EASA AD 2023–0068).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports that certain central wing box (CWB) fasteners had rotated inside the fastener holes due to insufficient friction for the application, and by the determination that additional work is necessary to ensure the correct application of the fuel vapor barrier structure paint on the outside of the CWB. The FAA is issuing this AD to address CWB fastener rotation. The unsafe condition, if not corrected, could lead to cracking of the fastener head sealant cover, followed by fuel vapor leakage inside the cabin, possibly resulting in injury to airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0068.

(h) Exceptions to EASA AD 2023–0068

This AD does not adopt the “Remarks” section of EASA AD 2023–0068.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved

by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7317; email dat.v.le@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0068, dated March 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0068, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on September 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023–20508 Filed 9–25–23; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2023–2006; Airspace Docket No. 23–AAL–18

RIN 2120–AA66

Amendment of Alaskan Very High Frequency Omnidirectional Range Federal Airway V–508 in the Vicinity of Aniak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Alaskan Very High Frequency Omnidirectional Range Federal Airway (VOR) V–508 in the vicinity of Aniak, AK. The FAA is taking this action due to the pending decommissioning of the Aniak, AK, Nondirectional Radio Beacon (NDB).

DATES: Comments must be received on or before November 13, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2006 and Airspace Docket No. 23–AAL–18 using any of the following methods:

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

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

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

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

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

FAA Order JO 7400.11H, 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 airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of an ongoing, large, and comprehensive T-route modernization project in the state of Alaska. The

project mission statement states: “To modernize Alaska’s Air Traffic Service route structure using satellite-based navigation development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground-based airway navigation.”

As part of this initiative, the Aniak NDB is scheduled to be decommissioned. As a result, a portion of Alaskan V-508 will become unusable. This airspace action proposes to amend the Alaskan V-508 by revoking the portion of the airway that relies on the Aniak NDB. The FAA published a final rule for Docket No. FAA-2022-0245 in the **Federal Register** (88 FR 50018; August 1, 2023) effective October 5, 2023, establishing Area Navigation (RNAV) T-route, T-380. This RNAV route was established, in part, to provide alternative to VOR Federal Airway V-508. The portion of Alaskan V-508 that is proposed to be revoked is paralleled by T-380.

The Proposal

The FAA proposes to amend 14 CFR part 71 by amending Alaskan VOR Federal airway V-508. The proposed airspace actions are described below.

V-508: The Alaskan Federal Airway V-508 extends between the Middleton Island, AK, VOR/DME, Kenai, AK, VOR/DME, Sparrevohn, AK, VOR/DME and the Aniak, AK, NDB. The FAA proposes to revoke the portion of the Alaskan Federal Airway V-508 that extends between the Sparrevohn, AK, VOR/DME and the Aniak, AK, NDB. As amended, Alaskan Federal Airway V-508 would extend between the Middleton Island, AK, VOR/DME; Kenai, AK, VOR/DME; to Sparrevohn, AK, VOR/DME.

Regulatory Notices and Analyses

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

under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(b); Alaskan VOR Federal Airways.

* * * * *

V-508 [Amended]

From Middleton Island, AK; Kenai, AK; to Sparrevohn, AK.

* * * * *

Issued in Washington, DC, on September 20, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023-20732 Filed 9-25-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 404, 415, 417, 431, 435, 437, 450, and 453

[Docket No.: FAA-2023-1858; Notice No. 23-13]

RIN 2120-AK81

Mitigation Methods for Launch Vehicle Upper Stages on the Creation of Orbital Debris

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: To limit the growth of orbital debris, the FAA proposes to require that upper stages of commercial launch vehicles and other components resulting from launch or reentry be removed from orbit within 25 years after launch, either through atmospheric disposal or maneuver to an acceptable disposal orbit. Any artificial object left in orbit around the Earth which no longer serves a useful purpose can become a debris hazard in space. Orbital debris is all such human-generated debris in Earth orbit that is greater than 5 millimeters (mm) in any dimension. Collisions between and with orbital debris are a growing concern because prior to the establishment of the Inter-Agency Space Debris Coordination Committee (IADC) practices allowed these objects to accumulate in Earth orbit. Additionally, an increasing number of launch operators are launching assets into space at greater rates. If left unchecked, this accumulation can clutter useful orbits and present a hazard to operations on-orbit. This proposed rule would reduce the amount of additional debris created, as well as limit potential collisions with functional spacecraft and other debris already on-orbit.

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

ADDRESSES: Send comments identified by docket number FAA-2023-1858 using any of the following methods:

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

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

- *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Privacy: In accordance with 5 U.S.C. 533(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be viewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267-4712; brenda.robeson@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended at 51 U.S.C.—Commercial Space Transportation, ch. 509, Commercial Space Launch Activities, 51 U.S.C. 50901–50923 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by United States (U.S.) citizens or within the United States. Section 50905 directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Pursuant to § 50903, the FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector.

List of Definitions and Acronyms Frequently Used In This Document

Disposal (storage) orbit—an orbit intended for post-mission long-term storage where atmospheric effects and

solar radiation will not move the disposed object into a protected orbit for at least 100 years.

ISS—International Space Station.

NASA—National Aeronautics and Space Administration.

Spacecraft—vehicles, payloads, and other manmade objects that are designed to for placement or operation in outer space. For example, spacecraft include satellites, inhabitable space stations, inhabitable capsules, and cargo vehicles.

Transfer orbit—a temporary orbit on which an object travels to move from one orbit to another.

Upper stage—a segment of a launch vehicle that reaches orbit.

I. Overview of Proposed Rule

This proposed rule would require an operator licensed or permitted under this chapter to perform a launch or reentry with a planned altitude greater than 150 kilometers (km) to limit or dispose of debris at the end of a launch or reentry to maintain a sustainable space environment. The FAA proposes to require that operators licensed or permitted under parts 415, 417, 431, 435, 437, or 450, to perform a launch or reentry with a planned altitude greater than 150 km submit an Orbital Debris Assessment Plan (ODAP)—including physical evidence, test results, and analyses to demonstrate removal activities—prior to each operation. This notice proposes that if debris—including spent upper stages and other components—is released during launch or reentry, during on-orbit aspects of launch or reentry, or during disposal operations, any pieces greater than 5 mm in size must be removed from highly-used regions within 25 years. The FAA proposes to allow operators to meet this criterion by performing one of five disposal options. Operators may choose to dispose of the debris within 30 days of mission completion through (1) controlled disposal; (2) maneuver to a disposal orbit; or (3) Earth-escape orbit. Alternatively, an operator could elect to (4) retrieve the debris within 5 years of mission completion; or (5) perform atmospheric uncontrolled disposal or natural decay within 25 years, if the debris disposal meets the risk criteria.

The FAA notes that many launches, as they are currently conducted, would already be in compliance with the operational requirements of the proposed regulation. The FAA also proposes to amend the reporting requirements governing debris creation. The FAA would require the reporting of a non-nominal launch or a debris-creating anomaly to the FAA.

II. Background

A. Statement of the Problem

Orbital debris is made up of fragmented material (resulting from anti-satellite tests, upper stage explosions, accidental collisions, etc.), nonfunctional spacecraft, rocket bodies, and mission-related items (explosive bolts, vehicle shrouds, etc.),¹ but excludes naturally-occurring debris such as meteoroids. As more and more spacefaring nations launch objects into Earth orbit, space is becoming increasingly crowded with orbital debris.² If left unchecked, orbital debris can diminish the usefulness of certain orbits and present a hazard to operations on-orbit. Current international modeling indicates that even if there were no further space launches, collisions between objects already in space will eventually become the major source of debris.³ This threat could soon escalate dramatically with the deployment of large constellations of small satellites in the already-congested Low Earth Orbit (LEO) region.

As of 2021, the number of orbital objects sized 10 centimeters (cm) or greater is estimated to be over 23,000. Recent debris projections estimate a total of half a million objects sized between 1 and 10 cm on orbit, and over 100 million objects larger than 1 mm.⁴

Each Earth orbit has a specific usefulness and needs to be protected from accumulated orbital debris. LEO is commonly used for Earth observation, communications, and scientific experiments. LEO is also the region where most human spaceflight activities take place. Medium Earth Orbit (MEO) contains space navigation satellites and some communications missions covering the North and South poles. Space objects in Geostationary Earth Orbit (GEO) typically support communications and weather missions. A transfer orbit is a temporary orbit that a launch vehicle uses to move from one orbit into another. A common transfer orbit is the GEO transfer orbit used to place spacecraft into GEO. The upper stage often remains in the GEO transfer orbit with an apogee near the GEO

¹ Belk, C.A., J.H. Robinson, M.B. Alexander, W.J. Cooke, and S.D. Pavelitz. (1997). Meteoroids and Orbital Debris: Effects on Spacecraft. *NASA Reference Publication 1408, Marshall Space Flight Center, AL*.

² Inter-Agency Space Debris Coordination Committee. (April 2013). *Space Debris IADC Assessment Report for 2010*.

³ Inter-Agency Space Debris Coordination Committee. (January 2013). *Stability of the Future LEO Environment*.

⁴ The NASA Orbital Debris Program Office. (Retrieved April 28, 2020). *Frequently Asked Questions. orbitaldebris.jsc.nasa.gov/faq/#*

region and the perigee in LEO. Spacecraft typically occupy LEO, MEO, or GEO, but can operate in other less congested orbits. The areas outside LEO,

MEO, and GEO have been known as acceptable disposal orbits for upper stages and discarded satellites because they are not frequently used by active

satellites. Figure 1 illustrates the various levels of Earth orbit including disposal orbit regions.

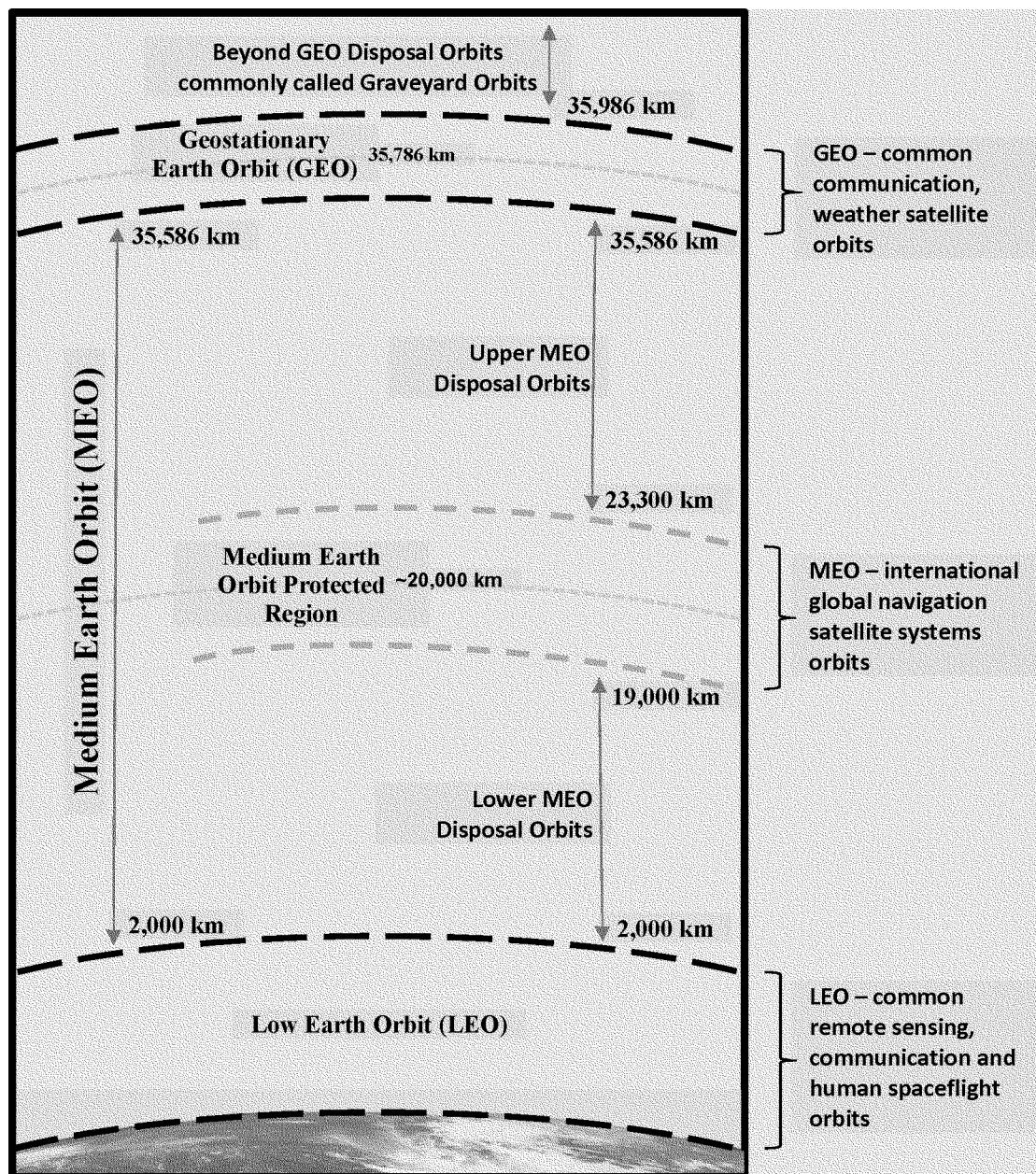


Figure 1: Operating and Disposal Orbits

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Debris in space travels at hypervelocities. On average, collisions in LEO occur at a closure rate, or combined velocity at impact, over 10 km per second.⁵ This is more than 11 times faster than a bullet. At those

speeds, an impact to a typical operational spacecraft by debris 5 mm and larger will most likely cause damage to critical systems that ends the mission of the spacecraft.⁶ As seen in Figure 2, the main threat to operational spacecraft (abbreviated to "S/C" in

Figure 2) in LEO is the debris in the range of 5 mm to 1 cm, primarily due to the sheer number of objects in this range. However, large objects greater than 1 meter, including discarded upper stages, are the main driver for debris growth.

⁵ Portree, D.S.F. and Loftus, J.P. (January 1999.) Orbital Debris: A Chronology. NASA/TP-1999-208856.

⁶ Squire, M., et al. (2015). Joint Polar Satellite System (JPSS) Micrometeoroid and Orbital Debris (MMOD) Assessment, NASA/TM-2015-218780.

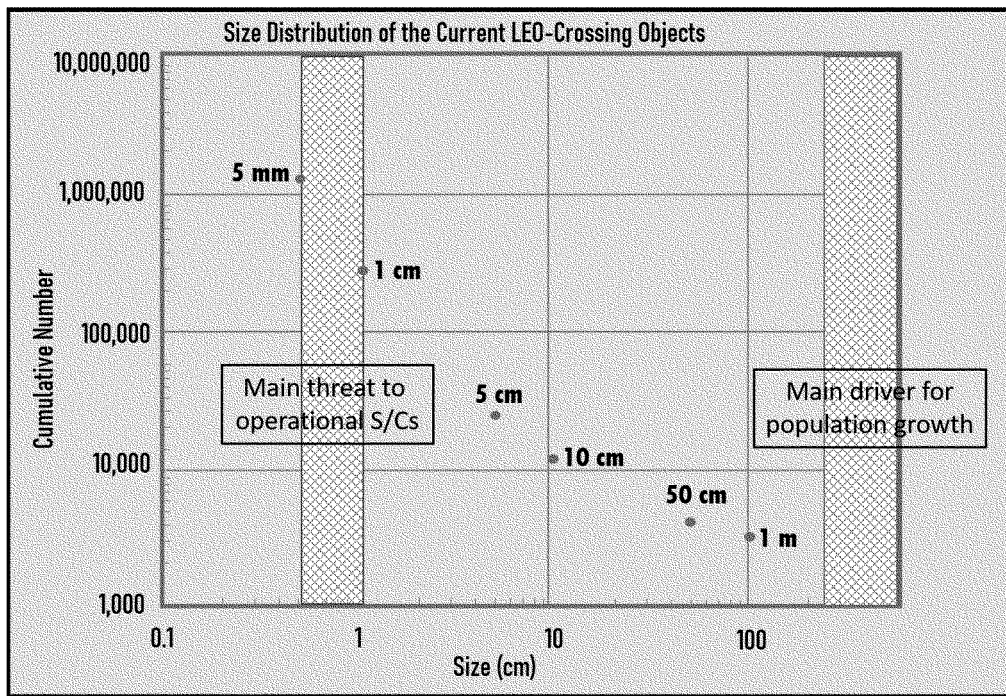


Figure 2: Notional cumulative size distribution of LEO-crossing objects⁷

In addition to causing catastrophic breakups, orbital debris impacts on functioning satellites or spacecraft can also degrade performance, pit or crack windows, mar surfaces of solar panels, damage optics, and degrade surface coatings.^{8,9} In 1984, a piece of orbital debris damaged the windshield of the Space Shuttle Challenger. A 4 mm diameter crater was made by a fleck of white paint approximately 0.2 mm in diameter, traveling 3–6 km/sec.¹⁰

As of 2021, approximately 95 percent of the total mass of human-generated objects in orbit is rocket bodies (*i.e.* upper stages)¹¹ and spacecraft. The remainder is mission-related debris and fragmentation debris.¹² The more mass an object has, the more debris it will create in the event of an explosion or collision.

The U.S. Government, for launches it conducts, has taken steps to mitigate

orbital debris generation. Similarly, other countries are taking steps to mitigate debris generation during operations they oversee. This proposed rule would align U.S. commercial orbital debris mitigation practices for U.S. commercial launch operations with orbital debris mitigation practices accepted by the U.S. Government and certain other countries. For example, the European Space Agency (ESA) is implementing a Zero Debris Approach to stop the growth of orbital debris from their operations by 2030. ESA's policy acknowledges that if the status quo of orbital debris generation continues, future on-orbit operations will be hindered unless actions like remediation (active debris removal) are enacted.¹³

If no mitigation measures are implemented, the projected growth of orbital debris is expected to rapidly

increase, as Figure 3 shows. The growth rate, as estimated in 2011, assumed a steady launch rate based on annual launch rates and did not address the increase in satellite constellations. SpaceX alone has launched over 1,500 satellites in its Starlink constellation as of August 2021. Several more companies have launched their own small satellite constellations. These small satellites are expected to have relatively short lifetimes, on the order of 5 years. Even though many operators are following current best practices, those practices allow multiple generations of spent satellites to co-exist on-orbit. The graph in Figure 3 is based on trackable debris. Current technology tracks objects 10 cm and larger, though debris between 5 cm and 10 cm pose risks. The shaded areas around the solid lines are the 1-sigma uncertainty from 100 Monte Carlo runs of the growth model.

⁷ Liou, J. C. (2011). Engineering and Technology Challenges for Active Debris Removal. Figure 4, page 8. Presented at the 4th European Conference for Aerospace Sciences. *Ibid.*

⁸ Williamson, M. (2006). Space: The Fragile Frontier, American Institute of Aeronautics and Astronautics, Inc.

⁹ The NASA Orbital Debris Program Office. (April 2009). Satellite Collision Leaves Significant Debris Clouds. NASA JSC Orbital Debris Quarterly News, 13(2), page 1–2.

¹⁰ Center for Orbital and Reentry Debris Studies, Aerospace Corporation. (December 2004). *Space Debris Basics: What Are the Risks?*

¹¹ Only some of the upper stages on-orbit result from U.S. commercially licensed launches.

¹² The NASA Orbital Debris Program Office. (May 2019). Monthly Mass of Objects in Earth Orbit by Object Type. *NASA JSC Orbital Debris Quarterly News*, 23(1 & 2), page 13.

¹³ European Space Agency. (Accessed on April 4, 2023). Short Introduction to ESA's Zero Debris Approach, blogs.esa.int/cleanspace/2023/01/12/short-introduction-to-esas-zero-debris-approach/#:~:text=The%20ESA%20Zero%20Debris%20Approach%20is%20the%20Agency%20E2%80%99s,the%20catastrophic%20degradation%20of%20the%20Low-Earth%20Orbit%20environment.

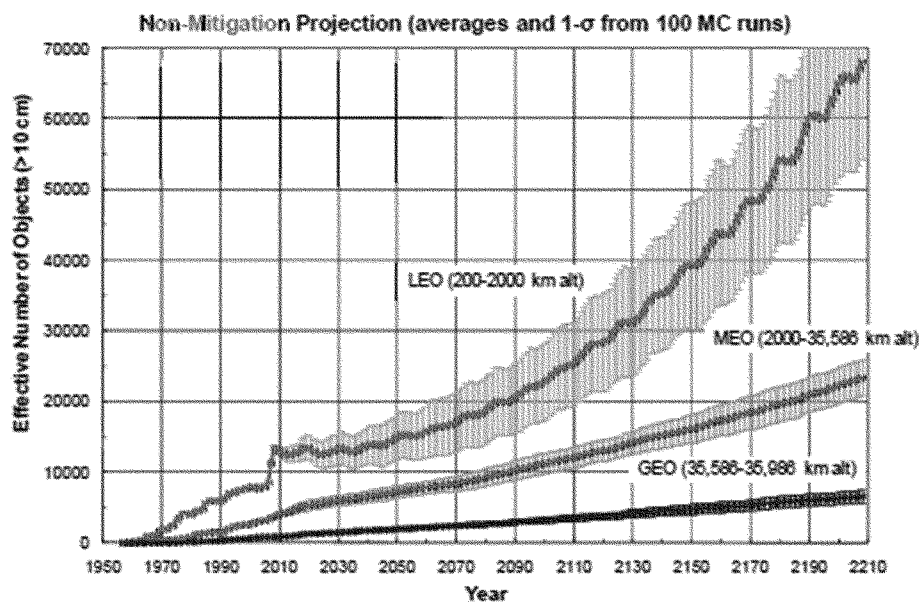


Figure 3: Projected growth of the trackable ≥ 10 cm debris population in LEO, MEO, and GEO for the next 200 years.¹⁴

A launch vehicle is made up of a first stage and usually one or more upper stages. When a vehicle is launched into space, the first stage typically propels the vehicle through the bulk of the atmosphere, but does not reach orbit. The first stage falls back to Earth shortly after launch. The upper stage then ignites to put the payload into LEO or a transfer orbit. Typically, the upper stage deploys the payload in LEO, if that is the final payload destination; otherwise, it usually deploys the payload in the transfer orbit for payload destinations higher than LEO.

Historically, the largest contributor to orbital debris was the explosion of upper stages.¹⁵ Defunct upper stages with charged batteries or partially fueled tanks would often experience

catastrophic failures attributed to stored energy. Current regulations adequately address this issue by requiring launch operators to ensure that stored energy is removed from all launch vehicle stages or components.¹⁶ However, now the greatest risk regarding the growth of orbital debris population is collision between objects including upper stages on orbit. The strength of upper stage structures, along with their mass and size, pose a risk of catastrophic collisions that would create substantial amounts of orbital debris. The threat of fracturing such a large object can be mitigated by removing it from populated orbits. With this proposed rule, the FAA intends to ensure upper stages are properly disposed of at the end of

launch to limit the growing orbital debris population.

The impact of even one collision has a significant effect on the growth of orbital debris. Figure 4, generated by the NASA Orbital Debris Program Office,¹⁷ shows the predicted growth rate of orbital debris in LEO, as estimated in 2022. This growth rate is based on the population of objects greater than or equal to 10 cm, which is primarily fragmented material. This figure portrays the growth of the orbital debris environment. The figure highlights collisions and intentional destruction of spacecraft as the largest contributors to the debris environment. The figure also highlights the recent and rapid growth of operational spacecraft as large constellations continue to proliferate.

¹⁴ Liou, J.-C. (2011). Engineering and Technology Challenges for Active Debris Removal. Presented at the 4th European Conference for Aerospace Sciences.

¹⁵ Anz-Meader, P.D., Johnson, N., Cizek, E., and Portman, S. (July 31, 2001). *History of On-Orbit*

Satellite Fragmentation, 12th ed. NASA Lyndon B. Johnson Space Center Orbital Debris Program Office, Houston, TX, JSC29517.

¹⁶ 14 CFR 417.129(b) and (c) and § 450.171.(a)(2)–(3).

¹⁷ Liou, J.-C. (8 Feb 2022). U.S. Space Debris Environment and Activity Updates. 59th Session of the Scientific and Technical Subcommittee, Committee on the Peaceful Uses of Outer Space, United Nations.

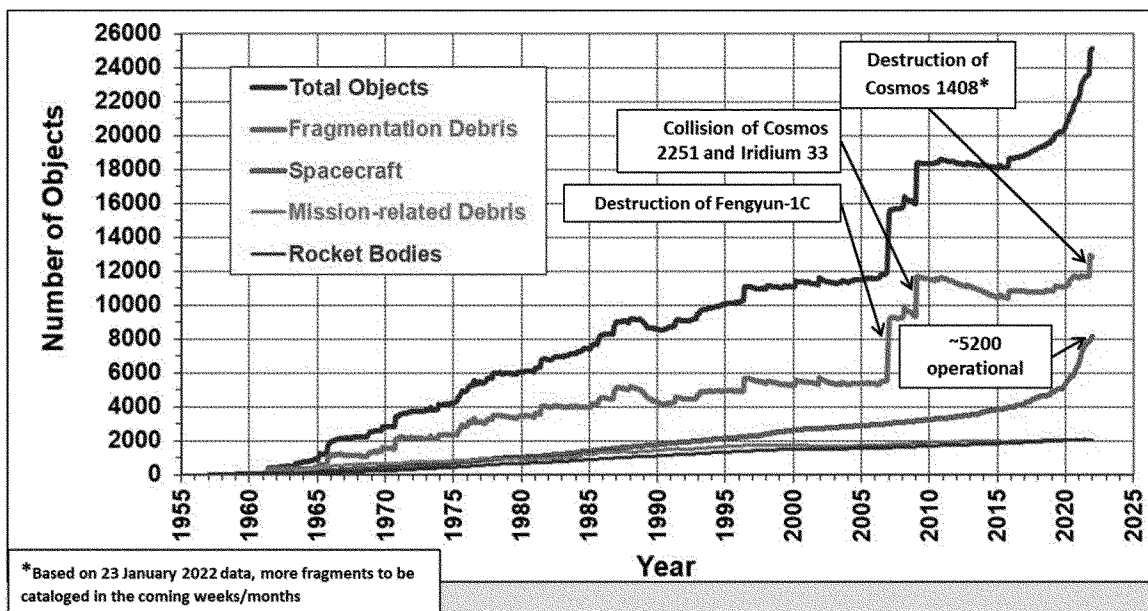


Figure 4: Predicted Growth of the LEO Debris Population.

The Iridium 33/Cosmos 2251 collision and the Chinese Fengyun-1C anti-satellite test have been the worst debris creating events ever recorded. These two events contributed approximately 5,900 catalogued objects to the environment. Launch vehicle upper stages are significantly more massive than any of the objects involved in these events and a catastrophic collision involving an upper stage would produce many more times the debris created in these events.

Debris imposes a cost on active satellites. Maneuvering an active spacecraft to avoid collision with space debris will mitigate the immediate threat of collision, but doing so uses up valuable resources. It takes time and effort to plan a maneuver; and, in some cases, the fuel expended on the maneuver will lead to a shortened mission life for the spacecraft. Most importantly, only active spacecraft are capable of maneuvering, whereas upper stages have no maneuverability after the end-of-launch. Removing upper stages from congested orbits would lessen the likelihood of debris-on-debris collisions and would reduce the probability of

active satellites maneuvering to avoid a collision.

The first accidental hypervelocity collision between two intact spacecraft occurred in February 2009. The operational U.S. Iridium 33 communications satellite and the defunct Russian Cosmos 2251 communications satellite collided at a speed of 11.7 km/sec (26,172.2 mph), above northern Siberia.¹⁸ The collision destroyed both satellites and produced more than 2,300 pieces of trackable debris.

The Chinese anti-satellite test and the Iridium/Cosmos collision were not the only orbital debris events to occur. In July 1996, a collision occurred between a French Cerise satellite and a briefcase-sized piece of debris left in orbit from an exploded Ariane third stage. The impact tore off a 4.2 m section of the Cerise's gravity-gradient stabilization boom.¹⁹

An example of orbital debris colliding with other orbital debris occurred on January 17, 2005, when a 31-year-old U.S. rocket body and a Thor-Burner 2A collided with a fragment from an exploded third stage of a Chinese CZ-4 launch vehicle. The collision occurred

at an altitude of 885 km above the South Polar Region.²⁰

If the amount of debris is not curtailed, the risk of future collisions between spacecraft and orbital debris will increase at a greater rate which will create more debris and degrade the usefulness of popular orbits. Fragments generated from one breakup can be large enough to catastrophically break up another target mass of the same size, continuing the cycle to create more debris. This cycle is referred to as the "Kessler Syndrome."²¹

Figure 5 shows the projected accidental collision activity in LEO as determined using 100 Monte Carlo runs in NASA's LEGEND model from 2010. An average of 8 to 9 collisions were expected to occur over the next 40 years (approximately 1 collision every 5 years).²² The uppermost line shows the increasing number of collisions based on a non-mitigation scenario. The middle line shows the effects if 90 percent of all launchers worldwide²³ followed the proposed orbital debris mitigation standards. However, this model did not account for the large constellations that have now started to populate LEO.

¹⁸ The NASA Orbital Debris Program Office. (April 2009). Satellite Collision Leaves Significant Debris Clouds. *NASA JSC Orbital Debris Quarterly News*, 13(2), page 1-2.

¹⁹ C.A. Belk, J.H. Robinson, M.B. Alexander, W.J. Cooke, and S.D. Pavelitz. (August 1997). Meteoroids and Orbital Debris: Effects on Spacecraft. *NASA Reference Publication 1408, Marshall Space Flight Center, AL*.

²⁰ Williamsen, J., Blacklock, K., Evans, H.J., and Guay, T.D. (1999). Quantifying and Reducing

International Space Station Vulnerability Following Orbital Debris Penetration. *Journal of Spacecraft*, 36(1), page 1333-141.

²¹ Kessler, D.J., Johnson, N., Liou, J.-C., and Matney, M., "The Kessler Syndrome: Implications to Future Space Operations", Presented at the 33rd Annual AAS Guidance and Control Conference, Paper AAS 10-016, Breckenridge, CO, February 6-10, 2010, Published in Vol. 137 of the *Advances in the Astronautical Sciences Series*.

²² *NASA JSC Orbital Debris Quarterly News* 14(1), page 7-8.

²³ In 2021, there were 135 successful worldwide orbital launches of which 39 were FAA licensed.

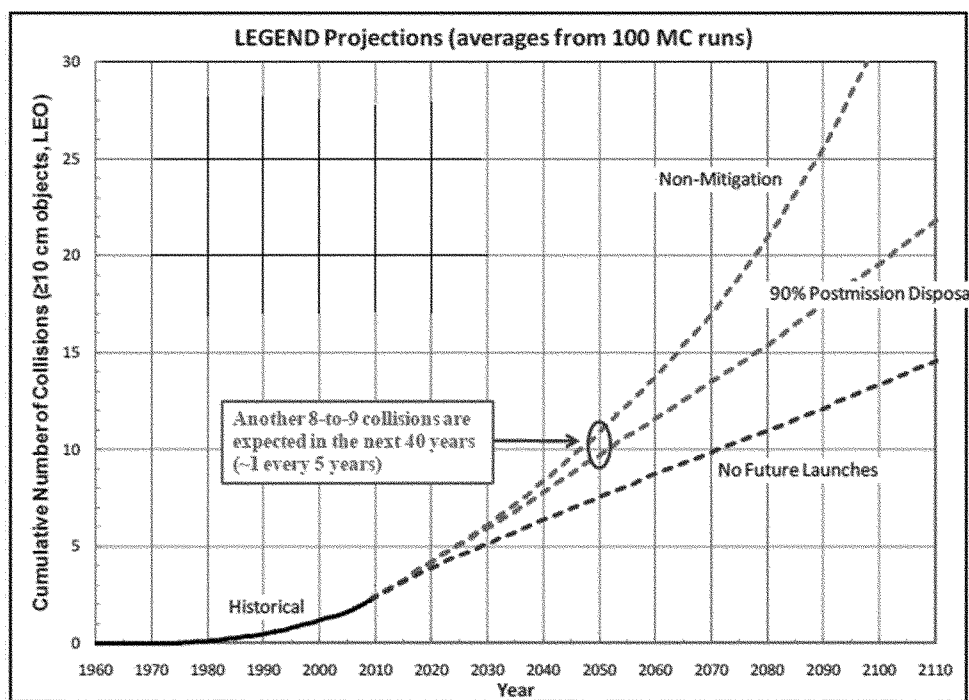


Figure 5: Predicted Accidental Collision Activities in LEO.²⁴

Figure 6 shows the updated collision expectation taking into account large constellations. With an addition of 8,300 spacecraft in constellations, the number of on-orbit collisions are expected to range from 1 every 2.2 years, up to more than 1 collision per year. The variance depends on the post-mission disposal (PMD) rate of the spacecraft in constellations, which is

the probability that the spacecraft will be removed from LEO after its mission is complete. This study assumed that the constellations were refreshed with new satellites every 20 years, so the large constellations were renewed and remained on orbit, just swapping out individual satellites. After 200 years, for a PMD rate of 90 percent, a total of 260 catastrophic collisions are estimated to

have occurred in LEO. With the accumulation of large constellations in LEO, it is imperative that large mass upper stages are removed from orbit so as to prevent collisions between upper stages and constellation spacecraft that could create large amounts of debris in already crowded orbital regions.

²⁴ NASA JSC Orbital Debris Quarterly News 14(1), page 7–8.

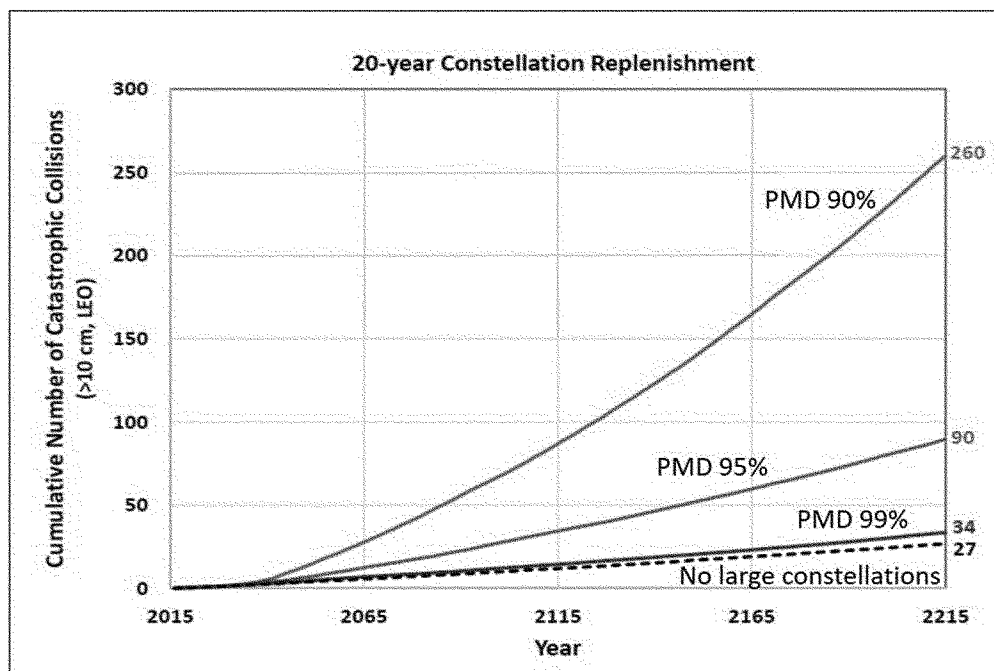


Figure 6: Cumulative Number of Catastrophic Collisions in LEO.²⁵

Orbital debris also poses a high risk to safety for the International Space Station (ISS). The ISS is a high-value asset occupied by a constant human presence; therefore, it requires more protection than that provided by its protective shielding. Through shielding, the U.S. modules of the ISS are protected against impacts from debris ranging from 1 mm to 1 cm in size. During the first 8 years of ISS operations between 1999 and 2007, 6 successful maneuvers were conducted to avoid debris. However, since the Chinese anti-satellite test and the Iridium/Cosmos collision, the ISS has on average made an evasive maneuver twice a year due to debris from those events. Each maneuver costs millions of dollars in fuel usage and to perform the risk calculations to determine whether to move the station or shelter the crew.²⁶ Collision events and their risk to the ISS, and other on-orbit human activity, highlight the need to remove upper stages and prevent more debris creation.

Orbital debris mitigation is crucial to stem the increase of accumulation of large objects in orbit. Projections indicate that orbital debris in the LEO environment will increase approximately 75 percent in the next

200 years, even if 90 percent of spacecraft and upper stages reenter the Earth's atmosphere within 25 years of the end of the mission.²⁷ This projection was done before the proliferation of large constellations and the increased launch rate seen in the past few years. Launch and reentry operators' compliance with the U.S. Government Orbital Debris Mitigation Standard Practices (USGODMSP)²⁸ and any action to remove a number of large objects from orbit would help prevent this increase.²⁹ This proposed rule reflects the best practices agreed to in the USGODMSP and is reflective of international consensus for orbital debris mitigation. Currently, research efforts are underway to develop the technology necessary to economically remove the critical debris pieces; however, there are no operational systems and the costs are expected to be high, approximately \$30 million to \$50 million per large object³⁰ (large objects

are objects weighing roughly over 5,000 kilograms). These large objects are primarily rocket body upper stages. A recent paper³¹ introduced at the 2020 International Astronautical Congress identified the 50 most dangerous pieces of orbital debris. The paper identified 39 of the 50 objects as upper stages capable of producing large amounts of space debris were they to collide.

With this proposal, the FAA also seeks to mitigate the risk to the public posed by uncontrolled disposals. Uncontrolled disposals of large upper stages, such as the Chinese Long March stage that reentered on May 9, 2021, and the Falcon 9 upper stage that reentered as an uncontrolled atmospheric disposal over the Pacific Northwest in March 2021, pose a significant risk to people on the ground due to their mass and the uncertainty of where they will land. Such disposals occur frequently, from upper stages, defunct spacecraft, and other debris. Per NASA, "During the past 50 years an average of one cataloged, or tracked, piece of debris fell back to Earth each day."³² Large upper stages carry the most risk to people on the ground; risk that is above the common acceptable risk limit of $1 \times$

Removal of Multiple Priority Targets. Presented at the 40th COSPAR Scientific Assembly.

³¹ McKnight, D., et al. (April 2021). Identifying the 50 statistically-most-concerning derelict objects in LEO. *Acta Astronautica*, 181, page 282–291.

³² Frequently Asked Questions: Orbital Debris, www.nasa.gov/news/debris_faq.html.

²⁵ J.-C. Liou, M. Matney, A. Vavrin, A. Manis, and D. Gates. (September 2018). NASA ODPO's Large Constellation Study. *Orbital Debris Quarterly News*, 22(3), pages 4–7.

²⁶ Discussion with NASA VIPER office, January 2012.

²⁷ NASA JSC *Orbital Debris Quarterly News* 14(1), page 7–8.

²⁸ The USGODMSP apply to all U.S. government space launches.

²⁹ D.J. Kessler, N. Johnson, J.-C. Liou, and M. Matney. (February 6–10, 2010). The Kessler Syndrome: Implications to Future Space Operations; Paper AAS 10–016. *Advances in the Astronautical Sciences Series*, 137. Presented at the 33rd Annual AAS Guidance and Control Conference, Breckenridge, CO.

³⁰ Braun, V., Schulz, E., and Wiedemann, C. (August 2014). *Cost Estimation for the Active Debris*

10^{-4} . This is the same risk limit codified in 14 CFR 450.101 for purposeful reentries, in International Standard (ISO) 24113, and in the USGODMSP, and the risk limit has been in common practice in the launch safety industry for more than 20 years. Although there are currently no documented cases of reentering debris causing casualties, uncontrolled disposal of large upper stages presents a significant safety risk to persons and property on the ground, or aircraft in flight. That risk can be mitigated by the operator performing a controlled disposal into an unpopulated area shortly after the end of launch, and providing advance notice to aircraft and vessels in the area. Uncontrolled disposals would not be permitted under the proposed orbital debris mitigation rule unless the operator can demonstrate that the effective casualty area, in total spread over the entire projected path, for the sum of all surviving debris will be less than 7 square meters or the expected average number of casualties will be less than 1×10^{-4} .

B. History

There have been many national and international efforts to protect against the effects of orbital debris. Early spaceflight operated under the theory that, because space was large, collisions were unlikely. Recent events discussed previously have demonstrated that to continue to operate under this theory is dangerous.

On February 11, 1988, President Reagan issued a Presidential Directive³³ on national space policy which included a requirement to limit the accumulation of orbital debris. This directive was the foundation for a coordinated effort among U.S. agencies and other nations to increase the understanding of the hazards caused by orbital debris and to establish effective techniques to manage the orbital debris environment. The National Security Council produced a Report on Orbital Debris³⁴ in 1989 outlining the problem and recommended more study of the orbital debris situation. An updated Interagency Report on Orbital Debris³⁵

by the new National Science and Technology Council was released in 1995, directing government agencies to develop a coordinated orbital debris work plan, to consult with U.S. industry, and to continue efforts to achieve international consensus on dealing with the orbital debris problem.

In response, NASA and the Department of Defense, coordinating with other space-related Federal agencies, developed a draft set of USGODMSP, derived in large measure from NASA Safety Standard 1740.14.³⁶ These standard practices, applicable to launches by the U.S. Government, were adopted by the U.S. Government in February 2001 and mandated by the National Space Policy of 2006.³⁷ The Department of Defense and its service and defense agencies issued their own detailed orbital debris mitigation requirements to meet the USGODMSP standard.

U.S. regulatory agencies, particularly the FAA, the National Oceanic and Atmospheric Administration (NOAA), and the Federal Communications Commission (FCC), have also addressed orbital debris mitigation by establishing requirements for space activities that they regulate. In a final rule published September 19, 2000,³⁸ the FAA adopted some, but not all, debris mitigation practices that were widely accepted by NASA and the commercial space industry at the time, such as the removal of stored energy sources that could generate debris.³⁹ The only collision mitigation measure the FAA established was to require avoiding any unplanned contact between the launch vehicle and the payload after payload separation.⁴⁰ At that time, the FAA aimed to align with then-current international practice without negatively affecting U.S. launch competition in the international market.

Since then, there has been considerable progress in addressing requirements to reduce orbital debris. Most notably, the FCC adopted a comprehensive set of regulations that apply to U.S. satellites and to satellites that provide communications services to

the United States.⁴¹ The FCC regulations closely reflect the USGODMSP.

The international community is also adopting practices that reduce orbital debris generation. The Inter-Agency Space Debris Coordination Committee (IADC), in which NASA represents the U.S., issued Space Debris Mitigation Guidelines in 2002. The IADC coordinates activities related to orbital debris issues and is comprised of representatives from space agencies around the world. Member States are encouraged to use the consensus-based IADC guidelines. These include implementing a mitigation plan for each launch that details how the operator will limit debris from normal operations, minimize the potential of unplanned breakup, and dispose of spacecraft and stages post-mission.⁴² The USGODMSP, which apply to U.S. Government launches, are consistent with, and in parts surpass, the IADC guidelines. The FAA's current regulations do not meet all the USGODMSP or the IADC guidelines. The FAA currently only requires passivation at the end of launch and prevention of collisions between the payload and upper stage. The current FAA regulations do not otherwise address debris mitigations or post-mission disposal, and do not restrict uncontrolled reentries based on the risk posed to public safety.

In 2010, the National Space Policy specifically encouraged the development and adoption of industry standards for the purpose of minimizing debris and preserving the space environment for the responsible, peaceful, and safe use of all users.⁴³ Subsequent policies have retained similar language.

In 2011, the National Research Council recommended incorporating orbital debris mitigation practices into regulations:

NASA should continue to engage relevant federal agencies as to the desirability and appropriateness of formalizing NASA's Orbital Debris Mitigation Standard Practices, including the "25-year rule,"⁴⁴ and NASA Procedural Requirements for Limiting Orbital Debris as legal rules that could be applicable

³³ The White House. (February 11, 1988). Presidential Directive on National Space Policy, [spp.fas.org/military/docops/national/policy88.htm#:~:text=The%20directive%20states%20that%20the%20national%20security%20space%20sector%20will,Space%20Control](https://www.fas.org/military/docops/national/policy88.htm#:~:text=The%20directive%20states%20that%20the%20national%20security%20space%20sector%20will,Space%20Control)

³⁴ National Security Council. (February 1989). Report on Orbital Debris by Interagency Group (Space), ntrs.nasa.gov/citations/19900003319.

³⁵ The National Science and Technology Council Committee on Transportation Research and Development. (November 1995). Interagency Report

on Orbital Debris, www.hsdl.org/?view&did=722496.

³⁶ NASA. (August 1995). *NSS 1740.14, NASA Safety Standard: Guidelines and Assessments for Limiting Orbital Debris*.

³⁷ The White House. (August 31, 2006). *U.S. National Space Policy*.

³⁸ Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations, 65 FR 182 (September 19, 2000).

³⁹ 64 FR 19586, 19608 ("The FAA has elected to adopt only selected debris mitigation practices that are of almost universal applicability.")

⁴⁰ 14 CFR 417.129(a).

⁴¹ Mitigation of Orbital Debris, 69 FR 54581 (September 9, 2004).

⁴² IADC. (October 2002). *IADC Space Debris Mitigation Guidelines; IADC-02-01*.

⁴³ The White House. (June 28, 2010). *National Space Policy of the United States of America*.

⁴⁴ NASA requires that "[a]ll debris released during the deployment, operation, and disposal phases shall be limited to a maximum orbital lifetime of 25 years from date of release (Requirement 56398)." NASA-STD-8719.14A, 2012-05-25.

to U.S. non-NASA missions and private activities.⁴⁵

In response, NASA engaged with relevant agencies: NOAA, regarding implementing orbital debris mitigation standard practices as part of NOAA's commercial remote sensing licensing program; FCC, regarding licensing of communications spacecraft; and the FAA, regarding launch vehicles.

In 2019, in response to the National Space Council's Space Policy Directive 3,⁴⁶ the U.S. Government released an updated version of the USGODMSP⁴⁷ to address the effects of large constellations and small satellites. The updates consist of a quantitative limit on debris released during normal operations, a probability limit on accidental explosions, probability limits on accidental collisions with large and small debris, and a reliability threshold for successful post-mission disposal. The new standard practices updated disposal options and incorporated new sections to clarify and address operating practices for large constellations, rendezvous and proximity operations, small satellites, satellite servicing, and other classes of space operations.

For this proposed rulemaking, the FAA considered the orbital debris requirements of NASA, FCC, NOAA, and the IADC, in an effort to align commercial standards and government standards and to address the persistent risks associated with heavy upper stages abandoned in orbit. The FAA focused on NASA because it has the most detailed orbital debris requirements and guidance, and is an internationally recognized leader in orbital debris and space exploration whose expertise in space and mission planning is a benchmark for the FAA's rulemaking efforts. The effort to establish common standards is consistent with the U.S. Space Transportation Policy, which states the Secretary of Transportation shall execute exclusive authority, consistent with existing statutes and executive orders, to address orbital debris mitigation practices for U.S.-licensed commercial launches, to include launch vehicle components

such as upper stages, through its licensing procedures.⁴⁸

The FAA believes the proposed regulations would not hinder U.S. companies from competing in the international launch market because regulations of foreign countries are also expected to comply with IADC guidelines, and some countries' regulations are stricter than the requirements proposed in this rule. For example, the French space agency, Centre National d'Études Spatiales (CNES), issued technical regulations in 2009 that extend beyond the requirements of the IADC guidelines and spell out the acceptable reentry risk from orbital debris for those with French space operation licenses. The IADC guidelines are a consensus document originally based on the USGODMSP. Due to the consensus nature of the IADC guidelines, an agreed-upon document between 13 different space agencies, the guidelines are not as thorough and specific as the USGODMSP. Several of the IADC's 13 participating space agencies are currently working to implement regulations that align with the IADC guidelines; however, not all IADC participants have launch capability.

III. Discussion of the Proposal

The FAA proposes several new requirements for limiting the lifetime of debris in LEO and in GEO. First, the FAA proposes to amend the definition of "disposal" in § 401.7 to include each of the disposal options proposed for part 453. The existing definition describes controlled atmospheric disposal, and would exclude the other four options proposed in §§ 453.14 through 453.18 for the disposal of spent upper stages and launch or reentry vehicle components. The FAA therefore proposes to define "disposal" as the execution or attempt to execute "controlled atmospheric disposal, heliocentric disposal, uncontrolled atmospheric disposal, disposal orbit, or direct retrieval of launch vehicle stages or components of launch or reentry vehicles under part 453 of this chapter."

The FAA also proposes to add definitions to § 401.7 for "Low Earth Orbit (LEO)," "Medium Earth Orbit (MEO)," "Geostationary Earth Orbit (GEO)," "the geosynchronous region," and "orbital debris." "LEO" would be defined as any Earth orbit with both apogee and perigee below 2,000 km altitude. "MEO" would be defined as

any Earth orbit in which an object's apogee and perigee both remain between LEO and GEO. "GEO" would be defined as any Earth orbit where the orbiting object orbits at the same angular velocity as the Earth and the object appears stationary from the ground. The altitude of this zero-inclination, zero-eccentricity orbit is 35,786 km. "The geosynchronous region" would be defined as the band of orbital space surrounding GEO. It is bound by altitude limits of 35,786 km +/- 200 km altitude and +/- 15 degrees latitude.

The IADC defines Space Debris as "all man-made objects including fragments and elements thereof, in Earth orbit or re-entering the atmosphere, that are non-functional."⁴⁹ The FAA agrees with the IADC definition of space debris and refines the debris issue further by establishing the size of debris applicable for regulation. "Orbital debris" would be defined as all human-generated debris in Earth orbit that is greater than 5 mm in any dimension. This includes, but is not limited to, payloads that can no longer serve a useful purpose, rocket bodies and other hardware (e.g., bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. The FAA proposes to expressly exclude released gases and liquids from the definition of orbital debris. The release of gases and liquids is often deliberate for the purpose of maneuvering or to evacuate excess gases and liquids at the end of launch. The FAA does not believe addressing the release of gases and liquids is necessary at this time because the risk is low. One of the debris mitigation actions at the end of launch is the release of pressurized gases and propellants because the risks of accidental explosion outweigh the risks of released gases and liquids. Based upon this understanding, the FAA finds that it is unnecessary to regulate released gases and liquids at this time.

The FAA proposes 5 mm as the threshold size because an object of that size, traveling at 10 km per second, a speed typical of objects on orbit, can incapacitate a functioning satellite, which in turn may contribute to the creation of more debris. Most active satellites on orbit are protected against small pieces of debris and micrometeoroids less than 5 mm in size with shielding or thermal blankets. However, pieces as small as 5 mm can do significant damage to satellite operations. The kinetic energy that a 5

⁴⁵ The National Academy of Sciences. (September 2011). *Limiting Future Collision Risk to Spacecraft: An Assessment of NASA's Meteoroid and Orbital Debris Programs*.

⁴⁶ The White House. (June 18, 2018). *Space Policy Directive-3, National Space Traffic Management Policy*. trumpwhitehouse.archives.gov/presidential-actions/space-policy-directive-3-national-space-traffic-management-policy/.

⁴⁷ United States Government. (November 2019) *U.S. Government Orbital Debris Mitigation Standard Practices, November 2019 Update*. orbitaldebris.jsc.nasa.gov/library/usg_orbital_debris_mitigation_standard_practices_november_2019.pdf.

⁴⁸ The White House. (November 21, 2013). *National Space Transportation Policy of the United States of America*. www.nasa.gov/sites/default/files/files/national_space_transportation_policy_11212013.pdf.

⁴⁹ IADC Space Debris Mitigation Guidelines, IADC-02-0, Revision 2, Mar 2020.

mm cube of titanium (4.43 g/cm³ density) has, while traveling 10 km per second in LEO, is 27,700 Joules. Comparably, the energy of a .30–06 rifle bullet (11.7 grams) when exiting a gun muzzle is only 3,700 Joules.

Spacecraft vary in design and material composition, so it is hard to identify an exact threshold size of debris that could significantly damage a spacecraft. Nevertheless, the National Research Council found in its 2011 report on orbital debris that typical spacecraft are not well shielded from small debris, and that objects 5 mm and larger can cause substantial damage.⁵⁰ For this reason, the FAA proposes to use 5 mm as the size threshold for orbital debris. However, the FAA requests comments on further lowering the size threshold to below 5 mm.

The FAA recognizes that a launch operator cannot prevent the release of all small debris fragments, such as paint flakes and solid rocket motor (SRM) slag. SRMs—used to boost satellites into higher orbits—are potentially a significant source of numerous pieces of aluminum oxide slag up to 5 cm in diameter. Likewise, flaking paint is a debris hazard, albeit of very small size. Debris of this size usually will not disable a spacecraft, but it does pose a hazard to spacewalkers, and over time it causes erosion damage and more debris. The FAA is not, however, proposing to regulate debris smaller than 5 mm, paint flakes, or solid rocket motor slag of any size, due to the current impracticality of tracking and mitigating the propagation of such small items. At this time, the only practical mitigation for debris smaller than 5 mm is to harden spacecraft to make them less susceptible to small debris.

Proposed § 453.1 would provide the scope of part 453: the requirements of a launch or reentry operator for orbital debris mitigation, including collision avoidance analysis, prior to launch or reentry operations licensed or permitted under this chapter with a planned altitude greater than 150 km. The FAA proposes to require in § 453.1(b) that for each licensed or permitted launch or reentry with a planned altitude greater than 150 km, an operator must submit (1) an ODAP containing the information required by this part, not less than 60 days before the licensed or permitted launch or reentry, unless the Administrator agrees to a different time frame in accordance with § 404.15; and (2) a Collision Avoidance Analysis

Worksheet in accordance with § 453.11(f). The submittals must be emailed to the address provided in proposed § 453.1(c) or otherwise submitted as agreed to by the Administrator in the license or permit. The FAA proposes to require that operators submit their ODAP no later than 60 days prior to the launch or reentry subject to part 453 to be consistent with the timeframes in part 450 and in the legacy regulations. The FAA proposes no change to the timeline for submitting the Collision Avoidance Analysis Worksheet, which is currently required by § 450.169 and would be moved to § 453.11(f).

Proposed § 453.3 would state that part 453 applies to launches and reentries licensed or permitted under this chapter with a stage or other component with a planned altitude greater than 150 km. Few satellites operate below the altitude of 150 km, hence mitigation of orbital debris below 150 km is not necessary.

A. Limitations on Orbital Lifetime of Debris Released During Normal Operations

Current §§ 417.129 and 450.171 do not address the planned release of debris during normal operations, such as the deliberate planned release of payload spacers, retaining rings, or tension rods. To reduce the amount of debris in orbit, the FAA proposes to require that launch operators ensure that no vehicle stages or components release orbital debris during normal operations that will remain in orbit for more than 25 years. Proposed § 453.5(a) would require a launch operator to ensure that no vehicle stages or components that reach Earth orbit release orbital debris into LEO that would remain in orbit for more than 25 years. The 25-year rule is a common standard recommended by the IADC and a requirement for U.S. Government launches under the USGODMSP.

For the lowest region of LEO—orbits with perigee altitudes below 600 km—debris typically has an orbital lifetime of less than 25 years, and smaller pieces of debris here may reasonably be expected to burn up on reentry into Earth's atmosphere within the allowable time limit. This proposed requirement would have a greater impact on operations releasing debris above 700 km, where debris may remain on-orbit for hundreds of years. The most efficient and practical approach to comply with the proposed requirements would be to avoid creating any debris in the upper portions of LEO and higher altitudes. For example, if a launch operator cannot demonstrate that it will remove all debris larger than 5 mm from orbit

within 25 years, as required by § 453.5, then the launch operator must prevent such objects from separating from the launch vehicle. A launch operator could do so by redesigning the separation system (a common source of debris) or by using lanyards or other means to prevent debris release.

Given that most current launch vehicles have been designed to minimize or eliminate normal operations debris release, the FAA anticipates that this proposed requirement would impose no more than a minimal burden on operators for compliance. Operators usually meet this requirement because they want to minimize the release of debris and the possibility of damage to their deployed payloads. Since commercial launches are deploying increasing numbers of payloads, which could result in additional debris release, the FAA finds it appropriate to require that all operators limit their release of debris.

The FAA also proposes to require in § 453.5(a) that the total object-time product for all debris planned to be released into LEO shall not exceed 100 object-years per licensed or permitted launch. Object-time is a unit of measure used by NASA. It means the number of objects multiplied by the unit of time, typically years. A higher object-time means more objects on orbit for a higher cumulative amount of time. Limiting the object-time reduces the number of objects in orbit. The more objects released, the less time they can spend in orbit to meet the object-time requirement. For example, if an operator plans to release 5 debris objects, none of those objects can remain in Earth orbit longer than 25 years, and the total orbital lifetime of all 5 debris objects cannot exceed 100 years. The regulation would specify that the total object-time product in LEO is the sum of the orbit dwell time in LEO for all of the planned released objects, excluding the upper stage and any released payloads. The requirement would target debris released into LEO since, as discussed above, this small spatial area is heavily used and currently contains the most debris. This requirement is consistent with the USGODMSP guidelines and is necessary to limit the number of released objects per launch. The FAA supports the USGODMSP object-time standard and notes the standard is particularly relevant to space launch activities that use payload deployment devices.

The FAA notes that the 100 object-years limit would apply to debris that the operator plans to release during launch activities, and would not include debris released due to non-nominal

⁵⁰The National Academy of Sciences. (September 2011). *Limiting Future Collision Risk to Spacecraft: An Assessment of NASA's Meteoroid and Orbital Debris Programs*.

conditions or launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance. However, an operator would be required to immediately notify the FAA and provide the information required by § 453.20 at the detection of a debris-creating event or any launch or reentry outside the 3-sigma trajectory provided for collision avoidance.

The FAA solicits comments on its proposal to limit the total object-time product of all debris released by a single launch into LEO to 100 object-years. Although, as noted above, this standard derives from the USGODMSP, the FAA recognizes that this standard is new, and the commercial space industry has not had an opportunity to weigh in on the effectiveness or operational implications of this requirement. As a result, FAA seeks insight into stakeholders' opinions on limiting the total object-time product of all debris released by a single launch into LEO to 100 object-years, and whether a smaller object-time should be imposed.

The FAA would also require that debris released into the geosynchronous region be removed within 25 years after release. Proposed § 453.5(b) would require a launch operator to ensure that any orbital debris released into the geosynchronous region enters an orbit with an apogee that would not remain within the geosynchronous region within 25 years of the release. Operators would need to submit analysis showing that the debris will stay below the geosynchronous region 25 years after release, and that it will not enter the operational geosynchronous region again. Released debris can only move into lower orbits. Debris released above GEO would eventually return to the GEO protected region.

The FAA solicits public comments on its proposal to require that debris be removed within 25 years, as opposed to a shorter deadline. While the FAA recognizes the current IADC and USGODMSP guidelines, which limit post-mission lifetimes in LEO to 25 years, the FAA recognizes that increases in the numbers and kinds of activities in Earth orbit may render the 25-year timeframe inadequate to prevent the growth of orbital debris. Given that the entire mission lifetime of upper stages and their components is quite short, and spent upper stages pose a significant risk of debris propagation the longer they are in orbit, it may be appropriate to have a shorter disposal timeline of 5 years or another time period less than 25 years. Shortening the removal deadline would decrease the risk of orbital debris causing damage to spacecraft, which could create more

debris, shorten another spacecraft's mission, or endanger the lives of human spaceflight participants. The FAA requests comments on the degree to which a shorter timeline for removal from LEO or GEO within 5 years or another period shorter than 25 years would further encourage the minimization of released debris, as well as the relative impact of a shorter timeframe on operational capabilities.

Proposed § 453.5(c) would specify the information that must be included in an ODAP to demonstrate compliance with § 453.5(a) and (b). Specifically, the ODAP must include (1) a demonstration through environmental qualification and acceptance testing that the system is designed to limit the release of orbital debris; and (2) a statistical analysis, including inputs and assumptions, demonstrating that any orbital debris released will be disposed of within 25 years and satisfy the 100 object-year requirement. The environmental qualification and acceptance testing could include vibration, shock, vacuum, or any other appropriate testing to demonstrate that debris will not be released from the upper stage. Operators should provide the FAA specific verifiable analysis or test results that demonstrate the mitigation measures the launch operator would take to prevent release of debris greater than 5 mm in size or to ensure that it departs LEO or GEO within 25 years. Results of hardware and software tests, if performed on the separation system, would fulfill the requirement to demonstrate the effectiveness of debris prevention measures. The testing should apply to the entire lifetime of the system. If debris will be released, an orbital lifetime analysis using the methods described in ISO 27852⁵¹ or NASA's Debris Assessment Software (DAS) or similar software would be acceptable. The inputs and assumptions referenced in § 453.5(c)(2) would include the initial orbit, the altitude of the release, and information about the debris objects planned to be released, such as their mass, area, and estimated orbital lifetime. The FAA seeks public comments on the proposed demonstration through specific analysis and testing of debris release prevention.

B. Collision Mitigation Between Launched Objects

The current FAA regulations in parts 415, 417, 431, 435, and 450 require that launch operators prevent the unplanned physical contact between a launch

vehicle and each payload after payload separation. The FAA proposes to move these current requirements for safety at the end of launch to § 453.9(a). The FAA proposes to add a requirement in § 453.9(b) to limit the probability of collision with orbital objects greater than 10 cm to less than 1 in 1,000 over the orbital lifetime of the upper stage. This proposal matches the standard in USGODMSP and is necessary to lower the risk of debris impacts with the upper stage and its components. The probability of collision during orbital lifetime can be reduced by removing the upper stage and components from orbit, as discussed in the next section, and by operating the upper stage in an orbit with a low density of orbital objects.

Proposed § 453.9(c) would require launch operators to include in their ODAP for each launch or reentry a procedure for preventing vehicle and payload collision after payload separation. The end-of-life activities, including any propellant depletion burns and compressed gas releases, could increase or decrease the probability of subsequent collisions; therefore, the launch operator should explain in the ODAP how these activities will affect potential collision risks. The ODAP must also include the results of a probability of collision analysis between the upper stage and its components and orbital objects. The analysis must use commonly accepted engineering and probability assessment methods, such as those available in NASA's DAS tool.

C. Post-Mission Disposal

In the current debris environment, the greatest risk to operational orbits is collision between objects having considerable mass. Spent upper stages are large, strong structures that contribute to the debris threat because their size increases the chance of a collision, and because their mass provides an ample source of fragmentation debris in the event of a collision. As noted above, the amount of orbital debris is projected to rapidly increase based on the current population of objects greater than 10 cm.⁵²

Disposal, either through reentry or another form of disposal, is necessary to mitigate the propagation of orbital debris because it removes upper stages and other vehicle components from the most populated orbits. If proper disposal is not implemented, spacecraft operators would need to employ increased shielding of payloads, along

⁵¹ International Organization for Standardization. (September 7, 2010). *ISO 27852:2010(E)*, "Space Systems—Estimation of orbit lifetime."

⁵² See Figures 3 and 4 in the Statement of the Problem.

with additional on-orbit collision avoidance, in order to continue to utilize the most populated orbits. However, neither of these options would mitigate the volume of dormant upper stages in orbit, and therefore, the growth of orbital debris. The only option in the future for these upper stages would be remediation—dedicated missions to remove them from orbit. This kind of remediation is forecasted to be expensive and has not yet been shown to be a viable operation. Research and development is still on-going into debris removal techniques.⁵³

Given that disposal is at this time the only viable means of mitigating the threat of orbital debris in populated orbits, the FAA is proposing to require in § 453.13 that launch operators dispose of all launch vehicle stages or jettisoned components using one of five methods: (1) controlled atmospheric disposal, (2) Heliocentric, Earth-escape disposal, (3) direct retrieval, (4) uncontrolled atmospheric disposal, or

(5) maneuver to a disposal orbit. The proposed requirements for each disposal method are set forth in §§ 453.14 through 453.18, respectively. A launch or reentry subject to part 453 must identify the chosen disposal method in the ODAF and satisfy the regulatory requirements applicable to that disposal method. Table 1 provides a list of disposal options derived from the USGODMSP. Options that promptly remove the upper stage and its components from orbit are the preferred disposal options according to the USGODMSP, as they significantly reduce both long term collision and debris generation risks. Delayed disposals through either direct retrieval or uncontrolled atmospheric disposal impose some risks to other on-orbit spacecraft until removal. Disposal orbits may become overly populated in the future which would preclude the future use of them for disposal. The FAA notes that while the USGODMSP identifies disposal methods in order of preference

in the following table, the proposed rules do not allocate preference or distinguish between disposal methods in order to provide flexibility to operators to perform any of these valid methods of debris disposal. However, the FAA expects that as space continues to become more congested, orbital debris requirements will tighten in response, such that delayed disposal options that pose some additional risk to on-orbit spacecraft (*i.e.* uncontrolled atmospheric disposal, highly eccentric long-term disposal, or use of a disposal orbit) may be restricted or eliminated. FAA requests comments on whether the prompt and safest disposal options (controlled atmospheric, heliocentric, and direct retrieval) should be the preferred disposal methods based upon expected growing orbital congestion. Additionally, the FAA seeks comment on whether it should impose a requirement to use the prompt disposal options unless shown to be impracticable.

TABLE 1—DISPOSAL OPTIONS

Disposal method	453 section	Time frame
Controlled Atmospheric Disposal	453.14	Within 30 days of mission completion.
Heliocentric (Earth-escape)	453.15	Within 30 days of mission completion.
Direct Retrieval	453.16	Not to exceed 5 years post mission completion.
Uncontrolled Atmospheric Disposal	453.17(b)	Not to exceed 25 years after launch.
Highly Eccentric Long-Term Disposal	453.17(c)	Not to exceed 200 years after mission completion.
Disposal Orbit	453.18	Within 30 days of mission completion into a perpetual disposal orbit.

a. Controlled Atmospheric Disposal

Upper stage-controlled reentry is the most effective method of orbital debris prevention and the safest reentry method. Controlled reentry eliminates the upper stage as a piece of orbital debris and therefore mitigates the risk of future debris creation through collision because the reentry would occur shortly after the end of launch. The FAA proposes to allow operators to perform controlled disposal by reentering Earth’s atmosphere if they meet the requirements of § 453.14. The requirements of § 453.14 would only apply if the operator elects controlled disposal for its disposal method, as required by § 453.13.

A controlled disposal means a planned burn of the upper stage engine to aim for a low-risk area on the surface of the Earth. The FAA acknowledges that the upper stage is not “controlled” during the entire atmospheric disposal. Variations in the engine burn, the

atmospheric density, and other factors beyond the operator’s control can affect the actual disposal location. Therefore, those uncertainties must be accounted for in the disposal risk assessment or in the determination of the disposal ellipse in a broad ocean area, in accordance with § 453.14(d).

In order to perform controlled disposal, proposed § 453.14(b) would require a launch operator to ensure the return of the upper stage and each of its components to the Earth’s surface within 30 days after mission completion in a controlled manner that ensures the effective casualty area of any surviving debris is less than 7 square meters, targets a broad ocean area, or meets the risk criteria set forth in § 450.101(d)(1)(iii)(A) through (C). This proposal would effectively require launch and reentry operators to consider disposal risks in their vehicle and mission designs—for instance, by designing components that demise

when heated by atmospheric reentry or by reentering in remote locations.

The FAA’s proposal to allow operators to target a broad ocean area or meet the risk criteria set forth in § 450.101(d)(1)(iii)(A) through (C) is substantively equivalent to the current text of § 450.101(d), which requires that all disposals—currently defined as controlled atmospheric disposal in § 401.7—either target a broad ocean area or meet the risk criteria in § 450.101(b). As discussed later in this preamble, the FAA proposes to amend § 450.101(d) to specify the risk criteria applicable to atmospheric disposals, rather than relying on the reentry risk criteria in § 450.101(b), since disposal is distinct from reentry. The FAA therefore proposes to extend the safety criteria applicable to licenses under part 450 to all launches or reentries covered by part 453, including experimental permits. The FAA is proposing that all launches or reentries authorized by the FAA that

⁵³ Zhao, et.al. (2020) Science China Technological Sciences, Survey on research and development of on-orbit active debris removal methods.

exceed 150 km be required to meet the risk criteria in § 450.101(d)(1)(iii)(A) through (C), target a broad ocean area, or have an effective casualty area less than 7 square meters for the following reasons.

Disposal into a broad ocean area would reduce the risk of casualties to near zero. The FAA considers an area 370 km (200 nm) from land to be “broad ocean area,” as used in § 450.101(d) and proposed part 453. Two hundred nautical miles is also the recognized limit of exclusive economic zones (EEZ), which are zones prescribed by the United Nations Convention on the Law of the Sea⁵⁴ over which the owning State has exclusive exploitation rights over all natural resources. Deorbiting beyond an EEZ further reduces the chance of disrupting economic operations such as commercial fishing.

For massive objects reentering the atmosphere, a controlled disposal into the broad ocean area may be necessary for safety because it would ensure that the casualty expectation of reentry could be kept below 1 in 10,000. Because the broad ocean area has a population density of nearly zero, objects that survive reentry in this area can be fairly large without inordinate risk of human casualties. Alternatively, the operator could show that the 1×10^{-4} collective risk and 1×10^{-6} individual risk limits are met for the controlled disposal in another area. The expectation of casualty alternative might allow for controlled disposal into areas near islands or coast lines with low populations. The operator could also choose to demonstrate that the cumulative effective casualty area of surviving debris will be less than 7 square meters. That small casualty area ensures that the expectation of casualty will be met without requiring a full expectation of casualty calculation.

The effective casualty area for inert debris is the region associated with a fragment’s impact location where it is assumed a person would become a casualty. Debris from atmospheric reentry of an upper stage is usually made up of multiple pieces, as the upper stage breaks up due to heating and friction. The total effective casualty area is determined by adding up the casualty area of each of those pieces.

An expectation of casualty calculation requires determination of the effective casualty area along with analysis of the expected trajectory and exposed populations to determine how many people could become a casualty due to the uncontrolled disposal of the upper

stage. Due to uncertainty and growth in population, that calculation can be difficult to complete for disposals that are expected on long timeframes like 25 years. As a result, FAA is proposing to allow an operator to demonstrate that the effective casualty area of surviving debris will be less than 7 square meters.

The FAA proposes to require in § 453.14(c) that operators performing controlled disposal notify the public of any region of land, sea, or air that contains, with 97 percent probability of containment, all debris resulting from normal flight events capable of causing a casualty. The FAA currently imposes this requirement on operators performing disposal operations under a part 450 license, and would extend the part 450 requirement to proposed § 453.14(c). The FAA finds that all operations required to comply with part 453 should provide this degree of notification to the public. These measures could include arrangements with the FAA or U.S. Coast Guard to provide Notice to Air Mission (NOTAM) and Notice to Mariners (NOTMAR).

The FAA proposes that an operator would be required to implement a controlled reentry within 30 days after the completion of the mission, which is also how long a launch operator must have insurance coverage under § 440.11. The FAA further proposes to require that operators accomplish any actions necessary to end a launch and commence controlled disposal within the insurance coverage timeframe. As discussed later in this preamble, the FAA proposes to apply the 30-day deadline to the Earth-escape and orbit disposal options as well.

Additionally, the FAA finds that 30 days would almost always provide sufficient time to assess the possible consequences of a launch anomaly, such as delivery to a wrong orbit or failure of a payload to separate from the vehicle’s upper stage. Current technologies and practices are adequate to require the following within 30 days (1) perform final maneuvers to direct controlled disposal, (2) relocate to a lower orbit where the upper stage will decay within 25 years, or (3) relocate to a disposal orbit.

Another reason for the proposed requirement to implement a disposal option within 30 days is the short time frame an upper stage would have to maneuver. Typically, most upper stages have limited electrical power supplied by flight batteries, and, by design, must maneuver expeditiously after payload separation. In order to mitigate the possibility of an explosion occurring, the FAA requires a launch operator to power down its batteries at the end of

launch. Accordingly, an affirmative act such as controlled reentry, placement to ensure reentry within 25 years, or maneuvering to a disposal orbit would have to occur within that time frame. Upper stages in orbits with an expected lifetime below 25 years would have no additional required actions to meet the post-mission 25-year rule. However, these upper stages may be required to move to disposal orbits if they cannot be safely deorbited due to excessive risk in uncontrolled reentries.

The FAA proposes to require in § 453.14(d) that operators submit a description of the controlled disposal in the ODAP prior to each launch or reentry pursuant to § 453.1(b). The ODAP must include verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the controlled atmospheric disposal as planned. The FAA proposes to require a probability of success of at least 90 percent. The FAA is adopting a 90 percent probability of success criteria that is consistent with the IADC Guidelines, ISO Standard 16126⁵⁵ and USGDMSP guidelines. ISO Standards represent a consensus international standard for specialized space activities. The testing and analysis can include engine re-light qualification tests or reliability analysis or similar. The ODAP must also include a description of how the system will achieve controlled atmospheric disposal under nominal and off-nominal conditions, such as a partial burn failure or off-trajectory scenario. Lastly, unless the operator is targeting a broad ocean area, the ODAP must include the calculated total collective and individual casualty expectations for the proposed operation or the effective casualty area of any surviving debris, pursuant to § 453.14(d)(3).

b. Heliocentric, Earth-Escape Disposal

The FAA proposes to allow operators to perform heliocentric, Earth-escape disposal if they meet the performance-based requirements of § 453.15. The requirements of proposed § 453.15 would only apply if the operator elects heliocentric, Earth-escape disposal as its disposal method under § 453.13. Proposed § 453.15(b) would require that the operator ensure, within 30 days after mission completion, that the upper stage and each of its components is placed in a hyperbolic trajectory that no longer orbits Earth. This option would

⁵⁵International Organization for Standardization. (April 1, 2014). *ISO 16126:2014, “Space systems— Assessment of survivability of unmanned spacecraft against space debris and meteoroid impacts to ensure successful post-mission disposal.”*

⁵⁴United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

remove the upper stage from orbit completely and also result in zero risk to the people of Earth. The upper stage and its components would travel into an orbit around the Sun rather than remain as debris in Earth orbit. The FAA recognizes that this disposal option is prohibitively costly for operators not already planning inter-planetary missions, as the energy needed to fully escape Earth orbit is greater than the energy needed for other disposal options. Operators without the available fuel will not be able to execute this option.

Operators who elect to perform heliocentric, Earth-escape disposal would be required under proposed § 453.15(c) to include a description of the Earth-escape disposal in the ODAP submitted prior to each launch or reentry. The description must include (1) verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned heliocentric, Earth-escape disposal, and (2) a description of how the system will achieve a controlled disposal under nominal and off-nominal conditions, such as a partial burn failure or off-trajectory scenario. The testing and analysis could include engine re-light qualification tests, reliability analyses, or similar tests.

c. Direct Retrieval

Another means by which an operator could dispose of the upper stage of a vehicle, or any other orbital debris released, would be direct retrieval, also called Active Debris Removal or remediation, in which an operator retrieves the upper stage and removes it from orbit via a controlled disposal or maneuver into a disposal orbit. Direct retrieval would require the launch of a device or spacecraft that attaches to or otherwise affects the upper stage and causes it to deorbit in a controlled manner or move to a disposal orbit. Current research and economic feasibility studies performed by commercial operators and international space agencies suggest this option could be commercially viable within a few years.⁵⁶ Demonstrations of this capability have already been conducted.⁵⁷ For this reason, the FAA proposes to include as § 453.16 the

option for operators to perform direct retrieval if they meet the requirements of § 453.16. The requirements of § 453.16 would only apply if the operator elects direct retrieval as its disposal method under § 453.13.

Proposed § 453.16 would require that operators retrieve the upper stage by either removing it from orbit in a controlled manner or maneuvering it to a disposal orbit no more than 5 years after completion of the mission. The FAA proposes to allow operators up to 5 years from mission completion to perform the direct retrieval as a means of balancing the burden on operators to carry out the subsequent retrieval mission against the compelling need to remove the spent upper stage and its components from orbit. A 5-year timeline is consistent with USGODMSP recommendations and would require operators to demonstrate that they are capable of performing the direct retrieval based on actual technical capabilities, rather than hypothetical future capabilities. Operators will have 5 years to perform the direct retrieval, however, removal should occur as soon as possible to reduce the risk of creating more debris. Under proposed § 453.16(b), if the result of the direct retrieval is a controlled disposal of the upper stage into a planned disposal area, then the retrieval would be required to meet the disposal safety requirements in § 453.14(b) and (c). Conversely, if the result of the direct retrieval is a maneuver into a disposal orbit, then the retrieval would need to meet the disposal orbit lifetimes and analysis requirements of § 453.18.

Under proposed § 453.16(c), an operator would be required to describe its plan for direct retrieval in its ODAP, and demonstrate a probability of successful disposal of at least 90 percent. The description must include verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned direct retrieval. If the planned retrieval will result in a controlled disposal, then the operator must include in its ODAP (i) a description of how the system will achieve a disposal under nominal and off-nominal conditions; and (ii) the total collective and individual casualty expectations for the proposed operation or the effective casualty area of any surviving debris, if the operator will not dispose of the debris into a broad ocean area. The operator should identify the intended disposal location so that the FAA can discern whether the operator will target a broad ocean area or verify the expectation of casualty from disposal

into that location. Alternatively, if the operator intends to retrieve and maneuver the debris to a disposal orbit, under proposed § 453.16(c)(3), the operator would need to include in their ODAP (i) a description of how the system will achieve and maintain the planned disposal orbit for the required time limit as specified in § 453.18(b) through (d); and (ii) a statistical analysis demonstrating that the probability of collision with operational spacecraft and debris is within the lifetime limit of § 453.18(e). The testing and analysis performed in accordance with § 453.16(c) should include qualification tests, reliability analyses, or similar tests.

d. Uncontrolled Atmospheric Disposal

The FAA proposes to allow launch or reentry operators to perform uncontrolled atmospheric disposal to meet the requirement of § 453.13 by using one of two methods. Under proposed § 453.17, an operator could either dispose of debris from LEO through natural decay by leaving the upper stage and its components in an orbit where the debris will gradually lower until it falls to Earth, or from MEO or higher orbit by maneuvering the debris to a highly elliptical orbit for long-term atmospheric disposal. The requirements of proposed § 453.17 would only apply if the operator elects to perform uncontrolled atmospheric disposal to meet the disposal requirement of § 453.13.

In order to dispose of debris from LEO—an orbit below 2,000 km—an operator would be required in § 453.17(b)(1) to leave an upper stage and its components in an orbit where, accounting for the mean projections for solar activity and atmospheric drag, the orbital lifetime is as short as practicable, but does not exceed 25 years after launch. Instead of reentering immediately, the orbit of the upper stage and its components would gradually lower over months or years until the debris falls to Earth. The disposal would be considered uncontrolled in the sense that the operator would not initiate the disposal at a particular time, and the disposal could occur anywhere on Earth under its orbital path.

The 25-year rule, which the FAA also proposes to implement in § 453.5, is a common standard recommended by the IADC and a requirement for U.S. Government launches under the USGODMSP. The IADC's *Support to the IADC Space Debris Mitigation Guidelines, Oct 2004 Working Group Report* states that a 25-year post-mission lifetime appears to be a good compromise between an immediate (or

⁵⁶ Yamamoto, et.al (2017) 7th European Conference on Space Debris, *Cost analysis of active debris removal scenarios and system architectures*.

⁵⁷ On August 25, 2021, a Japanese spacecraft successfully captured a simulated piece of space debris as a first step to demonstrate technology to remove orbital debris. On October 24, 2021, China launched a mission with the stated aim of testing space debris removal technologies.

very short lifetime) de-orbit policy which is very effective but much more expensive to implement, and a 50 or 100 year lifetime de-orbit policy which is less costly to implement but can lead to higher collision risks in the long-term.⁵⁸ Greater depth of technical analysis is available in the IADC working group report.

While the FAA concurs with the current IADC and USGODMSP guidelines, which limit post-mission lifetimes in LEO to 25 years, the FAA recognizes that increases in the numbers and kinds of activities in Earth orbit may necessitate reevaluation of the adequacy of a 25-year post-mission lifetime in the future. The FAA seeks public comment on whether a shorter deadline should be imposed. The FAA notes that upper stages of launch vehicles become debris as soon as the payloads are released; upper stages in orbits with perigee altitudes below 350 km typically have orbital lifetimes less than 5 years. Given that the entire mission lifetime of upper stages and their components is quite short, and spent upper stages pose a significant risk of debris propagation the longer they are in orbit, it may be appropriate to have a shorter disposal timeline of 5 years. A shorter deadline of 5 years that removes the highest-mass objects from orbit would vastly reduce the risk of creating more debris and would make U.S. commercial space a leader in orbital debris mitigation.

Uncertainties in modeling should be accounted for in evaluation of the orbital lifetime of an object. The use of publicly available software such as NASA's DAS and the French Space Agency's STELA (Semi-analytic Tool for End of Life Analysis) regularly update model inputs for atmospheric density, which is responsible for the largest uncertainty, could be used to estimate orbital lifetime prior to launch.

In addition to meeting the 25-year requirement of § 453.17(b)(1), the FAA would require in § 453.17(b)(2) that operators performing uncontrolled atmospheric disposal from LEO satisfy either an expected casualty (E_C) of 1×10^{-4} , or an equivalent effective casualty area of 7 square meters. The FAA proposes to delay the effective date of § 453.17(b)(2) until 1 year after the effective date of the rule, so as to avoid interference with current planned launches and provide operators additional time to come into compliance with the requirement. The FAA

⁵⁸ Inter-Agency Space Debris Coordination Committee. (October 2004). Support to the IADC Space Debris Mitigation Guidelines. *Oct 2004 Working Group Report*, section 5.3.2.

proposes to regulate uncontrolled atmospheric disposal in this manner due to the inherent risks posed to people and property on Earth whenever upper stages reenter the Earth's atmosphere in either a controlled or uncontrolled manner. Upper stages are designed to be robust systems capable of withstanding the stresses and temperatures of launch. Therefore, most upper stages are composed of heat-resistant material that does not burn-up upon reentry and can be expected to survive reentry to impact the ground. Although tracking and analysis can be done to help narrow down where an uncontrolled reentry may occur, and the appropriate civil authorities can be notified, there are no means to stop or move the impact location of reentering debris. Furthermore, the science of predicting impact points for uncontrolled disposals is limited. Reentry Assessment is difficult. It is virtually impossible to precisely predict where and when space debris will impact. This is due to limitations in the U.S. tracking system as well as environmental factors that impact on the debris.⁵⁹

National U.S. policy guidelines cited above, as well as those of NASA,⁶⁰ Department of Defense,⁶¹ and the FCC,⁶² along with a growing international consensus, recommend that the risk to the public on the ground not exceed 1 E_C in 10,000 events or 1×10^{-4} . This applies to reentries of orbital debris, whether they are a deliberate controlled disposal or an uncontrolled disposal through natural decay. The E_C should be calculated to one-significant figure unless an uncertainty analysis justifies a more precise estimate of risk.

The E_C can vary greatly due to factors outside of the launch vehicle designer's control. Growing world populations and various orbital inclination choices have direct correlations to the E_C rating for reentries. The FAA realizes that the E_C prediction can be difficult to calculate; therefore, the FAA sought an alternative method in addition to E_C .

As alternatives to a launch operator's calculating and satisfying of an E_C of 1×10^{-4} , the FAA is also proposing to allow an operator to demonstrate that it can limit the casualty area during

⁵⁹ United States Space Command. (Retrieved on August 26, 2021). Reentry Assessment—US Space Command Fact Sheet. *SpaceRef*. www.spaceref.com/news/viewpr.html?pid=4008.

⁶⁰ NPR 8715.6B, NASA Procedural Requirements for Limiting Orbital Debris and Evaluating the Meteoroid and Orbital Debris Environments.

⁶¹ Department of Defense Instruction 3100.12 and Air Force Instruction 91–202.

⁶² FCC Statute 25.114 *Applications for Space Authorizations*.

disposal by natural decay. Some companies may find the debris casualty area determination to be a more simplified analysis, and this analysis relies only on vehicle design and operation. Both analyses, E_C and debris casualty area, would be adequate to protect the public from disposal risk. Therefore, the FAA proposes disposal to be acceptable if a size limit is satisfied or if the E_C limit is met.

The FAA would permit uncontrolled reentry as an acceptable form of disposal if the surviving debris casualty area measured 7 square meters or less. This proposed casualty area matches that stated in the USGODMSP, guideline 4–1(e).⁶³ The casualty area is derived from the acceptance of a risk criteria of 1×10^{-4} . Applying the 1×10^{-4} expectation of casualty to uncontrolled disposal, NASA calculated the risk to account for the 2019 population of the world that could be affected and the size of the debris that could impact the ground. On average, analysis showed that a casualty area of 7 square meters of surviving debris would produce a 1×10^{-4} expectation of casualty. The debris casualty area takes into account that the force of impact of the debris is at least 11 ft-lb, the threshold for injury on an unsheltered person.⁶⁴ Specifying an acceptable casualty area as an alternative to a risk criterion eliminates the uncertainty inherent in risk calculations, including such variables as population counts and event probability assumptions.

The total effective casualty area is determined by adding up the casualty area of each piece of debris that impacts Earth. The upper stage will not land intact, but is expected to breakup in the atmosphere during reentry. The total casualty area of all pieces added together would be required to be less than 7 square meters.

The second option for performing an uncontrolled atmospheric disposal under proposed § 453.17 would be to maneuver the debris to a highly elliptical orbit for long-term atmospheric disposal. Under proposed § 453.17(c), an operator would maneuver the upper stage and its components from semi-synchronous Molniya orbits, synchronous Tundra orbits, and other elliptical orbits, to a long-term disposal orbit where orbital

⁶³ United States Government. (November 2019) *U.S. Government Orbital Debris Mitigation Standard Practices, November 2019 Update*. orbitaldebris.jsc.nasa.gov/library/usg_orbital_debris_mitigation_standard_practices_november_2019.pdf.

⁶⁴ SANDIA National Laboratories. (April 1997). *Hazards of Falling Debris to People, Aircraft, and Watercraft*.

resonances will increase the eccentricity for long-term atmospheric disposal of the upper stage. This proposal of up to a 200-year disposal matches the USGODMSP guidelines to allow the upper stage to be maneuvered to a disposal where orbital resonances keep increasing the eccentricity and eventually decrease the perigee for an uncontrolled atmospheric disposal. During the development of the USGODMSP, the FAA, NASA, and the Department of Defense reviewed various timeframes for highly elliptical orbit disposals. Objects in highly elliptical orbits are affected by gravitational forces from the Earth, the Moon, and the Sun. These forces, over time, alter the object's orbit and eventually cause the object to reenter Earth's atmosphere. The FAA foresees that very few commercial operations would fall within this scenario, because it is rarely used by commercial operators.

If an operator maneuvers the debris to a highly elliptical orbit in accordance with § 453.17(c), the orbital lifetime must be as short as practicable, but must not exceed 200 years after mission completion. The responsible behavior is to remove debris objects from orbit as soon as practical. Highly elliptical objects have very high apogees; therefore, atmospheric drag only affects them during a small portion of their orbit. Drag is a major factor in atmospheric disposal, so these disposals take a long time to occur. These objects spend a smaller portion of time within congested orbits, so over a 200-year timeframe, the time in congested orbits equals that of objects that are in LEO for 25 years. The probability of collision with operational spacecraft and debris 10 cm and larger should also be limited to less than 0.001 for the entire lifetime. The FAA proposes to delay the effective date of the risk requirement so as not to interfere with current planned launches. The FAA finds that delaying the effective date of this requirement by 1 year will allow operators sufficient time to implement disposal options that meet the risk criteria, without jeopardizing public safety. After 1 year, the launch operator must show that when the upper stage reenters, the risk will meet the criteria of 1×10^{-4} or that the effective casualty area will be less than 7 square meters.

Proposed § 453.17(d) would identify the information that an operator must include in its ODAP prior to each launch or reentry in order to perform uncontrolled atmospheric disposal in accordance with this section. The ODAP must include (1) verification through hardware and software testing or analysis that the system has at least a 90

percent probability of successfully executing the planned disposal option; (2) an estimate of the E_C or the effective casualty area for any surviving debris; and (3) a statistical analysis demonstrating compliance with the requirements of § 453.17(b) or (c) to dispose of the debris within the prescribed time limit. The testing and analysis could include an analysis using NASA's DAS or similar material that demonstrates compliance with the 25-year rule in the case of natural decay from LEO, or the 200-year rule for highly elliptical orbits. Alternatively, an analysis should be provided showing that the upper stage can meet the casualty area limit or expectation of casualty limit.

e. Maneuver to a Disposal Orbit

The FAA proposes to give launch or reentry operators the option in § 453.18 of disposing of debris by maneuvering it to a disposal orbit. In this scenario, the operator would move the upper stage and its components into a less-populated disposal orbit. Disposal or storage orbits are orbits intended for post-mission long-term storage, where atmospheric effects and solar radiation will not move disposed objects into a protected orbit for at least 100 years. Disposal orbits protect LEO, a narrow band in MEO bounded by 20,182 km plus or minus 300 km, and the GEO region. The band in MEO is used by Global Positioning System (GPS) spacecraft and other global positioning constellations. On-orbit disposal is not a permanent solution, and some of these storage orbits may be used for future space operations. Even spacecraft orbiting beyond GEO will eventually degrade and reenter populated orbits. While use of disposal orbits fails to remove debris from orbit and therefore reduce the chance of debris-making collisions, on-orbit disposal remains an effective alternative to atmospheric disposal in today's environment and is preferable to clogging LEO and intersecting GEO with spent upper stages. This option is consistent with the USGODMSP. In addition, for some operators, all other methods of disposal would be costly. The FAA therefore proposes to allow operators to maneuver orbital debris to a disposal orbit in order to meet the disposal requirement of § 453.13. Disposal orbits still impose some risk for future space programs and interplanetary missions. The FAA seeks comments on whether disposal orbit options should be phased out. And, if so, what an appropriate timeframe for phasing out should be.

The requirements of § 453.18 would only apply if the operator elects to

maneuver to a disposal orbit as its disposal method under § 453.13. To comply with § 453.18, the operator would move the upper stage and its components into a less-populated orbit within 30 days after mission completion. To prevent interference with active spacecraft for a significant length of time, the FAA proposes as disposal orbits those identified in the USGODMSP. If an operator elects to use a disposal orbit between LEO and GEO, then the operator would be required to place the upper stage and its components into either (1) an eccentric orbit where the perigee altitude remains above 2,000 km, the apogee altitude remains below the geosynchronous region for at least 100 years, and the time spent by the upper stage between 20,182 plus or minus 300 km is limited to 25 years or less over 200 years;⁶⁵ or (2) a near-circular disposal orbit that avoids altitudes 20,182 plus or minus 300 km, the geosynchronous region, and altitudes less than 2,000 km, for at least 100 years. Under proposed § 453.18(c)(1)(iii), an orbit that remains completely within the region bounded by 20,182 km plus or minus 300 km would not qualify as a disposal orbit. The orbital lifetime of any debris placed within this region would therefore be limited to 25 years or less over 200 years. If an operator elects to use a disposal orbit above GEO, the FAA proposes to require in § 453.18(d) that the operator place the upper stage and its components into an orbit with a perigee altitude above 36,100 km for a period of at least 100 years after disposal.

In addition to implementing the disposal orbits identified by the USGODMSP, the FAA proposes to require in § 453.18(e) that operators limit the probability of collisions with operational spacecraft and debris 10 cm and larger to less than 0.001 for 100 years after disposal. This requirement would be consistent with USGODMSP recommendations, as well as the requirement in proposed § 453.9(b) to limit the probability of collision between launched objects after the end of launch.

Proposed § 453.18(f) would prescribe the information that an operator must include in its ODAP to maneuver debris to a disposal orbit in accordance with § 453.18. Under proposed § 453.18(f), the ODAP must include: (1) verification through hardware and software testing or analysis that the system has at least

⁶⁵ All figures match the guidelines in the USGODMSP. A 200-year timeline ensures that the upper stage will avoid the altitude range commonly used by global navigation satellite systems.

a 90 percent probability of successfully executing the planned maneuver to the disposal orbit; (2) a description of how the system will achieve and maintain the planned disposal orbit for the required time limit; and (3) statistical analysis demonstrating compliance with the probability of collision lifetime limit with operational spacecraft and debris. ISO Standard 16126⁶⁶ provides an acceptable method for conducting the post-mission disposal probability of success analysis of § 453.18(f)(1). The testing and analysis can include engine re-light qualification tests or reliability analysis or similar.

D. Explosion Mitigation

The FAA proposes minor changes to its current requirement that a launch operator prevent fragmentation or explosion of its upper stage.⁶⁷ Currently, under §§ 417.129(c) and 450.171(a)(3), a launch operator must ensure the removal of stored energy from an upper stage by depleting residual fuel and leaving fuel lines open.⁶⁸

Proposed § 453.7(a) would require that, except for energy sources that are safety critical on-orbit or during reentry, a launch operator must ensure: (1) the integrated probability of debris-generating explosions or other fragmentation from the conversion of energy sources (*i.e.* chemical, pressure, kinetic) of each upper stage is less than 0.001 (1 in 1,000) during operations; and (2) stored energy is removed by depleting residual propellants, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy. The proposed rule would replace §§ 417.129(c) and 450.171(a)(3), and would not contain a specific requirement to leave valves open. After promulgation of its original debris requirements, the FAA has found on several occasions, through the licensing process, that leaving the valves open long enough for all fuels and oxidizers to vent and then permitting them to close, has provided a level of safety equivalent to leaving the valves open. Either approach removes the source of explosion risk—namely, the fuels and oxidizers. The FAA proposes a probability limit of 0.001, which matches the limit in the USGODMSP, in order to provide operators a quantitative requirement.

Proposed § 453.7(b) would identify the information that an operator would

need to include in its ODAP to demonstrate compliance with § 453.7(a), specifically: (1) analysis, using commonly accepted engineering and probability assessment methods, showing how the operation meets paragraph (a)(1); and (2) test results or analysis, with 95 percent confidence levels,⁶⁹ of the planned end-of-mission passivation procedure that verifies dissipation of all energy sources to levels that will prevent explosion of any launch vehicle component. The test results or analysis submitted in accordance with § 453.7(b)(2) would be required to show that all residual propellants contained in the system can be purged or passivated to an acceptable level at the end of the launch, all pressurized systems can be purged or passivated, and all energy storage systems have sufficient structural design to prevent rupture and subsequent explosion. This proposal marks a departure from current requirements, which only ask for a demonstration, without specifying that the demonstration be made with analysis and verification. The FAA now considers the latter necessary because operators have historically only stated that they would comply without providing the test or analysis to show how they would comply. The FAA seeks to clarify in regulation that asserting compliance is not a demonstration of compliance that satisfies this requirement. The FAA seeks feedback on the proposed analysis and testing requirements.

E. Collision Mitigation Between Launched Objects

The FAA proposes minor changes to its current requirements that a launch operator prevent unplanned physical contact between the launch vehicle and payload. Currently §§ 417.129(a) and 450.171(a)(1) require a launch operator to ensure that there is no unplanned physical contact between the launch vehicle and its components and the payload. Proposed § 453.9(a) would require a launch operator to prevent unplanned physical contact between a launch vehicle or any of its components and each payload after payload separation, and would replace the requirements in §§ 417.129 and 450.171.

The FAA proposes to add a requirement in § 453.9(b) to take into account the probability of collision with orbital objects 10 cm and larger when

designing the mission profile of an upper stage. The operator should ensure that the probability of collision is less than 0.001 (1 in 1,000) after the end of launch. Upper stages are the highest mass of orbital debris by far. It is important to prevent breakups of massive upper stages due to collisions with large debris. The proposed requirement also matches ODMSP Objective 3–1.

Proposed § 453.9(c)(1) would specify the information that an operator must include in its ODAP to demonstrate compliance with § 453.9: (1) the operator's procedure for preventing vehicle and payload collision after payload separation, including any propellant depletion burns and compressed gas releases that minimize the probability of subsequent collisions; and (2) the results of a probability of collision analysis, using commonly accepted engineering and probability assessment methods, meeting paragraph (b) of this section. This marks a departure from current requirements, which only require a demonstration, without specifying that the demonstration must consist of a written procedure. The FAA has received non-actionable demonstrations in previous applications and now proposes requiring complete procedures in the ODAP. The FAA now considers the latter necessary for purposes of clarification as to what the FAA seeks. The analysis should use commonly accepted engineering and probability assessment methods.

F. Launch and Reentry Collision Avoidance

The FAA proposes to move the collision avoidance analysis requirements from § 450.169, which are currently applicable to all orbital launches and reentries authorized by the FAA that exceed 150 km to § 453.11. The FAA would replace the current text in § 450.169 with a reference to § 453.11, and replace all references to § 450.169 outside of part 450 with a reference to new § 453.11, which would be called "Collision Avoidance with Orbital Objects." Proposed § 453.11 is substantially similar to the existing requirements in § 450.169, but would differ from the existing regulation in the following respects.

First, the FAA would omit from proposed § 453.11 the exclusion provided in § 450.169(d), which states that collision avoidance analysis is not required if the maximum planned altitude for any launched object is less than 150 km. This exclusion is necessary under current § 450.169 because part 450 is not limited to

⁶⁶ International Organization for Standardization. (April 1, 2014) *ISO 16126:2014*.

⁶⁷ See proposed § 417.129(b) and (c).

⁶⁸ See § 417.129(c).

⁶⁹ In statistics, a confidence interval is the range of values that includes the true value at a specified confidence level. A confidence level of 95 percent is commonly used which means that there is a 95 percent chance that the true value is encompassed in the interval.

launch or reentry activity above 150 km. Since the FAA would relocate the collision avoidance analysis requirements to part 453, which would only apply to launch or reentry activity that exceeds 150 km, the exclusion found in § 450.169(d) is no longer necessary. As such, the FAA would exclude the phrase “except as provided in paragraph (d),” which appears in § 450.169(a) from proposed § 453.11(a).

The text of proposed § 453.11(a)(1) would match current § 450.169(a)(1).

The FAA proposes to refer to “active payloads” in § 453.11(a)(2), instead of “objects that are neither orbital debris nor inhabitable” as used in current § 450.169(a)(2). The updated language clearly states the intent of this section and is consistent with U.S. Space Force terminology and current practice. Active payloads do not include inhabitable objects like the ISS, which require more stringent screening.

In § 453.11(a)(2), the FAA proposes to retain the probability of collision and spherical separation distance options from § 450.169(a)(2)(i) and (ii), but add a third option for operators to screen against active payloads: ellipsoidal screening. The FAA would accept an ellipsoidal separation distance of 25 km in-track and 7 km cross-and-radial-track ellipsoidal separation from active payloads for collision avoidance analyses. The FAA looked at collision risk associated with the radial component greater than 7 km and found that it posed a risk less than 1×10^{-5} . These ellipsoidal distances also match current practice identified by the Range Commanders Council. Operators would therefore have three options for screening against active payloads: probability of collision (§ 453.11(a)(2)(i)), ellipsoidal screening (§ 453.11(a)(2)(ii)), and spherical screening (§ 453.11(a)(2)(iii)).

The FAA proposes to add a requirement in § 453.11(a)(3) to perform launch and reentry collision avoidance analysis against small objects with a radar cross section greater than 0.04 m^2 . Currently, § 450.169(a)(3) only requires operators to screen against large objects with radar cross section greater than 1 m^2 and medium objects with radar cross section 0.1 m^2 to 1 m^2 . However, small objects, including CubeSat-sized objects, can cause vehicle breakdowns and orbital debris if a collision were to occur between the object and a launching or reentering vehicle. The FAA did not include small debris in its recent Streamlined Launch and Reentry License Requirements rulemaking, as the FAA was still investigating the implications of the increase of small objects in the debris catalog due to the

addition of the Department of Defense Space Fence. It is current practice at the Federal ranges to screen against all objects in the debris catalog, including small objects with a radar cross section greater than 0.04 m^2 . Therefore, the FAA proposes to add launch and reentry collision avoidance analysis screening against those small objects. The FAA would retain under § 453.11(a)(3) the screening options provided in § 450.169(a)(3): an operator would be required to ensure either (i) that the probability of collision between the launching or reentering objects and any known orbital debris does not exceed 1×10^{-5} ; or (ii) that the launching or reentering objects maintain a spherical separation distance of 2.5 km. Window closures that meet these requirements will ensure that launch and reentry vehicles do not collide with known objects during launch or reentry operations. Note that probability of collision is different than probability of casualty used elsewhere for public risk. Probability of collision is only the odds that two objects will occupy the same location at the same time. Probability of casualty factors in the odds of collision plus the vulnerability of a person. Thus, there are separate risk measures.

The FAA proposes to move the screening time requirements of § 450.169(b) to § 453.11(b), with several modifications. First, to enhance clarity the FAA would refer to “150 kilometers altitude” in § 453.11(b)(1) and (2), instead of “150 km,” which appears in § 450.169(b)(1) and (2). The text of proposed § 453.11(b)(3) would match current § 450.169(b)(3). Second, to accommodate the additional disposal options proposed in part 453, the FAA proposes to specify appropriate screening times for controlled atmospheric disposal and maneuver to a storage orbit, rather than refer to “disposal” generally, as done in current § 450.169(b)(4). Under proposed § 453.11(b)(4), an operator performing controlled atmospheric disposal would need to screen during descent from initial disposal burn to 150 km altitude. To maneuver to a disposal orbit, under § 453.11(b)(5), an operator would need to screen during initial disposal operation until removal from LEO or GEO.

The FAA proposes to move § 450.169(c) to § 453.11(c) without any changes. Since the FAA would not include the exclusion in § 450.169(d) because it is redundant of proposed part 453, the *Analysis* requirements found in § 450.169(e) would appear under paragraph (d) of proposed § 453.11.

The FAA proposes to move the language currently found in § 450.169(e)

to § 453.11(d), with two revisions. First, to enhance clarity, the FAA proposes to revise the first sentence of § 453.11(d) to use the active voice (“An operator must obtain a collision avoidance analysis . . .”). Second, the FAA proposes to identify in § 453.11(d)(2) the uncertainties that should be included in the vehicle trajectory and covariance calculation used in the collision avoidance analysis. Specifically, the FAA proposes to require that collision avoidance analyses account for uncertainties, “including launch or reentry vehicle performance and timing, atmospheric changes, variations in drag, and any other factors that affect position and timing of the launch or reentry vehicle.” It is important for a scientific and complete analysis to include these uncertainties because at the velocities of the objects in orbit, small variations or uncertainties can affect the collision prediction. By revising this provision, the FAA emphasizes the use of uncertainty at the beginning of collision analysis, whereas the previous language in § 450.169(e)(2) directed that uncertainties be used to modify the final analysis results.

The FAA proposes to move § 450.169(f) to § 453.11(e) without any substantive changes.

The FAA proposes to move part 450 Appendix A, the Collision Avoidance Analysis Worksheet, to § 453.11(f), with several revisions. First, the FAA proposes in § 453.11(f)(1) to update the launch and reentry information that must be included in the Collision Avoidance Analysis Worksheet. The FAA proposes to combine the “Segment Number” and “Orbiting objects to evaluate,” currently found in paragraphs (a)(5) and (a)(7) of Appendix A, into one requirement, § 453.11(f)(1)(v). These current requirements are redundant, and the updated requirement uses plain language to describe the objects that should be evaluated in the analysis: all free-flying launch vehicle stages, payloads, and components that reach orbit. The FAA also proposes to more clearly convey in § 453.11(f)(1)(vi) the orbital parameters of each free-flying launch vehicle stage, payload, or component achieving orbit that must be identified. The FAA would also refer to both launch and reentry in § 453.11(f)(1)(ii) and (iv), unlike the existing Appendix A, which inconsistently addresses launch and reentry. This is a correction, as all parts of the Collision Avoidance Analysis Worksheet are applicable to both launch and reentry.

G. Real-Time Reporting of Orbital Safety Hazards

The FAA proposes to add a requirement in § 453.20 that would require a launch or reentry operator to submit certain information to the FAA and, if applicable, to other requesting Federal agencies, at the detection of any launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance or any debris-creating event. Orbital safety is implemented through the pre-launch or reentry assessment of planned trajectories. If either an operator or Federal tracking capabilities detect activity outside the 3-sigma planned trajectory or a debris-generating event, the operator should contact the FAA to provide as much information as possible on the characteristics (size and mass), last known orbital or trajectory information, and other details determined necessary by the FAA to locate and categorize orbital objects. This should be done by phone or email as soon as the event is detected. The United States Strategic Command (USSTRATCOM) would be the Federal agency most likely to detect an event covered by § 453.20(a) and request information from the operator. This information may provide critical warning time to inhabited and active payloads on orbit, and allow USSTRATCOM to update its models and recalculate projected orbits. If a launch does not go as planned, and the vehicle ends up in a different orbit than expected, the original Collision Avoidance Analysis Worksheet would be moot. The FAA would need to reassess the collision probability against the new trajectory.

Specifically, proposed § 453.20(a) would require an operator to immediately submit the information identified in § 453.20(b) to the FAA and, if applicable, a requesting Federal agency, at the detection of any launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance or any debris-creating event. If an operator identifies such an event, or is notified by a Federal agency (such as U.S. Space Force and NASA), then the operator would need to report to the FAA and, if applicable, the requesting Federal agency: (1) the size and mass of the affected objects; (2) the last known orbital or trajectory information; and (3) any other details determined necessary by the FAA to locate and categorize orbital objects, such as the vehicle orientation, whether it is tumbling, or the operator's ability to control the object.

H. Revisions to Existing Regulations

The FAA's proposal to consolidate existing requirements for orbital debris mitigation and end-of-launch safety under part 453 necessitates the following revisions to current regulations.

Under part 404, the FAA proposes to replace the reference to § 450.169 in Table A404.1 with a reference to § 453.11.

Under part 415, the FAA proposes to revise § 415.2(b) to reference part 450 as well as part 453. The proposed revision would make clear that operations licensed under part 415 must comply with the critical asset protection requirements in § 450.101(a)(4) and (b)(4) and, for launches with a planned altitude greater than 150 km, the launch collision avoidance requirements in § 453.11. The FAA also proposes to revise § 415.35(d) to require that launch vehicles be operated "in a manner that ensures that flight risks meet the criteria of paragraph (a) of this section and in accordance with collision avoidance requirements in § 453.11 and critical asset protection requirements in § 450.101(a)(4) and (b)(4)."

The FAA also proposes to revise § 415.39 by revising the heading to read, "Demonstration of Orbital Debris Mitigation," instead of "Safety at End of Launch," and by replacing the reference to § 417.129 with a reference to the sections of proposed part 453 under which those end of launch requirements would appear: §§ 453.7 and 453.9. Similarly, the FAA proposes to revise § 415.133 by revising the heading to read, "Orbital Debris Mitigation," and by replacing the reference to § 417.129 with a reference to the sections of proposed part 453 under which those end of launch requirements would appear: §§ 453.7 and 453.9. These revisions would direct readers to the Code of Federal Regulations (CFR) part under which the FAA's safety at end of launch requirements would be relocated under this proposal, and affirm that any FAA-licensed launches exceeding 150 km would be required to comply with part 453. Lastly, the FAA would revise Appendix B to part 415 to reflect the revised heading of § 415.133 (Orbital Debris Mitigation).

Under part 417, the FAA proposes to revise § 417.113(c)(1) to reference the collision avoidance analysis requirements of proposed § 453.11, instead of § 450.169. The FAA proposes to replace the requirements in § 417.129 for safety at end of launch with a reference to the sections of proposed part 453 under which those end of launch requirements would appear:

§§ 453.7 and 453.9. This revision would direct readers to the CFR part under which the FAA's safety at end of launch requirements would be relocated under this proposal, and affirm that any FAA-licensed launches exceeding 150 km would be required to comply with part 453. As discussed above, the FAA proposes changes to the end of launch requirements under part 453, consistent with USGODMSP guidelines.

The FAA proposes to revise §§ 431.2(b) and 435.2(b) to reference part 450 and part 453. The proposed revisions would make clear that operations licensed under part 431 and 435 must comply with the critical asset protection requirements in § 450.101(a)(4) and (b)(4) and, for launches with a planned altitude greater than 150 km, the launch collision avoidance requirements in § 453.11. The FAA proposes to revise § 431.43(a)(1) to reference § 453.11 instead of § 450.169. The FAA also proposes to replace the reference to § 450.169 in § 431.43(c)(3) with a reference to the sections of proposed part 453 under which those end of launch requirements will appear: §§ 453.7 and 453.9. As discussed above, the FAA proposes to change the end of launch requirements consistent with USGODMSP guidelines. This revision would direct readers to the CFR part under which the FAA's safety at end of launch requirements would be relocated under this proposal, and affirm that any FAA-licensed launches or reentries exceeding 150 km would be required to comply with part 453.

Under part 437, the FAA proposes to replace the reference to § 450.169 in § 437.65 with a reference to § 453.11. The FAA also proposes to remove the word, "maximum" from § 437.65 because it is an unnecessary modifier to the phrase, "permitted flight with a planned altitude greater than 150 km."

Under part 450, the FAA proposes to revise § 450.101(d), titled Disposal Safety Criteria, to specify the risk criteria applicable to controlled and uncontrolled atmospheric disposals. As discussed earlier in this preamble, the current definition of "disposal" in § 401.7 includes only controlled atmospheric disposal. As a result, the disposal safety criteria currently identified in § 450.101(d) only apply to controlled atmospheric disposal. Since the FAA is proposing to amend the "disposal" definition to include all five disposal options proposed in §§ 453.14 through 453.18, and the disposal risk criteria currently identified in § 450.101(d) would not apply to all five disposal methods, the FAA must therefore revise § 450.101(d) to identify the risk criteria applicable to each

disposal method. Additionally, § 450.101(d) currently refers to the reentry risk criteria in (b), which may create confusion since reentry is distinct from disposal.

The risk criteria outlined in § 450.101 would only apply to disposals that result in orbital debris returning to Earth's surface or atmosphere—that is, controlled or uncontrolled atmospheric disposal. There is no need to calculate collective or individual risks to the public, or aircraft risk if an operator elects to maneuver orbital debris to a disposal orbit or a hyperbolic trajectory that no longer orbits Earth (Earth-escape disposal). Thus, the FAA proposes to revise § 450.101(d) to limit the applicability of the risk criteria to controlled atmospheric disposal performed in accordance with § 453.14, direct retrieval resulting in controlled atmospheric disposal per § 453.16(b)(1), and uncontrolled atmospheric disposal performed in accordance with § 453.17. The risk criteria applicable to controlled atmospheric disposal would appear in paragraph (d)(1), while the risk criteria applicable to uncontrolled atmospheric disposal would appear in paragraph (d)(2).

With respect to controlled atmospheric disposal, the FAA's proposed revision to § 450.101(d) is substantively equivalent to the current regulation. Operators performing controlled atmospheric disposal will still have the option of targeting a broad ocean area or meeting the same collective, individual, and aircraft risk criteria required for reentries under § 450.101(b). The FAA proposes to add a third alternative for compliance as § 450.101(d)(1)(i): ensuring that the effective casualty area of any surviving debris is less than 7 square meters. This revision renders the disposal risk criteria in § 450.101(d)(1) consistent with the safety criteria for controlled atmospheric disposal under proposed § 453.14.

The risk criteria applicable to uncontrolled atmospheric disposal will similarly match the criteria proposed in § 453.17. As noted in this section of this preamble discussing proposed § 453.17, the FAA will not require operators to calculate individual or aircraft risk as would an operator performing controlled atmospheric disposal because the science of predicting impact points for uncontrolled disposals is limited. Due to limitations in the U.S. tracking system and environmental factors that impact debris, it is virtually impossible to precisely predict when and where debris disposed through natural decay will impact. Instead, consistent with the USGODMSP, the FAA would require

that operators performing uncontrolled atmospheric disposal ensure that either (i) the effective casualty area for any surviving debris will be less than 7 square meters; or (ii) the risk to the public on the ground will not exceed $1 E_C$ in 10,000 events or 1×10^{-4} .

The FAA also proposes to revise § 450.101(e) to reflect the scope of proposed part 453. Specifically, the FAA would require in § 450.101(e)(1) that operators prevent collisions between a launch or reentry vehicle stage or component with a planned altitude greater than 150 km and people, property, and debris on orbit, in accordance with the requirements in § 453.11. Similarly, the FAA would require in § 450.101(e)(2) that operators perform debris mitigation in accordance with part 453 for any launch or reentry vehicle stage or component with a planned altitude greater than 150 km. The FAA also proposes to replace the reference to § 450.169 in § 450.165(a)(3) with a reference to § 453.11, and in § 450.213 with a reference to § 453.11(f). As discussed above, the FAA proposes to move the collision avoidance analysis requirements set forth in §§ 450.169 to 453.11, and replace the current language of § 450.169 with a reference to § 453.11.

The FAA also proposes to revise the equivalent level of safety requirements in § 450.37 to allow operators the option to seek an equivalent level of safety for collision avoidance analysis requirements (which would be located under § 453.11) and all other orbital debris mitigation requirements under part 453. Previously, § 450.37 did not include an equivalent level of safety for collision avoidance analysis. Upon further consideration, the FAA decided that an equivalent level of safety is appropriate. The FAA has found a need for flexibility in the current regulation, which does not allow an equivalent level of safety for collision avoidance analysis, to accommodate deployments of large numbers of satellites and for new launch operators. The FAA has found that collision avoidance is a difficult task for new launch operators, and options need to be available to get the operators to meet compliance. The FAA believes operators might be capable of proposing alternatives to the collision avoidance analysis requirements such as active debris avoidance that provide a level of safety equivalent to FAA regulations. The FAA also proposes to amend the flight safety analysis scope requirements of § 450.113 regarding disposal. The current regulation requires an operator to perform and document a flight safety analysis for all phases of flight, including for “disposal,” from the

initiation of the deorbit through final impact. As discussed earlier in this preamble, the FAA is proposing to expand the definition of “disposal” in § 401.7 to include all 5 disposal options proposed in §§ 453.14 through 453.18. The FAA does not believe it would be necessary or feasible to prepare a flight safety analysis for each of the 5 disposal methods proposed in part 453. The FAA will continue to only require a flight safety analysis for controlled atmospheric disposals. The FAA therefore proposes to replace the word “disposals” in § 450.113(a)(3) with “controlled atmospheric disposal performed in accordance with § 453.14 or direct retrieval resulting in controlled atmospheric disposal under § 453.16(b)(1).” Additionally, in order to reflect the safety criteria alternatives proposed in § 453.14(b), the FAA proposes to specify in § 450.113(c) that an operator would not need to prepare a flight safety analysis if the Administrator agrees that the disposal will target a broad ocean area or have an effective casualty area less than 7 square meters.

Lastly, the FAA proposes to replace the current requirements of § 450.171 for safety at end of launch with a reference to the sections of part 453 under which those requirements will now be found: §§ 453.7 and 453.9. As discussed above, the FAA is proposing changes to the requirements for safety at end of launch to include all orbital debris mitigation requirements. As such this revision will expand the scope of § 450.171, but as discussed earlier, should present no more than a minimal burden on operators for compliance.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (“Modernizing Regulatory Review”), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits,

and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year. The current threshold after adjustment for inflation is \$165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed 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: would result in benefits that justify costs; is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (“Modernizing Regulatory Review”); would not have a significant economic impact on a substantial number of small entities; would not create unnecessary obstacles to the foreign commerce of the United States; and would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Summary of the Regulatory Impact Analysis

To limit the growth of orbital debris, the FAA is proposing to require that

upper stages of commercial launch vehicles and other components be removed from orbit within 25 years after launch using an acceptable means of disposal. This document provides the FAA’s analysis of the impact of this regulatory change.

Assumptions:

- All monetary values are expressed in 2020 dollars.
- A 15-year analysis period is used based on the available forecast and cost information.
- Present values using 3 percent and 7 percent discount rate as prescribed by OMB in Circular A–4.

Entities Potentially Affected by this Rulemaking:

- Licensed and permitted operators for launches and reentries with a planned altitude above 150 km.
- All space users.
- Commercial space transportation suppliers.
- Satellite operators and owners.
- The Federal Aviation Administration and other government agencies.
- The general public.

Currently, the FAA has no regulations requiring post-mission disposal of upper stages. In this rulemaking, the FAA considers the U.S. Government Orbital Debris Mitigation Standard Practices (USGODMSP) and policies of NASA, Federal Communications Commission (FCC), National Oceanic and

Atmospheric Administration (NOAA), and the Inter-agency Space Debris Coordination Committee (IADC) in an effort to establish common standards as the commercial space industry evolves and utilization of space grows.

This proposed rule would prevent an estimated 427 used upper stages from becoming large orbital debris over the next 15 years. Furthermore, this proposed rule would likely result in cost savings resulting from avoiding orbital remediation costs in the long run. The proposed rule would reduce risks to human spaceflight and space property, and internalize the externality to benefit the satellite industry. In addition, the proposed mitigation requirements are in line with the public demand for a sustainable space environment and the commercial space industry’s interest in driving down orbital debris awareness costs. Therefore, this rulemaking would improve public safety and eventually save the industry money in the long run.

The FAA assesses scenarios of compliance costs using low, central, and high scenarios, which vary by the number of controlled disposals per year. Cost of present values and annualized costs for the lower case, central case and higher case are presented in the following table.

LOW, CENTRAL, AND HIGH-COST SCENARIOS IN 2022 U.S. DOLLARS

Million dollar	Present value at a 7% discount rate	Present value at a 3% discount rate	Annualized cost at a 7% discount rate	Annualized cost at a 3% discount rate
Lower Case	\$16	\$20	\$2	\$2
Central case	24	31	3	3
High Case	48	59	5	5

The central estimate of the present value of total costs over 15 years is \$24 million at a 7 percent discount rate or \$31 million at a 3 percent discount rate. The annualized costs at a 7 percent discount rate would be \$2.6 million or

\$2.6 million at a 3 percent discount rate. Without post-mission disposal, the upper stages contribute to the majority of orbital debris due to their mass. Moreover, prevention of large orbital

debris would reduce risks to human spaceflight and space property.

The following table is the summary of the total costs for central estimate, the FAA’s preferred estimate.

PRESENT VALUE AND ANNUALIZED COST IN 2022 U.S. DOLLARS

Summary of costs (\$ million)	Present value at a 3% rate	Present value at a 7% rate	Annualized cost at a 3% discount rate	Annualized cost at a 7% discount rate
Mitigation Costs	\$31.1	\$23.9	\$2.6	\$2.6

The following table summarizes benefits and costs.

SUMMARY OF BENEFITS AND COSTS

Benefits

- Preventing 427 used upper stages from becoming orbital debris over the 15 years.
- Avoiding orbital remediation costs in the long run.
- Mitigating risks to valuable space assets.
- Internalizing the externality (spill-over cost) to benefit the satellite industry.
- Aligning FAA requirements with interagency policies and common standards for orbital debris mitigation, and encouraging reciprocal regulatory action in foreign countries, which will further benefit U.S. commercial and government space operations by reducing space debris.
- Preventing collisions and protecting human spaceflight.

Costs

- Present-value cost over 15-years (7 percent) would be \$24 million (\$3 million annualized). The costs are categorized into five groups: four disposal methods and reporting costs.

The FAA encourages the public interest parties to read a full context of the regulatory impact analysis (RIA) of this proposed rule in the docket for this rulemaking.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Currently, there are five FAA-licensed United States commercial space launch orbital vehicle manufacturers and operators under the Small Business Administration small-entity criteria of 1,200 employees. Two of the five small entities are either a suborbital launcher

whose space vehicles would not reach high space altitude to become orbital debris against the 25-year rule or not an active launcher, but listed as a launch license holder. The other three of the five are considered to be rocket builders, whose products as low-cost suborbital rockets would not be affected by this proposed rule. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal.

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 \$155 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0608. 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.

Summary: Under §§ 453.5 through 453.18, the proposed rule would require applicants to submit an ODAP that includes several analyses, descriptions, and demonstrations. The analyses would detail the release of debris during normal operations, how that debris release could be mitigated, and how any debris released will meet the 25-year rule and 100 object-year rule. An analysis detailing the end-of-mission passivation procedure and its probability of success would also be

required, as well as a procedure for collision avoidance after payload separation and an analysis of the lifetime probability of collision. For post-mission disposal, analysis and description of the disposal method and its probability of success are proposed along with the calculated risk, effective casualty area, or the broad ocean location of any disposals into Earth's atmosphere.

Use: The information would be used by the FAA's Office of Commercial Space to evaluate the operator's application.

Respondents (including number of): There are approximately 13 FAA-licensed or permitted launches and reentries per year that would be affected by this proposed regulation.

Frequency: Operators would need to submit a mission-specific ODAP at least 60 days before each launch or reentry with a planned altitude above 150 km. In 2021, the FAA issued 24 space launch and reentry licenses held by 11 license holders. Many operators will be able to re-use the ODAP or parts of the ODAP for multiple operations, as some information will not change operation to operation. The FAA uses 25 ODAP per year for the calculation of the frequency.

Annual Burden Estimate: Changes in §§ 453.5 through 453.18 would result in some paperwork burden cost by requiring engineer time for analyses and documentations of mission disposal, normal operations debris release, explosion mitigation, and collision mitigation in an ODAP. The FAA estimates an aerospace engineer would spend approximately 10 hours per launch at the mean hourly wage rate of \$81.28.⁷⁰ To determine reporting requirement cost, the FAA calculates the annual launch number potentially for orbital debris creation. The annual impacted launch number was estimated to be 25 by dividing the total forecasted launches subtracting sub-orbital launches (or natural decay) by 15 years. Based on impacted 25 launches, the paperwork burden would be \$341,376 over 15-year analysis period.

In order to comply with § 453.20, launch operators would need to notify the FAA or, if appropriate, a requesting Federal agency, by phone call or email at the detection of a debris-creating event or any launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance. The FAA estimated the time required to report by

phone or email would be about 0.25 hours per launch or approximately 95 hours ($0.25 \times 25 \times 15$) over a 15-year period, assuming operators would have an event to report under proposed § 453.20 after every launch. It would cost \$8,677 (see table 2, column 3) over the entire 15-year period based on the average wage rate of \$81.28 for aerospace engineers.

The compliance costs for § 453.11, launch and reentry collision avoidance analysis and the associated worksheet, are unchanged from the previous part 450 burden determination.

Combing all the reporting costs, the undiscounted total reporting requirement cost would be \$350,053 (\$341,376 + \$8,677) over the 15-year period. The FAA believes the paperwork burden is insignificant.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by December 26, 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 17 Street NW, Washington, DC 20053.

F. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

V. 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 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.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or Federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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, or a memorandum submitted by outside parties to memorialize communications with the FAA. 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 to the extent practicable. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not

⁷⁰ The spent hour estimate is based on FAA/AST office and government launchers data sources. The wage rate is based on U.S. Bureau of Labor Statistics (BLS), Occupation Employment and Wages, occupation code 17–2011 for Aerospace Engineers, in Feb 2019.

file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (www.regulations.gov);
2. Visiting the FAA's Regulations and Policies web page at www.faa.gov/regulations_policies; or,
3. Accessing the Government Printing Office's web page at www.GovInfo.gov.

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 from the internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 401

Organization and functions (Government agencies), Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 415

Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 417

Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 431

Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 435

Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 437

Aircraft, Aviation safety. Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 450

Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 453

Reporting and recordkeeping requirements, Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter III of title 14, Code of Federal Regulations as follows:

PART 401—ORGANIZATION AND DEFINITIONS

- 1. The authority citation for part 401 continues to read as follows:

Authority: 51 U.S.C. 50101–50923.

- 2. Amend § 401.7 by:

- a. Revising the definition of “Disposal; and

- b. Adding the definitions of “Geostationary Earth Orbit (GEO)”, “Geosynchronous region”, “Low Earth Orbit (LEO)”, “Medium Earth Orbit (MEO)”, “Object time” and “Orbital debris”.

The revisions and additions read as follows:

§ 401.7 Definitions.

* * * * *

Disposal means to execute or attempt to execute controlled atmospheric disposal, heliocentric disposal, uncontrolled atmospheric disposal,

disposal orbit, or direct retrieval of launch vehicle stages or components of launch or reentry vehicles under part 453 of this chapter.

* * * * *

Geostationary Earth Orbit (GEO) means any Earth orbit where the orbiting object orbits at the same angular velocity as the Earth and the object appears stationary from the ground. The altitude of this zero inclination, zero eccentricity orbit is 35,786 km.

Geosynchronous region is the band of orbital space surrounding GEO. It is bound by altitude limits of 35,786 km +/- 200 km altitude and +/- 15 degrees latitude.

* * * * *

Low Earth Orbit (LEO) means any Earth orbit with both apogee and perigee below 2,000 km altitude.

* * * * *

Medium Earth Orbit (MEO) means any Earth orbit in which an object's apogee and perigee both remain between LEO and GEO.

* * * * *

Object time means the number of objects multiplied by the unit of time, typically years. A higher object-time means more objects on orbit for a higher cumulative amount of time.

* * * * *

Orbital debris means all human-generated debris in Earth orbit that is greater than 5 mm in any dimension. This includes, but is not limited to, payloads that can no longer serve a useful purpose, rocket bodies and other hardware (e.g., bolt fragments and covers) left in orbit as a result of normal launch and operational activities, and fragmentation debris produced by failure or collision. Released gases and liquids in a free state, and solid rocket motor slag of any size are not orbital debris.

* * * * *

PART 404—PETITION AND RULEMAKING PROCEDURES

- 3. The authority citation for part 404 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

- 4. Revise in Appendix A to Part 404, Table A404.1 to read as follows:

Appendix A to Part 404—Alternative Time Frames

* * * * *

TABLE A404.1—ELIGIBLE TIME FRAMES

Sections	Paragraphs
§ 404.5—Filing a petition for waiver	(a).
§ 413.23—License or permit renewal	(a).
§ 414.31—Safety element approval renewal	(a).
§ 420.57—Notifications	(d).
§ 437.89—Pre-flight reporting	(a), (b).
§ 440.15—Demonstration of compliance	(a)(1), (a)(2), (a)(3), (a)(4).
§ 453.11—Launch and Reentry Collision Avoidance Analysis Requirements	(e)(1).
§ 450.213—Pre-flight reporting	(b), (c), (d), (e).
§ 450.215—Post-flight reporting	(a).

PART 415—LAUNCH LICENSE

■ 5. The authority citation for part 415 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. Amend § 415.2 by revising paragraph (b) to read as follows:

§ 415.2 Licenses issued under this part.

* * * * *

(b) *Compliance with parts 450 and 453 of this chapter.* Operations under this part must comply with the critical asset protection requirements in § 450.101(a)(4) and (b)(4) of this chapter and, for launches with a planned altitude greater than 150 kilometers, the collision avoidance requirements in § 453.11 of this chapter.

■ 7. Amend § 415.35 by revising paragraph (d) to read as follows:

§ 415.35 Acceptable flight risk.

* * * * *

(d) *Operation.* A launch vehicle must be operated in a manner that ensures that flight risks meet the criteria of paragraph (a) of this section and in accordance with collision avoidance requirements in § 453.11 and critical asset protection requirements in §§ 450.101(a)(4) and (b)(4). An applicant must identify all launch operations and procedures that must be performed to ensure acceptable flight risk.

* * * * *

■ 8. Revise § 415.39 to read as follows:

§ 415.39 Demonstration of Orbital Debris Mitigation.

An applicant must demonstrate compliance with §§ 453.7 and 453.9 of this chapter for any proposed launch of a launch vehicle with a stage or component that will travel to an altitude of 150 kilometers or higher.

■ 9. Revise § 415.133 to read as follows:

§ 415.133 Orbital Debris Mitigation.

An applicant must demonstrate compliance with §§ 453.7 and 453.9 of this chapter for any proposed launch of a launch vehicle with a stage or component that will travel to an altitude of 150 kilometers or higher.

■ 10. Amend Appendix B to Part 415 by revising item 13.0 to read as follows:

Appendix B to Part 415—Safety Review Document Outline

* * * * *

13.0 Orbital Debris Mitigation (§ 415.133)

PART 417—LAUNCH SAFETY

■ 11. The authority citation for part 417 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 12. Amend § 417.113 by revising paragraph (c)(1) and (1)(iii) to read as follows:

§ 417.113 Launch safety rules.

* * * * *

(c) * * *

(1) The flight-commit criteria must implement the flight safety analysis of subpart C of this part, the collision avoidance requirements in § 453.11, and critical asset protection requirements in § 450.101(a)(4) and (b)(4). These must include criteria for:

* * * * *

(iii) Implementation of any launch wait in the launch window for the purpose of collision avoidance in accordance with collision avoidance requirements in § 453.11.

* * * * *

■ 13. Revise § 417.129 to read as follows:

§ 417.129 Orbital Debris Mitigation.

A launch operator must perform orbital debris mitigation as required by §§ 453.7 and 453.9 of this chapter.

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

■ 14. The authority citation for part 431 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 15. Amend § 431.2 by revising paragraph (b) to read as follows:

§ 431.2 Licenses issued under this part.

* * * * *

(b) *Compliance with parts 450 and 453 of this chapter.* Operations under this part must comply with the critical asset protection requirements in § 450.101(a)(4) and (b)(4) of this chapter and, for launches or reentries with a planned altitude greater than 150 kilometers, the launch and reentry collision avoidance requirements in § 453.11 of this chapter.

■ 16. Amend § 431.43 by revising paragraphs (a)(1) and (c)(3) to read as follows:

§ 431.43 Reusable launch vehicle mission operational requirements and restrictions.

(a) * * *

(1) That ensure RLV mission risks do not exceed the criteria set forth in §§ 431.35, 450.101(a)(4) and (b)(4), and 453.11 for nominal and non-nominal operations;

* * * * *

(c) * * *

(3) A launch operator must perform orbital debris mitigation as required by §§ 453.7 and 453.9 of this chapter; and

* * * * *

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

■ 17. The authority citation for part 435 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 18. Amend § 435.2 by revising paragraph (b) to read as follows:

§ 435.2 Licenses.

* * * * *

(b) *Compliance with parts 450 and 453 of this chapter.* Operations under this part with a planned altitude greater than 150 kilometers must comply with launch and reentry collision avoidance requirements in § 453.11 of this chapter and critical asset protection requirements in § 450.101(a)(4) and (b)(4) of this chapter.

PART 437—EXPERIMENTAL PERMITS

■ 19. The authority citation for part 437 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 20. Revise § 437.65 to read as follows:

§ 437.65 Collision avoidance analysis.

For a permitted flight with a planned altitude greater than 150 kilometers, a permittee must obtain a collision avoidance analysis in accordance with § 453.11 of this chapter.

PART 450—LAUNCH AND REENTRY LICENSE REQUIREMENTS

■ 21. The authority citation for part 450 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 22. Amend § 450.37 by revising paragraph (b) to read as follows:

§ 450.37 Equivalent level of safety.

* * * * *

(b) Paragraph (a) of this section does not apply to § 450.101(a), (b), (c)(1) and (3), (d), and (g).

■ 23. Amend § 450.101 by revising paragraphs (d) and (e) to read as follows:

§ 450.101 Safety criteria.

* * * * *

(d) *Disposal risk criteria.* For any controlled or uncontrolled atmospheric disposal, an operator may initiate the deorbit of a vehicle or its components only if all risks to the public satisfy the criteria in this paragraph.

(1) *Controlled atmospheric disposal.* For any controlled atmospheric disposal performed in accordance with § 453.14 or direct retrieval resulting in controlled atmospheric disposal under § 453.16(b)(1), an operator must:

- (i) Ensure that the effective casualty area for any surviving debris will be less than 7 square meters;
- (ii) Target a broad ocean area; or
- (iii) Meet the following risk criteria:

(A) *Collective risk.* The collective risk, measured as expected number of casualties (E_C), consists of risk posed by impacting inert and explosive debris, toxic release, and far field blast overpressure. Public risk due to any other hazard associated with the proposed deorbit of a launch vehicle stage or component of a launch or reentry vehicle will be determined by the Administrator on a case-by-case basis. The risk to all members of the public, excluding persons in aircraft must not exceed an expected number of 1 × 10⁻⁴ casualties.

(B) *Individual risk.* The individual risk, measured as probability of casualty (P_C), consists of risk posed by impacting inert and explosive debris, toxic release, and far field blast overpressure. Public risk due to any other hazard associated with the proposed deorbit of a launch vehicle stage or component of a launch

or reentry vehicle will be determined by the Administrator on a case-by-case basis. The risk to any individual member of the public must not exceed a probability of casualty of 1 × 10⁻⁶ per disposal.

(C) *Aircraft risk.* An operator must establish any aircraft hazard areas necessary to ensure the probability of impact with debris capable of causing a casualty for aircraft does not exceed 1 × 10⁻⁶.

(2) *Uncontrolled atmospheric disposal.* For any uncontrolled atmospheric disposal performed in accordance with § 453.17, an operator must either:

- (i) Ensure that the effective casualty area for any surviving debris will be less than 7 square meters; or
- (ii) Meet the collective risk criterion of paragraph (1)(iii)(A) of this subsection.

(e) *Protection of people and property on orbit.*

(1) A launch or reentry operator must prevent the collision between a launch or reentry vehicle stage or component with a planned altitude greater than 150 kilometers and people, property, and debris on orbit, in accordance with the requirements in § 453.11.

(2) For any launch or reentry vehicle stage or component with a planned altitude greater than 150 kilometers, a launch operator must perform orbital debris mitigation in accordance with the requirements in §§ 453.7 and 453.9.

* * * * *

■ 24. Amend § 450.113 by revising paragraph (a) and (a)(3) and adding paragraph (c) to read as follows:

§ 450.113 Flight safety analysis requirements—scope.

(a) An operator must perform and document a flight safety analysis for all phases of flight, except as specified in paragraphs (b) and (c) of this section, as follows—

* * * * *

(1) * * *
 (3) For controlled atmospheric disposal performed in accordance with § 453.14 or direct retrieval resulting in controlled atmospheric disposal under § 453.16(b)(1), from the initiation of the deorbit through final impact; and

* * * * *

(c) An operator is not required to perform and document a flight safety analysis for a controlled atmospheric disposal if agreed to by the Administrator that the disposal will target a broad ocean area or the effective casualty area for any surviving debris will be less than 7 square meters.

■ 25. Amend § 450.165 by revising paragraph (a)(3) to read as follows:

§ 450.165 Flight commit criteria.

* * * * *

(a) * * *

(3) Implementation of any launch or reentry window closure in the launch or reentry window for the purpose of collision avoidance in accordance with § 453.11;

* * * * *

■ 26. Revise § 450.169 to read as follows:

§ 450.169 Launch and reentry collision avoidance analysis requirements.

A launch or reentry operator must perform collision avoidance analysis as required by § 453.11.

■ 27. Revise § 450.171 to read as follows:

§ 450.171 Orbital Debris Mitigation.

A launch operator must perform orbital debris mitigation as required by §§ 453.7 and 453.9 of this chapter.

■ 28. Amend § 450.213 to revise paragraph (e) to read as follows:

§ 450.213 Pre-flight reporting.

* * * * *

(e) *Collision avoidance analysis.* A licensee must submit collision avoidance information to a Federal entity identified by the FAA and to the FAA in accordance with § 453.11(f).

* * * * *

Appendix A to Part 450—Collision Analysis Worksheet [REMOVED]

■ 29. Remove Appendix A to Part 450—Collision Analysis Worksheet.

■ 30. Add part 453 to read as follows:

PART 453—ORBITAL SAFETY REQUIREMENTS

Sec.

- 453.1 Applicability
- 453.3 [Reserved]
- 453.5 Control of Debris Released During Normal Operations
- 453.7 Minimizing Debris Generated by Explosions
- 453.9 Collision Mitigation between Launched Objects
- 453.11 Collision Avoidance with Orbital Objects
- 453.13 Post-Mission Disposal
- 453.14 Controlled Atmospheric Disposal
- 453.15 Heliocentric, Earth-escape Disposal
- 453.16 Direct Retrieval
- 453.17 Uncontrolled Atmospheric Disposal
- 453.18 Maneuver to a disposal orbit
- 453.20 Real-Time Reporting of Orbital Safety Hazards

Authority: 51 U.S.C. 50901–50923.

§ 453.1 Applicability

(a) This part establishes the requirements of a launch or reentry operator (operator) for orbital debris mitigation, including collision

avoidance analysis, prior to launch or reentry operations licensed or permitted under this chapter with a planned altitude greater than 150 kilometers.

(b) For each licensed or permitted launch or reentry with a planned altitude greater than 150 kilometers, an operator must submit—

(1) An Orbital Debris Assessment Plan containing the information required by this part not less than 60 days before the licensed or permitted launch or reentry, unless the Administrator agrees to a different time frame in accordance with § 404.15; and

(2) A Collision Avoidance Analysis Worksheet in accordance with § 453.11(f).

(c) An operator must send the information required by this part as an email attachment to *ASTOperations@faa.gov*, or other method as agreed to by the Administrator in the license or permit.

§ 453.3 [Reserved]

§ 453.5 Control of Debris Released During Normal Operations.

An operator must ensure for any proposed launch that for all vehicle stages and components related to launch that reach an altitude greater than 150 kilometers—

(a) The component will not release orbital debris into LEO that will remain in orbit for more than 25 years. For all planned released orbital debris, the total debris object-time product in LEO shall not exceed 100 object-years per licensed or permitted launch. The total object-time product in LEO is the sum of the orbit dwell time in LEO for all planned released debris objects, excluding the upper stage and any released payloads.

(b) Any orbital debris released into the geosynchronous region must enter an orbit with an apogee that will not remain in the geosynchronous region within 25 years of the release.

(c) Information Requirements. An operator must submit the following information in an Orbital Debris Assessment Plan—

(1) A demonstration through environmental qualification and acceptance testing that the system is designed to limit the release of orbital debris; and

(2) A statistical analysis, including inputs and assumptions, demonstrating that any orbital debris released will be disposed of within 25 years and satisfy the 100 object-year requirement.

§ 453.7 Minimizing Debris Generated by Explosions.

(a) An operator must ensure for any proposed launch that for all vehicle stages or other component that reaches

an altitude greater than 150 kilometers, except for energy sources that are safety critical on-orbit or during reentry:

(1) The integrated probability of debris-generating explosions or other fragmentation from the conversion of energy sources (*i.e.*, chemical, pressure, kinetic) of each upper stage is less than 0.001 (1 in 1,000) during operations; and

(2) Stored energy is removed by depleting residual propellants, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy.

(b) Information Requirements. An operator must submit the following information in an Orbital Debris Assessment Plan—

(1) Analysis, using commonly accepted engineering and probability assessment methods, showing how the operation meets paragraph (a)(1) of this section.

(2) Test results or analysis, with 95 percent confidence levels, of the planned end-of-mission passivation procedure that verifies dissipation of all energy sources to levels that will prevent explosion of any launch vehicle component, to show that:

(i) All residual propellants contained in the system can be purged or passivated at the end of launch;

(ii) All pressurized systems can be purged or passivated; and

(iii) All energy storage systems (*e.g.*, batteries or fuel cells) have sufficient structural design to prevent rupture and subsequent explosion.

§ 453.9 Collision Mitigation between Launched Objects.

(a) *Payload Separation.* A launch operator must prevent unplanned physical contact between a launch vehicle or any of its components and each payload after payload separation;

(b) *Collision after the End of Launch.* In developing the design and mission profile for an upper stage, the launch operator shall limit the probability of collision with objects 10 cm and larger after the end of launch to less than 0.001 (1 in 1,000);

(c) *Information required.* A launch operator must submit the following information in an Orbital Debris Assessment Plan—

(1) Procedure for preventing vehicle and payload collision after payload separation, including any propellant depletion burns and compressed gas releases that minimize the probability of subsequent collisions; and

(2) The results of a probability of collision analysis between the upper stage and its components and orbital

objects, using commonly accepted engineering and probability assessment methods, meeting paragraph (b) of this section.

§ 453.11 Collision Avoidance with Orbital Objects.

(a) *Criteria.* For an orbital or suborbital launch or reentry, an operator must establish window closures needed to ensure that the launch or reentry vehicle, any jettisoned components, or payloads meet the following requirements with respect to orbiting objects, not including any object being launched or reentered.

(1) For inhabitable objects, one of the following three criteria must be met:

(i) The probability of collision between the launching or reentering objects and any inhabitable object must not exceed 1×10^{-6} ;

(ii) The launching or reentering objects must maintain an ellipsoidal separation distance of 200 kilometers in-track and 50 kilometers cross-track and radially from the inhabitable object; or

(iii) The launching or reentering objects must maintain a spherical separation distance of 200 kilometers from the inhabitable object.

(2) For active payloads, one of the following criteria must be met:

(i) The probability of collision between the launching or reentering objects and the active payload must not exceed 1×10^{-5} ;

(ii) The launching or reentering objects must maintain an ellipsoidal separation distance of 25 kilometers in-track and 7 kilometers cross-track and radially from the active payload; or

(iii) The launching or reentering objects must maintain a spherical separation distance of 25 kilometers from the active payload.

(3) For all other known orbital debris identified by the FAA or other Federal Government entity with a radar cross section greater than 0.04 m²:

(i) The probability of collision between the launching or reentering objects and any known orbital debris must not exceed 1×10^{-5} ; or

(ii) The launching or reentering objects must maintain a spherical separation distance of 2.5 kilometers.

(b) *Screening time.* An operator must ensure the requirements of paragraph (a) of this section are met as follows:

(1) Through the entire segment of flight of a suborbital launch vehicle above 150 kilometers altitude;

(2) For an orbital launch, during ascent from a minimum of 150 kilometers altitude to initial orbital insertion and for a minimum of 3 hours from liftoff;

(3) For reentry, during descent from initial reentry burn to 150 kilometers altitude;

(4) For controlled atmospheric disposal, during descent from initial disposal burn to 150 kilometers altitude; and

(5) For maneuver to a disposal orbit, during initial disposal operation until removal from LEO or GEO.

(c) *Rendezvous*. Planned rendezvous operations that occur within the screening time frame are not considered a violation of collision avoidance if the involved operators have pre-coordinated the rendezvous or close approach.

(d) *Analysis*. An operator must obtain a collision avoidance analysis for each launch or reentry from a Federal entity identified by the FAA, or another entity agreed to by the Administrator.

(1) An operator must use the results of the collision avoidance analysis to establish flight commit criteria for collision avoidance; and

(2) The collision avoidance analysis must account for uncertainties including launch or reentry vehicle performance and timing, atmospheric changes, variations in drag, and any other factors that affect position and timing of the launch or reentry vehicle.

(e) *Timing and information required*. An operator must prepare a Collision Avoidance Analysis Worksheet for each launch or reentry using a standardized format that contains the input data required by § 453.11(f), as follows:

(1) Except as specified in paragraphs (e)(1)(i) and (ii) of this section, an operator must file the input data with an entity identified in paragraph (d) of this section and the FAA at least 7 days before the first attempt at the flight of a launch vehicle or the reentry of a reentry vehicle.

(i) Operators that have never received a launch or reentry conjunction assessment from the entity identified in paragraph (d) of this section must file the input data at least 15 days in advance.

(ii) The Administrator may agree to an alternative time frame in accordance with § 404.15.

(2) An operator must obtain a collision avoidance analysis performed by an entity identified in paragraph (d) of this section no later than 3 hours before the beginning of a launch or reentry window; and

(3) If an operator needs an updated collision avoidance analysis due to a launch or reentry delay, the operator must file the request with the entity identified in paragraph (d) of this section and the FAA at least 12 hours prior to the beginning of the new launch or reentry window.

(f) *Collision Avoidance Analysis Worksheet*. The Collision Avoidance Analysis Worksheet must include—

(1) *Launch or reentry information*. An operator must file the following information:

(i) *Mission name*. A mnemonic given to the launch or reentry vehicle/payload combination identifying the launch or reentry mission distinctly from all others;

(ii) *Launch or reentry location*. Launch or reentry site location in latitude and longitude;

(iii) *Launch or reentry window*. The launch or reentry window opening and closing times in Greenwich Mean Time (referred to as ZULU time) and the Julian dates for each scheduled launch or reentry attempts including primary and secondary launch or reentry dates;

(iv) *Epoch*. The epoch time, in Greenwich Mean Time (GMT), of the expected launch vehicle liftoff time or, for reentry, the times of reentry events such as the beginning of descent, atmospheric reentry below 150 kilometers, and touchdown;

(v) *Orbiting objects to evaluate*. An operator must identify all orbiting object descriptions including object name, dimensions (e.g., length, width, height, and diameter), and mass. These orbiting objects include each free-flying launch vehicle stage, payload, or component achieving orbit;

(vi) *Orbital Parameters*. An operator must identify the orbital parameters for each free-flying launch vehicle stage, payload, or component achieving orbit including the parameters for each object after thrust ends;

(vii) *Time of powered flight and sequence of events*. The elapsed time in hours, minutes, and seconds, from liftoff to passivation or disposal. The input data must include the time of powered flight for each stage or jettisoned component measured from liftoff; and

(viii) *Point of contact*. The person or office within an operator's organization that collects, analyzes, and distributes collision avoidance analysis results.

(2) *Collision avoidance analysis results transmission medium*. An operator must identify the transmission medium, such as voice or email, for receiving results.

(3) *Deliverable schedule/need dates*. An operator must identify the times before flight, referred to as "L-times," for which the operator requests a collision avoidance analysis. The final collision avoidance analysis must be used to establish flight commit criteria for a launch.

(4) *Trajectory files*. Individual position and velocity trajectory files, including:

(i) The position coordinates in the Earth-Fixed Greenwich (EFG) coordinates system measured in kilometers and the EFG velocity components measured in kilometers per second, of each launch vehicle stage or payload starting below 150 kilometers through screening time frame;

(ii) Radar cross section values for each individual file;

(iii) Position Covariance, if probability of impact analysis option is desired; and

(iv) Separate trajectory files identified by valid window time frames, if launch or reentry trajectory changes during launch or reentry window.

(5) *Screening*. An operator must select spherical, ellipsoidal, or collision probability screening as defined in this paragraph for determining any conjunction:

(i) *Spherical screening*. Spherical screening centers a sphere on each orbiting object's center-of-mass to determine any conjunction;

(ii) *Ellipsoidal screening*. Ellipsoidal screening utilizes an impact exclusion ellipsoid of revolution centered on the orbiting object's center-of-mass to determine any conjunction. An operator must provide input in the UVW coordinate system in kilometers. The operator must provide delta-U measured in the radial-track direction, delta-V measured in the in-track direction, and delta-W measured in the cross-track direction; or

(iii) *Probability of Collision*. Collision probability is calculated using position and velocity information with covariance in position.

§ 453.13 Post-Mission Disposal.

(a) *General*. An operator must dispose of all vehicle stages or jettisoned components in accordance with one of the disposal methods identified in §§ 453.14 through 453.18.

(b) *Information requirements*. An operator must submit a description of the chosen disposal option in an Orbital Debris Assessment Plan.

§ 453.14 Controlled Atmospheric Disposal.

(a) *Applicability*. This section applies to the use of controlled atmospheric disposal of vehicle stages or components by reentering the atmosphere to meet the post-mission disposal requirement of § 453.13.

(b) *Disposal safety criteria*. A launch or reentry operator must ensure the upper stage and each of its components, or any components of a reentry vehicle excluding the reentry vehicle itself, reenters the Earth's atmosphere within 30 days after mission completion in a controlled manner that:

(1) Ensures that the effective casualty area for any surviving debris will be less than 7 square meters;

(2) Targets a broad ocean area; or

(3) Meets the risk criteria of § 450.101(d)(1)(iii)(A) through (C).

(c) *Notification of planned impacts.* For any controlled atmospheric disposal, an operator must notify the public of any region of land, sea, or air that contains, with 97 percent probability of containment, all debris resulting from normal flight events capable of causing a casualty.

(d) *Information requirements.* An operator must submit a description of the controlled atmospheric disposal in an Orbital Debris Assessment Plan including—

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the controlled atmospheric disposal as planned;

(2) A description of how the system will achieve a controlled atmospheric disposal under nominal and off-nominal conditions; and

(3) If not targeting a broad ocean area, the calculated total collective and individual casualty expectations for the proposed operation or the effective casualty area of any surviving debris.

§ 453.15 Heliocentric, Earth-escape Disposal.

(a) *Applicability.* This section applies to the use of heliocentric, Earth-escape disposal to meet the post-mission disposal requirement of § 453.13.

(b) *General.* A launch operator must ensure, within 30 days after mission completion, that the upper stage and each of its components enters a hyperbolic trajectory which no longer orbits Earth;

(c) *Information requirements.* A launch operator must submit a description of the planned heliocentric, Earth-escape disposal in an Orbital Debris Assessment Plan including:

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned heliocentric, Earth-escape disposal; and

(2) A description of how the system will achieve a controlled disposal under nominal and off-nominal conditions.

§ 453.16 Direct Retrieval.

(a) *Applicability.* This section applies to the use of direct retrieval to meet the post-mission disposal requirement of § 453.13.

(b) *General.* No more than 5 years after completion of the mission, an

operator must ensure the removal of the upper stage and each of its components from orbit by either—

(1) Performing a controlled atmospheric disposal that meets the disposal safety requirements of § 453.14(b) and (c); or

(2) Maneuvering the debris into a disposal orbit in accordance with § 453.18.

(c) *Information requirements.* An operator must submit a description of the planned direct retrieval in an Orbital Debris Assessment Plan including—

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned direct retrieval; and

(2) If performing a controlled atmospheric disposal—

(i) A description of how the system will achieve a disposal under nominal and off-nominal conditions; and

(ii) If not disposing into a broad ocean area, the calculated total collective and individual casualty expectations for the proposed operation or the effective casualty area of any surviving debris; or

(3) If maneuvering to a disposal orbit—

(i) A description of how the system will achieve and maintain the planned disposal orbit for the required time limit as specified in § 453.18(b) through (d); and

(ii) A statistical analysis demonstrating that the probability of collision with operational spacecraft and debris is within the lifetime limit of § 453.18(e).

§ 453.17 Uncontrolled Atmospheric Disposal.

(a) *Applicability.* This section applies to the use of uncontrolled atmospheric disposal to meet the post-mission disposal requirement of § 453.13.

(b) *LEO Disposal.* For orbits below 2,000 kilometers:

(1) A launch or reentry operator must leave an upper stage and its components in an orbit where, accounting for mean projections for solar activity and atmospheric drag, the orbital lifetime should be as short as practicable but does not exceed 25 years after launch, and

(2) For all launches and reentries after [ONE YEAR AFTER THE REGULATION EFFECTIVE DATE], an operator must ensure that the effective casualty area for any surviving debris will be less than 7 square meters, or the expected average number of casualties will be less than 1×10^{-4} .

(c) *Highly elliptical long-term disposal.* For highly elliptical MEO (including semi-synchronous Molniya)

and highly elliptical GEO orbits (including synchronous Tundra orbits), and other orbits subject to significant eccentricity growth, the operator must maneuver the upper stage to a long-term disposal orbit where orbital resonances will increase the eccentricity for its long-term disposal. In developing this disposal plan, the operator must:

(1) Limit the orbital lifetime to be as short as practicable, but no more than 200 years after mission completion;

(2) Limit the probability of collisions with operational spacecraft and debris 10 cm and larger to less than 0.001 during orbital lifetime; and

(3) For launches after [ONE YEAR AFTER THE REGULATION EFFECTIVE DATE], a launch operator must ensure that the effective casualty area for any surviving debris will be less than 7 square meters, or the expected average number of casualties will be less than 1×10^{-4} .

(d) *Information requirements.* A launch or reentry operator must submit the following information in an Orbital Debris Assessment Plan—

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned disposal option;

(2) An estimate of the expected casualties or the effective casualty area for any surviving debris; and

(3) A statistical analysis demonstrating compliance with the requirements of § 453.17(b) or (c) to dispose of the debris within the prescribed time limit.

§ 453.18 Maneuver to a disposal orbit.

(a) *Applicability.* This section applies to the use of a disposal orbit to meet the post-mission disposal requirement of § 453.13.

(b) *General.* Within 30 days after mission completion, a launch or reentry operator must place the upper stage and its components either—

(1) Between LEO and GEO in accordance with paragraph (c) of this section; or

(2) Above GEO in accordance with paragraph (d) of this section.

(c) *Maneuver to disposal orbit between LEO and GEO.* The operator must place the upper stage and its components into either—

(1) An eccentric disposal orbit where—

(i) Perigee altitude remains above 2,000 kilometers for at least 100 years;

(ii) Apogee altitude remains below the geosynchronous region for at least 100 years; and

(iii) The time spent by the upper stage between 20,182 +/- 300 kilometers is

limited to 25 years or less over 200 years; or

(2) A near-circular disposal orbit that avoids for at least 100 years:

(i) Altitudes 20,182 +/- 300 kilometers;

(ii) The geosynchronous region; and

(iii) Altitudes less than 2,000 kilometers.

(d) *Maneuver to disposal orbit above GEO.* The operator must place the upper stage and its components into an orbit with a perigee altitude above 36,100 kilometers for a period of at least 100 years after disposal.

(e) *Probability of Collision.* The operator must limit the probability of collisions with operational spacecraft and debris 10 cm and larger to less than 0.001 for 100 years after disposal.

(f) *Information requirements.* A launch or reentry operator must submit the following information in an Orbital Debris Assessment Plan—

(1) Verification through hardware and software testing or analysis that the system has at least a 90 percent probability of successfully executing the planned disposal option;

(2) A description of how the system will achieve and maintain the planned disposal orbit for the required time limit; and

(3) Statistical analysis demonstrating compliance with the probability of collision lifetime limit with operational spacecraft and debris.

§ 453.20 Real-Time Reporting of Orbital Safety Hazards.

(a) At the detection of any launch or reentry activity outside the 3-sigma trajectory provided for collision avoidance or any debris-creating event, or if requested by a cognizant Federal agency, an operator must immediately provide information to the FAA and, if appropriate, to the requesting agency pertinent to locating and categorizing any orbital objects.

(b) The operator shall provide the following information to the FAA and, if applicable, the requesting Federal agency:

(1) The size and mass of the affected objects,

(2) The last known orbital or trajectory information, and

(3) Other details as determined by the FAA necessary to locate and categorize orbital objects.

Issued under authority provided by 49 U.S.C. 106(f) and 51 U.S.C. 50903, 50905 in Washington, DC.

Kelvin B. Coleman,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2023–20531 Filed 9–25–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

[File No. R307004]

Petition for Rulemaking of the U.S. Chamber of Commerce

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (“Commission”) received a petition for rulemaking from the U.S. Chamber of Commerce. This petition requests to amend the Commission’s rule regarding the disqualification of Commissioners. The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission’s Rules of Practice and Procedure and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by October 26, 2023.

ADDRESSES: You may view the petition, identified by docket number FTC–2023–0059, and submit written comments concerning its merits by using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at <https://www.regulations.gov> at any time.

FOR FURTHER INFORMATION CONTACT:

Daniel Freer (phone: 202–326–2663, email: dfreer@ftc.gov), Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days. Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record.

The Commission will not consider the petition’s merits until after the comment period closes. It may grant or deny the petition in whole or in part, and it may deem the petition insufficient to warrant commencement of a rulemaking proceeding. The purpose of this

document is to facilitate public comment on the petition to aid the Commission in determining what, if any, action to take regarding the request contained in the petition. This document is not intended to start, stop, cancel, or otherwise affect rulemaking proceedings in any way.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

(Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.)

April J. Tabor,
Secretary.

[FR Doc. 2023–20422 Filed 9–25–23; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130 and 1242

[CPSC Docket No. 2023–0037]

Safety Standard for Nursing Pillows

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the U.S. Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. The Commission is proposing a safety standard for nursing pillows. The Commission is also proposing to amend CPSC’s consumer registration requirements to identify

nursing pillows as durable infant or toddler products and proposing to amend CPSC's list of notice of requirements (NORs) to include such nursing pillows. This proposed rule would help ensure that consumers continue to have access to nursing pillows for feeding while reducing hazards that have been identified for this product category.

DATES: Submit comments by November 27, 2023.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed rule should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202-395-6974, or emailed to oir_submission@omb.eop.gov.

Other comments, identified by Docket No. CPSC-2023-0037, may be submitted electronically or in writing, as follows:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. Do not submit electronically any confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, insert the docket number, CPSC-2023-0037, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Timothy Smith, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; email: tsmith@cpsc.gov; telephone: (301) 987-2557.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, and (2) promulgate consumer product safety standards for durable infant and toddler products. 15 U.S.C. 2056a(b)(1). The Commission must continue to promulgate standards for all categories of durable infant or toddler products "until the Commission has promulgated standards for all such product categories." 15 U.S.C. 2056a(b)(2).

The Commission is issuing this notice of proposed rulemaking (NPR) to establish a consumer product safety rule for nursing pillows to further implement section 104 of the CPSIA.¹ The briefing package prepared by Commission staff defines "nursing pillows" as "any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position."² Nursing pillows provide support to caregivers by raising infants to the desired height for feeding, thereby reducing muscular strain and abdominal pressure on the caregiver and providing a buffering surface between the infant and the caregiver. When

¹ On September 8, 2023, the Commission voted (4-0) to publish this notice of proposed rulemaking. Chair Hoehn-Saric and Commissioners Trumka and Boyle issued statements in connection with their votes, available at: <https://www.cpsc.gov/s3fs-public/RCANoticeofProposedRulemakingSafetyStandardforNursingPillows.pdf?VersionId=wCUshNj0AhXxb3KM2A.kxMawNVGbS6oE>.

² Staff Briefing Package: Staff's Draft Proposed Rule for Nursing Pillows (Aug. 23, 2023) (Staff's NPR Briefing Package), available at: <https://www.cpsc.gov/content/Commission-Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Nursing-Pillows>.

infants fall asleep or are left unattended on nursing pillows, however, they are at risk for death or serious injury by suffocation.

As required by section 104(b)(1)(A) of the CPSIA, CPSC consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this rule, including through participation in the juvenile products subcommittee meetings of ASTM. CPSC formally began the consultation process for this rulemaking in December 2021, via a letter from CPSC staff requesting that ASTM form a working group to develop a voluntary standard to reduce the risk of death and injury from hazards associated with infant pillow products, including nursing pillows.³ CPSC staff provided ASTM incident data associated with both nursing pillows and infant support cushions. In response, ASTM formed the following subcommittees to develop two separate voluntary standards:

- the F15.16 Infant Feeding Supports subcommittee,⁴ intended to develop a standard for nursing pillows, which the subcommittee refers to as infant feeding supports; and
- the F15.21 Infant Loungers subcommittee, with a remit including nursing pillows that are also intended for lounging.

CPSC staff has been actively participating in both ASTM subcommittees to develop voluntary standards that address hazards associated with these products.

Currently, no voluntary or mandatory safety standard for nursing pillows exists to address the hazards of infants sleeping on or in these products. Pursuant to section 104 of the CPSIA, 15 U.S.C. 2056a, the Commission proposes to issue a mandatory standard for nursing pillows. Nursing pillows are sometimes used on elevated surfaces or inside an infant sleep product, which can lead to death or serious injury by suffocation, entrapment, or falls. CPSC staff identified 154 infant fatalities and 88 nonfatal incidents from January 1, 2010, to December 31, 2022, involving nursing pillows. Of the 154 fatalities, an infant was sleeping in or on the nursing pillow in 142 cases. In 1992, CPSC adopted a ban on certain types of hazardous "infant pillows" that contain loosely filled granular materials that conform to an infant's face or body, codified at 16 CFR 1500.18(a)(16) (Infant

³ <https://www.cpsc.gov/s3fs-public/Nursing-and-Support-Pillow-VS-request.pdf>.

⁴ The ASTM F15.16 Infant Feeding Supports subcommittee was initially called the Feeding and Infant Support Products subcommittee.

Pillow Ban). Certain nursing pillows are exempt from the Infant Pillow Ban while others do not fall within its scope, such as pillows with a non-granular fill. Many products are currently marketed for both nursing and “lounging,” despite the suffocation hazard posed of by propping up very young infants. In 2020, the most recent year for which CPSC has complete data, nursing pillows are associated with 38 fatalities and 14 injuries.

To address the risk of death and injury associated with nursing pillows, and as required in section 104 of the CPSIA, the Commission is issuing this proposed rule to establish mandatory performance and labeling requirements for nursing pillows. The proposed rule is intended to address the hazards associated with infants in nursing pillows. Accordingly, the proposed rule addresses:

(1) suffocation hazards associated with nursing pillows, by requiring nursing pillows to be sufficiently firm that the product is unlikely to conform to an infant’s face and occlude its airways;

(2) entrapment hazards posed when the product restricts an infant’s head movements, via performance standards requiring testing to assess this hazard;

(3) suffocation and fall risks due to infant restraints that could suggest to consumers that infants can safely be left unattended in or on the product; and

(4) the risks of suffocation, entrapment, or fall when an infant is left unattended in the product by requiring labeling and instructional literature to better communicate risks.

Section VI of this preamble, and Tabs B and C in Staff’s NPR Briefing Package, provide a detailed explanation of proposed performance and labeling requirements.

Nursing pillows are a durable infant or toddler product under section 104(f) of the CPSIA. Section 104(f)(1) defines the term “durable infant or toddler product” as “a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.” 15 U.S.C. 2056a(f)(1). Section 104(f)(2) of the CPSIA provides a non-exhaustive list of product categories within the definition of “durable infant or toddler products.” Although nursing pillows are not specifically listed in section 104(f)(2), they are “durable infant or toddler products” because (as explained in Part VIII below) they are durable products reasonably expected to be used by infants under the age of 5 years for support while they are being fed.

Section 104(d) of the CPSIA requires manufacturers of durable infant or

toddler products to establish a product registration program and comply with CPSC’s rule for product registration cards, 16 CFR part 1130. Any product defined in part 1130 as a “durable infant or toddler product” must comply with the product registration requirements, as well as testing and certification requirements for children’s products, that are codified in 16 CFR parts 1107 and 1109. Because nursing pillows are durable infant products that will be subject to the proposed consumer product safety standard, the Commission proposes to amend part 1130 to include nursing pillows in the list of durable infant or toddler products that must comply with these product registration requirements. *See* 16 CFR 1130.2(a).

The testing and certification requirements of section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), apply to standards promulgated under section 104 of the CPSIA. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (test laboratories) to assess conformity with a children’s product safety rule to which a children’s product is subject. The proposed rule would be a children’s product safety rule that requires the issuance of a NOR.

II. The Product Category

A. Definition of Nursing Pillows

Nursing pillows are infant products intended to position and support an infant during breastfeeding—also referred to as nursing—or bottle feeding. These products generally rest upon or are “worn” by the caregiver while seated or partially reclined. Nursing pillows are most commonly C-, U-, or crescent- (or horseshoe-) shaped—to fit closely around the caregiver’s torso. However, other designs exist, including a V-shaped or boomerang-shaped product, a round pod with a recessed center to support the infant, a stack of multiple petal-shaped pillows attached to a central tubular pillow, and E-shaped products for twins. Most nursing pillows are filled with synthetic batting or foam, but products filled with cotton, wool, or dried grains are available. *See* Tab E of Staff’s NPR Briefing Package.

In addition to providing a support surface for infants, nursing pillows raise the infant to the desired height for feeding, thereby reducing muscular strain on the caregiver, and provide a buffering surface between the infant and the caregiver, reducing pressure on the caregiver’s abdomen. This latter function is especially helpful where the

caregiver has abdominal stitches from a caesarean section. Some products include a strap or belt, sometimes with a buckle, to secure the product to the caregiver’s body, and a few have restraints that attach the infant to the product. Many products come with removable fabric covers, and some products have small infant head support bolsters or fabric toys attached.⁵

Nursing pillows are not covered by an existing voluntary safety standard. However, CPSC staff has been working with ASTM’s F15.16 Infant Feeding Supports subcommittee to develop requirements intended to address the primary hazards associated with nursing pillows. On March 20, 2023, ASTM’s F15.16 subcommittee issued a preliminary draft of the ASTM Infant Feeding Supports voluntary standard (ASTM draft standard).⁶ The ASTM draft standard (which is not an approved standard and remains subject to change) defines an infant feeding support as a “product that is intended to position and support an infant (the occupant) close to a caregiver’s body, and to reduce strain and pressure on the caregiver’s body, while breastfeeding or bottle feeding.” Although not part of the formal definition, the ASTM draft standard includes clarifying text that states: “These products are commonly U-shaped in appearance, and generally rest upon, wrap around, or are worn by a caregiver in a seated or reclined position. These products are commonly known as nursing pillows.” Thus, the ASTM draft standard for infant feeding supports would include nursing pillows within the scope of covered products.

B. Market Description

As discussed in Staff’s NPR Briefing Package at Tab E, CPSC estimates that annual sales of new nursing pillows likely total approximately \$67 million. New nursing pillows range in price from \$15 to \$100, with most products in the \$25 to \$65 range. The more expensive models tend to have removable covers. The Commission’s estimate of \$67 million per year in sales of new nursing pillows assumes an average price of approximately \$50 and annual sales of 1.34 million units. Some parents, however, may already own a pillow that was purchased for an older child, make a pillow, or buy a used pillow to use for nursing. Used nursing pillows and replacement covers for nursing pillows are commonly available from secondary marketplaces such as eBay and Mercari,

⁵ *See* Staff NPR Briefing Package at 5, figures 1 and 2, for examples of nursing pillow designs.

⁶ *See* Staff NPR Briefing Package at 12–17 and Engineering, Human Factors, and Health Sciences assessments, Tabs B, C, and D.

where prices are observed to range from less than \$7 to more than \$120. The widespread availability of replacement covers extends the useful life and durability of nursing pillows, allowing covers to be cleaned or replaced as needed.

Although more than a thousand businesses sell nursing pillows and nursing pillow covers online, just nine companies supply the models commonly sold in brick-and-mortar stores. Individual stores typically have fewer than four models of nursing pillows in stock, which limits consumers' ability to assess the safety-related characteristics of the products and to make selections on that basis.

C. Infant Cushion/Pillow Ban and Nursing Pillow Exemption

In 1992, pursuant to the Commission's authority under the Federal Hazardous Substances Act (FHSA), the Commission issued its Infant Pillow Ban. 57 FR 27912 (June 23, 1992). The Infant Pillow Ban bans "infant cushions," "infant pillows," and similar articles that are:

- loosely filled with granular material, including but not limited to, polystyrene beads or pellets;
- easily flattened;
- capable of conforming to the body or face of an infant; and
- intended or promoted for use by children under 1 year of age.

This proposed rule for nursing pillows does not change the FHSA ban. That ban was limited to infant cushions and infant pillows defined in the Infant Pillow Ban and the specific hazard presented by products with loosely filled granular material such as polystyrene beads or pellets.

In 2008, the Commission approved an exemption to the Infant Pillow Ban. 73 FR 77493 (Dec. 19, 2008). The exemption applies to Boston Billow Nursing Pillows and substantially similar nursing pillows that are designed to be used only as nursing aids for breastfeeding mothers. 16 CFR 1500.86(a)(9). Examples of products that fall within this exemption include nursing pillows that are tubular in form, C- or crescent-shaped to fit around a caregiver's waist, round in circumference, and filled with granular material. The exemption applies only to the Infant Pillow Ban and is not applicable to this proposed rule. In approving the exemption, the Commission assessed the utility of nursing pillows and the risk of harm based on data from January 1992 to May 2008. The Commission found that the data available at that time did not support a ban on the sale of all nursing pillows under the FHSA. *Termination of Rulemaking Other Than With Respect to Boston Billow Nursing Pillow and Substantially Similar Nursing Pillows*, 73 FR 51386, 51387 (Sept. 3, 2008).

Unlike the Infant Pillow Ban, this proposed rule sets a performance standard pursuant to the CPSIA that allows for the sale of nursing pillows that meet the requirements in the standard. As described below, this proposed rule is based in part on new data concerning incidents that occurred between January 2010 through December 2022, many of which were fatal. The proposed rule does not alter either the Infant Pillow Ban at 16 CFR 1500.18(a)(16) or the exemption codified at 16 CFR 1500.86(a)(9), both of which would remain in place. Thus, products that are not banned under the

Infant Pillow Ban but that meet this proposed rule's definition of a nursing pillow would need to comply with the proposed rule.

III. Incident Data and Hazard Patterns

CPSC staff searched the Consumer Product Safety Risk Management System (CPSRMS)⁷ and National Electronic Injury Surveillance System (NEISS)⁸ databases for fatalities, incidents, and concerns associated with nursing pillows and involving infants up to 12 months old, reported to have occurred between January 1, 2010, and December 31, 2022. Commission staff identified 154 fatal incidents and 88 nonfatal incidents and consumer concerns reported to CPSC during this time. Because reporting is ongoing, the number of reported fatalities and nonfatal incidents during this period may increase, especially for years 2021 and 2022. Tab A of Staff's NPR Briefing Package describes the incident and hazard patterns associated with nursing pillows.

A. Incident Severity

The Commission is aware of 242 incident reports associated with nursing pillows. Table 1 groups the reported cases by severity. Of the 242 reports, 154 (64 percent) involved a fatality.⁹ Of the 88 nonfatal incidents, 64 (73 percent) resulted in an injury, and 24 (27 percent) reported no injury. Among the reported incidents without injury, some included concerns such as product integrity or the smell of the nursing pillow that are unrelated to the hazards this proposed rule is intended to address. Table 1 provides the distribution of incidents by year.

TABLE 1—REPORTED INCIDENTS AND INJURY SEVERITY BY YEAR, JANUARY 1, 2010–DECEMBER 31, 2022

Year	Fatalities	Injuries	No injury	Total
2010	7	3	2	12
2011	5	0	1	6
2012	7	1	1	9
2013	5	0	6	11
2014	4	2	3	9
2015	10	3	0	13
2016	6	3	1	10
2017	10	5	0	15
2018	16	2	0	18
2019	17	5	0	22

⁷ CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, "external cause"-based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. CPSRMS documents include hotline reports, online reports, news reports, medical examiner's reports, death certificates, retailer/manufacturer reports, and documents sent by state and local authorities, among others.

⁸ NEISS is a statistically valid surveillance system for collecting injury data. NEISS is based on a nationally representative probability sample of hospitals in the U.S. and its territories. Each participating NEISS hospital reports patient information for every emergency department visit associated with a consumer product or a poisoning to a child younger than five years of age. The total number of product-related hospital emergency department visits nationwide can be estimated from the sample of cases reported in the NEISS. See

<https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data>.

⁹ More than half of the fatalities of which CPSC staff is aware were reported to have occurred since 2019. Staff's NPR Briefing Package at Tab A. However, staff has noted that because the reported data are anecdotal, fluctuations in the numbers of reported incidents could simply reflect changes in reporting rather than an actual change in incident frequency. *Id.*

TABLE 1—REPORTED INCIDENTS AND INJURY SEVERITY BY YEAR, JANUARY 1, 2010–DECEMBER 31, 2022—Continued

Year	Fatalities	Injuries	No injury	Total
2020	38	14	2	54
2021 *	21	14	1	36
2022 *	8	12	7	27
Total	154	64	24	242

Source: CPSRMS and NEISS.
Reporting is ongoing; 2021–2022 are incomplete.

As reflected in Table 2, nearly all (144 of the 154, or 94 percent) of the reported fatalities associated with nursing pillows involved infants 6 months old and younger, and most (110 out of 154, or 71 percent) were deaths of infants 3 months old or younger. For more than two-thirds of the nonfatal incidents and nearly all the incidents without injury, however, the victim’s age is not available.

TABLE 2—REPORTED INCIDENTS AND INJURY SEVERITY BY AGE, JANUARY 1, 2010–DECEMBER 31, 2022

Age	Fatalities	Injuries	No injury	Total
1 month	44	7	0	51
2 months	36	4	0	40
3 months	30	5	0	35
4 months	15	4	1	20
5 months	10	4	0	14
6 months	9	1	0	10
7 months	6	1	0	7
8 months	2	1	0	3
9 months	1	1	0	2
Unknown	1	36	23	60
Total	154	64	24	242

Source: CPSRMS and NEISS.
Reporting is ongoing. 2021–2022 are considered incomplete.

B. Fatalities and Associated Hazard Patterns

The official cause of death reported by the medical examiner in nearly all of the 154 reported fatalities was asphyxia, suffocation, overlay, sudden unexpected infant death (SUID), sudden infant death syndrome (SIDS; a sub-type of SUID), or a similar cause. Nearly all reported fatalities (142 of the 154) involved use of the nursing pillow for sleep, and these cases often involved additional unsafe sleep conditions including sleep-surface sharing—also known as co-sleeping—or the presence of other soft bedding such as pillows or blankets.

Nursing pillows are intended to be used for feeding when both infant and

caregiver are awake, and the caregiver is able to ensure that the infant’s airways are not covered by the pillow. However, because infants frequently fall asleep during or after feeding, nursing pillows are foreseeably misused for infant sleep, which creates a potential hazard for the infant. For example, if a sleeping infant rolls over so their face is pressed against the nursing pillow, the infant’s airways may be blocked, causing suffocation. Similarly, if an infant falls into the opening where the caregiver is positioned during feeding, the infant can land face-down with the pillow surrounding their head, causing entrapment against the surface on which the pillow rests. Even if the infant remains with their back against the top

of the nursing pillow, if the infant’s position shifts so that their head falls against their chest or tilts backwards over the top of the pillow, the hyperextension or hyperflexion of the infant’s neck can prevent breathing.

For the most part, there was no witness observing the fatal incidents, and 60 of the fatal cases (39 percent) had insufficient details to enable CPSC staff to determine the hazard pattern or scenario. However, CPSC staff classified the remaining 94 reported fatalities by hazard patterns, based on the best available information about the position in which the victim was found. Table 3 shows the distribution of the 154 reported fatalities by hazard scenario.

TABLE 3—REPORTED FATALITIES BY HAZARD SCENARIO, JANUARY 1, 2010–DECEMBER 31, 2022

Hazard scenario	Fatalities	Percent *
Face into product	32	21
Face into other object/bedding outside product	21	14
Face down in opening	14	9
Neck extension/flexion	13	8
Bedding over face	4	3
Face into product or bedding (unknown)	4	3
Entrapment/overlay while nursing	3	2
Overlay	3	2
Unknown	60	39

TABLE 3—REPORTED FATALITIES BY HAZARD SCENARIO, JANUARY 1, 2010–DECEMBER 31, 2022—Continued

Hazard scenario	Fatalities	Percent *
Total	154	100

Source: CPSRMS.
Reporting is ongoing, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

Sixty-two fatalities (40 percent) involved the nursing pillow product being used in another infant sleep product, such as a crib, portable playpen, or bassinet; 61 fatalities (40 percent) involved use of the product on an adult bed or mattress; and one fatality involved a mattress of unknown size. Eighteen reported fatalities (12 percent) involved the product being used on a couch, sofa, or loveseat; one fatality involved the product being used on the caregiver’s lap in a recliner chair; and the use location for 11 fatalities is unknown. Table 4 displays fatal incidents by the location where the nursing pillow and infant were placed.

TABLE 4—REPORTED FATALITIES BY PILLOW/INFANT PLACEMENT, JANUARY 1, 2010–DECEMBER 31, 2022

Pillow/infant placement	Fatalities	Percent *
Infant sleep product	62	40
<i>Bassinet</i>	29	19
<i>Crib</i>	20	13
<i>Portable playpen/crib</i>	13	8
Adult sleep product	61	40
<i>Adult bed</i>	58	38
<i>Adult mattress</i>	3	2
Couch	18	12
Recliner chair	1	1
Unknown size mattress	1	1
Unknown	11	7
Total	154	100

Source: CPSRMS.
Reporting is ongoing, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

C. Nonfatal Incidents

Of the 88 nonfatal incidents associated with nursing pillows, 64 resulted in an injury to the infant and 24 did not lead to a reported injury. Of the 64 injury victims, 19 infants were known to have been treated and released from the emergency department. All 19 of these injuries involved the infant falling or rolling off, or out, of the nursing pillow. An additional 3 injuries, one involving a burn, one due to a fall, and one due to cardiopulmonary arrest after the infant was laying on the nursing pillow, resulted in hospital admission. The remaining 42 injuries where the level of care was not known included falls, near suffocation, near strangulation, choking, and skin irritation or allergy. Table 5 summarizes the hazard patterns for the nursing pillow-related nonfatal incidents.

TABLE 5—REPORTED NONFATAL INCIDENTS BY HAZARD PATTERN, JANUARY 1, 2010–DECEMBER 31, 2022

Hazard	Nonfatal incidents	Percent *
Skin allergy/irritation	29	33
Fall/roll out	23	26
<i>Elevated surface</i>	19	22
<i>Carrying in product</i>	2	2
<i>Same level</i>	1	1
<i>Unknown level</i>	1	1
Filling coming out/choking hazard	6	7
Product integrity	5	6
Strong smell	5	6
Other	20	23
Total	88	100

Source: CPSRMS and NEISS.
Reporting is ongoing for these databases, especially for 2021–2022.
* Percentages may not sum to 100 due to rounding.

Table 6 displays nonfatal injuries by the location in which the nursing pillow and infant were placed. In 66 percent (42 of 64) of the nonfatal injuries, the location was unknown, but the most

common locations among the remaining incidents were couches and beds.

TABLE 6—REPORTED NONFATAL INJURIES BY PILLOW/INFANT PLACEMENT, JANUARY 1, 2010–DECEMBER 31, 2022

Pillow/infant placement	Injuries	Percent *
Couch	8	13
Adult bed ^	5	8
Bed, unknown type	3	5
Infant being carried in product	2	3
Table	2	3
Bathroom counter	1	2
Rocking Chair**	1	2
Unknown	42	66
Total	64	100

Source: CPSRMS and NEISS.

Reporting is ongoing for these databases, especially for 2021–2022.

* Percentages may not sum to 100 due to rounding.

^ In one incident, the caregiver was breastfeeding while in an adult bed.

** Infant was placed on the caregiver's lap while in the rocking chair.

IV. The BSU Final Report ¹⁰

CPSC awarded a contract to Boise State University (BSU) for infant biomechanics and suffocation research and consultancy services. One task under this contract was for research on pillows intended for infant care and use, and an analysis of the risk of injury or death to infants associated with the use of infant pillows marketed as aiding infants during activities such as feeding, nursing, sleeping, propping, and lounging; that is, nursing pillows and infant support cushions.

BSU delivered its final report on June 30, 2022 (the BSU Final Report).¹¹ The BSU Final Report provides recommendations and conclusions related to the performance and design of nursing pillows, including:

- **Firmness Testing.** The BSU Final Report recommends that all nursing pillows be required to undergo firmness testing, because products that lack firmness are more likely to conform around an infant's nose and mouth and to present a suffocation hazard. The report recommends testing using a 3-inch diameter, anthropometry-based hemispheric probe that is geometrically similar to, and sized to represent the breadth of, an infant's face. The report suggests that this probe should be applied to the product at three locations: the location of maximum thickness, the location of minimum thickness, and a third location that seems particularly soft or is otherwise

most likely to result in failure. The force required to displace the probe 1 inch into the product at each location must exceed 10 Newtons (N). Passing this requirement would mean that the product has firmness comparable to crib mattresses, which are generally considered the safest place for an infant to sleep.

- **Airflow Testing.** The BSU Final Report recommends that products that do not pass firmness testing be required to pass an airflow test. Passing the airflow test would mean that the product has airflow characteristics comparable to current mesh crib liners, which the BSU researchers believe would mitigate the suffocation hazard. However, the report also recommends that airflow testing is not required for products that pass their proposed firmness testing, because a firm product is unlikely to form a seal around an infant's nose and mouth.

- **Sagittal-Plane Testing.** BSU developed prototype sagittal-plane testing devices to allow for more comprehensive assessments of infant positioning in and on nursing pillows and infant support cushions.¹² The BSU Final report emphasizes that further research is needed to determine appropriate worst-case positions for testing and to set threshold values for acceptable body positions that would not negatively impact infant breathing.

- **Nursing Pillow Shape.** The BSU Final Report advises that nursing pillows that are firm and feature sharper corners, rather than cylindrical sides, are likely the safest option for infants, because there would be no reasonable

way for consumers to use such a product for lounging, thereby limiting the hazards associated with sagittal-plane positioning in a nursing pillow.

CPSC considered the BSU Final Report and its recommendations when developing this proposed rule for nursing pillows. Tab B of Staff's NPR Briefing Package contains CPSC staff's assessment of how the proposed rule reflects the report's conclusions and recommendations.

V. ASTM's Draft Standard ¹³

There are no published U.S. voluntary standards for nursing pillows. However, on March 20, 2023, ASTM issued ballot F15.16 (23–01), which included the ASTM draft standard. The ballot closed on April 20, 2023, and received 11 negative votes with comments and 6 other comments. Although not adopted, the ASTM draft standard reflects the types of performance requirements that are under consideration by industry, with input from CPSC staff.¹⁴ It includes general requirements typically found in other ASTM juvenile product standards, such as requirements for lead, including lead in paints; prohibitions against small parts, hazardous sharp edges or points, and removable protective components; requirements to prevent injury from scissoring, shearing, and pinching; requirements for toy accessories that are attached to, removable from, or sold with the products; and permanency requirements for labels and warnings.

The ASTM draft standard also includes four performance requirements

¹⁰ See Staff's NPR Briefing Package, Tab B.

¹¹ Mannen, E.M., Davis, W., Goldrod, S., Lujan, T., Siddicky, S.F., Whitaker, B., & Carroll, J. (2022). *Pillows Product Characterization and Testing*. Prepared for the U.S. Consumer Product Safety Commission under contract no. 61320620D0002, task order no. 61320621F1015. Available at: <https://www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing>.

¹² The sagittal plane is an anatomical plane that runs vertically through the human body, dividing it into left and right sections. It can be thought of as viewing the human body in profile.

¹³ See Staff's NPR Briefing Package, Tab B.

¹⁴ On August 21, 2023, ASTM issued ballot F15 (23–12), which included a revised draft of the ASTM Infant Feeding Supports voluntary standard. This new ballot is scheduled to close on September 21, 2023. Staff is currently reviewing the ballot

intended to address safety hazards specifically associated with nursing pillows:

- **Infant Restraints:** This requirement prohibits infant feeding supports from including an infant restraint system, which may entangle an infant and could invite misuse by suggesting to caregivers that it is acceptable to leave an infant unattended on the nursing pillow.

- **Fabric/Mesh Integrity:** This requirement is intended to address product integrity issues such as seam failures and material breakage.

- **Firmness:** This requirement places limits on the extent to which certain portions of the product can deflect when a 3-inch diameter hemispheric probe is applied to the product with a certain force. The proposed requirement

and test method address the suffocation hazard when a nursing pillow conforms to an infant's face, and are based on the firmness recommendations in the BSU Final Report.¹⁵ However, the BSU researchers' recommended requirements were applied not only to the top infant support surface, but also to the inner wall of the crescent-like opening of these products. Testing is performed at three locations on each of these two surfaces.

- **Occupant Containment:** This requirement applies a 9-inch diameter head probe to the opening of an infant feeding support; when moved laterally through this opening, the probe must not contact the side walls of the product. The requirement is intended to

reduce the potential for an infant's head to become entrapped within this opening. This requirement also is intended to reduce the extent to which these products are used for infant propping or lounging, by limiting the amount of lateral support available to young infants if they were placed within the opening.

The ASTM draft standard also includes marking, labeling, and instructional literature requirements. These include requirements for warnings that must appear on nursing pillows and other infant feeding supports covered by the standard. Figure 1 illustrates the ASTM draft standard's required warning statements that must appear on all nursing pillows:

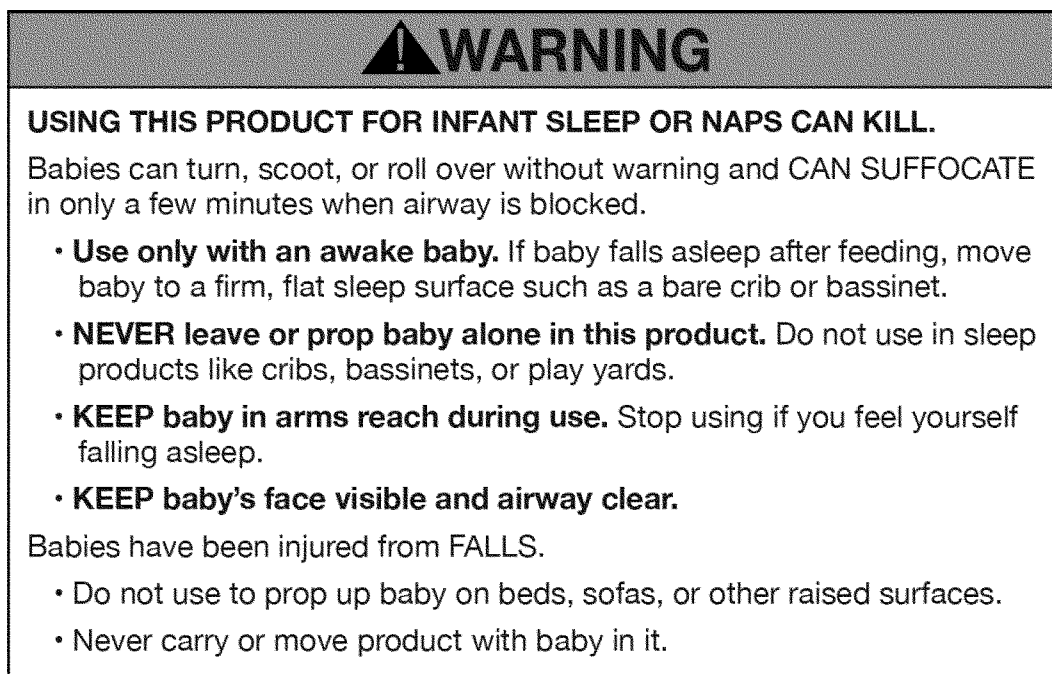


Figure 1: Warning Label in ASTM Draft Standard

The ASTM draft standard requires the warnings to be “permanent” and “conspicuous,” which the draft standard defines as a “label that is visible, when the infant feeding support is in a manufacturer’s recommended use position, to a person sitting near the infant feeding support at any position around the infant feeding support.”

The draft voluntary standard also includes requirements for package warnings against using nursing pillows for sleep or in sleep products, and to state the manufacturer’s recommended weight, height, age, developmental level, or combination thereof, of the infant. In addition, the package cannot include warnings, statements, or

graphics that indicate or imply that the infant may be left in the product without an adult caregiver in attendance.

Lastly, ASTM’s draft voluntary standard includes requirements for instructional literature to accompany products covered by the standard. In addition to the warnings on the product, there must be instructions to consumers to: (1) read all instructions before using the product; (2) keep the instructions for future use; and (3) not use the product if it is damaged or broken. The instructions also must indicate the manufacturer’s recommended maximum weight, height, age, developmental level, or combination thereof, of the

infant. If the product is not intended for use by a child for a specific reason (*e.g.*, a disability that would prevent safe use of the product), the instructions must state this limitation.

VI. Description of the Proposed Mandatory Standard for Nursing Pillows¹⁵

To address established risks of death and injury associated with infant suffocations, entrapments, and falls, and as required in section 104 of the CPSIA, the Commission is issuing this proposed rule to establish mandatory performance

¹⁵ See Staff’s NPR Briefing Package, Tab B.

and labeling requirements for nursing pillows. The proposed rule addresses:

(1) suffocation hazards associated with nursing pillows, by requiring nursing pillows to be sufficiently firm so that the product is unlikely to conform to an infant's face and occlude its airways;

(2) entrapment hazards posed when the product restricts an infant's head movements, via performance standards requiring testing to assess this hazard;

(3) suffocation and fall risks due to infant restraints that could suggest that infants can safely be left unattended in the product; and

(4) the risks of suffocation, entrapment, or fall when an infant is left unattended in the product by requiring labeling and instructional literature to better communicate risks.

The text of the proposed rule is based on an evaluation of the nursing pillow market, the existing Infant Pillow Ban and its associated exemption, the ASTM draft standard for infant feeding supports that is under development, and the recommendations of the BSU Final Report. The proposed rule would apply to all nursing pillows, as defined below. The proposed rule is summarized below and explained in more detail in Tabs B and C of Staff's NPR Briefing Package.

A. Scope

Section 1242.2 of the proposed rule defines "nursing pillow" as:

Any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.

The definition of "nursing pillow" excludes maternity pillows, also known as pregnancy pillows, which staff defines as "a large body pillow intended, marketed, and designed to provide support to a pregnant adult's body during sleep or while lying down," and sling carriers, as defined in 16 CFR part 1228, which are already required to meet CPSC's sling carrier safety standard.

This definition is intended to encompass all nursing pillows on the market and within the available incident data, while excluding products that are not intended primarily for nursing (maternity pillows) or that might be used for nursing but whose hazards are already addressed by another standard (sling carriers). This definition is similar to the definition developed by the ASTM infant feeding supports subcommittee for the ASTM draft standard. The proposed rule, however, does not include additional

language used in the ASTM draft standard's definition of "infant feeding support," which states that these products are commonly U-Shaped in appearance. That language is not needed because all products that meet the definition in the proposed rule are subject to the same hazards and should be considered within the scope of the proposed rule regardless of the details of their shape.

B. General Requirements

The proposed rule includes many of the general requirements included in the ASTM draft standard for infant feeding supports to address the potential hazards associated with lead in paints; small parts; sharp edges or points; toy accessories that are attached to, removable from, or sold with the nursing pillow; and the removal of protective components. However, the requirement in the ASTM draft standard to prevent the removal of protective components has been augmented in the proposed rule to include other possibly detachable components that are present, such as zipper pulls and buttons. If detached, these components can expose the infant to hazards such as sharp points, sharp edges, and choking hazards.

The proposed rule also includes the warning permanency requirements in the ASTM draft standard, with an additional permanency requirement for "free-hanging" labels that attach to the product at only one end and are particularly susceptible to attempts at removal or alteration by consumers. Section 1242.3(e)(4) of the proposed rule includes the following warning permanency requirement:

Warning labels that are attached to the fabric of nursing pillows with seams shall remain in contact with the fabric around the entire perimeter of the label, when the product is in all manufacturer-recommended use positions, when tested in accordance with [reference to existing test method for assessing permanency of warning labels attached with seams].

C. Proposed Performance Requirements

1. Infant Restraints

To address a potential entanglement hazard, the proposed rule prohibits nursing pillows from including an infant restraint system. The draft ASTM voluntary standard for infant feeding supports includes a similar requirement. Proper use of a nursing pillow involves actively attending to the infant during use, and the presence of restraints could suggest to consumers that infants

properly can be left unattended on the product.

2. Seam Strength

Under the proposed rule nursing pillow seams would be subject to a tension test similar to that applied to toys intended for children up to 18 months old under ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (the toy standard),¹⁶ but tested at a higher tension force of 15 pounds rather than 10 pounds, because nursing pillows may be used for multiple children or passed on to other caregivers, meaning these products would be subject to stress over a usable life that can span more than a single infant's use. CPSC is aware of one injury associated with seam failures, where an infant reportedly choked on filling that came out of the product, and has received additional reports of nonfatal incidents involving product integrity issues such as seam failures. See Staff's NPR Briefing Package at Tab A. The seam strength requirement and test method in the proposed rule would address such incidents.

3. Caregiver Attachments

To address the potential for infant falls if the buckled belts, straps, or other features intended to secure the product to the caregiver fails, the proposed rule includes a requirement and test method for the strength of caregiver attachments. Specifically, the proposed rule would require that each element of the caregiver attachment system (e.g., strap or buckle) that is included on nursing pillows be required to withstand a static load equal to the recommended weight limit of the product, or 20 pounds, whichever is greater.

4. Firmness

The proposed rule includes a firmness requirement that applies to each nursing pillow's infant support surface, as well as the inner wall of the nursing pillow opening (e.g., within the crescent-like opening). As explained in Tab B of Staff's NPR Package, the proposed firmness requirement and test method is based on the recommendations of the BSU Final Report, with modifications including the addition of a requirement to test the inner wall of the opening. The test applies a 3-inch diameter hemispheric probe, which is similar in size and shape to an infant's face, to three test locations on each surface. To meet the firmness requirement, the force

¹⁶ Incorporated by reference in 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys*.

required to displace the probe 1 inch into each test location must exceed 10 N (about 2.25 pounds), which results in product firmness that is comparable to crib mattresses. The diagrams in Figure

2, below, illustrate the firmness test being applied to the two surfaces of a nursing pillow. This requirement is intended to reduce the likelihood that the infant support surface or the interior

opening of the nursing pillow can conform to an infant's face and suffocate the child.

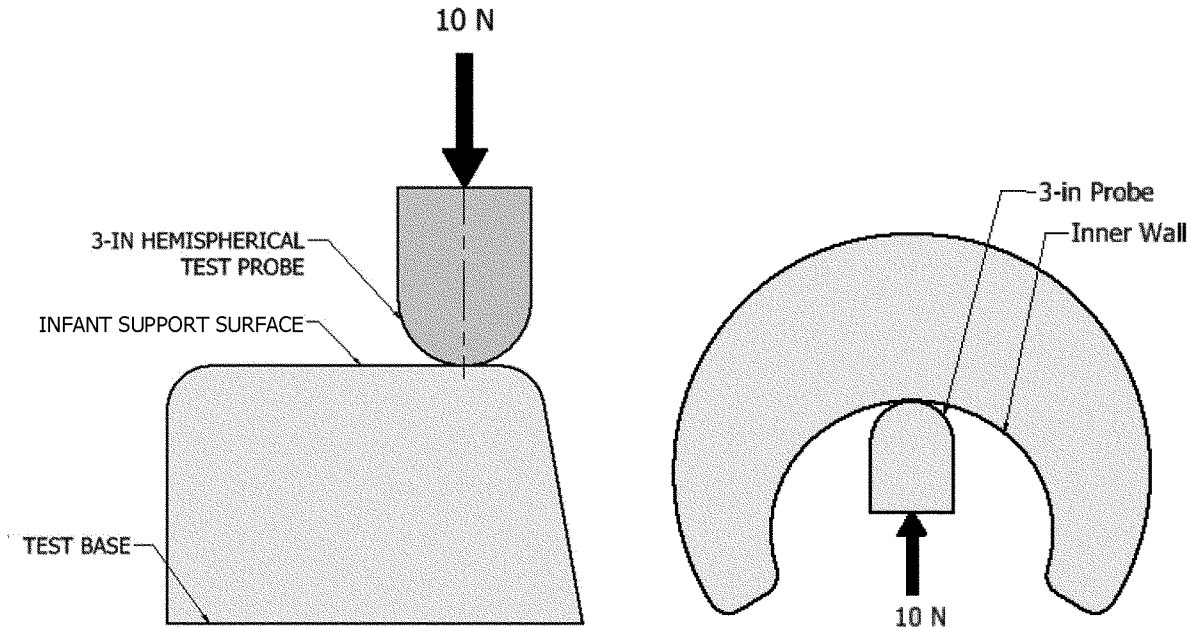


Figure 2: Illustration of Firmness Test Applied to Two Surfaces of Nursing Pillow

ASTM's draft voluntary standard includes a firmness requirement similar to the firmness requirement in the proposed rule, including for the inner wall of the nursing pillow opening.

5. Infant Containment

The proposed rule requires nursing pillow openings to be of a size that is

more appropriate for an adult user, rather than an infant, and limits the amount of lateral support for young infants who might be placed within the nursing pillow opening. This requirement also reduces the potential for an infant's head to become entrapped in the nursing pillow's opening or for the product to restrict a

young infant's head movements, should the infant find themselves in the opening.

As shown in Figure 3, a 9-inch probe is used to ensure that the product opening is wider than the probe and that the probe can be moved outward from inside the nursing pillow without contacting its surface.

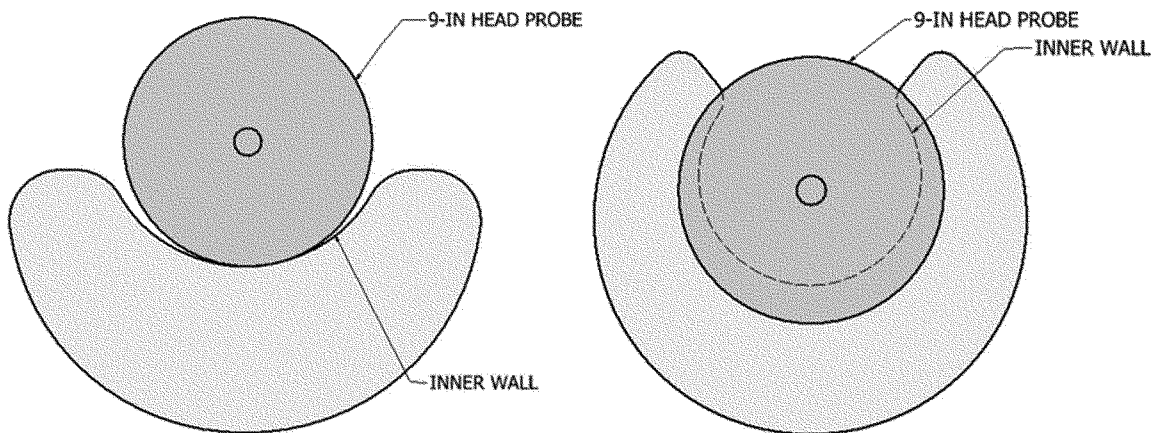


Figure 3: Illustration of nursing pillows that pass (left) and fail (right) CPSC's proposed infant containment provision.

Tab B in Staff's NPR Briefing Package contains a detailed description of this proposed testing method. The requirement in the proposed rule is similar to the requirement that appears

in the ASTM draft standard for infant feeding supports. The proposed rule, however, includes an additional requirement that the nursing pillow cannot extend beyond the opposite end

of the probe, and also requires testing to be performed both with and without any caregiver attachments secured, as shown in Figure 4, below.

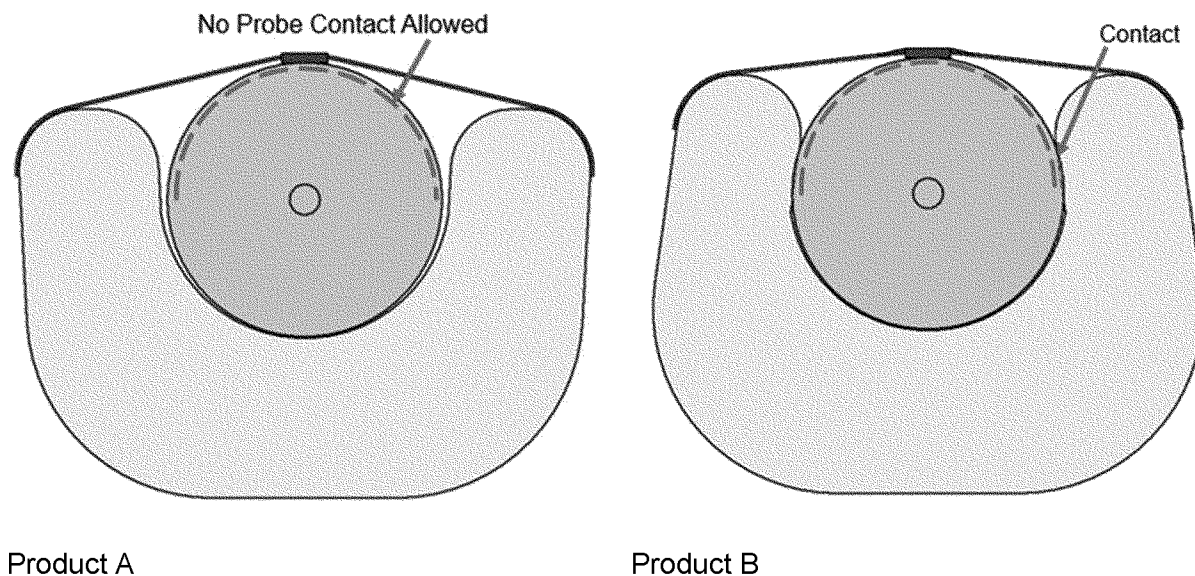


Figure 4: Example of Infant Containment Tests with Caregiver Attachments

D. Performance Requirements Considered But Not Proposed

1. Airflow Requirement

The BSU Final Report recommends that nursing pillows that do not pass firmness testing be required to pass an airflow test that would demonstrate the product has airflow characteristics comparable to mesh crib liners, which the authors concluded would mitigate the suffocation hazard. However, the report also stated that airflow testing is not needed for a product that passes the proposed firmness testing, because a firm product is unlikely to form a seal around an infant's nose and mouth. BSU Final Report at 49–63. Because the proposed rule would require that all nursing pillows meet firmness testing that is at least as stringent as that recommended in the BSU Final Report, an airflow requirement for nursing pillows is unnecessary.

2. Angular Requirement

The BSU Final Report assessed that nursing pillows that are firm and feature sharper corners, rather than cylindrical sides, might be safer for infants because

there would be no reasonable way for consumers to use such a product as an infant support cushion. The proposed rule does not include an angular requirement, however, because of uncertainties surrounding what would be appropriate pass-fail criteria and the potential for such a requirement to increase the risk of positional asphyxia by neck hyperflexion or hyperextension if the nursing pillow is used as a support cushion for lounging. See Staff NPR Briefing Package at 21–22 and Tab C at 66–67.

The Commission invites public comments on this issue. Specifically, the Commission is interested in information on the potential effectiveness of an angular requirement, including what pass-fail criteria would effectively discourage use of a nursing pillow for infant lounging; the potential risks associated with such a requirement; and whether an alternative requirement could better discourage consumers from using nursing pillows for infant lounging without concurrently increasing risks if the product is used in that manner.

E. Warning and Instructional Requirements

Compared to the performance requirements described above, warnings are likely to be less effective in eliminating or adequately reducing exposure to nursing pillow hazards. Nevertheless, prominent and well-designed warnings can be a secondary safety mechanism that provides consumers important information about the hazards associated with these products and appropriate behaviors to avoid the hazards. Thus, the proposed rule includes requirements for on-product warnings that address the primary hazards associated with nursing pillows, with particular emphasis on the potentially deadly consequences of using these products for naps or sleep.

The proposed rule includes warning content and format requirements that are similar to those in the ASTM draft standard, with minor changes for clarity and internal consistency. Figure 5 shows the warning statements and format that would be required on all nursing pillows:

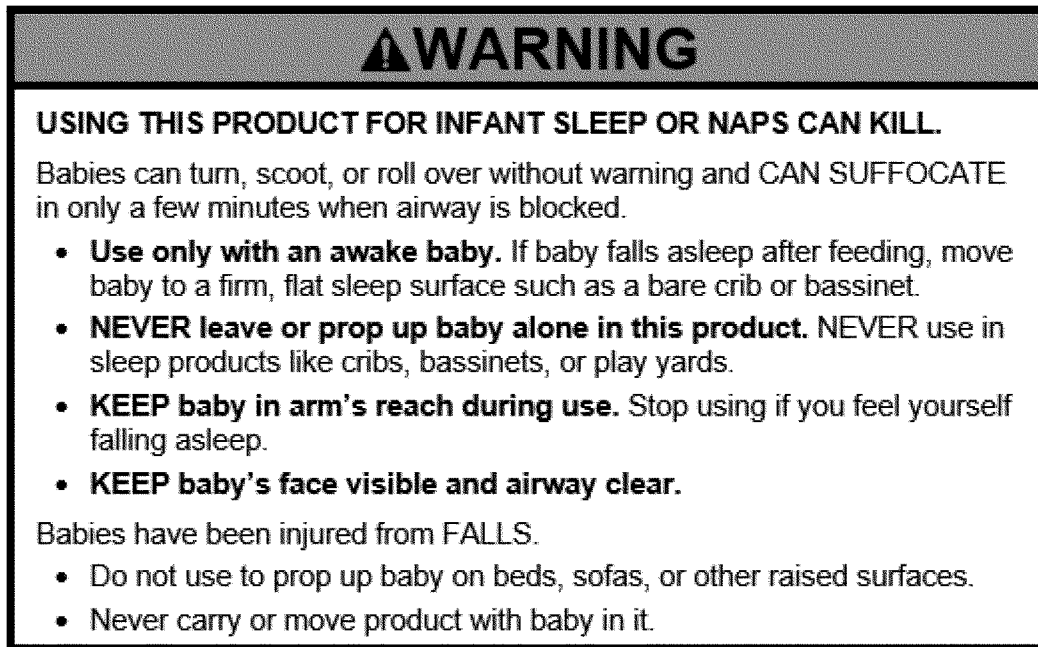


Figure 5: Warning Statement Required On All Nursing Pillows

The ASTM draft standard requires the warning to be “conspicuous,” which the ASTM draft standard defines as a “label that is visible, when the infant feeding support is in a manufacturer’s recommended use position, to a person sitting near the infant feeding support at any position around the infant feeding support.” The proposed rule does not rely on this definition, because it would allow the warning to be placed on a side of the product that is not visible to the caregiver who is using the product (*e.g.*, the side opposite the crescent-like opening). Instead, the proposed rule defines “conspicuous” as “visible, when the nursing pillow is in each manufacturer’s recommended use position, to a person while placing an infant into or onto the nursing pillow.”

More specifically, the proposed rule incorporates by reference the following provisions of the ANSI warning format requirements published in ANSI Z535.4, *Product Safety Signs and Labels* (ANSI Z535.4): sections 6.1–6.4, which include requirements related to safety alert symbol use, signal word selection, and warning panel format, arrangement, and shape; sections 7.2–7.6.3, which include color requirements for each panel; and section 8.1, which addresses letter style. See Staff’s NPR Briefing Package, 72–73.

The ASTM draft standard also requires the warnings to be “permanent” and includes warning permanence requirements among the General Requirements for infant feeding supports. As discussed in Part VI.B. above, the proposed rule includes an

additional permanence requirement to further reduce the potential for the warnings to be torn, ripped, or cut off.

In addition to on-product warnings, the ASTM draft standard includes basic warning requirements for the packaging that accompanies nursing pillows, largely based on the ASTM Ad Hoc Language task group’s recommended requirements for package warnings. The requirements in the ASTM draft standard include warning statements about not using the product for sleep or in sleep products such as cribs, bassinets, or play yards; information about the manufacturer’s recommended weight, height, age, or developmental stage; and a prohibition against other warnings, statements, or graphics that indicate or imply that an infant can be left in the product without an adult caregiver present. The package warnings also are required to have formatting similar to the on-product warnings. The proposed rule includes these requirements. The ASTM draft standard for infant feeding supports includes requirements for instructional literature to accompany nursing pillows, including requirements for the instructions to include all on-product warnings and to instruct consumers to read all instructions before using the product, to keep the instructions for future use, and not to use the product if it is damaged or broken. Like the package requirements, the instructions must provide information about the manufacturer’s recommended weight, height, age, or developmental stage, at a

minimum. These requirements are based on meetings of the ASTM Infant Feeding Supports Warnings task group and on the recommended requirements for instructional literature by the ASTM Ad Hoc Language task group. The proposed rule includes these instructional literature requirements.

VII. Proposed Amendment to 16 CFR Part 1112 To Include NOR for Nursing Pillows

Products subject to a consumer product safety rule under the CPSCA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children’s products subject to a children’s product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children’s product safety rule to which a children’s product is subject. 15 U.S.C. 2063(a)(3). The proposed standard for nursing pillows would be a children’s product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies*, 78 FR 15836, which is codified at 16 CFR part 1112. Part 1112 became effective on June 10, 2013, and establishes requirements for accreditation of third-

party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also lists the NORs that the CPSC has published. Accordingly, the Commission proposes to amend part 1112 to include the Safety Standard for Nursing Pillows in the list of other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard are required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have the *Safety Standard for Nursing Pillows* included in its scope of accreditation as reflected on the CPSC website at: www.cpsc.gov/labsearch.

VIII. Product Registration Rule Amendment

In addition to requiring the Commission to issue safety standards for durable infant or toddler products, section 104 of the CPSIA also directed the Commission to issue a rule requiring that manufacturers of durable infant or toddler products establish a program for consumer registration of those products. 15 U.S.C. 2056a(d). Section 104(f) of the CPSIA defines the term "durable infant or toddler product" as "a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years," and lists 12 distinct product categories. 15 U.S.C. 2056a(f). The product categories listed in section 104(f)(2) of the CPSIA represent a non-exhaustive list of durable infant or toddler product categories. Nursing pillows are not included in the statutory list of durable infant or toddler products.

In 2009, the Commission issued a rule implementing the consumer registration requirement. 74 FR 68668 (Dec. 29, 2009) (establishing 16 CFR part 1130). As the CPSIA directs, the consumer registration rule requires each manufacturer of a durable infant or toddler product to provide a postage-paid consumer registration form with each product; keep records of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and certain other identifying information on the product.

When issuing the consumer registration rule, the Commission identified six additional products as durable infant or toddler products:

children's folding chairs; changing tables; infant bouncers; infant bathtubs; bed rails; and infant slings. *Id.* at 68669. The Commission explained that the specified statutory categories were not exclusive, and that the Commission is charged with identifying the product categories that are covered. "Because the statute has a broad definition of a durable infant or toddler product but also includes 12 specific product categories," the Commission noted, "additional items can and should be included in the definition, but should also be specifically listed in the rule." *Id.* at 68670.

The Commission proposes in this NPR to amend part 1130 to include "Nursing pillows," as defined, as durable infant or toddler products. The Commission tentatively finds that nursing pillows are a category of "durable infant or toddler product" for purposes of CPSIA section 104 because they: (1) are intended for use, and may be reasonably expected to be used, by children under the age of 5 years; (2) are products similar to the other feeding support products listed in section 104(f)(2), such as high chairs, booster chairs, and hook-on chairs; and (3) are commonly available for resale or "handed down" for use by other children over a period of years.

IX. Incorporation by Reference

Section 1242.8 of the proposed rule incorporates by reference American National Standards Institute (ANSI) Z535.4–2011, *American National Standard for Product Safety Signs and Labels*, sections 6.1–6.4, 7.2–7.6.3, and 8.1, with modifications to further reduce the risk of injury associated with nursing pillows. In accordance with regulations of the Office of the Federal Register (OFR), 1 CFR part 51, section VI.E of this preamble summarizes the provisions of ANSI Z535.4–2011 that the Commission proposes to incorporate by reference. The ANSI standard is reasonably available to interested parties in several ways. By permission of ANSI, the standard can be viewed as a read-only document during the comment period on this NPR, at: <https://www.surveymonkey.com/r/DQVJYMK>. To download or print the standard, interested persons may purchase a copy of ANSI Z535.4–2011 from ANSI via its website, <https://www.ansi.org>, or by mail from ANSI, 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642–4900. Alternatively, interested parties may inspect a copy of the standard at CPSC's Office of the Secretary by contacting Alberta E. Mills, Commission Secretary, U.S. Consumer Product Safety

Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: cpsc-os@cpsc.gov.

X. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes an effective date of 180 days after publication of the final rule in the **Federal Register**, such that the requirements of the rule would apply to all nursing pillows manufactured after that date. This amount of time is typical for rules issued under section 104 of the CPSIA. Six months is also the period that JPMA typically allows for products in their certification program to shift to a new standard once that new standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time. A 180-day effective date should also be sufficient for manufacturers to comply with this rule because the proposed requirements do not demand significant preparation by testing laboratories. For example, no new complex testing instruments or devices would be required to test nursing pillows for compliance to the proposed rule. The Commission invites comments, particularly from small businesses, that provide specific data addressing whether the proposed 180-day effective date period is appropriate.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA); 5 U.S.C. 601–612, requires that agencies review a proposed rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies make an initial regulatory flexibility analysis (IRFA) available to the public for comment when the NPR is published. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. CPSC Staff prepared an IRFA for this rulemaking that appears at Tab E of the Staff's NPR Briefing Package. We summarize the IRFA below.

A. Reasons and Legal Basis for the NPR

Section I of this preamble describes the reasons and legal basis for this NPR. As discussed in sections VI–VIII of this preamble, and detailed in Tab B of Staff's NPR Briefing Package, the proposed rule sets out mandatory requirements for nursing pillows to

address the suffocation, entrapment, fall, and other hazards associated with these products, adds nursing pillows to the list of products for which a registration card is required, and adds nursing pillows to the list of durable infant products for which an NOR is required.”

B. Small Entities to Which the Proposed Rule Would Apply

As explained in Tab E to Staff’s NPR Briefing Package, Commission staff has identified 22 small U.S. manufacturers, 6 small U.S. importers, and more than 500 U.S. non-employer businesses that would be impacted by the proposed NPR in the United States. The majority of nursing pillow suppliers to the U.S. market are small U.S. manufacturers, importers, or non-employee businesses.

C. Impact of the Proposed Rule on Small Manufacturers and Importers

This proposed rule would likely have a significant impact on a substantial number of these small entities, based on the estimated costs of modifying nursing pillows to achieve compliance, and the ongoing cost of testing to demonstrate compliance. The Commission considers one percent of annual revenue to be a “significant” economic impact on a company, consistent with regulatory flexibility analyses used by other federal government agencies.

1. Costs Associated With Modifying Products

Most in-scope products on the market will require redesign to meet the requirements in the proposed rule, and redesign costs would be potentially significant for a substantial number of small firms for the first year that a rule is effective. With an estimated 1,000 models to be redesigned, the total cost of redesign to the industry in the first year could be as high as \$13.5 million. The cost of redesign is likely to be significant for a substantial number of small U.S. firms, particularly small home crafters.

2. Third Party Testing Costs

If issued, a final rule would require all manufacturers and importers of nursing pillows to meet additional third-party testing requirements under section 14 of the CPSA. As specified in 16 CFR part 1109, though, entities that are not manufacturers of children’s products, such as importers and wholesalers, may rely on the certificate of compliance provided by others. Further, manufacturers would pass on at least some of the cost of testing for compliance to importers and wholesalers.

Third party testing costs for nursing pillows under the proposed rule are estimated at \$500 to \$1,000 per model. The annual cost of samples for testing is estimated at around \$150, bringing the overall annual cost to an estimated \$650 to \$1,150 per model. However, some small volume suppliers would likely be able to raise retail prices to cover at least some of their testing costs. For example, a hand crafter selling 200 nursing pillows a year could cover the entire testing cost by raising the price by \$3.25, while a smaller supplier could cover at least some of their costs with a modest price increase.

3. Summary of Impacts

The best-selling nursing pillows are from companies that have sufficient sales volume to spread the cost of compliance over thousands of units and are unlikely to exit the market. It is likely that the products currently in stores, and the best-selling online-only products, would still be available, with modest redesigns. However, there may be some loss in sales of specific products if the redesigned products are less appealing to consumers.

The redesign could increase wholesale or retail prices by a few dollars, but likely not a significant amount, given that the materials and production methods are likely to remain roughly similar. Warning labels, registration forms, and instruction manuals could add up to \$1 to the cost of the product. If companies decide to pass the ongoing cost of testing onto consumers, the additional retail price increase of perhaps \$1, added to the additional \$1 cost of the warning labels and instruction manuals, would total \$2, or 4 percent of the price of a \$50 item.

D. Other Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

CPSC has not identified any other federal rules that duplicate, overlap, or conflict with the proposed rule.

E. Alternatives Considered To Reduce the Impact on Small Entities

The Commission considered the following alternatives to the proposed rule to reduce the impact on small businesses. The Commission requests comments on these alternatives or other alternatives that could reduce the potential burden on small entities.

1. Not Establishing a Safety Standard

The Commission considered not establishing a safety standard for nursing pillows. While this alternative would result in no regulatory impact on

small businesses, deaths and injuries from the use of nursing pillows would likely continue to occur at similar rates as those observed during the 2010–2022 time period. As discussed earlier, CPSC observed 88 nonfatal incidents and 154 fatalities during this time period. In 2020 alone—the most recent year for which there is complete data—there were 38 fatalities and 14 injuries from nursing pillows.

2. Delay To Await Publication of a Voluntary Standard

The Commission considered delaying the draft proposed rule to allow possible publication of a voluntary standard. Although this alternative would delay any impact on small businesses, it would also allow the hazard to continue indefinitely, as there is no clear date at which ASTM or any other voluntary standards organization will adopt a relevant standard; nor any assurance that a voluntary standard, if published, would be complied with or adequately address the identified hazards.

3. “Angular” Performance Requirement

The Commission considered including in the proposed safety standard an “angular” performance requirement based upon the BSU Final Report’s suggestion that nursing pillows that are firm and feature sharper corners are likely safer for babies because there is no reasonable way to use these products for lounging. However, as the BSU Final Report notes, its recommendation on that point is preliminary and the Commission is seeking comment from the public on this point.

4. Earlier Effective Date

The Commission is proposing an effective date 180 days after publication of the final rule in the **Federal Register**. 180 days has generally been sufficient time for suppliers to come into compliance with durable infant or toddler product rules. Additionally, six months from the change in a voluntary standard is the period that JPMA uses for its certification program, so compliant manufacturers are used to this time frame to comply with a modified standard. Testing laboratories should have no difficulty preparing to test to the proposed new mandatory standards within a 180-day period.

The Commission considered adopting an earlier effective date to achieve the safety benefits of the rule more quickly, but a shorter period would increase the burden on small businesses to quickly redesign and test their products. In addition, a significantly earlier effective date could result in temporary shortages

of nursing pillows due to a lack of availability of testing laboratory resources.

F. Impact on Testing Labs

Section 14 of the CPSC requires that all products that are subject to a children’s product safety rule must be tested by a third party conformity assessment body that has been accredited by CPSC. One of the roles of these third party conformity assessment bodies is to test products for compliance with applicable children’s product safety rules. Testing laboratories that want to conduct testing must meet the NOR for third-party conformity testing. See 16 CFR part 1112.

The Commission does not expect a significant adverse impact on any testing laboratories as a result of this rule. Laboratories will not need to acquire complex or costly testing instruments or devices to test nursing pillows for compliance, and laboratories will decide for themselves whether to offer testing services for nursing pillow compliance.

XII. Environmental Considerations

Certain categories of CPSC actions normally have “little or no potential for affecting the human environment” and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The proposed rule for nursing pillows falls within the categorical exclusion.

XIII. Paperwork Reduction Act

This proposed rule for nursing pillows contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;

- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Nursing Pillows.

Description: The proposed rule would require each nursing pillow within the scope of the rule to meet the rule’s new performance and labeling requirements. It would require suppliers to conduct third party testing to demonstrate compliance and provide the specified warning label and instructions. These requirements fall within the definition of a “collection of information,” as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import nursing pillows.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 7—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
Labeling and instructions	844	1	844	2	1,688

While some products currently have labels, all products would have to meet the specific labeling requirements and instructions specified in the proposed rule, which provides the text and graphics for the required labels and instructions. Specialized expertise in graphics design would not be required to develop the warnings and instructions. Most reporting and recordkeeping requirements in this proposed rule would be new for all suppliers.

CPSC estimates there are 844 entities that would respond to this collection annually.¹⁷ We estimate that the time required to create and modify labeling and instructions is about 2 hours per response. Therefore, the estimated burden associated with this collection is 844 responses × 1 response per year × 2 hours per response = 1,688 hours annually.

We estimate the hourly compensation for the time required to respond to the collection is \$37.41 (U.S. Bureau of Labor Statistics, “Employer Costs for Employee Compensation,” March 2023, Table 4, total compensation for all sales and office workers in goods-producing private industries: https://www.bls.gov/news.release/archives/ecec_06162023.pdf). Therefore, the estimated annual labor cost of the collection is \$63,148 (\$37.41 per hour × 1,688 hours = \$63,148.08).

Based on this analysis, the proposed standard for nursing pillows would impose an additional burden to industry of 1,688 hours at a cost of \$63,148.

Comments. CPSC has submitted the information collection requirements of this proposed rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d). CPSC requests that interested parties submit comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the ADDRESSES section at the beginning of this NPR). Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission invites comments on:

- whether the collection of information is necessary for the proper performance of the CPSC’s functions, including whether the information will have practical utility;
- the accuracy of the CPSC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard

¹⁷ Although Commission staff estimate the total number of nursing pillow suppliers to the United States to be more than 1,000, staff anticipates that only a portion of those suppliers will respond to the collection each year based on when they introduce new product models or redesign previous models.

or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as “consumer product safety rules.” Therefore, if finalized, the preemption provision of section 26(a) of the CPSA would apply to this rule for nursing pillows.

XV. Request for Comments

The Commission seeks public comment on all aspects of the proposed rule. In particular, however, the Commission seeks comment on the potential effectiveness of an angular requirement not included in the proposed rule; including what pass-fail criteria would effectively discourage the use of nursing pillows for lounging, the potential risks associated with such a requirement, and whether an alternative requirement could assist in discouraging consumers from using nursing pillows for infant lounging without increasing risks to those infants whose caregivers still choose to use the product this way. The Commission also specifically requests comments on the proposed effective date and the costs of compliance with, and testing to, the proposed Safety Standard for Nursing Pillows.

Comments should be submitted in accordance with the instructions in the ADDRESSES section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1242

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Nursing, Pillows, and Toys.

For the reasons discussed in the preamble, the Commission proposes to

amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(56) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(56) 16 CFR part 1242, Safety Standard for Nursing Pillows.

* * * * *

■ 3. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

■ 4. Amend § 1130.2 by adding paragraph (a)(19) to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

§ 1130.2 Definitions.

* * * * *

(a) * * *

(19) Nursing pillows.

* * * * *

■ 5. Add part 1242 to read as follows:

PART 1242—SAFETY STANDARD FOR NURSING PILLOWS

Sec.

1242.1 Scope, purpose, application, and exemptions.

1242.2 Definitions.

1242.3 General requirements.

1242.4 Performance requirements.

1242.5 Test methods.

1242.6 Marking and labeling.

1242.7 Instructional literature.

1242.8 Incorporation by reference.

Authority: 15 U.S.C. 2056a.

§ 1242.1 Scope, purpose, application, and exemptions.

(a) *Scope and Purpose.* This part 1242, a consumer product safety standard, prescribes requirements intended to reduce the risk of death and injury from hazards associated with nursing pillows, as defined in § 1242.2.

(b) *Application.* Except as provided in paragraph (c) of this section, all nursing pillows that are manufactured after March 25, 2024, are subject to the requirements of this part 1242.

(c) *Exemptions.* The following products are exempt from this part

1242: (1) Maternity pillows, as defined in § 1242.2, and (2) Sling carriers, as defined in 16 CFR part 1228.

§ 1242.2 Definitions.

Caregiver attachment means a portion of the product intended to secure the nursing pillow to the caregiver and not intended to secure the infant to the nursing pillow. A caregiver attachment may comprise components including, but not limited to, straps, buckles, or latches.

Caregiver opening means the surface of the nursing pillow, excluding the caregiver attachment, intended to fit against the caregiver’s torso during use. This surface is typically, but not necessarily, crescent-like in shape.

Conspicuous means visible, when the nursing pillow is in each manufacturer’s recommended use position, to a person while placing an infant into or onto the nursing pillow.

Infant restraint system means a portion of a product intended to secure or hold an infant in place on the product. These typically take the form of straps or harnesses that are secured by the caregiver.

Infant support surface means the manufacturer’s intended support surface for the infant during nursing or feeding.

Maternity pillow, also known as a pregnancy pillow, means a large body pillow intended, marketed, and designed to provide support to a pregnant adult’s body during sleep or while lying down.

Nursing pillow means any product intended, marketed, or designed to position and support an infant close to a caregiver’s body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.

Safety alert symbol means a symbol consisting of an exclamation mark surrounded by an equilateral triangle, or an equilateral triangle with a contrasting superimposed exclamation mark. The safety alert symbol precedes the signal word “WARNING,” or other signal word, in the signal word panel of a warning.

§ 1242.3 General requirements.

(a) *Lead in Paints.* All paint and surface coatings on the product shall comply with the requirements of 16 CFR part 1303.

(b) *Small Parts.* There shall be no small parts, as defined in 16 CFR part 1501, before testing or liberated as a result of testing.

(c) *Hazardous Sharp Edges or Points.* There shall be no hazardous sharp points or edges, as defined in 16 CFR

1500.48 and 16 CFR 1500.49, before or after testing.

(d) *Removal of Components.* When tested in accordance with § 1242.5(b), any removal of components that are accessible to an infant while in the product or from any position around the product shall not present a small part, sharp point, or sharp edge as required in § 1242.3(b) and § 1242.3(c).

(e) *Permanency of Labels and Warnings.* (1) Warning labels (whether paper or non-paper) shall be permanent when tested in accordance with § 1242.5(c)(1) through § 1242.5(c)(3).

(2) Warning statements applied directly onto the surface of the product by hot stamping, heat transfer, printing, wood burning, etc. shall be permanent when tested in accordance with § 1242.5(c)(4).

(3) Non-paper labels shall not liberate small parts when tested in accordance with § 1242.5(c)(5).

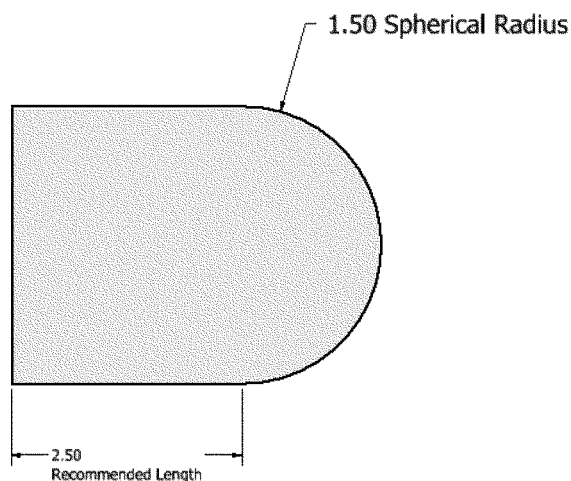
(4) Warning labels that are attached to the fabric of infant feeding supports with seams shall remain in contact with the fabric around the entire perimeter of the label, when the product is in all manufacturer-recommended use

positions, when tested in accordance with § 1242.5(c)(3).

§ 1242.4 Performance requirements.

(a) *Firmness.* When tested in accordance with § 1242.5(d), § 1242.5(e) and § 1242.5(f), the force required for a 1.00-in. (2.54 cm) displacement of the 3-inch (76.2 mm) diameter hemispheric probe (Figure 1 to this paragraph (a)—3-in. head probe) at any measurement location shall be greater than 10.0 N (2.24 lb).

Figure 1 to Paragraph (a)—3-In Head Probe

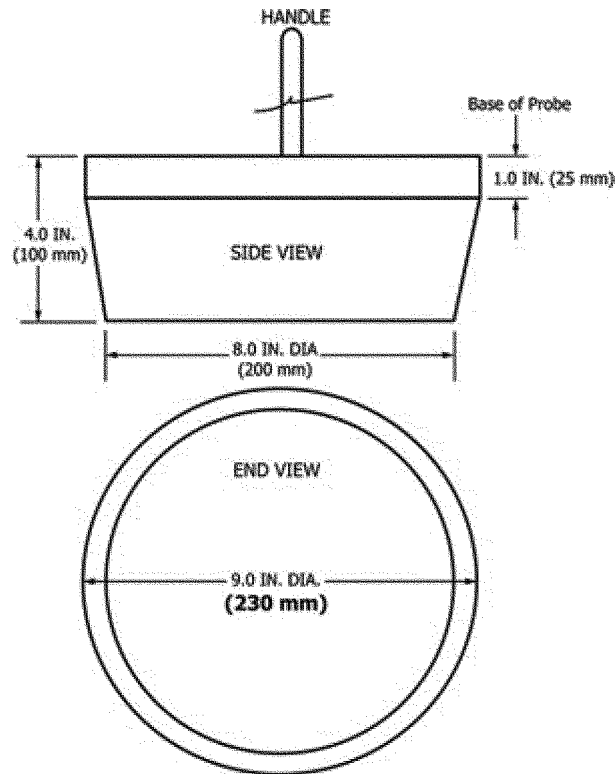


(b) *Infant Containment.* When tested in accordance with § 1242.5(g), the surfaces within the caregiver opening of the product shall not contact the 9-inch (230 mm) diameter head probe (Figure

2 to this paragraph (b)—9-in. head probe) such that the probe is constrained within the caregiver opening and, when placed according to

§ 1242.5(g)(6), the probe must extend past the caregiver opening.

Figure 2 to Paragraph (b)—9-In. Head Probe



(c) *Infant Restraints.* Nursing pillows shall not include any infant restraint system.

(d) *Seam Strength.* When tested in accordance with § 1242.5(h), fabric/mesh seams and points of attachment shall not fail such that a small part, sharp point, or sharp edge is presented, as required in § 1242.3(b) and § 1242.3(c).

(e) *Caregiver Attachment Strength.* When tested in accordance with § 1242.5(i), material seams, points of attachment, and attachment components shall not fail, and shall create no hazardous conditions, such as small parts or sharp edges, as required in § 1242.3(b) and § 1242.3(c).

§ 1242.5 Test methods.

(a) *Test Conditions.* (1) Condition the product for 48 hours at 23 °C \pm 2 °C (73.4 °F \pm 3.6 °F) and a relative humidity of 50% \pm 5%.

(2) Secure the firmness fixture to a test base such that the 3-in. head probe (Figure 1 to § 1242.4(a)) does not deflect more than 0.01 in. (0.025 cm) under a 10 N (2.2 lb) load applied in each orientation required in the test methods.

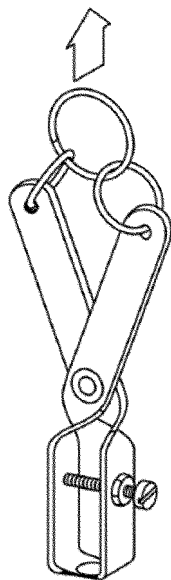
(b) *Removal of Components Test Method.* (1) For torque and tension tests, any suitable device may be used to grasp the component, provided that it does not interfere with the attachment elements that are stressed during the tests.

(2) *Torque Test.* Gradually apply a 4 lb-in. (0.4 N-m) torque over 5 seconds

(s.) in a clockwise rotation to 180 degrees or until 4 lb-in. has been reached. Maintain for 10 s. Release and allow component to return to relaxed state. Repeat the torque test in a counterclockwise rotation.

(3) *Tension Test.* For components that can reasonably be grasped between thumb and forefinger, or teeth, apply a 15 lb (67 N) force over 5 s., in a direction to remove the component. Maintain for 10 s. A clamp such as shown in Figure 3 to this paragraph (b)(3) may be used if the gap between the back of the component and the base material is 0.04 in. (0.1 cm) or more.

Figure 3 to Paragraph (b)(3)—Tension Test Adapter Clamp



(c) *Permanency of Labels and Warnings.* (1) A paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed, it tears into pieces upon removal, or such action damages the surface to which it is attached.

(2) A non-paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed or such action damages the surface to which it is attached.

(3) A warning label attached by a seam shall be considered permanent if it does not detach when subjected to a 15-lbf (67-N) pull force applied in the direction most likely to cause failure using a 3/4-in. (1.9 cm) diameter clamp surface. Gradually apply the force within a period of 5 s. and maintain for an additional 10 s.

(4) *Adhesion Test for Warnings Applied Directly onto the Surface of the Product:*

(i) Apply the tape test defined in Test Method B of Test Method D3359, eliminating parallel cuts.

(ii) Perform this test once in each different location where warnings are applied.

(iii) The warning statements will be considered permanent if the printing in the area tested is still legible and attached after being subjected to this test.

(iv) A non-paper label, during an attempt to remove it without the aid of tools or solvents, shall not fit entirely within the small parts cylinder defined in 16 CFR part 1501 if it can be removed.

(d) *Infant Support Surface Firmness Test Method.* Perform the following steps to determine the infant support surface firmness of the product as received from the manufacturer.

(1) Conduct tests at three locations on the surface to be tested, with 3 in. (7.62 cm) or more separation: maximum thickness perpendicular to the test surface and two other locations most likely to fail.

(2) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(3) Prevent movement of the product in a manner that does not affect the force or deflection measurement of the product surface under test. Provide no additional support beneath the product.

(4) Orient the axis of the 3-in. head probe (Figure 1 to § 1242.4(a)) perpendicular to the test surface and aligned with a force gauge and parallel to a distance measurement device or gauge.

(5) Using a lead screw or similar device to control movement along a single direction, advance the probe onto the product and set the deflection to 0.0 in. when a force of 0.1 N (0.02 lb) force is reached.

(6) Continue to advance the head probe into the product at a rate not to exceed 0.1 inch per second and pause when the force exceeds 10.0 N (2.24 lb), or the deflection is equal to 1.00 in. (2.54 cm).

(7) Wait 30 s. If the deflection is less than 1.00 in. and the force is 10.0 N or less, repeat steps § 1242.5(d)(6) and § 1242.5(d)(7).

(8) Record the final force and deflection amounts.

(9) Repeat the infant support surface firmness tests on any other infant

support surface and in all manufacturer-intended configurations that could affect the infant support surface, such as the folding or layering of parts of the product.

(e) *Inner Wall Firmness Test Method.* For nursing pillows with a caregiver opening, perform the steps in § 1242.5(d)(1) through § 1242.5(d)(8) on the inner wall of the caregiver opening, and perform the following, to determine the inner wall firmness as received from the manufacturer. Repeat the inner wall firmness tests in all manufacturer-intended configurations that could affect the inner wall firmness.

(f) *Product Conditioning Firmness Test Method.* Following the firmness testing in § 1242.5(d) and § 1242.5(e), perform the following steps to determine the product firmness after conditioning.

(1) Launder and dry the product according to the manufacturer's instructions.

(2) Repeat § 1242.5(d) *Infant Support Surface Firmness Test Method.*

(3) Repeat § 1242.5(e) *Inner Wall Firmness Test Method.*

(g) *Infant Containment Test Method.*

(1) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(2) For nursing pillows with a caregiver attachment, adjust and latch the caregiver attachment to the minimum length allowed by the product.

(3) Place the 9-in. head probe (Figure 2 to § 1242.4(b)) inside the caregiver opening such that the flat bottom of the probe rests on the test surface and the probe's perimeter contacts the innermost surface of the caregiver opening.

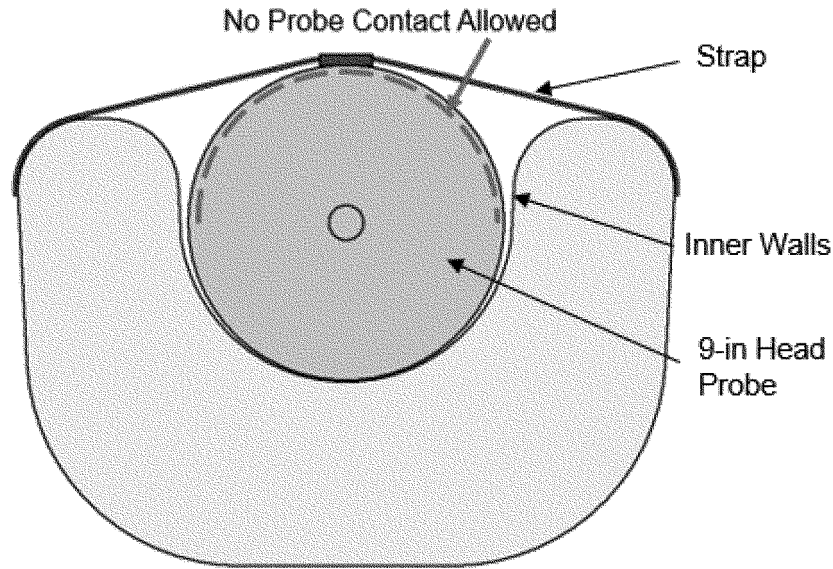
(4) If any inner surfaces of the caregiver opening contact the outwardly facing portions of the probe, or the inner surfaces interfere with placing the probe down, the caregiver opening is considered to constrain the probe. See Figure 4 to this paragraph (g)(4). Do not

include in the assessment any contact with a caregiver attachment.

Figure 4 to Paragraph (g)(4)—Infant Containment, Example

In § 1242.5(g), the inner walls of the nursing pillow, excluding the strap,

shall not constrain the 9-in. head probe in the caregiver opening, such that no contact with the outwardly facing portion (red arc) of the probe is allowed.



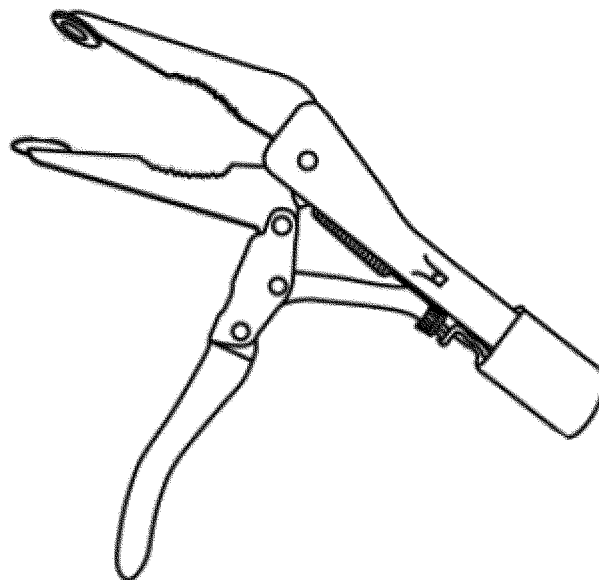
(5) Unlatch and move any caregiver attachment away from the caregiver opening. Conduct steps § 1242.5(g)(3) and § 1242.5(g)(4) in the procedure.

(6) With the probe at the position contacting the innermost surface within the caregiver opening, determine if any portion of the probe extends beyond a line projected across the outside limits of the caregiver opening.

(7) Slide the probe horizontally out of the caregiver opening to the outside of the nursing pillow. Determine if the probe is constrained by any inner surfaces of the caregiver opening contacting the outwardly facing portions of the probe. Do not include in the assessment any contact with a caregiver attachment.

(h) *Seam Strength Test Method.* (1) *Equipment.* Clamps with 0.75 in. (1.9 cm) diameter clamping surfaces capable of holding fabric and with a means to attach a force gauge. Figure 5 to this paragraph (h)(1), or equivalent. The force gauge must have an accuracy of ±0.5 lb (1.1 N).

Figure 5 to Paragraph (h)(1)—Seam Clamp



(2) Clamp the fabric of the nursing pillow on each side of the seam under test with the 0.75 in. clamping surfaces placed not less than 0.5 in. (1.2 cm) from the seam.

(3) Apply a tension of 15 lb (67 N) evenly over 5 s. and maintain for an additional 10 s.

(4) Repeat the test on every distinct seam and every 6 in. (15 cm) along each seam.

(i) *Caregiver Attachment Test Method.*

(1) *Equipment.* Any suitable clamping devices with means to attach a force gauge with accuracy of 0.5 lb (1.2 N) may be used. The clamping surfaces shall grasp across the entire width of the strap or attachment element.

(2) Support the nursing pillow to resist the pull forces and release the buckle or clasp of the caregiver attachment.

(3) Clamp one side of the attachment or strap of the nursing pillow not less than 0.5 in. (1.2 cm) from the attachment to the nursing pillow.

(4) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

(5) Repeat the test on the other side of the attachment or strap.

(6) Join the buckle or clasp of the attachment or straps.

(7) Clamp both sides of the attachment or straps across the buckle or clasp, one on each side and not less than 0.5 in. (1.2 cm) from the buckle or clasp.

(8) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

§ 1242.6 Marking and labeling.

(a) Each product and its retail package shall be marked or labeled clearly and legibly to indicate the following:

(1) The name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller.

(2) A code mark or other means that identifies the date (month and year as a minimum) of manufacture.

(3) The marking or labeling in § 1242.6(a)(1) and § 1242.6(a)(2) are not required on the retail package if they are on the product and are visible in their entirety through the retail package. When no retail packaging is used to enclose the product, the information provided on the product shall be used for determining compliance with § 1242.6(a)(1) and § 1242.6(a)(2). Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(b) The marking and labeling on the product shall be permanent.

(c) Any upholstery labeling required by law shall not be used to meet the requirements of this section.

(d) Warning Design for Product: (1) The warnings shall be easy to read and understand and be in the English language at a minimum.

(2) Any marking or labeling provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

(3) The warnings shall be conspicuous and permanent.

(4) The warnings shall conform to ANSI Z535.4–2011, *American National Standard for Product Safety Signs and Labels*, sections 6.1 through 6.4, 7.2

through 7.6.3, and 8.1 (incorporated by reference, see § 1242.8), with the following changes.

(i) In sections 6.2.2, 7.3, 7.5, and 8.1.2, replace “should” with “shall.”

(ii) In section 7.6.3, replace “should (when feasible)” with “shall.”

(iii) Strike the word “safety” when used immediately before a color (for example, replace “safety white” with “white”).

Note 1 to paragraph (d)(4)—For reference, ANSI Z535.1, *American National Standard for Safety Colors*, provides a system for specifying safety colors.

(5) The safety alert symbol and the signal word “WARNING” shall be at least 0.2 in. (5 mm) high. The remainder of the text shall be in characters whose upper case shall be at least 0.1 in. (2.5 mm), except where otherwise specified.

Note 2 to paragraph (d)(5)—For improved warning readability, avoid typefaces with large height-to-width ratios, which are commonly identified as “condensed,” “compressed,” “narrow,” or similar.

(6) Message Panel Text Layout. (i) The text shall be left-aligned, ragged-right for all but one-line text messages, which can be left-aligned or centered.

Note 3 to paragraph (d)(6)(i)—Left-aligned means that the text is aligned along the left margin, and in the case of multiple columns of text, along the left side of each individual column. See Figure 6 to this paragraph (d)(6)(i) for examples of left-aligned text.

Figure 6 to Paragraph (d)(6)(i)—Examples of Left-Aligned Text

The text shown for these warnings is filler text, known as lorem ipsum, commonly used to demonstrate graphic elements.

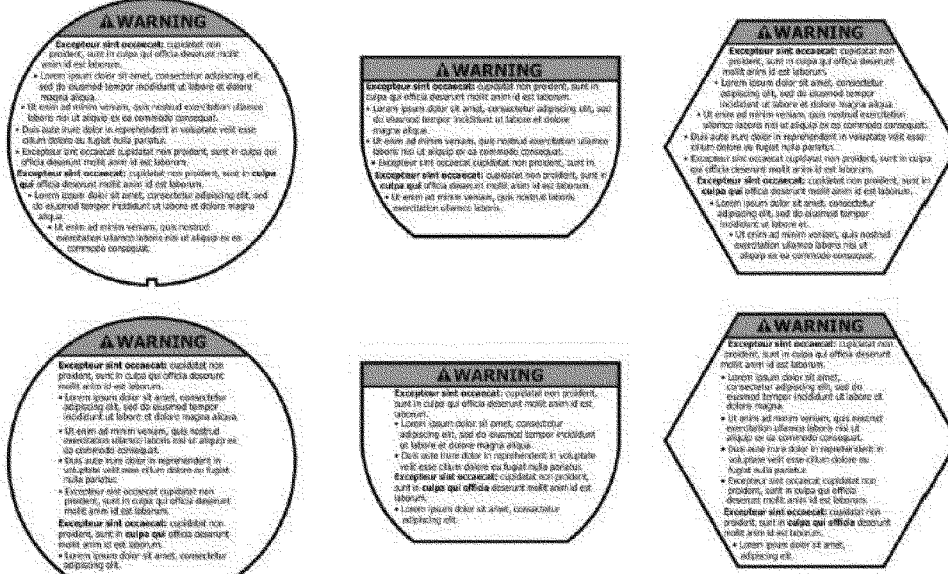


Figure 7 to Paragraph (d)(7)—Example of Warning

(ii) The text in each column should be arranged in list or outline format, with precautionary (hazard avoidance) statements preceded by bullet points. Multiple precautionary statements shall

be separated by bullet points if paragraph formatting is used. (7) An example warning in the format described in this section is shown in Figure 7 to this paragraph (d)(7).

⚠ WARNING

USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN KILL.

Babies can turn, scoot, or roll over without warning and **CAN SUFFOCATE** in only a few minutes when airway is blocked.

- **Use only with an awake baby.** If baby falls asleep after feeding, move baby to a firm, flat sleep surface such as a bare crib or bassinet.
- **NEVER leave or prop up baby alone in this product.** NEVER use in sleep products like cribs, bassinets, or play yards.
- **KEEP baby in arm’s reach during use.** Stop using if you feel yourself falling asleep.
- **KEEP baby’s face visible and airway clear.**

Babies have been injured from **FALLS**.

- Do not use to prop up baby on beds, sofas, or other raised surfaces.
- Never carry or move product with baby in it.

(e) Warning Statements. Each product shall have warning statements. The text must address the warnings as shown in Figure 7 to paragraph (d)(7), Example of Warning.

Note 4 to paragraph (e)—“Address” means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product-specific is presented.

(f) Package Warnings. (1) The warnings and statements are not required on the retail package if they are on the product and are visible in their entirety through the retail package. Cartons and other materials used exclusively for shipping the product are not considered retail packaging. (2) Warning Statements. Each product’s package shall have warning

statements to address the following, at a minimum, as specified in § 1242.6(d)(1), § 1242.6(d)(2), § 1242.6(d)(4), § 1242.6(d)(5), and § 1242.6(d)(6):
 (i) Do not use for sleep.
 (ii) Do not use in sleep products like cribs, bassinets, or play yards.
 (3) Each product’s retail package shall address the manufacturer’s

recommended weight, height, age, or developmental stage or combination thereof of the infant.

(4) Warnings, statements, or graphic pictorials on the product and package shall not indicate or imply that the infant may be left in the product without an adult caregiver in attendance.

§ 1242.7 Instructional literature

(a) Instructions shall be provided with the product and shall be easy to read and understand and shall be in the English language at a minimum. These instructions shall include information on assembly, maintenance, cleaning, and use, where applicable.

(b) The instructions shall include all warnings specified in § 1242.6(e).

(c) The instructions shall address the following additional warnings:

(1) Read all instructions before using this product.

(2) Keep instructions for future use.

(3) Do not use this product if it is damaged or broken.

(4) Instructions shall indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the infant for whom the nursing pillow is intended. If this product is not intended for use by a child for a specific reason, the instructions shall so state this limitation.

(d) The cautions and warnings in the instructions shall meet the requirements specified in § 1242.6(d)(4), § 1242.6(d)(5), and § 1242.6(d)(6), except that sections 6.4 and 7.2 through 7.6.3 of ANSI Z535.4—2011, *American National Standard for Product Safety Signs and Labels*, need not be applied. However, the signal word and safety alert symbol shall contrast with the background of the signal word panel, and the cautions and warnings shall contrast with the background of the instructional literature.

Note 5 to paragraph (d)—For example, the signal word, safety alert symbol, and the warnings may be black letters on a white background, white letters on a black background, navy blue letters on an off-white background, or some other high-contrast combination.

(e) Any instructions provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

Note 6 to paragraph (e)—For additional guidance on the design of warnings for instructional literature, please refer to ANSI Z535.6, *American National Standard: Product Safety Information in Product Manuals, Instructions, and Other Collateral Materials*.

§ 1242.8 Incorporation by Reference

ANSI Z535.4—2011, *American National Standard for Product Safety Signs and Labels*, approved October 20, 2017, is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, email: cpsc-os@cpsc.gov. 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. A free, read-only copy of the standard is available for viewing on the ANSI website at <https://ibr.ansi.org/Standards/nema.aspx>. You may also obtain a copy from American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642-4900, www.ansi.org.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023-20156 Filed 9-25-23; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[REG-105954-22]

RIN 1545-BQ40

Superfund Chemical Taxes; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the excise taxes imposed on certain chemicals and certain imported substances.

DATES: The public hearing on this proposed regulation has been scheduled for October 25, 2023, at 10 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by October 11, 2023. If no outlines are received by October 11, 2023, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

Send Submissions to CC:PA:1:PR (REG-105954-22), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:1:PR (REG-105954-22), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-105954-22) (preferred).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Stephanie Bland or Natalie Payne, (202) 317-6855; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202) 317-6901 (not a toll-free numbers) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-105954-22) that was published in the **Federal Register** on Wednesday, March 29, 2023, (FR 88 18446).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 11, 2023.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (www.Regulations.gov) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by October 11, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-105954-22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-105954-22.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-105954-22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-105954-22.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-105954-22 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-105954-22. Requests to attend the public hearing must be received by 5 p.m. ET by October 20, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-105954-22 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-105954-22. Requests to attend the public hearing must be received by 5 p.m. ET by October 20, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by October 20, 2023. Any questions regarding speaking at or

attending a public hearing may also be emailed to publichearings@irs.gov.

Oluwafunmilayo A. Taylor,
Section Chief, Publications and Regulations Branch, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2023-20840 Filed 9-25-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG 115762-23]

RIN 1545-BQ94

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210-AC24

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 149

[CMS-9890-P]

RIN 0938-AV39

Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed rules related to the fees established by the No Surprises Act for the Federal independent dispute resolution (IDR) process, as established by the Consolidated Appropriations Act, 2021 (CAA). These proposed rules would amend existing regulations to provide that the administrative fee amount charged by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (the Departments) to participate in the Federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations will be set by the

Departments through notice and comment rulemaking. These proposed rules would also set forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. This document also proposes the amount of the administrative fee for disputes initiated on or after the later of the effective date of these rules or January 1, 2024. Finally, this document proposes the certified IDR entity fee ranges for disputes initiated on or after the later of the effective date of these rules or January 1, 2024. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov/>.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by October 26, 2023.

ADDRESSES: Written comments may be submitted to the addresses specified below. Any comment that is submitted will be shared among the Departments. Please do not submit duplicates.

Comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, refer to file code CMS-9890-P. Because of staff and resource limitations, the Departments cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9890-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for

Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9890-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Shira B. McKinlay, Internal Revenue Service, Department of the Treasury, 202-317-5500;

Shannon Hysjulien or Rebecca Miller, Employee Benefits Security Administration, Department of Labor, 202-693-8335; and

Jacquelyn Rudich or Nora Simmons, Centers for Medicare & Medicaid Services, Department of Health and Human Services, 301-492-5211.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments:

Comments received before the close of the comment period will be available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The Departments will post comments on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. The Departments will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. The Departments continue to encourage individuals not to submit duplicative comments. The Departments will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. Preventing Surprise Medical Bills and Establishing the Federal IDR Process Under the Consolidated Appropriations Act, 2021

On December 27, 2020, the CAA was enacted.¹ Title I, also known as the No Surprises Act, and title II (Transparency) of Division BB of the CAA amended chapter 100 of the Internal Revenue Code (Code), Part 7 of the Employee Retirement Income Security Act (ERISA), and title XXVII of the Public Health Service Act (PHS Act). The No Surprises Act provides Federal protections against surprise billing by limiting out-of-network cost sharing and prohibiting balance billing in many of the circumstances in which surprise bills most frequently arise. In particular,

the No Surprises Act added new provisions applicable to group health plans and health insurance issuers offering group or individual health insurance coverage. Section 102 of the No Surprises Act added section 9816 of the Code,² section 716 of ERISA,³ and section 2799A-1 of the PHS Act,⁴ which contain limitations on cost sharing and requirements regarding the timing of initial payments and notices of denial of payment by plans and issuers for emergency services furnished by nonparticipating providers and nonparticipating emergency facilities, and for non-emergency services furnished by nonparticipating providers for patient visits to participating health care facilities, generally defined as hospitals, hospital outpatient departments, critical access hospitals, and ambulatory surgical centers.⁵

Section 103 of the No Surprises Act established a Federal IDR process that plans and issuers and nonparticipating providers and facilities may utilize to resolve certain disputes regarding out-of-network rates under section 9816 of the Code,⁶ section 716 of ERISA,⁷ and section 2799A-1 of the PHS Act.⁸ Section 9816(c)(8) of the Code,⁹ section 716(c)(8) of ERISA,¹⁰ and section 2799A-1(c)(8) of the PHS Act¹¹ provide that each party to a determination under the Federal IDR process shall pay a fee for participating in the Federal IDR process, and the amount of the fee is an amount established by the Departments in a manner such that the total amount of fees paid by all parties is estimated to be equal to the amount of expenditures estimated to be made by the Departments for the year in carrying out the Federal IDR process.

Section 105 of the No Surprises Act added section 9817 of the Code,¹² section 717 of ERISA,¹³ and section

2799A-2 of the PHS Act.¹⁴ These sections contain limitations on cost sharing and requirements for the timing of initial payments and notices of denial of payment by plans and issuers for air ambulance services furnished by nonparticipating providers of air ambulance services, and allow plans and issuers and nonparticipating providers of air ambulance services to utilize the Federal IDR process.

The No Surprises Act also added provisions to title XXVII of the PHS Act in a new part E¹⁵ that apply to health care providers, facilities, and providers of air ambulance services, such as prohibitions on balance billing for certain items and services and requirements related to disclosures about balance billing protections.

The Departments of the Treasury, Labor, and Health and Human Services (HHS) (the Departments), along with the Office of Personnel Management (OPM), have issued rulemakings in 2021 and 2022 to implement various provisions of the No Surprises Act. More specifically relevant to this proposed rulemaking, the Departments and OPM issued interim final rules (July 2021 interim final rules¹⁶ and October 2021 interim final rules¹⁷) and final rules (August 2022 final rules¹⁸) implementing provisions of sections 9816 and 9817 of the Code,¹⁹ sections 716 and 717 of ERISA,²⁰ and sections 2799A-1 and 2799A-2 of the PHS Act.²¹ These rules implement provisions to protect consumers from surprise medical bills for emergency services, non-emergency services furnished by nonparticipating providers for patient visits to participating facilities²² in certain circumstances, and air ambulance services furnished by nonparticipating providers of air ambulance services. These rules also implement provisions to establish a Federal IDR process to determine payment amounts when there is a dispute between plans or issuers and providers, facilities, or providers of air ambulance services about the out-of-network rate for these services if a specified State law as defined in 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45

² 26 U.S.C. 9816, *et seq.*

³ 29 U.S.C. 1185e, *et seq.*

⁴ 42 U.S.C. 300gg-111, *et seq.*

⁵ Section 102(d)(1) of the No Surprises Act amended the Federal Employees Health Benefits Act, 5 U.S.C. 8901 *et seq.*, by adding a new subsection (p) to 5 U.S.C. 8902. Under this new provision, each FEHB Program contract must require a carrier to comply with requirements described in sections 9816 and 9817 of the Code, sections 716 and 717 of ERISA, and sections 2799A-1 and 2799A-2 of the PHS Act (as applicable) in the same manner as these provisions apply with respect to a group health plan or health insurance issuer offering group or individual health insurance coverage.

⁶ 26 U.S.C. 9816, *et seq.*

⁷ 29 U.S.C. 1185e, *et seq.*

⁸ 42 U.S.C. 300gg-111, *et seq.*

⁹ 26 U.S.C. 9816(c)(8).

¹⁰ 29 U.S.C. 1185e(c)(8).

¹¹ 42 U.S.C. 300gg-111(c)(8).

¹² 26 U.S.C. 9817, *et seq.*

¹³ 29 U.S.C. 1185f, *et seq.*

¹⁴ 42 U.S.C. 300gg-112, *et seq.*

¹⁵ 42 U.S.C. 300gg-131-139.

¹⁶ 86 FR 36872 (July 13, 2021).

¹⁷ 86 FR 55980 (October 7, 2021).

¹⁸ 87 FR 52618 (August 26, 2022).

¹⁹ 26 U.S.C. 9816, *et seq.* and 26 U.S.C. 9817, *et seq.*

²⁰ 29 U.S.C. 1185e, *et seq.* and 29 U.S.C. 1185f, *et seq.*

²¹ 42 U.S.C. 300gg-111, *et seq.* and 42 U.S.C. 300gg-112, *et seq.*

²² References to a “participating facility” in this preamble mean a “participating health care facility,” as defined at 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30.

¹ Public Law 116-260 (Dec. 27, 2020).

CFR 149.30 or an applicable All-Payer Model Agreement under section 1115A of the Social Security Act does not provide a method for determining the total amount payable.

The July 2021 interim final rules and October 2021 interim final rules generally apply to plans and issuers (including grandfathered health plans) for plan years (in the individual market, policy years) beginning on or after January 1, 2022, and to health care providers, facilities, and providers of air ambulance services for items and services furnished during plan years (in the individual market, policy years) beginning on or after January 1, 2022.²³ The August 2022 final rules became effective October 25, 2022, and are applicable for items or services provided or furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

B. October 2021 Interim Final Rules and Related Guidance

The October 2021 interim final rules implement the Federal IDR process under sections 9816(c) and 9817(b) of the Code,²⁴ sections 716(c) and 717(b) of ERISA,²⁵ and sections 2799A–1(c) and 2799A–2(b) of the PHS Act.²⁶ The rules apply to emergency services, non-emergency services furnished by nonparticipating providers for patient visits to certain types of participating health care facilities²⁷ (unless an individual has been provided notice and waived the individual's surprise billing protections, in accordance with 45 CFR 149.410 or 149.420, as applicable), and air ambulance services furnished by nonparticipating providers of air ambulance services, for situations in which neither a specified State law as

²³ The interim final rules also include interim final regulations under 5 U.S.C. 8902(p) issued by OPM that specify how certain provisions of the No Surprises Act apply to health benefit plans offered by carriers under the Federal Employees Health Benefits Act. These provisions apply to carriers in the FEHB Program with respect to contract years beginning on or after January 1, 2022. The disclosure requirements at 45 CFR 149.430 regarding patient protections against balance billing are applicable as of January 1, 2022.

²⁴ 26 U.S.C. 9816(c) and 26 U.S.C. 9817(b).

²⁵ 29 U.S.C. 1185e(c) and 29 U.S.C. 1185f(b).

²⁶ 42 U.S.C. 300gg–111(c) and 42 U.S.C. 300gg–112(b).

²⁷ A health care facility, in the context of non-emergency services, is defined as (1) a hospital (as defined in section 1861(e) of the Social Security Act), (2) a hospital outpatient department, (3) a critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act), or (4) an ambulatory surgical center described in section 1833(i)(1)(A) of the Social Security Act. Code section 9816(b)(2)(A)(ii), ERISA section 716(b)(2)(A)(ii), and PHS Act section 2799A–1(b)(2)(A)(ii). 26 CFR 54.9816–3T, 29 CFR 2590.716–3, and 45 CFR 149.30.

defined in 26 CFR 54.9816–3T, 29 CFR 2590.716–3, and 45 CFR 149.30 nor an All-Payer Model Agreement under section 1115A of the Social Security Act applies.

To implement the Federal IDR process, the October 2021 interim final rules include requirements governing the costs of the Federal IDR process. Under section 9816(c)(5)(F)(i) of the Code,²⁸ section 716(c)(5)(F)(i) of ERISA,²⁹ section 2799A–1(c)(5)(F)(i) of the PHS Act,³⁰ and the October 2021 interim final rules, the party whose offer is not selected is responsible for the payment of the fee charged by the certified IDR entity (certified IDR entity fee).³¹ Under the October 2021 interim final rules, as a condition of certification, the certified IDR entity must notify the Departments of the amount of the certified IDR entity fees it intends to charge for payment determinations, which is limited to a fixed certified IDR entity fee amount for single determinations and a separate fixed certified IDR entity fee amount for batched determinations.³² Each of these fixed certified IDR entity fees must be within a range set forth in guidance by the Departments, unless the certified IDR entity receives written approval from the Departments to charge a certified IDR entity fee outside that range.³³ The October 2021 interim final rules describe the considerations that the Departments will use to develop the certified IDR entity fee ranges, including the anticipated time and resources needed for certified IDR entities to meet the requirements of those interim final rules, the volume of payment determinations, and the adequacy of the Federal IDR process capacity to efficiently handle the volume of IDR initiations and payment determinations, and discuss that the Departments will review and update the allowable fee ranges annually based on these factors, the impact of inflation, and other cost increases. Those rules also provide that on an annual basis, the certified IDR entity may update its certified IDR entity fees within the ranges set forth in current guidance and seek approval from the Departments to charge fixed

²⁸ 26 U.S.C. 9816(c)(5)(F)(i).

²⁹ 29 U.S.C. 1185e(c)(5)(F)(i).

³⁰ 42 U.S.C. 300gg–111(c)(5)(F)(i).

³¹ In the case of a batched dispute, the party with fewest determinations in its favor is considered the non-prevailing party and is responsible for paying the certified IDR entity fee. In the event that each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties. 86 FR 55980, 56001.

³² 26 CFR 54.9816–8T(e)(2)(vii), 29 CFR 2590.716–8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii).

³³ *Id.*

certified IDR entity fees beyond the upper or lower limits for certified IDR entity fees.³⁴

Additionally, pursuant to section 9816(c)(8) of the Code,³⁵ section 716(c)(8) of ERISA,³⁶ and section 2799A–1(c)(8) of the PHS Act,³⁷ and under the October 2021 interim final rules, each party must pay an administrative fee for participating in the Federal IDR process. The administrative fee is established in guidance in a manner so that, in accordance with the requirements of section 9816(c)(8)(B) of the Code,³⁸ section 716(c)(8)(B) of ERISA,³⁹ and section 2799A–1(c)(8)(B) of the PHS Act,⁴⁰ the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments to carry out the Federal IDR process for that year.⁴¹

Contemporaneously with the October 2021 interim final rules, the Departments released the Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act (October 2021 guidance), setting the administrative fee for both parties to a dispute at \$50 per party.⁴² The October 2021 guidance also established the range for fixed certified IDR entity fees for single determinations as \$200–\$500, and the range for fixed certified IDR entity fees for batched determinations as \$268–\$670, unless otherwise approved by the Departments. In October 2022, the Departments released the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act (October 2022 guidance), again setting the administrative fee for both parties to a dispute at \$50 per party.⁴³ The October 2022 guidance explained that the data available regarding take-up and usage of

³⁴ *Id.*

³⁵ 26 U.S.C. 9816(c)(8).

³⁶ 29 U.S.C. 1185e(c)(8).

³⁷ 42 U.S.C. 300gg–111(c)(8).

³⁸ 26 U.S.C. 9816(c)(8)(B).

³⁹ 29 U.S.C. 1185e(c)(8)(B).

⁴⁰ 42 U.S.C. 300gg–111(c)(8)(B).

⁴¹ 26 CFR 54.9816–8T(d)(2)(ii), 29 CFR 2590.716–8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii).

⁴² Centers for Medicare & Medicaid Services (September 30, 2021). *Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf>.

⁴³ Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

the Federal IDR process was not reliable enough to support a change to either the estimated number of payment determinations for which administrative fees would be paid or the estimated ongoing program costs for 2023; therefore, the 2023 administrative fee amount due from each party for participating in the Federal IDR process would remain the same as the 2022 administrative fee. The October 2022 guidance permits certified IDR entities to charge a fee between \$200 and \$700 for single determinations and between \$268 and \$938 for batched determinations, unless the Departments otherwise grant approval for the certified IDR entity to charge a fee outside of these ranges. In addition, to account for the heightened workload for batched determinations, the October 2022 guidance permits a certified IDR entity to charge the following percentage of its approved certified IDR entity batched determination fee (“batching percentage”) for batched determinations, which are based on the number of line items initially submitted in the batch:

- 2–20 line items: 100 percent of the approved batched determination fee;
- 21–50 line items: 110 percent of the approved batched determination fee;
- 51–80 line items: 120 percent of the approved batched determination fee; and
- 81 line items or more: 130 percent of the approved batched determination fee.

In December 2022, the Departments released the Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act (December 2022 guidance), which amended the \$50 per party administrative fee set in the October 2022 guidance to \$350 for calendar year 2023.⁴⁴ The change in the administrative fee for 2023 reflected the additional costs to the Departments to carry out the Federal IDR process as a result of the Departments’ enhanced role in calendar year 2023 in conducting pre-eligibility reviews to allow the certified IDR entities to complete their eligibility determinations more efficiently,⁴⁵ as

well as systemic improvements that allowed for the aggregation of data needed to estimate the rate at which disputes were determined eligible for the Federal IDR process and the rate at which one or both parties paid the administrative fee for purposes of calculating the administrative fee. The December 2022 guidance did not amend the certified IDR entity fee ranges.

C. Recent Litigation

On November 30, 2022, the Texas Medical Association, Tyler Regional Hospital, and a Texas physician filed a lawsuit (*TMA III*)⁴⁶ against the Departments and OPM, asserting that the July 2021 interim final rules⁴⁷ and certain related guidance documents were in conflict with the statutory language, including the regulations governing how the qualifying payment amount (QPA) should be calculated. On August 24, 2023, the U.S. District Court for the Eastern District of Texas (Texas District Court) issued a memorandum opinion and order⁴⁸ that vacated certain portions of the July 2021 interim final rules and associated regulatory provisions⁴⁹ and portions of guidance documents,⁵⁰ including those portions that provided the methodology for calculating the QPA and interpretations for certified IDR entities related to the processing of disputes for air ambulance services.

On January 30, 2023, the Texas Medical Association, Houston Radiology Associated, Texas Radiological Society, Tyler Regional Hospital, and a Texas physician filed a lawsuit (*TMA IV*)⁵¹ against the Departments and OPM, asserting that the December 2022 guidance was unlawfully issued without notice and

Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process. <https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf>.

⁴⁴ *Tex. Med. Ass’n. v. U.S. Dep’t of Health and Human Servs.*, Case No. 6:22-cv-00450-JDK (E.D. Tex. November 30, 2022).

⁴⁵ 86 FR 36872 (July 13, 2021).

⁴⁶ See Memorandum Opinion and Order, *Tex. Med. Ass’n. v. U.S. Dep’t of Health & Hum. Servs.*, No. 6:22-cv-00450-JDK (E.D. Tex. August 24, 2023).

⁴⁷ Specifically, the Texas District Court vacated certain subprovisions of 45 CFR 149.130 and 149.140, 26 CFR 54.9816–6T and 54.9817–1T, and 29 CFR 2590.716–6 and 2590.717–1. The Texas District Court also vacated 5 CFR 890.114(a).

⁴⁸ Specifically, the Texas District Court vacated FAQs 14 and 15 of *FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55* (August 19, 2022), as well as portions of *Technical Guidance for Certified IDR Entities at 2–3* (August 18, 2022).

⁴⁹ *Tex. Med. Ass’n. v. U.S. Dep’t of Health and Human Servs.*, Case No. 6:23-cv-00059-JDK (E.D. Tex. January 30, 2023).

comment rulemaking.⁵² On August 3, 2023, the Texas District Court issued a memorandum opinion and order⁵³ that vacated the portion of the December 2022 guidance⁵⁴ that increased the administrative fee for the Federal IDR process to \$350 per party for disputes initiated during the calendar year beginning January 1, 2023. The Texas District Court also vacated certain provisions of the October 2021 interim final rules setting forth the batching criteria under which multiple IDR items or services are treated as related to the “treatment of a similar condition.”⁵⁵

As a result of the *TMA IV* opinion and order, on August 3, 2023, the Departments instructed certified IDR entities to pause all work in the Federal IDR portal until the Departments updated the Federal IDR process guidance, systems, and related documents to make them consistent with the *TMA IV* opinion and order. Subsequently, on August 7, 2023, the Departments directed certified IDR entities to resume processing all single and bundled disputes for which the administrative fee had already been paid and all batched disputes for which the certified IDR entity had already determined the dispute to be eligible and administrative fees had been paid (or the deadline for collecting fees had expired) before August 3, 2023. On August 8, 2023, the Departments directed certified IDR entities to resume processing single and bundled disputes initiated in 2022 for which the administrative fee had not been paid before August 3, 2023. On August 11, 2023, the Departments released

⁵² See Motion for Summary Judgment and Reply in Support of Summary Judgment, p. 1, *Tex. Med. Ass’n. v. U.S. Dep’t of Health & Hum. Servs.*, No. 6:23-cv-00059-JDK (E.D. Tex. March 27, 2023). <https://ecf.txed.uscourts.gov/doc1/175113317945>.

⁵³ See Memorandum Opinion and Order, *Tex. Med. Ass’n. v. U.S. Dep’t of Health & Hum. Servs.*, No. 6:23-cv-00059-JDK (E.D. Tex. August 3, 2023).

⁵⁴ Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee.* <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁵⁵ Specifically, the Texas District Court vacated the requirement under 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716–8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C) that for a qualified IDR item and service to be considered the same or similar item and service, it must be billed under the same service code or a comparable code under a different procedural code system, such as the Current Procedural Terminology (CPT) codes with modifiers, if applicable, Healthcare Common Procedure Coding System (HCPCS) with modifiers, if applicable, or Diagnosis-Related Group (DRG) codes with modifiers, if applicable.

⁴⁴ Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee.* <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁴⁵ Centers for Medicare & Medicaid Services (November 21, 2022). *Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent*

guidance⁵⁶ to reflect the *TMA IV* decision related to the administrative fee and to clarify the applicability of the \$50 per party per dispute administrative fee amount for 2023, as provided in the October 2022 guidance. On the same date, the Departments directed certified IDR entities to resume processing single and bundled disputes initiated in 2023 for which the administrative fees had not been paid before August 3, 2023. As a result of the *TMA III* opinion and order issued on August 24, 2023, the Departments again paused all IDR-related activities in order to evaluate the Texas District Court's order and review current Federal IDR processes, templates, and system updates that are necessary to comply with the order. As of the publication of this proposed rulemaking, the Departments have directed certified IDR entities only to perform limited Federal IDR process functions.

D. Scope and Purpose of Rulemaking

These rules propose amendments to 26 CFR 54.9816–8(d)(2)(ii) and (e)(2)(vii), 29 CFR 2590.716–8(d)(2)(ii) and (e)(2)(vii), and 45 CFR 149.510(d)(2)(ii) and (e)(2)(vii) to provide that the administrative fee amount and the ranges for certified IDR entity fees for single and batched disputes would be set by the Departments through notice and comment rulemaking, rather than in guidance published annually. This rulemaking also proposes to set forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. These rules would also propose the administrative fee amount and certified IDR entity fee ranges for disputes initiated on or after the later of the effective date of these rules or January 1, 2024.

II. Overview of the Proposed Rules—Departments of the Treasury, Labor, and HHS

A. Administrative Fee Amount and Methodology

Under section 9816(c)(8)(A) of the Code,⁵⁷ section 716(c)(8)(A) of ERISA,⁵⁸ section 2799A–1(c)(8)(A) of the PHS Act,⁵⁹ and the October 2021 interim

final rules,⁶⁰ each party to a determination for which a certified IDR entity is selected must pay an administrative fee for participating in the Federal IDR process. Under section 9816(c)(8)(B) of the Code,⁶¹ section 716(c)(8)(B) of ERISA,⁶² section 2799A–1(c)(8)(B) of the PHS Act,⁶³ and the October 2021 interim final rules,⁶⁴ the administrative fee is established in a manner such that the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments to carry out the Federal IDR process for that year.

In *TMA IV*,⁶⁵ the Texas District Court issued an opinion and order holding that the process by which the Departments amended the 2023 administrative fee guidance to increase the administrative fee for the Federal IDR process from \$50 to \$350 per party for disputes initiated during the calendar year beginning January 1, 2023⁶⁶ was a violation of the Departments' obligation under the Administrative Procedure Act to give affected parties notice of and an opportunity to comment on the administrative fee.⁶⁷ In light of the Texas District Court's opinion and order, as well as the Departments' reassessment regarding the practicability of establishing the administrative fee through notice and comment rulemaking, the Departments propose to establish the amount of the administrative fee through notice and comment rulemaking. To reflect this, the Departments propose to amend 26 CFR 54.9816–8(d)(2)(ii), 29 CFR 2590.716–8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii) to state that the Departments will set the administrative fee through notice and comment rulemaking.

The Departments also propose to amend 26 CFR 54.9816–8(d)(2)(ii), 29 CFR 2590.716–8(d)(2)(ii), and 45 CFR

149.510(d)(2)(ii) that, for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, the proposed administrative fee amount would be \$150 per party per dispute, which would remain in effect until changed by subsequent rulemaking. Under this proposed rule, the Departments propose to retain the flexibility to update the administrative fee more frequently or less frequently than annually. With this flexibility, the Departments intend to update the administrative fee amount when the total projected amount of administrative fees paid or projected expenditures made by the Departments to carry out the Federal IDR process changes, such that a new administrative fee amount would be required for the Departments to cover the costs of carrying out the Federal IDR process. For example, the Departments' expenditures may be impacted by changes to regulations governing the Federal IDR process or the implementation of that process, the volume of disputes initiated and closed under the Federal IDR process, and the Departments' costs. In such cases, the Departments would propose a different administrative fee amount in notice and comment rulemaking before applying a new administrative fee amount. Thus, the proposal to amend the current regulation to remove the requirement to set the administrative fee amount annually would help mitigate the risk of the Departments being unable to collect administrative fees sufficient to carry out the Federal IDR process in response to evolving conditions, such as the rates at which disputes are being initiated and closed. Additionally, the Departments could determine that the projected amount of administrative fees paid at the current fee amount will equal the projected expenditures made to carry out the Federal IDR process in a subsequent year, and therefore, no adjustment of the fee amount in rulemaking would be necessary. This proposed approach would comport with the statutory requirement to set the administrative fee amount in a manner such that the total amount of fees paid in a year is estimated to be equal to the amount of expenditures estimated to be made by the Departments in such year in carrying out the Federal IDR process.

The Departments propose to set the administrative fee amount by projecting the amount of expenditures to be made by the Departments in carrying out the Federal IDR process and dividing this by the projected number of administrative fees to be paid by the parties. The Departments project the number of administrative fees to be paid

⁵⁶ Centers for Medicare & Medicaid Services (August 11, 2023). *Federal Independent Dispute Resolution (IDR) Process Administrative Fee FAQs*. <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/no-surprises-act-independent-dispute-resolution-administrative-fee-frequently-asked-questions.pdf>.

⁵⁷ 26 U.S.C. 9816(c)(8)(A).

⁵⁸ 29 U.S.C. 1185e(c)(8)(A).

⁵⁹ 42 U.S.C. 300gg–111(c)(8)(A).

⁶⁰ 26 CFR 54.9816–8T(d)(2)(i), 29 CFR 2590.716–8(d)(2)(i), and 45 CFR 149.510(d)(2)(i).

⁶¹ 26 U.S.C. 9816(c)(8)(B).

⁶² 29 U.S.C. 1185e(c)(8)(B).

⁶³ 42 U.S.C. 300gg–111(c)(8)(B).

⁶⁴ 26 CFR 54.9816–8T(d)(2)(ii), 29 CFR 2590.716–8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii).

⁶⁵ 6:23–cv–00059–JDK (E.D. Tex. Jan. 30, 2023).

⁶⁶ Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee*. <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁶⁷ See Memorandum Opinion and Order, *Tex. Med. Ass'n. v. U.S. Dep't of Health & Hum. Servs.*, No. 6:23–cv–00059–JDK (E.D. Tex. August 3, 2023). <https://ecf.txed.uscourts.gov/doc1/175113317945>.

based on the total volume of disputes to be closed. Under the current Federal IDR process and the policies proposed in these proposed rules, both the initiating and non-initiating parties to a dispute are required to pay the non-refundable administrative fee in full, and therefore the total amount of administrative fees paid is calculated to reflect that both parties to a dispute pay the administrative fee. In calculating the Departments' estimated administrative fee, the Departments use the total volume of disputes projected to be closed, rather than the total volume of disputes projected to be initiated, because the total volume of closed disputes is more indicative of the total volume of disputes for which fees are paid under the Departments' current collections process.⁶⁸

For the purposes of calculating the administrative fee amount proposed in this rulemaking, the Departments project approximately 225,000 disputes will be closed annually. This projection is based on Federal IDR process data from February 2023 through July 2023, which is the most recent 6-month period before Federal IDR process operations were temporarily paused in August 2023.⁶⁹ Using this projected volume of disputes, the Departments assume a prospective reduction of approximately 25 percent in the volume of closed disputes to account for the impact of the *TMA IV* opinion and order's vacatur of the batching regulations at 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716–8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C). The Departments anticipate that the vacatur of the batching regulations as a result of *TMA IV* discussed in sections I.C. and II.B. of this preamble may result in the initiation and closure of fewer disputes due to the possibility that batched disputes may involve more line items and take more time to close.

Additionally, to calculate the administrative fee amount proposed in this rulemaking, the Departments

projected the expenditures to carry out the Federal IDR process. These projected expenditures include the Federal resources needed to carry out the Federal IDR process, such as personnel costs, as well as activities included as part of contract costs, such as resources used for targeted improvements of the overall process. The costs to the Departments for carrying out the Federal IDR process in 2024 are projected to be approximately \$70 million,⁷⁰ which includes contract costs and Federal resources associated with:

- Maintaining the Federal IDR portal, which is intended to make the parties' and certified IDR entities' experiences using the portal more efficient, clear, and streamlined;
- Certifying IDR entities and collecting data from them, which is intended to increase the number of certified IDR entities, improving the speed of eligibility and payment determinations, and to assist the Departments in understanding where some efficiencies may still be gained in the process;
- Conducting program integrity activities, such as QPA audits and IDR decision audits, which are intended to ensure program integrity of the Federal IDR process by reducing and preventing errors in the Federal IDR process;
- Investigating relevant complaints, which is intended to ensure compliance with the Federal IDR process;
- Providing outreach to parties and technical assistance to certified IDR entities, which is intended to streamline the experience and further improve the speed and integrity of eligibility and payment determinations;
- Collecting administrative fees, which is intended to operationalize, maintain, and oversee administrative fee collections from certified IDR entities;
- Assisting with eligibility determinations when the volume of disputes submitted exceeds the capacity of certified IDR entities to perform those determinations, which is intended to expedite and facilitate eligibility reviews conducted by certified IDR entities;⁷¹ and

- Retaining and making available Federal personnel dedicated to carrying out Federal IDR process activities.

Using this methodology, as proposed in paragraphs 26 CFR 54.9816–8(d)(2)(ii), 29 CFR 2590.716–8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii), the proposed administrative fee for disputes initiated on or after the later of the effective date of these rules or on January 1, 2024, and continuing until changed by subsequent rulemaking, would be calculated by dividing the projected annual expenditures of approximately \$70 million to be made by the Departments in carrying out the Federal IDR process by the projected annual number of administrative fees to be paid by the disputing parties. As previously explained, the projected total number of administrative fees is calculated using the projected volume of disputes closed and reflects that both parties to a dispute pay the administrative fee. We project 225,000 closed disputes in calendar year 2024. Therefore, 450,000 administrative fees would be paid by the parties in the year, because initiating and non-initiating parties to a dispute are required to pay the full administrative fee under the current Federal IDR process. This would result in a proposed administrative fee amount of \$150 per party per dispute.⁷² This administrative fee amount is based on the most current collections data (February through July 2023), which the Departments have determined to be the best available data for estimation of future collections, and the Departments' projected expenditures as of the publication of these proposed rules. These projections may change between the publication of the proposed and final rules based on more recent data available at that time; thus, the Departments propose to finalize an administrative fee amount methodology proposed here, as finalized, using the updated data, if applicable.

The Departments continue to consider improvements to the Federal IDR process, including how collection of the administrative fee could be more efficient and how the administrative fee amount could better ensure equitable access to the Federal IDR process across the various parties seeking to initiate disputes. Accordingly, the Departments intend to propose additional policies related to the administrative fee in future notice and comment rulemaking, including policies that would change the manner and timeframe in which the

⁶⁸ Under current policy and guidance, the administrative fee may be collected by certified IDR entities up until the time the parties submit their offers, and therefore the administrative fee is not collected for all disputes initiated. See, for example, Centers for Medicare & Medicaid Services (March 2023). *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities*. <https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf>.

⁶⁹ For this calculation, we used our Federal IDR process collections data from February 2023 through July 2023 to calculate the average monthly volume of disputes closed. We applied the 25 percent reduction described in this rule to the average monthly volume and multiplied this number by 12 to project the annual volume of closed disputes.

⁷⁰ Because the Departments generally are not permitted to publicly provide information that is confidential due to trade secrets associated with future contracting, the Departments are limited in their ability to provide detailed information about projected total Federal IDR process expenditures. See 45 CFR 5.31(d).

⁷¹ Centers for Medicare & Medicaid Services (November 21, 2022). *Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process*. <https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf>.

⁷² As described later in this rule, we estimate that the proposed administrative fee of \$150 per party, per dispute would result in an estimated annual collection approximately equal to the projected annual expenditures of approximately \$70 million.

administrative fee is paid, reduce the administrative fee amount for disputes that are determined ineligible or that involve low-dollar claims, and codify the consequences of failing to pay the administrative fee. Therefore, it is likely that these potential future proposals could require changes to the administrative fee amount, and any such change would be set forth in future notice and comment rulemaking.

The Departments solicit comments on this proposal, including the methodology used to calculate the administrative fee amount and the proposed administrative fee amount for disputes initiated on or after the later of the effective date of these rules or on January 1, 2024, as well as any potential effects on interested parties as a result of increasing the administrative fee from \$50 to \$150 per party. For example, the Departments solicit comments on whether this proposed administrative fee amount could be cost prohibitive for certain parties disputing low-dollar items and services, and whether it would reduce the number of disputes initiated in calendar year 2024 and beyond. The Departments also solicit comment on the proposal to set the administrative fee amount more frequently or less frequently than annually and whether the Departments should instead retain the current policy that the administrative fee amount is set annually. Additionally, the Departments seek comment on any implications of *TMA III* and *TMA IV* that could impact these administrative fee proposals that are not already noted in this proposed rulemaking.

Finally, the Departments solicit comment on whether, in future years, they should apply an inflationary adjustment, such as the consumer price index for all urban consumers (CPI-U), to the projected expenditures to be made by the Departments in carrying out the Federal IDR process when calculating the administrative fee amount each year and set forth the adjusted administrative fee amount in guidance, rather than in notice and comment rulemaking, as long as there are no other changes to the methodology.

B. Certified IDR Entity Fee Ranges

Under current regulations at 26 CFR 54.9816–8T(e)(2)(vii), 29 CFR 2590.716–8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii), the certified IDR entity fees for single determinations and batched determinations are set by the certified IDR entities within the upper and lower limits of ranges for each as set forth in guidance issued annually by the Departments.

The Departments propose to amend the provisions of the regulations establishing the ranges for certified IDR entity fees for single and batched disputes to refer to the ranges being established in notice and comment rulemaking, rather than in guidance. These changes would be reflected at 26 CFR 54.9816–8(e)(2)(vii), 29 CFR 2590.716–8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii), which would specify that certified IDR entities must, on an annual basis, provide a fixed fee for single determinations and separate fixed fees for batched determinations within the upper and lower limits for each as set in notice and comment rulemaking. Further, the proposed rules would provide that the certified IDR entity fee ranges established by the Departments in rulemaking would remain in effect until new certified IDR entity fee ranges are changed by a subsequent notice and comment rulemaking. Under this approach, the Departments would retain the discretion to update the certified IDR entity fee ranges more or less frequently than annually. Consistent with the current process, the certified IDR entity could not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits. Finally, the Departments propose that the certified IDR entity or IDR entity seeking certification may seek advance written approval from the Departments to update its fees more frequently than once annually.

The Departments propose that for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, certified IDR entities would be permitted to charge a fixed certified IDR entity fee for single determinations within the range of \$200 to \$840. This fee range represents a 20 percent increase to the upper limit from the 2023 single determination fee range.⁷³ The Departments anticipate that the proposed range for single determinations would only minimally impact the fixed fees selected by certified IDR entities. This is because the process of arbitrating single determinations should remain relatively predictable in 2024, as these disputes

⁷³ Beginning January 1, 2023, certified IDR entities are permitted to charge a certified IDR entity fee for single determinations within the range of \$200–\$700. See Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

have not been impacted by the *TMA IV* decision. The Departments expect that certified IDR entities would continue to price their single determination fees competitively despite the proposed increase in range. Nonetheless, the Departments are of the view that an increase to the upper limit of the range is necessary to allow certified IDR entities flexibility to set their fees in alignment with their operating costs.

The Departments propose that for disputes initiated on or after the later of the effective date of these proposed rules, or January 1, 2024, certified IDR entities would be permitted to charge a fixed certified IDR entity fee for batched determinations within the range of \$268 to \$1,173, unless a fee not within that range is approved by the Departments pursuant to paragraphs 26 CFR 54.9816–8T(e)(2)(vii)(A) and (B), 29 CFR 2590.716–8(e)(2)(vii)(A) and (B), and 45 CFR 149.510(e)(2)(vii)(A) and (B). This fee range represents a 25 percent increase to the upper limit from the 2023 batched determination fee range.⁷⁴ The Departments propose to continue to use a tiered fee structure based on the number of line items within the batch.⁷⁵ Under this proposed rule, the certified IDR entities would be permitted to charge a fixed tiered fee within the range of \$75 to \$250 for every additional 25 line items within a batched dispute beginning with the 26th line item. A certified IDR entity's batched determination fee would be applied to all batched disputes that have between 2 and 25 line items. For batched disputes with more than 25 line items, the certified IDR entity fee would be able to increase the base amount for every additional 25 line items by a fixed value between \$75 and \$250, as determined by the certified IDR entity. Unlike the fixed certified IDR entity fee for single and batched determinations, certified IDR entities would not be able

⁷⁴ Beginning January 1, 2023, certified IDR entities are permitted to charge a certified IDR entity fee for batched determinations within a range of \$268–\$938. See Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁷⁵ This was first proposed in the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act and implemented for all disputes initiated as of January 1, 2023. See Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

to seek approval to charge a fee outside of the tiered fee range for batched determinations. It is the Departments' view that the ability to seek approval to charge a fee outside of the fixed certified IDR entity batched fee range is sufficiently flexible to address any potential cost concerns. This is because the certified IDR entities only need the ability to set a fee outside one of the two batched ranges' upper and lower limits to set their overall batched fee in a manner that allows them to cover their expenses. Further, for batched determinations, the fee range would not restrict the application of the additional fixed tiered fee for batched disputes. For example, if a certified IDR entity had, in 2024, set its batched determination fee at \$1,000 (which would be within the fee range of \$268 to \$1,173) and its tiered fee at \$200 (which would be within the tiered fee range of \$75 to \$250) for each additional increment of 25 line items, and were to be selected for a batched determination with 53 line items (which corresponds to 2 increments of 25 line items within the tiered fee structure plus the batched determination fee) it would be permitted to charge \$1,400 (\$1,000 + (\$200 × 2)) as its batched determination fee in calendar year 2024.

Further, the Departments propose that the batched determination fee would continue to be based on the number of line items included in the initiating party's initial submission of the batched dispute to the Federal IDR process. This would account for the time and effort required of certified IDR entities in determining eligibility for all line items within a batched dispute such that they can ultimately make a payment determination. These fee ranges would apply until another set of fee ranges were proposed and finalized through subsequent notice and comment rulemaking.

If a certified IDR entity wishes to charge a fee outside either of these proposed ranges, it would continue to follow the existing process for requesting written approval from the Departments to do so outlined in 26 CFR 54.9816–8T(e)(2)(vii)(A) and (B), 29 CFR 2590.716–8(e)(2)(vii)(A) and (B), and 45 CFR 149.510(e)(2)(vii)(A) and (B), which the Departments do not propose to change in this rulemaking.

During calendar year 2023, certified IDR entities continue to incur high administrative costs due to the volume of disputes and the complexity in determining eligibility, as described in the December 2022 guidance.⁷⁶ These

proposed ranges reflect the significant administrative burden, ongoing eligibility determination challenges,⁷⁷ and the Departments' desire to allow more flexibility for certified IDR entities to determine a fee that best reflects their operating costs. Given the wide variability of certified IDR entities' operations, structures, staffing patterns, and expenses, it is the Departments' position that the ranges should not overly restrict the certified IDR entities' ability to set their fees commensurate with their costs. Instead, broad ranges that allow certified IDR entities flexibility to set their fees in accordance with their own circumstances would allow them to remain financially viable and encourage their continued participation in the Federal IDR process. The Departments acknowledge that broadening the certified IDR entity fee ranges could have some impact on the cost to parties to engage in the Federal IDR process (discussed in section IV.D.2. of this preamble) which could implicate access to the Federal IDR process. However, access to the Federal IDR process is dependent on certified IDR entities' voluntary participation in that process. Voluntary participation by certified IDR entities is only possible if they are able to set their fees within ranges necessary to cover their operating expenses. If the Departments were to set fee ranges that could not support the certified IDR entities' financial viability and certified IDR entities declined to participate in the Federal IDR process altogether, the goal of access would be impaired.⁷⁸ Therefore, the Departments

Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁷⁷ Between April 15, 2022 and March 31, 2023, disputing parties initiated 334,828 disputes through the Federal IDR portal. During that time, non-initiating parties challenged the eligibility of 122,781 disputes. Even if the non-initiating party does not challenge eligibility of the dispute, the certified IDR entity must review the dispute and confirm that it is eligible before the dispute can proceed in the Federal IDR process. These reviews involve complex eligibility determinations that require certified IDR entities to expend considerable time and resources. Eligibility challenges are described in the following documents: Centers for Medicare & Medicaid Services (August 19, 2022). *Federal Independent Dispute Resolution Process Status Update.* <https://www.cms.gov/files/document/federal-idr-process-status-update-august-2022.pdf> and Centers for Medicare & Medicaid Services (April 27, 2023). *Federal Independent Dispute Resolution—Status Update.* <https://www.cms.gov/files/document/federal-idr-process-status-update-april-2023.pdf>.

⁷⁸ Indeed, during the early implementation of the Federal IDR process, some certified IDR entities did temporarily halt their operations before the Departments provided additional batching guidance

have endeavored to judiciously balance access concerns with certified IDR entities' interests and seek comment on the balance proposed. In setting the certified IDR entity ranges for disputes initiated on or after the later of the effective date of these rules or on January 1, 2024, the Departments considered:

- The anticipated time and resources needed for certified IDR entities to make payment determinations meeting the requirements of the statute, rules, and guidance;
- The anticipated time and resources needed for data reporting;
- The anticipated time and resources needed for complying with audit requirements;
- The anticipated volume of Federal IDR initiations and payment determination quality assessments;
- The anticipated volume of Federal IDR initiations ineligible for the Federal IDR process; and
- The level of complexity in determining the eligibility of items and services for the Federal IDR process.

After reviewing these considerations, the Departments are of the opinion that a 20 percent increase in the upper limit of the certified IDR entity fee range for single determinations (from \$200 to \$840), would provide certified IDR entities an appropriate amount of flexibility in setting a fixed fee for single determinations, taking into account the anticipated increase in operational cost. The Departments relied on these same considerations to develop the proposed 25 percent increase in the upper limit of the certified IDR entity fee range for batched determinations, but also took into account the TMA IV opinion and order when proposing the range for batched determinations and the associated tiered fee based on the number of line items. In particular, the Departments have considered the impact of the TMA IV opinion and order on the anticipated complexity of batched determinations to inform the proposed increased base range of \$268 to \$1,173 and proposed tiered fee range of \$75 to \$250 based on the number of line items in a batched dispute. Section 9816(c)(3)(A) of the Code,⁷⁹ section 716(c)(3)(A) of the ERISA,⁸⁰ and section

in August 2022, see: U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury (August 2022). *Technical Assistance for Certified Independent Dispute Resolution Entities.* <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/Technical-Assistance-IDR-Entities-August-2022.pdf>.

⁷⁹ 26 U.S.C. 9816(c)(3)(A).

⁸⁰ 26 U.S.C. 9816(c)(3)(A).

⁷⁶ See Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar*

2799A–1(c)(3)(A) of the PHS Act⁸¹ direct the Departments to specify criteria under which multiple qualified IDR items and services are permitted to be considered jointly as part of a single determination by a certified IDR entity for purposes of encouraging the efficiency (including minimizing costs) of the Federal IDR process. These sections further require that items and services may be considered as part of a batched determination only if the items and services are furnished by the same provider or facility; payment for the items and services are made by the same group health plan or health insurance issuer; such items and services are related to the treatment of a similar condition; and the items and services were furnished during the 30-day period following the date on which the first item or service included in the batched determination was furnished, or during an alternative period as determined by the Departments, for use in limited situations, such as by the consent of the parties or in the case of low-volume items and services, to encourage procedural efficiency and minimize health plan and provider administrative costs.

Since the *TMA IV* opinion and order vacated 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716–8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C), which established standards for determining when multiple items or services relate to “the treatment of a similar condition” for the purpose of batched disputes,⁸² the certified IDR entities may no longer rely on the regulatory guidance provided to assist certified IDR entities when reviewing batched disputes. Certified IDR entities must now only rely upon statutory language when determining whether multiple items or services are related to the treatment of a similar condition and are therefore appropriate to batch.

As explained in the preamble to the October 2021 interim final rules, the Departments originally adopted the batching standards in those rules to avoid combinations of unrelated claims of providers, facilities, providers of air ambulance services and plans and issuers in a single dispute that could unnecessarily complicate an IDR payment determination and create inefficiencies in the Federal IDR process. The Departments further intended to reduce redundant IDR proceedings and streamline the certified

IDR entities’ decision-making processes. The Departments anticipate that the change in batching parameters introduced by the vacatur of 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716–8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C) will make certified IDR entities’ responsibilities and processes for eligibility and payment determinations under the Federal IDR process more complex and less certain. This unpredictability increases the systemic burden for certified IDR entities in the administration of their duties. In addition, the vacatur of 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716–8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C) will also likely increase the number of items or services batched. Certified IDR entities have indicated to the Departments that making determinations on large batches of dissimilar items and services is particularly complex and burdensome. Based on certified IDR entities’ experiences during the early stages of implementing the Federal IDR process, prior to the Departments having provided guidance regarding the batching parameters in August 2022,⁸³ the Departments observed that confusion related to the batching standards for the same or similar items or services contributed to increased complexity in determining eligibility, which added time and cost for certified IDR entities and contributed to processing delays.⁸⁴ The Departments anticipate that the changes to batching standards will require certified IDR entities to update their operations, processes, and systems, demand greater staff resources, and increase the time needed to render eligibility determinations, including determinations of whether items or services may be submitted as a batch. Therefore, the proposal to increase the fee range for batched determinations and apply a tiered fee for batched disputes based on the number of line items would allow certified IDR entities to be appropriately compensated and ensure that Federal IDR process costs are clear to parties in advance of initiating the Federal IDR process.

In finalizing the fee amounts, the Departments intend to take into account any updated data or assumptions as

applied to the factors considered in this preamble to set the fee ranges.

The Departments do not propose to change the process for certified IDR entities to set their fees.⁸⁵ Certified IDR entities will continue to be permitted to set their fees within the ranges proposed in these proposed rules, if finalized. Under these proposed rules, a certified IDR entity must receive the Departments’ advance written approval to modify its fixed fees more than once annually. If requesting to set its fee more than once annually, the certified IDR entity must submit to the Departments for approval: (1) the fixed fee that the certified IDR entity is seeking to charge; (2) a description that reasonably explains the circumstances that require a change to its fee; and (3) a detailed description that reasonably explains how the change to its fee will be used to mitigate the effects of these circumstances. The Departments would use their discretion to determine if the explanations included in the request demonstrate that the change would ensure the certified IDR entity’s financial viability and would not impose on parties an undue barrier to accessing the Federal IDR process. It is appropriate to permit certified IDR entities to change their fees more than once annually, with advance approval from the Departments, as some certified IDR entities may adopt more efficiencies throughout the year that would allow them to charge a lower fee, or if conditions of the Federal IDR process fluctuate throughout the year, some certified IDR entities may need to increase their fees to cover operating expenses.

The Departments seek comment on these proposals, including the proposed fee ranges themselves. The Departments solicit comment on whether in future years they should apply an inflationary adjustment consideration, such as the CPI–U, to the considerations used to develop the certified IDR entity fee ranges each year and set forth the adjusted fee amount in guidance, rather than notice and comment rulemaking. The Departments also seek comment on whether certified IDR entities should be allowed to set their fees based on a structure other than a fixed fee range for single disputes and tiered fees for batched disputes within the ranges proposed in these rules. Specifically, the Departments seek comment on whether certified IDR entities should have flexibility to set a per line item fee or a per unique service code fee. The Departments have considered that allowing a per line item fee or a per

⁸¹ 42 U.S.C. 300gg–111(c)(3)(A).

⁸² See Memorandum Opinion and Order, *Tex. Med. Ass’n v. U.S. Dep’t of Health & Hum. Servs.*, No. 6:23–cv–00059–JDK (E.D. Tex. August 3, 2023). <https://efcf.txd.uscourts.gov/doc1/175113317945>.

⁸³ See U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury (August 2022). Technical Assistance for Certified Independent Dispute Resolution Entities. <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/Technical-Assistance-IDR-Entities-August-2022.pdf>.

⁸⁴ Id.

⁸⁵ 45 CFR 149.510(e)(2)(vii).

unique service code fee could better address the concern of unpredictable batching practices imposing high burdens on certified IDR entities. However, the Departments acknowledge that these pricing structures for batching could decrease the accessibility of the Federal IDR process for parties, particularly small providers. In addition, the Departments seek comment on the proposed number of line items in each additional batched tier. The Departments seek comment on whether the tiers should be set at 10 line items, 50 line items, or a different number than the proposed tiered increments of 25 line items. The Departments acknowledge the need to strike the correct balance between the line item increment and the amount of resources expended by the certified IDR entities to review those line items. The Departments have considered if increments of 25 line items or higher might impose too great a burden on the certified IDR entities so as not to be commensurate with the proposed tiered fee range available to them. However, the Departments also acknowledge that setting the line item increments lower than 25 line items would further impact the cost to parties of submitting a dispute, and that the proposed tiered fee range of \$75 to \$250 may not be appropriate at smaller line item increments. The Departments seek comment on whether the tiered fee for batched disputes should be set at a percentage of the certified IDR entity's batched determination fee, similar to how the tiering for the 2023 calendar year were implemented, rather than a dollar value range. The Departments also seek comment on whether to provide a fixed fee that all certified IDR entities must charge beyond the proposed 25 line items per additional 25 line items rather than permitting a range for certified IDR entities to choose from. More specifically, the Departments seek comment on whether certified IDR entities should be permitted to set their batched determination fee between \$268 and \$1,173 and then be permitted to charge only an additional fixed dollar amount (for example, \$125, \$150, \$200, etc.) per additional 25 line items. The Departments seek comment on the appropriateness of setting a fixed dollar tiered fee structure for batched disputes, since this could impact the certified IDR entities' operational flexibility, and would limit their ability to competitively price their fees. However, the Departments are considering whether establishing a fixed dollar tiered fee might mitigate the risk of one or a few certified IDR entities pricing

their tiered fee for batched disputes so low that they become inundated with large batches and thus provide greater consistency across certified IDR entities. The Departments are considering if this alternate approach would provide more consistency regarding the fees charged by different certified IDR entities and avoid potentially overburdening IDR entities that select a low tiered fee for batched disputes.

III. Severability

In the event that any portion of these proposed rules, if finalized as proposed, is declared invalid, the Departments intend that the various aspects of the administrative fee proposals and certified IDR entity fee proposals, as finalized, be severable. For example, if a court were to find unlawful all of the administrative fee proposals, the Departments would still intend for the certified IDR entity fee proposals to stand, and vice versa. As another example, if a court were to find unlawful the proposals to establish both the administrative fee and the certified IDR entity fee ranges more or less frequently than annually, the Departments would still intend for the administrative fee amount and certified IDR entity fee ranges to be (1) established through notice and comment rulemaking and (2) established in the amount and ranges as proposed in these proposed rules. Likewise, if a court were to find unlawful the proposed administrative fee amount or methodology or the certified IDR entity fee ranges or considerations used to determine the fee ranges as proposed in these proposed rules, the Departments would still intend for the administrative fee amount and certified IDR entity ranges to be (1) established through notice and comment rulemaking and (2) established more or less frequently than annually.

Thus, the Departments propose at new paragraph 26 CFR 54.9816–8(d)(3)(i), 29 CFR 2590.716–8(d)(3)(i), and 45 CFR 149.510(d)(3)(i) that any provision of paragraph (d) or paragraphs (e)(2)(vii) through (e)(2)(ix) held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of these paragraphs is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of these paragraphs and shall not affect the remainder thereof. The

Departments further propose at new paragraph 26 CFR 54.9816–8(d)(3)(ii), 29 CFR 2590.716–8(d)(3)(ii), and 45 CFR 149.510(d)(3)(ii) that the provisions in paragraphs (d) and (e)(2)(vii) through (ix) are intended to be severable from each other.

The Departments are of the view that each of the proposals for the administrative fee amount and the certified IDR entity fee ranges would still function sensibly even if one or more of the proposals in these proposed rules, as finalized, were found unlawful. For example, the proposals to establish the administrative fee amount and certified IDR entity fee ranges in notice and comment rulemaking would not depend on either the lawfulness of the methodology used to determine the administrative fee amount or the lawfulness of the considerations used in determining the certified IDR entity fee ranges, or whether both would be established on an annual basis or more or less frequently than annually. The proposal to use notice and comment rulemaking to establish the fees specifies only the method the Departments would use and does not determine how frequently the fees would be established or the methodology for the administrative fee amount or the considerations used to determine the certified IDR entity fee ranges.

The Departments seek comment on this approach.

IV. Economic Impact and Paperwork Burden

A. Summary—Departments of Health and Human Services and Labor

These proposed rules would establish the administrative fee amount and the certified IDR entity fee ranges in notice and comment rulemaking, as well as propose the methodology for setting both fees.

The Departments have examined the effects of these proposed rules as required by Executive Order 13563 (76 FR 3821, January 21, 2011, Improving Regulation and Regulatory Review); Executive Order 12866 (58 FR 51735, October 4, 1993, Regulatory Planning and Review); Executive Order 14094 entitled “Modernizing Regulatory Review” (April 6, 2023); the Regulatory Flexibility Act (Pub. L. 96–354, enacted September 19, 1980, Pub. L. 96–354); section 1102(b) of the Social Security Act (42 U.S.C. 1102(b)); section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4); and Executive Order 13132 (64 FR 43255, August 10, 1999, Federalism).

B. Executive Orders 12866, 13563, and 14094—Departments of Health and Human Services and Labor

Executive Orders 12866, 13563, and 14094 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB’s Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or

otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for rules deemed significant under section 3(f)(1) (\$200 million or more in any 1 year). Although based on the Departments’ estimates, OMB’s OIRA has determined these rules are not significant under section 3(f)(1), the Departments have prepared an RIA that to the best of their ability presents the costs and benefits of these rules. OMB has reviewed these proposed regulations, and the Departments have provided the following assessment of their impact.

C. Need for Regulatory Action—Departments of Health and Human Services and Labor

The Departments propose to amend the certified IDR entity and administrative fee provisions of the rules for the Federal IDR process to set

the administrative fee and the certified IDR entity fee ranges in notice and comment rulemaking, as well as propose the methodology for setting the administrative fee and the considerations for developing the certified IDR entity fee ranges. The Departments are of the view that these proposals would ensure that disputing and other parties are sufficiently notified and provided an opportunity to comment on the fees associated with the Federal IDR process.

D. Summary of Impacts and Accounting Table—Departments of Health and Human Services and Labor

The expected benefits and costs of these proposed rules are summarized in Table 1 and discussed in this section of the preamble. In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Departments’ assessment of the benefits, costs, and transfers associated with this regulatory action. The Departments are unable to quantify all benefits and costs of these proposed rules but have sought, where possible, to describe these non-quantified impacts. The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of these proposed rules.

TABLE 1—ACCOUNTING TABLE

Accounting statement				
Benefits:				
Non-Quantified:				
<ul style="list-style-type: none"> Increased interested party transparency as a result of the proposals to establish the administrative fee and certified IDR entity fee ranges in notice and comment rulemaking, as well as the methodology for calculating the administrative fee amount and the considerations for developing the certified IDR entity fee ranges. 				
Costs:				
	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized	\$0.09	2023	7	2023–2027
Monetized (\$/Year)	\$0.08	2023	3	2023–2027
Quantified:				
<ul style="list-style-type: none"> Costs to interested parties of \$438,543 to review and interpret these rules in 2023. 				
Transfers:				
	Estimate (million)	Year dollar	Discount rate (percent)	Period Covered
Annualized	\$41.69	2023	7	2023–2027
Monetized (\$/year)	\$42.55	2023	3	2023–2027
Quantified:				
<ul style="list-style-type: none"> Transfers from disputing parties to the Federal government of approximately \$45 million annually beginning in 2024 as a result of the proposal to set the administrative fee amount at \$150 per party per dispute initiated on or after the later of the effective date of these rules or January 1, 2024. Transfers from disputing parties to certified IDR entities of approximately \$9 million annually beginning in 2024 as a result of the proposal to set the certified IDR entity fee ranges at \$200-\$840 for single determinations, \$268-\$1,173 for batched determinations, and an additional \$75-\$250 for each 25 line items in excess of the first 25 line items. 				

1. Benefits

The primary benefit of this rulemaking would be to allow the Federal IDR process to function through establishing the administrative fee amount and certified IDR entity fee ranges in rulemaking and establishing the amounts of these fees for disputes initiated on or after the later of the effective date of these rules or January 1, 2024. In response to the opinion and order in *TMA IV*, these proposed rules are necessary in order to set the administrative fee amount. The primary non-quantifiable benefit of these proposed rules would be the continuation of a functioning Federal IDR process, which helps to protect consumers from surprise medical bills and helps providers to receive compensation. Additional benefits specific to each Federal IDR process fee type appear in the following sections.

a. Administrative Fee Amount and Methodology

The Departments are proposing to establish the amount of the administrative fee in notice and comment rulemaking for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, as well as the methodology for determining the administrative fee. Utilizing notice and comment rulemaking would increase transparency of the administrative fee setting process and allow interested parties to provide feedback to the Departments prior to the Departments setting the administrative fee amount. The Departments seek comment on these assumptions.

b. Certified IDR Entity Fee Ranges

The Departments are proposing to establish the certified IDR entity fee ranges for single and batched determinations, which include a tiered fee range for batched determinations for disputes that exceed 25 dispute line items, in notice and comment rulemaking for disputes initiated on or after the later of the effective date of these rules or January 1, 2024. Utilizing notice and comment rulemaking to set the appropriate ranges for certified IDR entity fees would increase transparency for parties interested in the certified IDR entity fee ranges and allow interested parties to identify in advance the impacts of changing the certified IDR entity fee ranges. The Departments seek comment on these assumptions.

2. Costs

a. Administrative Fee Amount and Methodology

The Departments are proposing to establish the amount of the administrative fee in notice and comment rulemaking for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, as well as proposing the methodology for setting the administrative fee amount, in response to the opinion and order in *TMA IV* and to ensure that disputing and other parties are sufficiently notified and provided an opportunity to comment on the certified IDR entity fee ranges. The Departments are also proposing the administrative fee amount for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, at \$150 per party per dispute.

The current administrative fee is \$50 per party per dispute.⁸⁶ Based on Federal IDR process data from February through July 2023, as discussed in section II.A. of this preamble, the Departments estimate that approximately 225,000 disputes are closed per year. Therefore, if the current administrative fee were to remain applicable, disputing parties would pay approximately \$22.5 million in administrative fees annually (225,000 disputes × 2 parties per dispute × \$50 per party).⁸⁷ As the Departments are now proposing an administrative fee of \$150 for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, the Departments estimate that disputing parties would pay approximately \$67.5 million in administrative fees annually beginning in 2024 (225,000 disputes × 2 parties per dispute × \$150 per party), assuming the number of disputes remains stable year over year and the

⁸⁶ As a result of the opinion and order in *TMA IV*, which vacated the portion of the December 2022 guidance that increased the administrative fee to \$350 per party per dispute for disputes initiated during calendar year 2023, the administrative fee amount reverted to the administrative fee amount established in the October 2022 guidance. See Centers for Medicare & Medicaid Services (August 11, 2023). Federal Independent Dispute Resolution (IDR) Process Administrative Fee FAQs. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/no-surprises-act-independent-dispute-resolution-administrative-fee-frequently-asked-questions.pdf>. Also see Centers for Medicare & Medicaid Services (October 31, 2022). Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act. <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

⁸⁷ The numbers in this analysis assume that all parties pay the requisite administrative fee in all closed disputes.

administrative fee amount is not subsequently changed through notice and comment rulemaking. Therefore, the costs associated with this proposal would be approximately \$45 million (\$67.5 million if this proposal is finalized – \$22.5 million if the status quo were to continue).

The Departments seek comment on these estimates and assumptions.

b. Certified IDR Entity Fee Ranges

The Departments are proposing to set the certified IDR entity fee ranges for single and batched determinations, with a tiered fee range for batched determination for disputes that exceed 25 line items, in notice and comment rulemaking for disputes initiated on or after January 1, 2024 in response to the opinion and order in *TMA IV* and to ensure that disputing and other parties are sufficiently notified and provided an opportunity to comment on the certified IDR entity fee ranges. The proposed certified IDR entity fee range for single determinations for disputes initiated on or after the later of effective date of these rules or January 1, 2024, would be \$200 to \$840. The proposed certified IDR entity fee range for batched determinations for disputes initiated on or after the later of the effective date of these rules or January 1, 2024 would be \$268 to \$1,173. Further, the proposed tiered fee range for batched determination for disputes initiated on or after the later of the effective date of these rules or January 1, 2024 would be \$75 to \$250. While the certified IDR entities are responsible for setting their fees for single and batched determinations, the Departments acknowledge that the proposed changes to the fee ranges may impact the cost to participate in the Federal IDR process for the parties. The Departments anticipate that the vacatur of batching standards by the Texas District Court's opinion and order in *TMA IV* could result in initiating parties submitting single and batched disputes in proportions similar to those prior to the issuance of the August 2022 guidance, which interpreted the standards for batching qualified IDR items or services. Based on internal data prior to the establishment of the now vacated batching criteria that was released in August 2022, approximately 70 percent of disputes were single disputes and approximately 30 percent were batched disputes.⁸⁸ The Departments anticipate that, as a result of *TMA IV*, initiating

⁸⁸ The Departments estimate that currently approximately 80 percent of disputes are single disputes and 20 percent of disputes are batched disputes.

parties will likely resume the batching practices they engaged in prior to issuance of the August 2022 guidance, such as initiating a higher proportion of batched disputes and including more items or services within those batched disputes.

As discussed in section II.A. of this preamble, the Departments estimate that approximately 225,000 disputes are closed annually. Further, the Departments assume that certified IDR entities collect a certified IDR entity fee on approximately 135,000 of those 225,000 closed disputes annually.⁸⁹ Therefore, for the purposes of this analysis, the Departments estimate that certified IDR entities would collect certified IDR entity fees on approximately 94,500 single disputes and 40,500 batched disputes closed annually ($135,000 \times 0.70$ and $135,000 \times 0.30$, respectively). The Departments acknowledge that each party must pay a certified IDR entity fee to the certified IDR entity no later than the time that party submits its offer. However, because the non-prevailing party is ultimately responsible for the full certified IDR entity fee, which is retained by the certified IDR entity for the IDR services it performed, it is the Departments' position that providing a per-dispute calculation reasonably captures the overall cost of the dispute without implicating false precision on the amount of certified IDR fee costs that initiating and non-initiating parties ultimately may incur.

To develop a reasonable estimate for the certified IDR entity fee amount for both single and batched disputes, the Departments assume that the certified IDR entities would set single determination fixed fees approximate to the median value of the proposed fee range and would set batched determination fixed fees approximate to the 75th quartile of the proposed fee range.⁹⁰ Therefore, for the purposes of

⁸⁹ The Departments use the number of closed disputes for this analysis, as the certified IDR entity fee is due from the parties at the time the parties submit their offers, in accordance with 26 CFR 54.9816-8T(d)(1)(ii), 29 CFR 2590.716-8(d)(1)(ii), and 45 CFR 149.510(d)(1)(ii). Therefore, using the number of initiated disputes for this analysis would be inappropriate as not all initiated disputes proceed to the offer submission stage if, for example, they are determined to be ineligible for the Federal IDR process.

⁹⁰ Currently, the median of the calendar year 2023 certified IDR entity fees is \$549 for single determinations and \$770 for batched determinations, which are approximately the upper quartiles of the 2023 certified IDR entity fee ranges for single determinations (\$200-\$700) and batched determinations (\$268-\$938). The Departments anticipate that, due to the uncertainty around batching practices as a result of the *TMA IV* opinion and order, the certified IDR entities will likely choose to increase their batched determination fee.

this analysis, the Departments estimate that the average single determination fixed fee (range \$200-\$840) would be approximately \$520, and that the average batched determination fixed fee (range \$268-\$1,173) would be approximately \$947. At an estimated cost of \$520 per single determination for approximately 94,500 single determinations annually, the Departments estimate that single determinations would cost disputing parties approximately \$49,140,000 annually ($\$520 \times 94,500$). At an estimated cost of \$947 per batched determination for approximately 40,500 batched determinations annually, the Departments estimate that batched determinations would cost disputing parties approximately \$38,353,500 annually ($\$947 \times 40,500$).

Further, the Departments estimate that using the proposed tiered fee range for batched determinations, certified IDR entities would set and apply a fixed fee approximate to the median of the proposed range (\$75-\$250) for batched determinations based on the number of dispute line items. The Departments estimate that certified IDR entities would set their tiered fee at \$163 on average. The Departments acknowledge the uncertainty surrounding the number of line items that may be submitted in batched disputes due to the *TMA IV* opinion. However, to produce an estimate, and for the purposes of this analysis, the Departments estimate that a subset of approximately 4,455 batched determinations would potentially be subject to at least 2 applications of the tiered fee ($\$163 \times 2 = \326).⁹¹ As such, the Departments estimate that this subset of approximately 4,455 batched determinations exceeding 25 line items would cost disputing parties approximately \$1,452,330 annually ($\$326 \times 4,455$). In total, assuming the number of disputes remains stable year over year, the Departments estimate the parties would pay approximately \$89 million in certified IDR entity fees annually if these proposals are finalized as proposed (\$49,140,000 for single determinations + \$38,353,500 for batched determinations + \$1,452,330 for the subset of batched determinations subject to the tiered fee).

The calendar year 2023 certified IDR entity fee ranges for single determinations and batched

Therefore, using the 75th percentile of the proposed fee range to calculate the cost of batched determinations provides a reasonable approximation of the expected increase.

⁹¹ The Departments estimate that approximately 11 percent of batched disputes submitted prior to the establishment of the batching criteria released in August 2022 exceeded 25 dispute line items.

determinations are \$200-\$700 and \$268-\$938, respectively. Certified IDR entities currently charge a median fixed fee of \$549 for single determinations and \$770 for batched determinations in 2023. As such, for approximately 108,000 single determinations and 24,840 batched determinations annually,⁹² if current certified IDR entity fixed fees remained applicable, the Departments estimate that disputing parties would pay approximately \$59,292,000 for single determinations ($\$549 \times 108,000$) and \$19,126,800 for batched determinations ($\$770 \times 24,840$). Current guidance permits certified IDR entities to charge a batching percentage on batched determinations based on the number of dispute line items.⁹³ For the purposes of this analysis, the Departments assume that a subset of approximately 8 percent of batched determinations potentially subject to the batched percentages would at least receive a 120 percent increase from the median batched determination fixed fee ($\$770 \times 1.20$). As such, the Departments estimate that disputing parties would pay approximately \$2 million for this subset of batched determinations potentially subject to a batching percentage ($2,160 \times \$924$), resulting in a total cost of approximately \$80 million under the current calendar year 2023 certified IDR entity fee structure (\$59,292,000 for single determinations + \$19,126,800 for batched determinations + \$2 million for the subset of batched determinations subject to the tiered fee). Therefore, taking into account the current costs to the parties associated

⁹² The Departments estimate that 80 percent of disputes are single disputes and 20 percent are batched disputes ($135,000 \times 0.80$ and $135,000 \times 0.20$, respectively). For the purpose of this analysis, the Departments estimate that a subset of approximately 8 percent, or 2,160 batched determinations would be subject to a batching percentage ($27,000 \times 0.08$).

⁹³ Without the need to seek further approval, to account for the differential in the workload of batched determinations, a certified IDR entity may charge the following percentage of its approved certified IDR entity batched determination fee ("batching percentage") for batched determinations, which are based on the number of line items initially submitted in the batch:

- 2–20 line items: 100 percent of the approved batched determination fee;
- 21–50 line items: 110 percent of the approved batched determination fee;
- 51–80 line items: 120 percent of the approved batched determination fee; and
- 81 line items or more: 130 percent of the approved batched determination fee.

See Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act*. <https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf>.

with the current certified IDR entity fee structure, the total costs to disputing parties associated with this proposal is approximately \$9 million (\$89 million if finalized as proposed – \$80 million if the status quo fee ranges were to continue).

The Departments seek comments on these estimates and assumptions.

3. Uncertainties

It is unclear whether the Federal IDR process would experience the same operating conditions, such as the number of disputes initiated, future policy changes finalized after future notice and comment rulemaking, and increased or decreased costs by the Departments to carry out the Federal IDR process. Due to the need to take point-in-time estimates of volume and expenditures for the purposes of developing the analyses in these rules, there is inherent uncertainty in the estimates in these analyses as the data are constantly changing. It is difficult to project the impact on the administrative fee amount charged to the parties if the Federal IDR process landscape changes. Although the Departments have analyzed the Federal IDR process data available to inform their projections, it is uncertain whether the trends in this data will remain applicable. The Federal IDR process is still in an early phase of implementation and has not yet achieved the stabilization that would likely occur with long-term uptake of the process. Initially, the Departments estimated that approximately 22,000 disputes would be submitted to the process each year;⁹⁴ uptake of the process, however, rapidly outpaced that estimate, as dispute initiations have grown exponentially since implementation, and analysis has revealed an estimated number closer to 340,000 annual initiated disputes is currently more accurate. At the same time, the Departments do not know what impact changes to the batching policy as a result of the Texas District Court's opinion and order in *TMA IV* will have on the number of disputes being initiated and the time that it will take certified IDR entities to close those disputes.

4. Regulatory Review Cost Estimation

If regulations impose administrative costs on entities, such as the time

⁹⁴ In the regulatory impact analysis of the October 2021 interim final rules, the Departments estimated that 17,333 disputes involving non-air ambulance services and 4,899 disputes involving air ambulance services would be submitted to the Federal IDR process during the first year of implementation, totaling 22,232 anticipated disputes.

needed to read and interpret rules, regulatory agencies should estimate the total cost associated with regulatory review. Based on comments received for the July 2021 interim final rules and October 2021 interim final rules, the Departments estimate that more than 2,100 entities will review these proposed rules, including 1,500 issuers, 205 third party administrators (TPAs), and at least 395 other interested parties (for example, State insurance departments, State legislatures, industry associations, advocacy organizations, and providers and provider organizations). The Departments acknowledge that this assumption may understate or overstate the number of entities that will review these proposed rules.

Using the median hourly wage rate from the Bureau of Labor Statistics for a Lawyer (Code 23–1011) to account for average labor costs (including a 100 percent increase for the cost of fringe benefits and other indirect costs), the Departments estimate that the cost of reviewing these proposed rules would be \$130.52 per hour.⁹⁵ The Departments estimate, based on an estimated rule length of approximately 22,000 words and an average reading speed of 200 to 250 words per minute, that it would take each reviewing entity approximately 1.6 hours to review these proposed rules, with an associated cost of approximately \$208.83 (1.6 hours × \$130.52 per hour). Therefore, the Departments estimate that the total burden to review these proposed rules will be approximately 3,360 hours (2,100 reviewers × 1.6 hours per reviewer), with an associated cost of approximately \$438,543 (2,100 reviewers × \$208.83 per reviewer).

The Departments welcome comments on this approach to estimating the total burden and cost for interested parties to read and interpret these proposed rules.

E. Regulatory Alternatives— Departments of Health and Human Services and Labor

In developing these proposed rules, the Departments considered various alternative approaches.

1. Administrative Fee Amount and Methodology (26 CFR 54.9816–8(d)(2), 29 CFR 2590.716–8(d)(2), and 45 CFR 149.510(d)(2))

In *TMA IV*, the Texas District Court indicated that notice and comment rulemaking is necessary to set the administrative fee amount. In light of

⁹⁵ U.S. Bureau of Labor Statistics (May 1, 2022). *May 2022 National Occupational Employment and Wage Estimates*. https://www.bls.gov/oes/current/oes_nat.htm.

the Texas District Court opinion and order, as well as the Departments' assessment regarding the practicability of determining the administrative fee amount through notice and comment rulemaking, the Departments are of the view that alternative approaches would lead to unwarranted uncertainty. In addition, the Departments are of the view that providing a description of the methodology used to calculate the fee amount and proposing the administrative fee amount in these proposed rules would increase transparency for the parties and provide interested parties the opportunity to be included in the fee setting process. The Departments considered that guidance has historically set the administrative fee amount based on concerns that the requirement to collect fees sufficient to fund the Federal IDR process, and the lead time required to set the fee amount in notice and comment rulemaking, could constrain the Departments' responsiveness to program needs and artificially inflate the administrative fee amount due to the need to ensure adequate funding of the process. However, in light of *TMA IV*, the Departments are of the view that the increased transparency and opportunity for interested parties to provide feedback on the administrative fee methodology and amount would outweigh the potential concern that the administrative fee might be artificially inflated by the need to make conservative estimates to set the administrative fee amount further in advance through notice and comment rulemaking.

2. Certified IDR Entity Fee Ranges (26 CFR 54.9816–8(e)(2), 29 CFR 2590.716–8(e)(2), and 45 CFR 149.510(e)(2))

The Departments considered maintaining the current policy that the allowable ranges for certified IDR entity fees would be set in guidance yearly instead of through notice and comment rulemaking. The Departments considered whether continuing to set the certified IDR entity fee ranges in guidance would preserve necessary flexibility for the certified IDR entities to choose their fees within the allowable ranges and submit those fees for approval to the Departments, and would allow the Departments time to review and approve each certified IDR entity's fees and publish them in advance of the year to which the fees apply. The Departments balanced several considerations, including that certified IDR entities are ultimately able to choose their own fee within the ranges established in guidance by the Departments, and that setting the fee

ranges through guidance was intended to create a competitive market among the certified IDR entities to keep fees affordable, while ensuring that those entities are able to cover their costs. Setting the allowable ranges for certified IDR entity fees through notice and comment rulemaking is appropriate because it would increase transparency and provide an opportunity for the Departments to consider comments from interested parties.

F. Paperwork Reduction Act

These proposed rules are not subject to the requirements of the Paperwork Reduction Act of 1995,⁹⁶ because they do not contain a collection of information as defined in 44 U.S.C. 3502(3). Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires agencies to analyze options for regulatory relief of small entities and to prepare an initial regulatory flexibility analysis to describe the impact of these proposed rules on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of “small entity.” The Departments use a change in revenues of more than 3 to 5 percent as their measure of significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions.

The provisions in these proposed rules would affect plans (or their TPAs),⁹⁷ health insurance issuers offering group or individual health insurance coverage, and providers, facilities, and providers of air ambulance services.

For purposes of analysis under the RFA,⁹⁸ the Departments consider an employee benefit plan with fewer than

100 participants to be a small entity.⁹⁹ The basis of this definition is found in section 104(a)(2) of ERISA,¹⁰⁰ which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under section 104(a)(3),¹⁰¹ the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Under the authority of section 104(a)(3),¹⁰² the Department of Labor has previously issued simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, which cover fewer than 100 participants and satisfy certain requirements.¹⁰³ While some large employers have small plans, small plans are generally maintained by small employers. Thus, the Departments are of the view that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of a small entity considered appropriate for this purpose differs, however, from a definition of a small business based on size standards issued by the SBA¹⁰⁴ in accordance with the Small Business Act.¹⁰⁵

In 2021, there were 1,500 issuers in the U.S. health insurance market¹⁰⁶ and 205 TPAs.¹⁰⁷ Health insurance issuers are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards,¹⁰⁸ entities with average annual receipts of \$47 million or less are considered small entities for this NAICS code. The Departments expect that few, if any, insurance companies underwriting health insurance policies fall below these size thresholds. Based on data

⁹⁹ The Departments consulted with the Small Business Administration Office of Advocacy in making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c) in a memo dated June 4, 2020.

¹⁰⁰ 29 U.S.C. 1024(a)(2).

¹⁰¹ 29 U.S.C. 1024(a)(3).

¹⁰² 29 U.S.C. 1024(a)(3).

¹⁰³ 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10.

¹⁰⁴ 13 CFR 121.201 (2011).

¹⁰⁵ 15 U.S.C. 631 *et seq.* (2011).

¹⁰⁶ Centers for Medicare & Medicaid Services (2022). *Medical Loss Ratio Data and System Resources*. <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr>.

¹⁰⁷ Non-issuer TPAs based on data derived from the 2016 benefit year reinsurance program contributions.

¹⁰⁸ United States Small Business Administration (March 17, 2023). *Table of Size Standards*. <https://www.sba.gov/document/support-table-size-standards>.

from Medical Loss Ratio (MLR) annual report submissions for the 2021 MLR reporting year, approximately 87 out of 483 issuers of health insurance coverage nationwide had total premium revenue of \$47 million or less.¹⁰⁹ However, it should be noted that over 77 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies, are likely to have non-health lines of business that would result in their revenues exceeding \$47 million. For the purposes of this analysis, the Departments assume 8.6 percent, or 128 issuers, and 18 TPAs are considered small entities.

These proposed rules would also affect health care providers due to the proposed requirements related to the certified IDR entity and administrative fees. The Departments estimate that 140,270 physicians, on average, bill on an out-of-network basis. The number of small physicians is estimated based on the SBA’s size standards. The size standard applied for providers is NAICS 62111 (Offices of Physicians), for which a business with less than \$16 million in receipts is considered to be small. By this standard, the Departments estimate that 47.2 percent or 66,207 physicians are considered small under the SBA’s size standards.¹¹⁰ These proposed rules are also expected to affect non-physician providers who bill on an out-of-network basis. The Departments lack data on the number of non-physician providers who would be impacted.

The Departments do not have the same level of data for the air ambulance subsector. In 2020, the total revenue of providers of air ambulance services was estimated to be \$4.2 billion, with 1,114 air ambulance bases.¹¹¹ This results in an industry average of \$3.8 million per air ambulance base. Accordingly, the Departments are of the view that most providers of air ambulance services are likely to be small entities.

The proposed policies that would result in an increased burden to small entities are described below.

The Departments propose to establish the administrative fee amount in notice and comment rulemaking, and the

¹⁰⁹ Centers for Medicare & Medicaid Services (2022). *Medical Loss Ratio Data and System Resources*. <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr>.

¹¹⁰ Based on data from the NAICS Association for NAICS code 62111, the Departments estimate the percent of businesses within the industry of Offices of Physicians with less than \$16 million in annual sales. United States Census Bureau (May 2021). *2017 SUSB Annual Data Tables by Establishment Industry*. <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

¹¹¹ ASPE Office of Health Policy (September 10, 2021). *Air Ambulance Use and Surprise Billing*. <https://aspe.hhs.gov/sites/default/files/2021-09/aspe-air-ambulance-ib-09-10-2021.pdf>.

⁹⁶ 44 U.S.C. 3501 *et seq.*

⁹⁷ The Departments expect that most self-insured group health plans will work with a TPA to meet the requirements.

⁹⁸ 5 U.S.C. 601, *et seq.*

Departments propose that the administrative fee amount for disputes initiated on or after the effective date of these rules or on January 1, 2024, would be \$150 per party. The total annual burden associated with this proposal is \$45 million, split evenly between plans and issuers and providers, facilities, and providers of air ambulance services (\$22.5 million each). For more details, please refer to the Regulatory Impact Analysis in these proposed rules.

The Departments propose to establish the certified IDR entity fee ranges in notice and comment rulemaking, and the Departments propose that the ranges would be \$200–\$840 for single determinations and \$268–\$1,173 for batched determinations, with a \$75–\$250 tiered fee range for disputes that contain more than 25 line items. The total annual burden associated with this proposal is approximately \$9 million, 30 percent (\$2.7 million) for providers, facilities, and providers of air ambulance services¹¹² and 70 percent (\$6.3 million) for plans and issuers.¹¹³ For more details, please refer to the Regulatory Impact Analysis in these proposed rules.

To estimate the proportion of the total costs that would fall on small entities, the Departments assume that the proportion of costs is proportional to the industry receipts. Applying data from the Census Bureau of receipts by size for each industry, the Departments estimate that small issuers would incur 0.2 percent of the total costs incurred by all issuers and small providers would incur

¹¹² Historically, less than 1 percent of disputes for emergency and non-emergency services have been submitted by group health plans, health insurance issuers, or FEHB carriers. U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of Treasury (n.d.) *Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15–September 30, 2022*. <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>.

¹¹³ Data from the first full year of Federal IDR process operations show that initiating parties prevail in approximately 70 percent of disputes. See Centers for Medicare & Medicaid Services (April 27, 2023). *Federal Independent Dispute Resolution Process—Status Update*. Therefore, as the prevailing party's certified IDR entity fee is refunded per 26 CFR 54.9816–8T(d)(1)(ii), 29 CFR 2590.716–8(d)(1)(ii), and 45 CFR 149.510(d)(1)(ii), initiating parties only pay the certified IDR entity fee for 30 percent of disputes, while non-initiating parties pay for the other 70 percent. <https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf>. Therefore, as the prevailing party's certified IDR entity fee is refunded per 26 CFR 54.9816–8T(d)(1)(ii), 29 CFR 2590.716–8(d)(1)(ii), and 45 CFR 149.510(d)(1)(ii), initiating parties only pay the certified IDR entity fee for 30 percent of disputes, while non-initiating parties pay for the other 70 percent.

42.4 percent of the total cost by all providers.¹¹⁴

For the proposal to set the administrative fee amount at \$150 per party for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, the Departments estimate that the total annual cost for small providers¹¹⁵ would be \$9,540,000.¹¹⁶ This results in a per-entity cost for small providers of \$144.09.¹¹⁷ The Departments estimate that the total annual cost for small issuers and TPAs would be \$45,000.¹¹⁸ This results in a per-entity cost for small issuers and TPAs of \$308.22.¹¹⁹

For the proposal to set the certified IDR entity fee ranges at \$200–\$840 for single determinations and \$268–\$1,173 for batched determinations, with a \$75–\$250 tiered fee range for disputes that contain more than 25 line items, the Departments estimate that the total annual cost for small providers¹²⁰ would be \$1,144,800.¹²¹ This results in a per-entity cost for small providers of \$17.29.¹²² The Departments estimate that the total annual cost for small issuers and TPAs would be \$12,600.¹²³

¹¹⁴ United States Census Bureau (March 2020). *2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipt Size*. <https://www.census.gov/data/tables/2020/econ/susb/2020-susb-annual.html>.

¹¹⁵ Historically, less than 1 percent of disputes for emergency and non-emergency services have been submitted by group health plans, health insurance issuers, or FEHB carriers. U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of Treasury (n.d.) *Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15–September 30, 2022*. <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>.

¹¹⁶ The total annual cost for small providers is estimated as: \$22.5 million × 42.4 percent = \$9,540,000.

¹¹⁷ The annual per-entity cost is estimated as: \$9,540,000/66,207 small providers = \$144.09.

¹¹⁸ The total annual cost for small issuers and TPAs is estimated as: \$22.5 million × 0.2 percent = \$45,000.

¹¹⁹ The annual per-entity cost for small issuers and TPAs is estimated as: \$45,000/(128 issuers + 18 TPAs) = \$308.22.

¹²⁰ Historically, less than 1 percent of disputes for emergency and non-emergency services have been submitted by group health plans, health insurance issuers, or FEHB carriers. U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of Treasury (n.d.) *Initial Report on the Federal Independent Dispute Resolution (IDR) Process, April 15–September 30, 2022*. <https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf>.

¹²¹ The total annual cost for small providers is estimated as: \$2,700,000 × 42.4 percent = \$1,144,800.

¹²² The annual per-entity cost is estimated as: \$1,144,800/66,207 small providers = \$17.29.

¹²³ The total annual cost for small issuers and TPAs is estimated as: \$6,300,000 × 0.2 percent = \$12,600.

This results in a per-entity cost for small issuers and TPAs of \$86.30.¹²⁴

Thus, the total estimated annual cost for small issuers and TPAs is \$57,600, and the total estimated annual cost for small providers is \$10,684,800. The per-entity annual cost for small issuers and TPAs is \$394.52, and the per-entity annual cost for small providers is \$161.38.

The Departments seek comment on this analysis and seek information on the number of small plans (or TPAs), issuers, or providers that may be affected by the provisions in these proposed rules.

The number of impacted small health plans is not significant compared to the total universe of 1.9 million small health plans. Assuming that 340,000 disputes are submitted to the Federal IDR process each year, 18 percent of small health plans would be impacted.¹²⁵ The number of impacted plans and issuers may be even smaller if some plans and issuers have multiple disputes that are batched in the Federal IDR process. By batching qualified IDR items and services, there may be a reduction in the per-service cost of the Federal IDR process, and potentially the aggregate administrative costs, because the Federal IDR process is likely to exhibit at least some economies of scale.¹²⁶

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. The Departments are of the view that this threshold will not be reached by the requirements in these proposed rules, given that the annual per-entity cost of \$413.70 per small issuer/TPA represents 0.02 percent of the average annual receipts for a small issuer/TPA and the annual per-entity cost of \$165.23 per small provider represents 0.01 percent of the average annual receipts for a small provider.¹²⁷ Therefore, the Secretary has certified that these proposed rules will not have

¹²⁴ The annual per-entity cost for small issuers and TPAs is estimated as: \$12,600/(128 issuers + 18 TPAs) = \$86.30.

¹²⁵ 340,000 claims/1,927,786 ERISA health plans = 18 percent (Source: 2020 Medical Expenditure Panel Survey-Insurance Component).

¹²⁶ Fielder, M., Adler, L., Ippolito, B. (March 16, 2021). *Recommendations for Implementing the No Surprises Act*. U.S.C.-Brookings Schaeffer on Health Policy. <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2021/03/16/recommendations-for-implementing-the-no-surprises-act/>.

¹²⁷ United States Census Bureau (March 2020). *2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipt Size*. <https://www.census.gov/data/tables/2020/econ/susb/2020-susb-annual.html>.

a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Paperwork Reduction Act requires the Departments to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA.¹²⁸ For purposes of section 1102(b) of the Paperwork Reduction Act, the Departments define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. While these proposed rules are not subject to section 1102 of the Paperwork Reduction Act, the Departments have determined that these proposed rules will not affect small rural hospitals. Therefore, the Secretary has certified that these proposed rules will not have a significant impact on the operations of a substantial number of small rural hospitals.

H. Special Analyses—Department of the Treasury

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required. Pursuant to section 7805(f) of the Code,¹²⁹ these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)¹³⁰ requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule or any final rule for which a general notice of proposed rulemaking was published that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. That threshold is approximately \$177 million in 2023. As discussed earlier in the RIA, plans, issuers, TPAs, and providers, facilities, and providers of air ambulance services would incur costs to comply with the provisions of these proposed rules. The

Departments estimate the combined impact on State, local, or tribal governments and the private sector would not be above the threshold.

J. Federalism

Executive Order 13132 outlines the fundamental principles of federalism. It requires adherence to specific criteria by Federal agencies in formulating and implementing policies that have “substantial direct effects” on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies issuing regulations that have these federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to these proposed rules.

The Departments do not anticipate that these proposed rules would have federalism implications or limit the policy-making discretion of the States in compliance with the requirement of Executive Order 13132.

State and local government health plans may be subject to the Federal IDR process where a specified State law or All-Payer Model Agreement does not apply. The No Surprises Act authorizes States to enforce the new requirements, including those related to balance billing, for issuers, providers, facilities, and providers of air ambulance services, with HHS enforcing only in cases where the State has notified HHS that the State does not have the authority to enforce or is otherwise not enforcing, or HHS has made a determination that a State has failed to substantially enforce the requirements. However, in the Departments’ view, the federalism implications of these proposed rules are substantially mitigated because some States have their own process for determining the total amount payable under a plan or coverage for out-of-network emergency services and to out-of-network providers for patient visits to in-network facilities for non-emergency services. Where a State has a specified State law, the State law, rather than the Federal IDR process, would apply.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance

Commissioners and consulting with State insurance officials on an individual basis.

While developing these rules, the Departments attempted to balance the States’ interests in regulating health insurance issuers with the need to ensure market stability. By doing so, the Departments complied with the requirements of Executive Order 13132.

Douglas W. O’Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lisa M. Gomez

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Child support, Employee benefit plans, Health care, Health insurance, Infants and children, Maternal and child health, Penalties, Pensions, Privacy, Reporting and recordkeeping requirements.

45 CFR Part 149

Administrative practice and procedure, Health care, Health insurance, Insurance companies, Penalties, Reporting, and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

Accordingly, the Department of the Treasury and the IRS proposes to amend 26 CFR part 54 as follows:

PART 54—PENSION EXCISE TAXES

■ 1. The authority citation for part 54 is amended by adding an entry for § 54.9816–8 in numerical order to read in part as follows:

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

Section 54.9816–8 also issued under 26 U.S.C. 9816.

* * * * *

■ 2. Section 54.9816–8 is amended by revising paragraphs (a) through (e) and the headings for paragraphs (f) and (g) to read as follows:

§ 54.9816–8 Independent dispute resolution process.

(a) *Scope and definitions.* For further guidance, see § 54.9816–8T(a).

¹²⁸ 5 U.S.C. 603.

¹²⁹ 26 U.S.C. 7805(f).

¹³⁰ 2 U.S.C. 1511.

(b) *Determination of payment amount through open negotiation and initiation of the Federal IDR process.* For further guidance, see § 54.9816–8T(b).

(c) *Federal IDR process following initiation.* For further guidance, see § 54.9816–8T(c).

(d) *Costs of IDR process.* (1) *Certified IDR entity fee.* For further guidance, see § 54.9816–8T(d)(1).

(2) *Administrative fee.* (i) For further guidance, see § 54.9816–8T(d)(2)(i).

(ii) The administrative fee amount will be established through notice and comment rulemaking in a manner such that the total administrative fees paid for a year are estimated to be equal to the projected amount of expenditures made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, the administrative fee amount is \$150 per party per dispute and will remain in effect until changed by subsequent rulemaking.

(3) *Severability.* (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) through (ix) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of these paragraphs is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of these paragraphs and shall not affect the remainder thereof.

(ii) The provisions in paragraphs (d) and (e)(2)(vii) through (ix) of this section are intended to be severable from each other.

(e) *Certification of IDR entity—(1) In general.* For further guidance see § 54.9816–8T(e)(1).

(2) *Requirements.* (i) through (vi). For further guidance, see § 54.8616–8T(e)(2)(i) through (vi).

(vii) Provide, on an annual basis, a fixed fee for single determinations and separate fixed fees for batched determinations, as well as additional fixed tiered fees for batched disputes, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until

changed by subsequent rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits. The certified IDR entity or IDR entity seeking certification may also seek advance written approval from the Secretary to update its fees more frequently than once annually. If a certified IDR entity or IDR entity seeking certification submits to the Secretary a request to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking, the Secretary will use their discretion to determine if the information submitted by a certified IDR entity or IDR entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the certified IDR entity's financial viability and would not impose on parties an undue barrier to accessing the Federal IDR process. In order for the certified IDR entity to receive the Secretary's written approval to charge a fee beyond the upper or lower limits for fees as set forth in rulemaking, or to modify the fixed fees more than once annually, it must satisfy the conditions in both paragraphs (e)(2)(vii)(A) and (B) of this section, as follows:

(A) Submit, in writing, a proposal to the Secretary that includes:

(1) If requesting to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking:

(i) The alternative fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(ii) A description of the circumstances that require the alternative fee; and

(iii) A description that reasonably explains how the alternative fixed fee will be used to mitigate the effects of those circumstances; or

(2) If requesting to modify the fixed fee more than once annually:

(i) The fixed fee the certified IDR entity is seeking to charge;

(ii) A description of the circumstances that require a change to its fixed fee; and

(iii) A detailed description that reasonably explains how the change to its fixed fee will be used to mitigate the effects of those circumstances.

(B) Receive from the Secretary, the Secretary of Health and Human Services, and the Secretary of Labor written approval to charge the fee documented in the certified IDR entity's or the IDR entity seeking certification's written proposal.

(viii) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of \$200 to \$840, unless a fee not within that range is approved by the Secretary pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. The range for the certified IDR entity fee for single determinations will remain in effect until changed by subsequent rulemaking.

(ix) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for batched determinations within the range of \$268 to \$1,173, unless a fee not within that range is approved by the Secretary pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of \$75 to \$250 for every additional 25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for batched determinations will remain in effect until changed by subsequent rulemaking.

(x) through (xiii). For further guidance, see § 54.9816–8T(e)(2)(x) through (xiii).

(f) *Reporting of information relating to the Federal IDR process.* * * *

(g) *Extension of time periods for extenuating circumstances.* * * *

* * * * *

■ 3. Section 54.9816–8T is amended by:

■ a. Revising paragraph (d)(2)(ii);

■ b. Adding paragraph (d)(3);

■ c. Revising paragraph (e)(2)(vii)

■ d. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(x) through (xiii);

■ e. Adding new paragraphs (e)(2)(viii) and (ix).

The revisions and additions read as follows:

§ 54.9816–8T Independent dispute resolution process (temporary).

* * * * *

(d) * * *

(2) * * *

(ii) For further guidance, see § 54.9816–8(d)(2)(ii).

(3) *Severability.* For further guidance, see § 54.9816–8(d)(3).

(e) * * *
(2) * * *
(vii) and (ix). For further guidance, see § 54.9816–8(e)(2)(vii) and (ix).

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Secretary of Labor’s Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

- 5. Section 2590.716–8 is amended by:
■ a. Revising paragraph (d)(2)(ii);
■ b. Adding paragraph (d)(3);
■ c. Revising paragraph (e)(2)(vii);
■ d. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(x) through (xiii); and
■ e. Adding new paragraphs (e)(2)(viii) and (ix).

The revisions and additions read as follows:

§ 2590.716–8 Independent dispute resolution process.

(d) * * *
(2) * * *

(ii) The administrative fee amount will be established through notice and comment rulemaking in a manner such that the total administrative fees paid for a year are estimated to be equal to the projected amount of expenditures made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, the administrative fee amount is \$150 per party per dispute, which will remain in effect until changed by subsequent rulemaking.

(3) Severability. (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) through (ix) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of these paragraphs is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of these paragraphs and shall not affect the remainder thereof.

(ii) The provisions in paragraphs (d)(2) and (e)(2)(vii), (viii), and (ix) of this section are intended to be severable from each other.

(e) * * *
(2) * * *

(vii) Provide, on an annual basis, a fixed fee for single determinations and separate fixed fees for batched determinations, as well as additional fixed tiered fees for batched disputes, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until changed by subsequent rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits. The certified IDR entity or IDR entity seeking certification may also seek advance written approval from the Secretary to update its fees more frequently than once annually. If a certified IDR entity or IDR entity seeking certification submits to the Secretary a request to charge a fixed fee beyond the upper or lower limited for fees set forth in rulemaking, the Secretary will use their discretion to determine if the information submitted by the certified IDR entity or entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the certified IDR entity’s financial viability and would not impose on parties an undue barrier accessing the Federal IDR process. In order for the certified IDR entity to receive the Secretary’s written approval to charge a fee beyond the upper or lower limits for fees as set forth in rulemaking, or to modify the fixed fees more than once annually, it must satisfy the conditions in both paragraphs

(e)(2)(vii)(A) and (B) of this section, as follows:

(A) Submit, in writing, a proposal to the Secretary that includes:

(1) If requesting to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking:

(i) The alternative fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(ii) A description of the circumstances that require the alternative fee; and

(iii) A description that reasonably explains how the alternative fixed fee will be used to mitigate the effects of those circumstances; or

(2) If requesting to modify the fixed fee more than once annually:

(i) The fixed fee the certified IDR entity is seeking to charge;

(ii) A description of the circumstances that require a change to its fixed fee; and

(iii) A detailed description that reasonably explains how the change to its fixed fee will be used to mitigate the effects of those circumstances.

(B) Receive from the Secretary, the Secretary of the Treasury, and the Secretary of Health and Human Services, written approval to charge the fee documented in the certified IDR entity’s or the IDR entity seeking certification’s written proposal.

(viii) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of \$200 to \$840, unless a fee not within that range is approved by the Secretary pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. The range for the certified IDR entity fee for single determinations will remain in effect until changed by subsequent rulemaking.

(ix) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for batched determinations within the range of \$268 to \$1,173, unless a fee not within that range is approved by the Secretary pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of \$75 to \$250 for every additional

25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for batched determinations will remain in effect until changed by subsequent rulemaking.

* * * * *

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 149 as set forth below:

PART 149—SURPRISE BILLING AND TRANSPARENCY REQUIREMENTS

■ 6. The authority citation for part 149 continues to read as follows:

Authority: 42 U.S.C. 300gg–92 and 300gg–111 through 300gg–139, as amended.

■ 7. Section 149.510 is amended by:

- a. Revising paragraph (d)(2)(ii);
- b. Adding paragraph (d)(3);
- c. Revising paragraph (e)(2)(vii);
- d. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(x) through (xiii); and
- e. Adding new paragraphs (e)(2)(viii) and (ix).

The revisions and additions read as follows:

§ 149.510 Independent dispute resolution process.

* * * * *

(d) * * *

(2) * * *

(ii) The administrative fee amount will be established through notice and comment rulemaking in a manner such that the total administrative fees paid for a year are estimated to be equal to the projected amount of expenditures made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, the administrative fee amount is \$150 per party per dispute, which will remain in effect until changed by subsequent rulemaking.

(3) *Severability.* (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) through (ix) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of these paragraphs is invalid and unenforceable in all circumstances, in which event the provision shall be

severable from the remainder of these paragraphs and shall not affect the remainder thereof.

(ii) The provisions in this paragraph (d) and paragraphs (e)(2)(vii) through (ix) of this section are intended to be severable from each other.

(e) * * *

(2) * * *

(vii) Provide, on an annual basis, a fixed fee for single determinations and a separate fixed fee for batched determinations, as well as an additional fixed tiered fee for batched disputes, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until changed by subsequent rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits. The certified IDR entity or IDR entity seeking certification may also seek advance written approval from the Secretary to update its fees more frequently than once annually. If a certified IDR entity or IDR entity seeking certification submits to the Secretary a request to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking, the Secretary will use their discretion to determine if the information submitted by a certified IDR entity or IDR entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the certified IDR entity's financial viability and would not impose on parties an undue barrier to accessing the Federal IDR process. In order for the certified IDR entity to receive the Secretary's written approval to charge a fee beyond the upper or lower limits for fees as set forth in rulemaking, or to modify the fixed fees more than once annually, it must satisfy the conditions in both paragraphs (e)(2)(vii)(A) and (B) of this section, as follows:

(A) Submit, in writing, a proposal to the Secretary that includes:

(1) If requesting to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking:

(i) The alternative fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(ii) A description of the circumstances that require the alternative fee; and

(iii) A description that reasonably explains how the alternative fixed fee will be used to mitigate the effects of those circumstances; or

(2) If requesting to modify the fixed fee more than once annually:

(i) The fixed fee the certified IDR entity is seeking to charge;

(ii) A description of the circumstances that require a change to its fixed fee; and

(iii) A detailed description that reasonably explains how the change to its fixed fee will be used to mitigate the effects of those circumstances.

(B) Receive from the Secretary, the Secretary of the Treasury, and the Secretary of Labor, written approval to charge the fee documented in the certified IDR entity's or the IDR entity seeking certification's written proposal.

(viii) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of \$200 to \$840, unless a fee not within that range is approved by the Secretary, pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. The range for the certified IDR entity fee for single determinations will remain in effect until changed by subsequent rulemaking.

(ix) For disputes initiated on or after the later of the effective date of Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges final rules or January 1, 2024, certified IDR entities are permitted to charge a fixed certified IDR entity fee for batched determinations within the range of \$268 to \$1,173, unless a fee not within that range is approved by the Secretary pursuant to paragraphs (e)(2)(vii)(A) and (B) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of \$75 to \$250 for every additional 25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for batched determinations will remain in effect until changed by subsequent rulemaking.

* * * * *

[FR Doc. 2023–20799 Filed 9–21–23; 4:15 pm]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2022–5]

Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act**AGENCY:** U.S. Copyright Office, Library of Congress.**ACTION:** Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a supplemental notice of proposed rulemaking to update its October 25, 2022 proposed rule regarding the applicability of the derivative works exception to termination rights under the Copyright Act to the new statutory mechanical blanket license established by the Music Modernization Act. This supplemental notice modifies the proposed rule and expands its scope in light of comments received in response to the previous notice. In addition to addressing the applicability of the derivative works exception, the supplemental proposed rule addresses other matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties. Among other things, the Office proposes adopting regulations addressing the mechanical licensing collective's distribution of matched historical royalties and administration of ownership transfers, requests to designate alternative royalty payees, and related disputes. The Office invites public comments on the supplemental proposed rule.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on October 26, 2023. Written reply comments must be received no later than 11:59 p.m. Eastern Time on November 13, 2023.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office's website at <https://copyright.gov/rulemaking/mma-termination>. If electronic submission of comments is not feasible due to lack of access to a computer or the internet, please contact the Copyright Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT:

Rhea Efthimiadis, Assistant to the General Counsel, by email at mef@copyright.gov or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:**I. Background**

The Copyright Office (“Office”) issues this supplemental notice of proposed rulemaking (“SNPRM”) subsequent to a notice of proposed rulemaking (“NPRM”) published in the **Federal Register** on October 25, 2022, pursuant to the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”).¹ In the NPRM, the Office proposed regulations regarding the applicability of the derivative works exception (“Exception”) to termination rights under the Copyright Act to the statutory mechanical blanket license established by the MMA (“blanket license”).² This SNPRM assumes familiarity with the prior NPRM and the public comments received in response to the NPRM.³

A. The Notice of Proposed Rulemaking

The Office commenced this proceeding in response to the adoption by the Mechanical Licensing Collective (“MLC”) of a termination dispute policy that conflicted with prior guidance given by the Office and that embodied an erroneous application of the Exception.⁴ As a result of the MLC's adoption of this policy, the Office concluded it was necessary to revisit the termination issue more directly and to

squarely resolve the question of how termination law intersects with the blanket license.⁵ The NPRM explained that the Office “seeks to provide clarity concerning the application of the Exception to the blanket license,” as “[d]oing so would provide much needed business certainty to music publishers and songwriters” and “would enable the MLC to appropriately operationalize the distribution of post-termination royalties in accordance with existing law.”⁶ The NPRM contained a detailed discussion of the procedural background leading to this rulemaking,⁷ the Office's regulatory authority,⁸ and legal background about the Copyright Act's termination provisions and the Exception.⁹

The Office then analyzed the application of the Exception in the context of the blanket license and preliminarily concluded “that the MLC's termination dispute policy is inconsistent with the law.”¹⁰ It explained that “[w]hether or not the Exception applies to a [digital music provider's (“DMP's”)] blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination.”¹¹ This means that “the post-termination copyright owner (*i.e.*, the author, the author's heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC.”¹²

Consequently, the Office proposed a rule to clarify the appropriate payee under the blanket license to whom the MLC must distribute royalties following a statutory termination.¹³ Because the Office concluded that the MLC's termination dispute policy is contrary to law, it also proposed to require the MLC to immediately repeal its policy in full.¹⁴ The Office further proposed to require the MLC to adjust any royalties distributed under the policy within 90 days to make copyright owners whole for any distributions the MLC made based on “an erroneous understanding and application of current law.”¹⁵

¹ 87 FR 64405 (Oct. 25, 2022).

² *Id.*

³ The NPRM stemmed from a previous rulemaking proceeding, discussed in detail in the NPRM, that involved multiple rounds of public comments through a notification of inquiry, 84 FR 49966 (Sept. 24, 2019), a notice of proposed rulemaking, 85 FR 22518 (Apr. 22, 2020), and an *ex parte* communications process. Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at <https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html>. All rulemaking activity, including public comments, as well as educational material regarding the MMA, can currently be accessed via navigation from <https://www.copyright.gov/music-modernization>. Comments received in response to the NPRM are available at <https://copyright.gov/rulemaking/mma-termination/>. References to those public comments are by party name (abbreviated where appropriate), followed by “Initial Comments,” “Reply Comments,” or “*Ex Parte* Letter,” as appropriate.

⁴ 87 FR 64405, 64407. The Office disagrees with the MLC's suggestions to the contrary. *See, e.g.*, MLC Initial Comments at 2–3; MLC Reply Comments at 1–2. As explained more fully in the NPRM, the Office's ultimate conclusion in the prior proceeding was that “it seems reasonable for the MLC to act in accordance with letters of direction received from the relevant parties, or else hold applicable royalties pending direction or resolution of any dispute by the parties.” 87 FR 64405, 64407 (quoting 85 FR 58114, 58132 (Sept. 17, 2020)).

⁵ 87 FR 64405, 64407.

⁶ *Id.* (“Moreover, without the uniformity in application that a regulatory approach brings, the Office is concerned that the MLC's ability to distribute post-termination royalties efficiently would be negatively impacted.”).

⁷ *Id.* at 64406–07.

⁸ *Id.* at 64407–08.

⁹ *Id.* at 64408–10.

¹⁰ *Id.* at 64410–11.

¹¹ *Id.* at 64411.

¹² *Id.*

¹³ *Id.* at 64411–12.

¹⁴ *Id.* at 64412.

¹⁵ *Id.*

After publication of the NPRM, the MLC said that it voluntarily “suspended its [termination dispute policy] pending the outcome of the [Office’s] rulemaking proceeding” and “will hold all royalties for uses of musical works that are subject to statutory termination claims beginning with the October [2022] usage period, which would have been distributed in January 2023.”¹⁶ To the Office’s knowledge, the MLC continues to hold such royalties at present.

B. The NPRM Comments

The Office received over 40 public comments in response to the NPRM. These comments reflect the views of hundreds of interested parties, including songwriters, music publishers and administrators, record labels, public interest groups, academics, and practitioners. Most commenters, including multiple music publishers and administrators, generally supported the proposed rule.¹⁷ While some commenters raised concerns with certain aspects of the NPRM,¹⁸ the National Music Publishers’ Association (“NMPA”) was the only commenter to oppose the proposed rule more broadly.¹⁹

NMPA explained that it “has serious concerns regarding (i) the impermissible retroactive effect of the NPRM, (ii) the statutory authority underlying the broad legal analysis contained in the NPRM that would appear to have effect beyond the limited issue of whether the

Exception applies to the Blanket License, and (iii) whether the Proposed Rule may constitute an unconstitutional taking in violation of the Fifth Amendment.”²⁰ Notwithstanding these concerns, NMPA stated that it “supports what it believes to be the ultimate goal of the Proposed Rule: to provide that the post-termination copyright owner of a musical composition shall receive post-termination royalties under the Blanket License for any sound recordings created pre- or post-termination.”²¹

Several commenters, including the MLC, sought additional guidance from the Office on various related issues not directly addressed by the NPRM. Examples include the following:

- Application of the Exception to other types of statutory mechanical licenses;²²
- Application of the Exception to voluntary licenses;²³
- Procedures for carrying out the proposed corrective royalty adjustment to remedy prior distributions by the MLC based on an erroneous understanding and application of the Exception.²⁴
- Procedures concerning notice, documentation, timing, and other matters relating to the MLC’s implementation of a termination notification;²⁵ and
- Procedures concerning termination disputes and related confidential information.²⁶

The MLC emphasized the importance of the Office providing guidance on these topics, explaining that it is “essential to processing royalties in connection with statutory termination claims” and “would provide important

guidance to parties involved in termination claims.”²⁷

II. Supplemental Proposed Rule

While the Office is still considering the comments submitted in response to the NPRM, in light of the requests for further guidance and other comments received, the Office is issuing this SNPRM modifying the proposed rule, providing additional detail, and expanding its scope. The Office seeks public comments on the revised proposal and will consider all comments received in response to both the NPRM and SNPRM when issuing its final rule.

As discussed below, in addition to the Exception, the supplemental proposed rule addresses other matters germane to identifying the proper payee to whom the MLC must distribute royalties. These matters include issues related to the distribution of matched historical royalties, the MLC’s administration of terminations and related disputes, other types of ownership transfers, and requests to designate alternative royalty payees. While commenters’ requests for additional guidance largely pertain to termination-related issues, the requests and other comments lead the Office to believe that a more comprehensive set of regulations would be beneficial to the MLC, publishers, songwriters, and the wider music industry. The accurate distribution of royalties is a core objective of the MLC. Adopting the supplemental proposed rule would establish standards and settle expectations for all parties with respect to such distributions. This SNPRM is, thus, a natural extension of the NPRM and continues to “ultimately reflect[] the Office’s oversight and governance of the MLC’s reporting and payment obligations to copyright owners.”²⁸

The Office begins with two introductory notes about some of the terminology used below. First, under the MMA, the MLC must hold, for a designated minimum time period, royalties associated with reported uses of sound recordings embodying musical works for which the copyright owners of such musical works (or shares of such works) have not been identified or located.²⁹ Such works (or shares) are “unmatched.”³⁰ At the end of the statutory minimum holding period, accrued royalties for musical works (and shares) that remain unmatched become eligible for distribution by relative

¹⁶ The MLC, Policies, <https://www.themlc.com/dispute-policy> (last visited Sept. 20, 2023).

¹⁷ See, e.g., Authors All. et al. Initial Comments at 1–3; BMG Rights Mgmt. Initial Comments at 1–2; BMG Rights Mgmt. Reply Comments at 1; ClearBox Rights Initial Comments at 2, 6–8; Fishman & Garcia Initial Comments at 1–4; Gates Reply Comments at 1; Howard Initial Comments at 1–2; Howard Reply Comments at 2–3; King, Holmes, Paterno & Soriano LLP Initial Comments at 1; Landmann Initial Comments at 1; Miller Initial Comments at 1; North Music Grp. Reply Comments at 2–3; NSAI Initial Comments at 3; Promopub Initial Comments at 1–2; Promopub Reply Comments at 1–2; Recording Academy Reply Comments at 2–3; Rights Recapture Initial Comments at 1; SGA et al. Initial Comments at 1–2, 5; SONA et al. Initial Comments at 2–3; SONA et al. Reply Comments at 3; Songwriters Reply Comments at 1; Wixen Music Publ’g Initial Comments at 1–2.

¹⁸ See, e.g., CMPA Initial Comments at 1–2 (requesting that the rule not affect previously distributed royalties); A2IM & RIAA Reply Comments at 1–2 (agreeing with parts of the Office’s termination analysis, but requesting that the Office limit its analysis to those parts to ensure that the analysis and rule are strictly limited to the context of the blanket license); MPA Reply Comments at 2–5 (taking no position on the proposed rule, but expressing “significant concerns with portions of the NPRM supporting the proposed rule to the extent they could be read to limit the application of the [Exception] beyond the Section 115 blanket license”).

¹⁹ See generally NMPA Initial Comments; NMPA Ex Parte Letter (Feb. 6, 2023).

²⁰ NMPA Initial Comments at 2; see also NMPA Ex Parte Letter at 2 (Feb. 6, 2023).

²¹ NMPA Initial Comments at 1; see also NMPA Ex Parte Letter at 2 (Feb. 6, 2023); CMPA Initial Comments at 1 (“CMPA concurs with what it believes the USCO’s intent is, under the Proposed Rule.”).

²² See, e.g., MLC Initial Comments at 6; MLC Reply Comments at 2; ClearBox Rights Initial Comments at 6; ClearBox Rights Reply Comments at 2; Howard Initial Comments at 5; King, Holmes, Paterno & Soriano LLP Initial Comments.

²³ See, e.g., MLC Initial Comments at 4–6; MLC Reply Comments at 2; ClearBox Rights Initial Comments at 6; ClearBox Rights Reply Comments at 2; Howard Initial Comments at 5; Rights Recapture Initial Comments.

²⁴ See, e.g., MLC Initial Comments at 6–8; ClearBox Rights Reply Comments at 3–4; ClearBox Rights Ex Parte Letter at 2–4 (June 28, 2023); Howard Initial Comments at 6; Promopub Initial Comments at 2; Promopub Reply Comments at 3; North Music Grp. Reply Comments at 2.

²⁵ See, e.g., MLC Initial Comments at 10–11; ClearBox Rights Initial Comments at 8; ClearBox Rights Reply Comments at 5–6; Howard Initial Comments at 3–5; Howard Reply Comments at 2–3; SGA et al. Initial Comments at 2, 6–8.

²⁶ See, e.g., MLC Initial Comments at 11–14; ClearBox Rights Reply Comments at 6.

²⁷ MLC Initial Comments at 9–10; see also MLC Reply Comments at 2.

²⁸ See 87 FR 64405, 64408.

²⁹ 17 U.S.C. 115(d)(3)(H)(i).

³⁰ Id. at 115(e)(35).

market share to copyright owners identified in the MLC's records, at which point they become "unclaimed royalties."³¹

Second, the MMA contains an optional limitation on liability for unlicensed uses of musical works made by DMPs prior to January 1, 2021 (the "license availability date").³² To be eligible for this limitation on liability, DMPs had to engage in good-faith, commercially reasonable efforts to identify, locate, and pay musical work copyright owners for covered uses of their works and had to accrue and hold royalties for uses of any unmatched musical works.³³ If a musical work remained unmatched as of January 1, 2021, the DMP had to transfer all accrued royalties to the MLC along with a cumulative statement of account.³⁴ Such royalties are "historical unmatched royalties." When the MLC matches the musical work (or share) to which historical unmatched royalties are attributable, they become "matched historical royalties."

A. Rulemaking Authority

The Office relies on the same authority for the supplemental proposed rule as it did for the original proposed rule, which is discussed in detail in the NPRM.³⁵ The Office is continuing to evaluate comments submitted on this topic³⁶ and welcomes further comments on its authority to adopt the supplemental proposed rule, including with respect to the proposed corrective royalty adjustment discussed in Part II.H below.

B. Termination and the Exception

1. Analysis Regarding Blanket Licenses

While many commenters agree with the Office's legal analysis in the NPRM regarding the application of the

³¹ *Id.* at 115(d)(3)(j)(i), (e)(34). The MLC has publicly confirmed that it does not have "any such [market-share] distribution planned in the coming year," as it "is focused on matching uses and identified rightsholders, and . . . has not yet turned to the evaluation of what remaining royalties might be appropriate for a market share distribution, let alone begun the process to effectuate such a distribution, which will occur with significant public notice and transparency as Congress intended." *Five Years Later—The Music Modernization Act: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary*, Responses to Questions for the Record, 118 Cong. 2–3 (2023) (statement of Kris Ahrend, CEO, Mechanical Licensing Collective), <https://docs.house.gov/meetings/JU/JU03/20230627/116155/HHRG-118-JU03-20230627-SD013.pdf>.

³² 17 U.S.C. 115(d)(10)(A).

³³ *Id.* at 115(d)(10)(B).

³⁴ *Id.*

³⁵ 87 FR 64405, 64407–08.

³⁶ See NMPA Initial Comments at 4–10, 12–13; NMPA *Ex Parte* Letter at 2–4 (Feb. 6, 2023).

Exception to blanket licenses,³⁷ other commenters raise some concerns.³⁸ The Office is continuing to evaluate these comments, but for purposes of this SNPRM, the Office continues to propose a rule that relies on the preliminary analysis and conclusions regarding the Exception, as detailed in the NPRM. Therefore, the Office does not propose to revise the portion of the proposed rule that would make clear (1) that the Exception is inapplicable to blanket licenses, and (2) that the Exception does not affect copyright ownership.³⁹ The Office, however, proposes to further clarify that because the Exception is inapplicable to blanket licenses, the Exception does not affect the identity of the applicable royalty payee either.⁴⁰ The Office proposes this clarification in light of the distinction that can exist between the copyright owner and the royalty payee.⁴¹

2. Requests for Additional Guidance

Various commenters, including the MLC, request guidance from the Office regarding the application of the Exception to voluntary licenses⁴² and other types of statutory mechanical

³⁷ See, e.g., A2IM & RIAA Reply Comments at 2; Authors All. et al. Initial Comments at 2–3; BMG Rights Mgmt. Initial Comments at 2; ClearBox Rights Initial Comments at 6–7; Fishman & Garcia Initial Comments at 1–4; King, Holmes, Paterno & Soriano LLP Initial Comments at 1; North Music Grp. Reply Comments at 2; Recording Academy Reply Comments at 2; SGA et al. Initial Comments at 2, 5; SONA et al. Initial Comments at 2–3.

³⁸ See NMPA Initial Comments at 2–3; NMPA *Ex Parte* Letter at 2–3 (Feb. 6, 2023); MPA Reply Comments at 2–5; see also A2IM & RIAA Reply Comments at 2; Fishman & Garcia Initial Comments at 4.

³⁹ The Office does not mean to suggest that someone could theoretically be construed as the copyright owner based on the Exception. See Howard Initial Comments at 5. Rather, the point of the proposed language is to make that impossibility clear.

⁴⁰ The Office makes this proposal based on Linda Edell Howard's suggestion to change the proposed rule to refer to "any claim to any rights or revenue." *Id.*

⁴¹ Termination causes copyright ownership to revert to the author (or heirs). After termination, the Exception only permits a pre-termination derivative work to "continue to be utilized under the terms of the [terminated] grant." 17 U.S.C. 203(b)(1), 304(c)(6)(A); see H.R. Rep. No. 94–1476, at 127 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5742–43 (explaining that "termination means that ownership of the rights covered by the terminated grant reverts" to the author or heirs, and describing the Exception as a "limitation on the rights of a copyright owner under a terminated grant") (emphasis added); *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 173 (1985) (stating that "[t]he purpose of the Exception was to preserve the right of the owner of a derivative work to exploit it, notwithstanding the reversion") (emphasis added) (internal citations and quotation marks omitted).

⁴² See, e.g., MLC Initial Comments at 4–6; MLC Reply Comments at 2; ClearBox Rights Initial Comments at 6; ClearBox Rights Reply Comments at 2; Howard Initial Comments at 5; Rights Recapture Initial Comments at 1.

licenses beyond the blanket license,⁴³ which the Office did not directly address in the NPRM. With respect to non-blanket statutory mechanical licenses, the MLC says that guidance is necessary to enable it to accurately match works (and shares) associated with historical unmatched royalties.⁴⁴ Regarding voluntary licenses, the MLC explains that guidance is necessary because it must match and identify ownership for works used under voluntary licenses so that royalties for uses of such works can be deducted from DMP blanket license royalties.⁴⁵ The Office notes that the MLC must also do the same for uses under individual download licenses.⁴⁶

The Office agrees that further official guidance on these issues is required. While some commenters express concern with the Office opining on issues beyond the blanket license,⁴⁷ the Office is persuaded that doing so is necessary to enable the MLC to accurately carry out its core statutory function to match and distribute royalties to copyright owners.

i. Matched Historical Royalties⁴⁸

The Office is inclined to conclude that the Exception does not apply to any matched historical royalties. Historical unmatched royalties were paid to the MLC by DMPs as one of the requirements for the statutory limitation on liability for pre-2021 unlicensed uses and not pursuant to the terms of any pre-2021 voluntary or statutory license.⁴⁹ Instead, where a DMP could not identify and locate an applicable copyright owner, the statute directed the DMP to accrue and hold royalties at the statutory license rate and ultimately transfer such accrued royalties to the MLC if they remained unmatched as of January 1, 2021.⁵⁰ Likewise, the MLC's distribution of historical unmatched

⁴³ See, e.g., MLC Initial Comments at 6; MLC Reply Comments at 2; ClearBox Rights Initial Comments at 6; ClearBox Rights Reply Comments at 2; Howard Initial Comments at 5; King, Holmes, Paterno & Soriano LLP Initial Comments at 1.

⁴⁴ MLC Initial Comments at 6.

⁴⁵ *Id.* at 4–6 (citing 17 U.S.C. 115(d)(3)(G)).

⁴⁶ 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). An "individual download license" is "a compulsory license obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work." *Id.* at 115(e)(12).

⁴⁷ See A2IM & RIAA Reply Comments at 2; MPA Reply Comments at 2–5; NMPA *Ex Parte* Letter at 2–3 (Feb. 6, 2023).

⁴⁸ As discussed below in Parts II.D and E, the MLC's market-share-based distributions of unclaimed royalties, including historical unmatched royalties that may become unclaimed royalties, are beyond the scope of this rulemaking.

⁴⁹ 17 U.S.C. 115(d)(10); 37 CFR 210.10; see generally 86 FR 2176 (Jan. 11, 2021).

⁵⁰ 17 U.S.C. 115(d)(10)(B)(iv); see 37 CFR 210.10.

royalties is governed by the statute. Historical unmatched royalties that remain unmatched long enough to become unclaimed royalties are eligible to be distributed by relative market share,⁵¹ and historical unmatched royalties that become matched historical royalties are to be distributed to the “copyright owner.”⁵²

Terms of any pre-2021 license, including as those terms might otherwise apply through the Exception, appear to have no bearing on how the MLC must distribute matched historical royalties.⁵³ This is because the accrual and transfer of historical unmatched royalties to the MLC and distribution of any such royalties by the MLC are governed by statute and the Office’s regulations. Even if the Exception applied to a pre-2021 license, it would not affect the statutory directive that the MLC must distribute matched historical royalties to the “copyright owner.”⁵⁴ The Office tentatively believes that, based on these facts, the Exception does not apply to matched historical royalties.

ii. Pre-2021 Statutory Mechanical Licenses

Under the MMA’s provisions governing the transition to the new blanket licensing regime, most pre-2021 statutory mechanical licenses do not appear to have continued in effect after the license availability date.⁵⁵ Section 115(d)(9)(A) provides that “[o]n the license availability date, a blanket license shall, without any interruption in license authority enjoyed by such [DMP], be automatically substituted for and supersede any existing compulsory license previously obtained under

[section 115] by the [DMP].”⁵⁶ That provision then has an exception, where the substitution does not apply “to any authority obtained from a record company pursuant to a compulsory license to make and distribute permanent downloads.”⁵⁷ Section 115(d)(9)(B) adds that, except as provided in section 115(d)(9)(A), “on and after the license availability date, licenses other than individual download licenses obtained under [section 115] for covered activities prior to the license availability date shall no longer continue in effect.”⁵⁸ Read together, with respect to covered activities, it appears that only record companies’ pre-2021 individual download licenses and the authority obtained from them by DMPs survived the license availability date.⁵⁹ Because all other pre-2021 statutory mechanical licenses to engage in covered activities are no longer in effect pursuant to their own terms (*i.e.*, the statutory text), any application the Exception may or may not have had while they were in force seems to have no bearing on the MLC’s distribution of royalties for post-2021 usage.⁶⁰ The application of the Exception to both pre- and post-2021 individual download licenses is discussed in the next section.

iii. Individual Download Licenses

The Office tentatively believes that its legal analysis in the NPRM for blanket licenses applies similarly to individual download licenses. First, as a type of statutory mechanical license, the analysis contained in Parts V.A.1 (discussing that the blanket license cannot be terminated) and V.A.3 (discussing that applying the Exception to the blanket license would lead to an extreme result) of the NPRM fully applies to individual download licenses for the same reasons as for blanket licenses.⁶¹ Second, the analysis under

Part V.A.2 of the NPRM (discussing that derivative works generally are not prepared pursuant to the blanket license) also applies to the extent no sound recording derivative is actually prepared pursuant to the individual download license.⁶² In such cases, for the same reasons discussed in Part V.A.2 of the NPRM, the individual download license “is not part of any preserved grants that make the Exception applicable.”⁶³ If sound recording derivatives are prepared pursuant to an individual download license, then the Exception still would not apply.⁶⁴ As explained in Part V.A.1 of the NPRM, a self-executing statutory license, like an individual download license, cannot be terminated in the first place.⁶⁵ Third, the analysis contained in Part V.B of the NPRM is essentially the same for individual download licenses as for blanket licenses.⁶⁶ The only difference is that the relevant terms of the individual download license providing for payment to the “copyright owner” is in a different location from the relevant provisions about blanket licenses.⁶⁷

Based on the foregoing, the supplemental proposed rule provides that the Exception would not apply to individual download licenses for purposes of the MLC’s efforts under section 115(d)(3)(G)(i)(I)(bb) and 37 CFR 210.27(g)(2)(ii).

iv. Voluntary Licenses

The application of the Exception to voluntary licenses requires consideration of additional questions in light of the variety of licenses that may exist. Because DMP voluntary licenses are not statutory mechanical licenses, parts of the Office’s analysis in the NPRM specific to the nature of the blanket license as self-executing and to the particular text of section 115 (*i.e.*, Parts V.A.1, V.A.3, and V.B) do not apply to them.⁶⁸ The analysis contained in Part V.A.2 of the NPRM, however, would generally apply “where no sound recording derivative is prepared

⁵¹ 17 U.S.C. 115(d)(3)(f).

⁵² *Id.* at 115(d)(3)(f)(ii).

⁵³ To be clear, as the Office previously explained, a pre-2021 agreement can, however, affect the calculation of the accrued royalties required to be transferred to the MLC to be eligible for the limitation on liability. *See* 86 FR 2176, 2195 (“Only ‘accrued royalties’ for uses of unmatched works must be transferred to the MLC, and these may not necessarily be the same as the royalties that would otherwise be attributable to such usage under the statutory rate in the absence of any voluntary agreements that may extinguish or alter such royalty obligations for certain uses of certain works.”); *see also* 37 CFR 210.10(c)(5)(i). The Office further notes that it expresses no opinion at this time as to whether the Exception may have any bearing on the calculation of relative market share for distributions of historical unmatched royalties that become unclaimed royalties. The distribution of unclaimed royalties is beyond the scope of this proceeding.

⁵⁴ 17 U.S.C. 115(d)(3)(f)(ii); *see id.* at 203(b)(1), 304(c)(6)(A). This result would not necessarily bar a party from seeking to recover unpaid royalties, at the statutory rate, for pre-2021 unlicensed uses from a relevant DMP, even if the DMP is shielded by the limitation on liability. *Id.* at 115(d)(10)(A).

⁵⁵ *Id.* at 115(d)(9)(A)–(B).

⁵⁶ *Id.* at 115(d)(9)(A).

⁵⁷ *Id.*

⁵⁸ *Id.* at 115(d)(9)(B). “Covered activity” means “the activity of making a digital phonorecord delivery of a musical work, including in the form of a permanent download, limited download, or interactive stream, where such activity qualifies for a compulsory license under [section 115].” *Id.* at 115(e)(7).

⁵⁹ *See* H.R. Rep. No. 115–651, at 10 (2018) (“Because the new blanket license replaces the previous work-by-work compulsory license, the compulsory licenses obtained under notices of intent served on musical work copyright owners prior to the availability of the blanket license will no longer be valid.”); S. Rep. No. 115–339, at 10 (2018) (same); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees 8 (2018) (“Conf. Rep.”), https://www.copyright.gov/legislation/mma_conference_report.pdf (same).

⁶⁰ *See* 17 U.S.C. 203(b)(1), 304(c)(6)(A).

⁶¹ *See* 87 FR 64405, 64410–11.

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *See id.*

⁶⁶ *See id.* at 64411.

⁶⁷ Under the statute, a notice must be served on the “copyright owner” to obtain an individual download license and payments must be made in accordance with section 115(c)(2)(I). 17 U.S.C. 115(b)(2)(A), (3). Under section 115(c)(2)(I), royalties must be paid in accordance with the Office’s regulations. *Id.* at 115(c)(2)(I). Under the Office’s regulations, individual download licenses are subject to the same payment regulations as other non-blanket statutory mechanical licenses. 37 CFR 210.11. Under those regulations, payment is to be made to the “copyright owner.” *Id.* at 210.6(g).

⁶⁸ *See* 87 FR 64405, 64410–11.

pursuant to a DMP's [voluntary] license."⁶⁹ In many cases, for the reasons discussed in the NPRM, "that [voluntary] license is not part of any preserved grants that make the Exception applicable."⁷⁰

There may, however, be some situations where the result is different, such as where a DMP's voluntary license is a "pass-through" license.⁷¹ In such cases, even if no sound recording derivative is prepared pursuant to the DMP's voluntary license, the pre-termination copyright owner may still be entitled to post-termination royalties for uses made pursuant to such a license. The contractual payment terms between a DMP and a record company pursuant to a voluntary pass-through license could be preserved by the Exception along with other terms that are part of the same direct chain of successive grants providing authority to utilize the relevant sound recording derivatives (e.g., those among the songwriter, music publisher, and record company).⁷²

Additionally, and in contrast to blanket and other statutory mechanical

⁶⁹ See *id.* The Office emphasizes that, as noted above, even though it is relying on the preliminary analysis and conclusions detailed in the NPRM for purposes of this SNPRM, it is continuing to evaluate the comments concerning its legal analysis of the Exception. The Office welcomes further comments and legal discussion and, in particular, invites comments on the jurisprudence of the Second Circuit, including the decisions in *Woods v. Bourne Co.*, 60 F.3d 978 (2d Cir. 1995) and *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998).

⁷⁰ See *id.* (referring generically to any DMP "musical work licenses" throughout the analysis).

⁷¹ When the copyright owner of a musical work authorizes a record company (or someone else) to prepare a sound recording derivative of the musical work, the musical work copyright owner can also provide the record company with authority to engage in what is often referred to as "pass-through" licensing. See U.S. Copyright Office, *Copyright and the Music Marketplace* 131–32 (2015), <https://copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> (discussing pass-through licensing and describing it as "mimic[ing] the traditional physical model, where record labels ship product to stores and report sales back to publishers"); 86 FR 12822 (Mar. 5, 2021) (discussing prior rulemaking activity involving pass-through licenses). Such authority would allow the record company, to the extent permitted by its license with the musical work copyright owner, to license the rights it possesses in the underlying musical work to a third party, e.g., a DMP, as a part of utilizing the sound recording embodying that musical work. Thus, a DMP could potentially enter into a voluntary license with the record company instead of the musical work copyright owner for uses of the musical work. This is similar to how individual download licenses operate, whereby "record labels [can] obtain and pass through [section 115] mechanical license rights [to DMPs] for individual permanent downloads." H.R. Rep. No. 115–651 at 4; S. Rep. No. 115–339 at 4; Conf. Rep. at 3; see 17 U.S.C. 115(b)(3).

⁷² See 17 U.S.C. 203(b)(1), 304(c)(6)(A); *Mills Music, Inc.*, 469 U.S. at 163–69.

licenses that cannot be terminated, if sound recording derivatives are in fact prepared by a DMP pursuant to a voluntary license before its termination, the Exception might apply to the extent of the voluntary license's terms. The Exception could allow the DMP's sound recording derivatives to "continue to be utilized under the terms of the [voluntary license] after its termination."⁷³

In sum, unlike statutory mechanical licenses, there are an innumerable variety of voluntary licenses and related underlying agreements that either currently exist or that could exist in the future. Consequently, the Office is inclined to conclude that it would not be prudent to attempt to craft a rule trying to account for how the Exception may or may not apply in every possible situation. Even if the Office could craft such a rule, it would be challenging, if not impossible, for the MLC to evaluate each and every voluntary license to determine the Exception's applicability based on whatever regulatory criteria the Office might adopt. Accordingly, the Office believes that the MLC should not exercise independent judgment regarding the application of the Exception to a voluntary license or its underlying grant of authority.⁷⁴

Instead of tasking the MLC with making such an evaluation, the Office proposes that the MLC only act as directed pursuant to either: (1) a notice from the copyright owner entitled to receive royalties from the MLC under the Office's regulations that designates an alternative royalty payee (such notices are discussed in Part II.F.1.iv below); or (2) the resolution of a dispute with respect to the applicability of the Exception to the relevant voluntary license or its underlying grant of authority. Under the supplemental proposed rule, the MLC's implementation of the Exception through its efforts under section 115(d)(3)(G)(i)(I)(bb) and 37 CFR 210.27(g)(2)(ii), to confirm uses of musical works subject to voluntary licenses and deduct corresponding amounts from royalties that would otherwise be due under the blanket license, would therefore depend on how the MLC is directed to act. In the absence of any such direction, the Office proposes that the Exception would not apply to the MLC's aforementioned efforts.

⁷³ See 17 U.S.C. 203(b)(1), 304(c)(6)(A).

⁷⁴ See The MLC, *Dispute Policy: Musical Work Ownership*, sec. 1.2 (Feb. 2021) ("The Collective does not judge or resolve Conflicts or Disputes, or participate in the substantive resolution of Conflicts or Disputes.").

The first type of direction the MLC may receive, from the copyright owner, is intended to accommodate situations where that owner may have contractually agreed to an alternative payment arrangement such that the MLC should act as if the Exception applies. The second type of direction the MLC may receive, pursuant to the resolution of a dispute, follows legal precedent holding that the pre-termination copyright owner has the burden of proving that the Exception applies.⁷⁵ This approach would place the burden on the pre-termination copyright owner to initiate a dispute regarding the application of the Exception. As discussed below, after initiating a dispute, the MLC would hold relevant royalties and interest pending its resolution. If the resolution of the dispute—whether through settlement or adjudication—requires the MLC to apply the Exception, then the MLC would be required to act as directed (see Part II.G.4 below discussing the resolution of disputes).

C. The Copyright Owner at the Time of the Use Versus the Copyright Owner at the Time of the Payment

To codify its preliminary conclusion that the statute entitles the "current copyright owner" to the royalties under the blanket license, the Office proposed in the NPRM that the copyright owner of the musical work as of the end of the monthly reporting period is the one who is entitled to the royalties and any other related amounts (e.g., interest), including any subsequent adjustments, for the uses of the work during that period.⁷⁶ The NPRM explained the Office's reasoning for its proposal and sought comments on it, including whether some other point in time might be appropriate.⁷⁷ The Office refers to the approach proposed in the NPRM as distributing royalties to "the owner at the time of the use."

⁷⁵ *Woods*, 60 F.3d at 993–94; see *Mills Music, Inc. v. Snyder*, 469 U.S. at 188 & n.20 (White, J., dissenting) ("In attempting to claim for itself the benefits of the [Exception], [the pre-termination copyright owner] bears the burden of proof."); see also Norman J. Singer & Shambie Singer, *Sutherland Statutes & Statutory Construction* sec. 47.11 (7th ed. 2014 & Supp. 2022) (explaining that "all courts do agree that those who claim the benefit of an exception have the burden of proving that they come within the limited class for whose benefit the exception was established," and collecting cases).

⁷⁶ 87 FR 64405, 64411–12. The Office further explained that by "uses," the Office means the covered activities engaged in by DMPs under blanket licenses as reported to the MLC. *Id.* at 64412.

⁷⁷ *Id.* at 64412 (citing to sections 115(c)(1)(C) and 501(b)).

Commenters largely agree with the proposed approach.⁷⁸ NMPA and the Church Music Publishers Association (“CMPA”) propose a different approach. Instead of distributing royalties to the owner at the time of the use, they suggest that royalties should be distributed to the copyright owner as of the date of the MLC’s relevant distribution—regardless of when the related use occurred.⁷⁹ The Office refers to this approach as distributing royalties to “the owner at the time of the payment.” NMPA and CMPA state that this approach is better for terminating songwriters because they would be the owner at the time of the payment for any post-termination adjustments to pre-termination periods.⁸⁰ NMPA and CMPA refer to distributing royalties to the owner at the time of the payment as “industry practice,”⁸¹ though NMPA later commented that “under current industry practice, once an ownership transfer occurs, the party receiving subsequent adjustment payments for usage of a musical work that occurred prior to the transfer is typically handled pursuant to the agreement between the previous owner and the new owner of the work.”⁸² The MLC adds that, “as is standard in the industry, royalties from general reprocessing are normally paid to the current copyright owner, regardless of the usage month at issue.”⁸³

Regardless of whatever the industry norm may be under voluntary agreements, the Office remains inclined to believe that the owner at the time of the use is the more appropriate payee under the blanket license, absent an agreement to the contrary. While the right to royalties can be assigned via contract independently of ownership in

⁷⁸ See, e.g., ClearBox Rights Initial Comments at 8 (“Attempting to identify, calculate and pay royalties by a specific day of the month in which the musical work was streamed based on the actual termination date would be administratively cumbersome and ripe for disputes.”); Howard Initial Comments at 3; King, Holmes, Paterno & Soriano LLP Initial Comments at 1; Miller Initial Comments at 1; NSAI Initial Comments at 3; SGA et al. Initial Comments at 2, 5.

⁷⁹ NMPA Initial Comments at 5–6; CMPA Initial Comments at 2.

⁸⁰ NMPA Initial Comments at 6; CMPA Initial Comments at 2.

⁸¹ NMPA Initial Comments at 6 (explaining that “any adjustments or other payments made after an ownership transfer are paid to the new owner of the composition, including for usage that occurred prior to the transfer”); CMPA Initial Comments at 2.

⁸² NMPA *Ex Parte* Letter at 3 (Feb. 6, 2023); see also *id.* at 4 (“NMPA’s draft legislation would have required the copyright owner at the time of the usage to be paid for subsequent adjustments.”).

⁸³ MLC Initial Comments at 9 n.9.

the copyright,⁸⁴ that has no bearing on who the proper payee is where no such agreement exists. In response to the claim that distributing royalties to the owner at the time of the payment benefits terminating songwriters, the Office notes that it is not seeking to adopt a rule that is limited to the termination context. The Office is proposing a rule to govern all MLC distributions under the blanket license, including in contexts where ownership may be transferred by means other than statutory termination.⁸⁵

While the statute does not explicitly address whether the proper payee is the owner at the time of the use or the owner at the time of the payment, various statutory provisions support the Office’s view. Under section 115(c)(1)(C), the payable royalties under the blanket license are for “every digital phonorecord delivery of a musical work made under [the blanket] license.”⁸⁶ Thus, where the statute refers to distributing royalties to the “copyright owner,” it most logically means the copyright owner at the time that the applicable digital phonorecord delivery is made.⁸⁷ This understanding is supported by sections 115(d)(4)(E)(ii)(II) and 501(b). Under section 115(d)(4)(E)(ii)(II), where a DMP’s blanket license is terminated by the MLC, “[s]uch termination renders the making of all digital phonorecord deliveries of all musical works (and shares thereof) covered by the blanket license for which the royalty . . . has not been paid actionable as acts of infringement under section 501.”⁸⁸ Section 501(b) provides that “[t]he legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it.”⁸⁹ Read together, it appears that, absent an agreement to the contrary,⁹⁰ the

⁸⁴ See, e.g., William F. Patry, 6 Patry on Copyright, sec. 21:19 (2023) (“An agreement to share royalties, or even assigning all rights to royalties is not a ‘transfer of copyright’; instead, it is merely a right to proceeds flowing from exploitation of an exclusive right.”).

⁸⁵ See ClearBox Rights *Ex Parte* Letter at 4 (June 28, 2023) (stating that “the same rules should apply for songs which have ownership transferred in methods other than through terminations” and that “if a song is sold from one person to another, the person who owns the work at the end of the reporting period should be entitled to the royalties”).

⁸⁶ 17 U.S.C. 115(c)(1)(C).

⁸⁷ See, e.g., *id.* at 115(d)(3)(G)(i)–(III), (d)(3)(I).

⁸⁸ *Id.* at 115(d)(4)(E)(ii)(II).

⁸⁹ *Id.* at 501(b).

⁹⁰ Courts have held that a “copyright owner can assign its copyright but, if the accrued causes of action are not expressly included in the assignment, the assignee will not be able to prosecute them.”

copyright owner who can sue a DMP for infringement due to non-payment of royalties under the blanket license is the copyright owner at the time the infringement was committed—*i.e.*, at the time of the use. It, therefore, seems reasonable to the Office for that owner to be the one to whom such royalties are paid by the MLC.⁹¹

The Office’s conclusion that the owner at the time of the use is the more appropriate payee under the statutory mechanical license is not a new one. It reached the same conclusion under the pre-MMA version of the statute almost a decade ago.⁹² There, the Office determined that while “[t]he transactions transferring copyright ownership may provide for a different result as a matter of private contract,” “absent such an arrangement, any underpayment or overpayment stemming from the reconciliation of final performance royalty payments may properly be attributable to the copyright owner at the time of the relevant use of the statutory license.”⁹³

With respect to private agreements, the Office is inclined to agree with NMPA that it is important “to allow parties to agree by contract to a different payment arrangement and provide letters of direction to the MLC pursuant to those agreements.”⁹⁴ Therefore, the supplemental proposed rule would only establish the owner at the time of the use as the *default* payee—*i.e.*, the proper payee to whom the MLC must distribute royalties and any other related amounts under the blanket license in the absence of an agreement to the contrary. As discussed below in Part II.F, the

. . . In the event that accrued claims are not expressly included in the assignment, “the assignor retains the right to bring actions accruing during its ownership of the right, even if the actions are brought subsequent to the assignment.” *John Wiley & Sons, Inc. v. DRK Photo*, 882 F.3d 394, 404 (2d Cir. 2018) (quoting *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971, 980 (2d Cir. 1991)); see also NMPA *Ex Parte* Letter at 5 (Feb. 6, 2023) (explaining that “who has the right to sue for infringement for activity occurring prior to the ownership change” would “be addressed by private contract”).

⁹¹ The Office declines to propose the changes suggested by ClearBox Rights to (1) omit the word “monthly” before “reporting period” in case DMPs report semi-monthly, and (2) to clarify that the relevant reporting period is the “period of the [DMP’s] actual activity, and not the . . . period in which the MLC received and/or distributed the royalties.” ClearBox Rights *Ex Parte* Letter at 4–5 (June 28, 2023). Regarding the first suggestion, the statute does not contemplate semi-monthly reporting. 17 U.S.C. 115(c)(2)(I), (d)(4)(A)(i). On the second suggestion, the Office believes the supplemental proposed rule is sufficiently clear, as it refers to the period “in which such musical work is used.”

⁹² 79 FR 56190, 56193 (Sept. 18, 2014).

⁹³ 79 FR 56190, 56193.

⁹⁴ NMPA *Ex Parte* Letter at 4. (Feb. 6, 2023).

supplemental proposed rule is designed to accommodate and give effect to contractual payment arrangements that deviate from this default rule.

D. Unclaimed Royalties

Commenters raise various questions about the MLC's distribution of unclaimed royalties.⁹⁵ With respect to the market-share-based distributions of unclaimed royalties, the Office proposes to clarify that the reporting and payment regulations in § 210.29 do not apply, as that section governs MLC distributions of royalties for *matched* works.⁹⁶ Beyond this clarification, the Office views the market-share-based distributions of unclaimed royalties as beyond the scope of this proceeding.

E. Matched Historical Royalties

Similarly, commenters raise questions about the proposed rule and matched historical royalties.⁹⁷ Here, the Office proposes to clarify that § 210.29 *does* apply and the MLC must report and distribute matched historical royalties in the same manner and subject to the same requirements that apply to the reporting and distribution of blanket license royalties. To avoid any confusion, the Office proposes to further clarify that matched historical royalties should be treated as accrued royalties distributable under § 210.29(b)(1)(ii). They would need to be included in applicable royalty statements and separately identified and broken out from blanket license royalties so copyright owners can easily ascertain the nature and source of the payment made to them by the MLC. The Office proposes this approach because, at least based on the current record, it generally sees no reason to treat the reporting and distributing of matched historical royalties and blanket license royalties differently.

This would include the payee proposal discussed in Part II.C above, whereby the MLC would distribute royalties to the copyright owner at the time of the use, as opposed to the owner at the time of the payment. Despite this proposal, the Office is inclined to agree with NMPA that, given the age of some of the historical usage, there likely will be greater difficulty in identifying and locating historical copyright owners,

and that requiring the MLC to pay the owner at the time of the use “may result in lower match rates and lower payouts of historic unmatched royalties, even where the current copyright owner is known, because the MLC may have possibly incomplete or unreliable historical ownership data.”⁹⁸ The Office also recognizes Congress's clear interest in generally “reduc[ing] the incidence of unclaimed royalties.”⁹⁹ Therefore, it seeks comments regarding whether it should consider drawing a distinction between matched historical royalties and blanket license royalties when it comes to the royalty payee. For example, the MLC could be permitted to distribute matched historical royalties to the copyright owner at the time of the payment when the owner at the time of the use cannot be located and identified. The Office further seeks comments on whether it has the authority to adopt such a distinction or any other approach commenters may wish to propose. For example, would it be appropriate to consider works matched to the owner at the time of the payment, rather than the owner at the time of the use, as being “matched” within the meaning of the statute, or does the statute require that such works be considered “unmatched” and subject to eventual market-share-based distributions?

F. Ownership Transfers and Other Changes to the Royalty Payee

Several commenters, including the MLC, seek additional guidance from the Office on procedures concerning notice, documentation, timing, and other matters relating to the MLC's implementation of a termination notification.¹⁰⁰ Having considered these comments, the Office agrees that further guidance would be helpful to stakeholders. Specifically, the Office proposes to adopt regulations governing the MLC's administration of all transfers of copyright ownership and other changes to the royalty payee entitled to distributions from the MLC. The Office believes such a rule will help establish standards and settle expectations for all parties with respect to such distributions.

Under the supplemental proposed rule, current § 210.30—addressing a temporary exception to certain DMP reporting requirements with a deadline that passed over two years ago—would

be repealed and replaced with an entirely new § 210.30. Under paragraph (b) of the newly proposed § 210.30, the MLC would be prohibited from taking any action to implement or give effect to a change in the royalty payee unless it receives a notice about the change that complies with the requirements of proposed paragraph (c) or is acting in connection with the resolution of a dispute under proposed paragraph (f).¹⁰¹ Where the requirements of proposed paragraph (c) are satisfied, the MLC would be required to implement and give effect to the change in payee in accordance with the provisions of proposed paragraph (d).

1. Notice of a Change to the MLC

Under proposed paragraph (c), the MLC would need to be appropriately notified in writing about any change in the royalty payee. The supplemental proposed rule would establish detailed and tailored notice requirements based on the type of payee change. Several of the proposed requirements—such as those about submission and receipt, certification and signature, and the identification of the relevant parties and musical works—are similar to the regulations governing the notices of license that DMPs must submit to the MLC to obtain a blanket license.¹⁰² Those requirements seem to be working in the DMP context and there are sufficient parallels between the two types of notices that the Office proposes to adopt them here. The Office encourages the MLC to develop an electronic form to assist submitters in completing notices about a change in payee.

i. Transfers of Copyright Ownership Other Than by Will or Operation of Law

Proposed paragraph (c)(1) addresses the requirements for a change in payee due to a transfer of copyright ownership other than by will or operation of law. Accordingly, these requirements would apply to a contractual assignment of the copyright in the relevant musical work, but not a reversion of the copyright resulting from the statutory termination of a prior grant concerning the work. The Office proposes that notices for the transfers covered by paragraph (c)(1) must include: (1) all relevant dates required for the MLC to properly implement and give effect to the transfer; (2) information identifying the

⁹⁵ See, e.g., ClearBox Rights Reply Comments at 4–5; ClearBox Rights *Ex Parte* Letter at 5 (June 28, 2023); NMPA Initial Comments at 6 n.10; North Music Grp. Reply Comments at 2; McAnally & North *Ex Parte* Letter at 6–7 (Mar. 14, 2023).

⁹⁶ With this clarification, the supplemental proposed rule removes as redundant the reference to section 115(d)(3)(J) proposed in § 210.29(b)(4)(i) of the NPRM.

⁹⁷ See, e.g., NMPA *Ex Parte* Letter at 4 (Feb. 6, 2023); CMPA Initial Comments at 2.

⁹⁸ See NMPA *Ex Parte* Letter at 4 (Feb. 6, 2023).

⁹⁹ See Public Law 115–264, tit. I, sec. 102(f)(1), 132 Stat. at 3722; 17 U.S.C. 115(d)(3)(H)(i).

¹⁰⁰ See, e.g., MLC Initial Comments at 10–11; ClearBox Rights Initial Comments at 8; ClearBox Rights Reply Comments at 5–6; Howard Initial Comments at 3–5; Howard Reply Comments at 2–3; SGA et al. Initial Comments at 2, 6–8.

¹⁰¹ Proposed paragraph (f) is discussed below in Part II.G.4.

¹⁰² See 37 CFR 210.24(b), (b)(8), (c), (d). The Office's rationale for originally adopting those requirements can be found in the record of that proceeding. 85 FR 22518, 22519–21; 85 FR 58114, 58116–18.

transferor (*i.e.*, the prior musical work copyright owner); (3) information identifying the transferee (*i.e.*, the new musical work copyright owner); and (4) either (i) an identification satisfactory to the MLC of any applicable catalog exclusions from the transfer (which may state that there are no such exclusions, and that, therefore, the whole catalog is subject to the transfer) or (ii) a list of all transferred musical works identified by appropriate unique identifiers.

The Office further proposes that the required notice must be submitted and signed by the transferor or its representative certifying the accuracy of the information provided. This proposal is intended to reduce both the possibility of fraudulent notices and the effort required by the MLC to verify transfer claims where notice of the transfer is provided solely by a purported transferee.

Where there are multiple transferors or transferees, the notice would also need to identify any applicable ownership shares for the transferred works. Where there are multiple transferors, the notice would be effective only as to those transferors whose information is provided in the notice and whom have signed and certified the notice. Where there are multiple transferees, the notice would be effective only as to those transferees whose information is provided in the notice.

ii. Transfers of Copyright Ownership by Statutory Termination

Proposed paragraph (c)(2) addresses the requirements for a change in payee due to a transfer of copyright ownership resulting from an effective termination under section 203 or 304. The Office proposes that the required notice for this type of payee change must include the following requirements: (1) a copy of the statutorily required notice of termination submitted to the Office for recordation;¹⁰³ (2) a copy of the statement of service submitted to the Office for recordation, if one was submitted;¹⁰⁴ (3) either (i) proof that the notice of termination was recorded in the Office before the effective date of termination, or (ii) if the Office has not yet recorded the notice, proof that the notice was submitted to the Office for recordation, so long as proof of timely recordation is delivered to the MLC at a later date;¹⁰⁵ and (4) information

identifying the terminating party (*i.e.*, the new musical work copyright owner).

With respect to the first three items, the supplemental proposed rule would make clear that it is not necessary to provide the MLC with official Copyright Office certifications for this information. If the MLC has good reason to doubt the authenticity of the information provided, it should seek verification from the Office. Where the supplemental proposed rule refers to providing proof of recordation or proof of submission for recordation, the Office means more than a declaration by the terminating party or its representative. Adequate proof of timely recordation could be demonstrated by either providing the MLC with a copy of the certificate of recordation or the record as reflected in the Office's online public catalog. Adequate proof of submission to the Office for recordation could take the form of courier tracking or a delivery confirmation, a return receipt from the Office,¹⁰⁶ or some other communication from the Office confirming receipt.¹⁰⁷

The MLC requests the inclusion of additional information and documentation.¹⁰⁸ The Office declines to propose these additional requirements. It agrees with other commenters that the MLC's requests exceed what is necessary to effectuate a statutory termination under the law.¹⁰⁹ The Office also shares commenters' concerns about the ability of terminating parties to provide some of what the MLC requests.¹¹⁰ The Office continues to "remain convinced that the required contents of the notice [of termination] must not become unduly burdensome to grantors, authors, or their successors, and must recognize that entirely legitimate reasons may exist for gaps in

¹⁰⁶ See 37 CFR 201.10(f)(2)(iii).

¹⁰⁷ Proof of submission would not need to include proof of proper fee payment to the Office because an incorrect fee can be remedied without affecting the relevant date of recordation. *Id.* at 201.10(f)(3).

¹⁰⁸ MLC Initial Comments at 11 (proposing, among other things, documents sufficient to "identify the grants that the post-termination claimant claims have been terminated by the relevant termination notice" and to "show that the post-termination claimant or its assignor owns the termination interest").

¹⁰⁹ ClearBox Rights Reply Comments at 5–6; Howard Reply Comments at 2–3; see 17 U.S.C. 203, 304(c); 37 CFR 201.10; U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices*, sec. 2310.3(D)(1)(c) (3d ed. 2021) ("In most cases, the party issuing the notice of termination may not have a copy of the grant that is being terminated or may not have access to a copy. For these reasons, the terminating party does not need to identify the location of the grant, offer to produce a copy of the grant, or attach a copy of the grant to the notice.")

¹¹⁰ Howard Reply Comments at 2–3 (describing the MLC's proposal as "a list of documents that will be impossible for an author or his/her statutory heirs to provide"); see ClearBox Rights Reply Comments at 5–6.

their knowledge and certainty."¹¹¹ The intent of the Office's proposal is to generally provide the MLC with the necessary information to process the termination without unduly burdening terminating parties.¹¹²

The Office appreciates that part of the MLC's proposal is geared at "maintaining basic fraud protection and avoiding unnecessary disputes."¹¹³ While the Office supports those aims, it is concerned that the MLC's proposed measures could result in legitimate terminating parties being unable to exercise their rights because they are unable to provide the information the MLC seeks. Instead, the Office proposes a notice and dispute process as an alternative means of achieving the MLC's stated goals in this context.

Evaluating and potentially disputing a termination on the merits is the duty of the pre-termination copyright owner, not the MLC. The proposed notice and dispute process (discussed in more detail below) would provide the pre-termination copyright owner with an opportunity to dispute a termination before the MLC would be required to implement it, thereby reducing the likelihood of the MLC acting on a fraudulent notice.¹¹⁴

Nevertheless, the Office recognizes that a valid notice of termination might not provide the MLC with sufficient information to process and implement the ownership change. In those cases, the Office proposes that the MLC should

¹¹¹ 42 FR 45916, 45918 (Sept. 13, 1977); see *id.* at 45917 ("[T]he preparation of notice of termination will be occurring at a time far removed from the original creation and publication of a work and, in many cases, will involve successors of original authors having little, if any, knowledge of the details of original creation or publication."); *id.* at 45918 (recognizing that "it will commonly be the case that the terminating author, or [other terminating party], will not have a copy of the grant or ready access to a copy").

¹¹² For example, the Office's regulations governing the content of statutory notices of termination already provide for an identification of each: (1) grant, 37 CFR 201.10(b)(1)(iv), (b)(2)(v); (2) pre-termination copyright owner, 37 CFR 201.10(b)(1)(ii), (b)(2)(ii), (d)(2); (3) terminating party, 37 CFR 201.10(b)(1)(vii), (b)(2)(vii), (c)(2)–(3); (4) work, 37 CFR 201.10(b)(1)(iii), (b)(2)(iv); and (5) effective date of termination, 37 CFR 201.10(b)(1)(v), (b)(2)(vi).

¹¹³ MLC Initial Comments at 11.

¹¹⁴ The Office also notes that with respect to fraud, federal law prohibits (and may punish with fine or imprisonment), "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States," the making of any "knowingly and willfully" "materially false, fictitious, or fraudulent statement or representation" or the provision of "any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." 18 U.S.C. 1001(a)(3). This provision applies to submissions to the Office, including where a notice of termination is submitted for recordation.

¹⁰³ See 37 CFR 201.10(f)(1)(i)(A).

¹⁰⁴ See *id.* at 201.10(f)(1)(i)(B).

¹⁰⁵ See 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A) ("A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.").

engage in best efforts to identify the minimum necessary information, including through correspondence with both the terminating party and pre-termination copyright owner (or their respective representatives). This may be a better approach than requiring terminating parties to provide additional information to the MLC at the outset that they may not readily have and which may not be needed to implement the change.

Similar to other transfers, the Office proposes that the required notice must be submitted and signed by either the terminating party or the pre-termination copyright owner (or their respective representatives) certifying the accuracy of the information provided.¹¹⁵ The Office agrees with ClearBox Rights that a terminating party should not be “held hostage” by needing to wait for a pre-termination copyright owner’s acknowledgement that the termination is valid and effective before the MLC can act on the notice.¹¹⁶ At the same time, however, the Office believes that pre-termination copyright owners must have a fair opportunity to dispute the validity of a termination where the MLC is notified of the payee change unilaterally by the terminating party.

Therefore, if the notice to the MLC is submitted by the terminating party, the Office proposes additional requirements similar to those suggested by ClearBox Rights.¹¹⁷ First, the MLC would be required to inform the pre-termination copyright owner about the notice within 15 days of receiving either the notice or the last piece of information necessary for the MLC to implement the change, whichever is later. Second, after being so notified, a pre-termination copyright owner who disputes the termination would have 30 days to initiate its dispute with the MLC. Third, if the pre-termination copyright owner does not initiate a dispute within the allotted time, then the MLC would be required to implement and give effect to the ownership transfer resulting from the termination in accordance with the

proposed implementation requirements discussed in Part II.F.2 below. The supplemental proposed rule would make clear that even if the pre-termination copyright owner misses the regulatory deadline and the MLC implements the change, nothing prevents that owner from disputing the termination with the MLC at a later date or challenging the termination in court. The purpose of the proposal is not to limit a pre-termination copyright owner’s right or ability to oppose a purported termination, but rather to help ensure that the implementation of a terminating party’s notification to the MLC is not unduly delayed by a pre-termination copyright owner’s inaction.¹¹⁸

Where there are multiple terminating parties or pre-termination copyright owners, the notice would need to identify any applicable ownership shares for the works subject to the termination. Where there are multiple terminating parties, the notice would be effective only as to those terminating parties whose information is provided in the notice. Also, the Office proposes that where there are multiple terminating parties, a notice that is signed and certified by any one of them would be sufficient as to all terminating parties. The Office invites comments on this proposal.

iii. Other Transfers of Copyright Ownership

Proposed paragraph (c)(3) addresses changes in payees due to any other type of ownership transfer, such as a transfer by will or through intestate succession. For these types of changes, the Office declines to propose any specific requirements at this time, but welcomes comments on whether it should adopt any. Under the supplemental proposed rule, such changes would be subject to any additional reasonable notice requirements established by the MLC.

iv. Designating an Alternative Royalty Payee

The last type of payee change covered under proposed paragraph (c) involves the circumstance where the copyright owner entitled to receive royalties from the MLC under the Office’s regulations¹¹⁹ designates an alternative royalty payee to whom the MLC must

distribute the royalties instead. This part of the supplemental proposed rule would apply where there is no transfer of copyright ownership. Instead, it addresses the situation where the regulatorily entitled copyright owner might voluntarily elect or be compelled by private agreement to request that the MLC distribute the royalties to someone else—*e.g.*, a party contractually entitled to such royalties. The Office proposes this process as the means by which the supplemental proposed rule would accommodate and give effect to contractual payment arrangements that deviate from the proposed default payee rules discussed above.¹²⁰

The proposed notice requirements for this type of payee change are similar to the requirements for contractual ownership transfers discussed above. The Office proposes that the required notice must include: (1) all relevant dates required for the MLC to properly implement and give effect to the request; (2) information identifying the copyright owner entitled to receive royalties from the MLC under the Office’s regulations; (3) information identifying the current royalty payee if different from such copyright owner (*i.e.*, the previously designated royalty payee who is being superseded by a new designated payee); (4) information identifying the designated royalty payee (*i.e.*, the new payee designated by the relevant copyright owner to receive royalty distributions from the MLC that would otherwise be paid to such owner under the Office’s regulations); and (5) either (i) an identification satisfactory to the MLC of any applicable catalog exclusions from the request (which may state that there are no such exclusions, and that, therefore, the whole catalog is subject to the request) or (ii) a list of all musical works subject to the request identified by appropriate unique identifiers.

The Office proposes that the required notice must be submitted and signed by the copyright owner entitled to receive royalties from the MLC or its representative certifying the accuracy of the information provided. Where there are multiple copyright owners or designated royalty payees, the notice would also need to identify any applicable ownership shares for the relevant works. Where there are multiple copyright owners, the notice would be effective only as to those owners whose information is provided in the notice and whom have signed and

¹¹⁵ The Office declines to propose Linda Edell Howard’s suggestion to require the pre-termination copyright owner to be the one to notify the MLC of the termination. Howard Initial Comments at 4. While the supplemental proposed rule would *permit* the pre-termination owner to provide the notice, the Office does not propose to require that they be the one to provide it, in part, because it is not clear what the remedy for noncompliance would be.

¹¹⁶ ClearBox Rights Initial Comments at 8; *see also* ClearBox Rights Reply Comments at 6; Howard Reply Comment at 3 (“[T]he default should be reversion of rights and royalties to the termination owners and the burden placed on the publisher to bring suit to challenge a Notice before the MLC could ignore one.”).

¹¹⁷ *See* ClearBox Rights Reply Comments at 6.

¹¹⁸ *See* ClearBox Rights Initial Comments at 8 (“There is very little incentive for the pre-termination owner to send an acknowledgement, and even if they don’t have an issue with doing so, administratively it could take them weeks, months, or in some cases, years.”).

¹¹⁹ This would include regulations governing both blanket license royalties and matched historical royalties.

¹²⁰ *See* NMPA *Ex Parte* Letter at 4 (Feb. 6, 2023) (requesting that the rule “allow parties to agree by contract to a different payment arrangement and provide letters of direction to the MLC pursuant to those agreements”).

certified the notice. Where there are multiple designated royalty payees, the notice would be effective only as to those payees whose information is provided in the notice.

In addition to the foregoing, the Office proposes to adopt the Songwriters Guild of America et al.'s ("SGA et al.'s") proposal for the scenario where the MLC is asked by the terminating party to implement an agreement directing the MLC to pay post-termination royalties to the pre-termination copyright owner.¹²¹ SGA et al. states that, without additional safeguards, it "will inadvertently open the door to . . . acts of contractual overreaching by publishers," and that the "execution of 'anticipatory [letters of direction]' as part of publishing agreements has become common practice."¹²² Based on the current record, the proposal seems to be a reasonable safeguard, even if there is no such overreach at present.

Consequently, the Office proposes that where the relevant copyright owner is the terminating party and the designated royalty payee is the pre-termination copyright owner, the following additional notice requirements should apply: (1) the notice must be signed after the effective date of termination; (2) the notice must acknowledge the deviation from the standard royalty payee under the Office's regulations; and (3) the notice must provide that neither the notice nor the distribution of royalties by the MLC in accordance with the notice prejudices the legal rights of either party.

v. Multiple Changes

The Office proposes that where multiple ownership transfers occur prior to providing notice of the change to the MLC, a compliant notice for each transfer in the chain must be delivered to the MLC. For example, where there is a termination followed by an assignment of the copyright in the musical work, both a notice for the termination and a notice for the subsequent assignment would need to be provided. Similarly, the Office proposes that where an ownership transfer and a request to designate or change an alternative royalty payee are related, a compliant notice for both the

transfer and request must be delivered to the MLC. For example, where there is an assignment of the copyright in the musical work that includes a contractual right for the new owner to also be entitled to future royalty distributions for periods predating the transfer, both a notice for the assignment and a notice for the designation of the alternative royalty payee would need to be provided.

The Office proposes these requirements to assist the MLC in verifying claimed changes in payees and to further the MLC's duty to maintain an accurate public database of musical works and their owners. This includes tracking historical changes in ownership.¹²³

2. Implementation of a Change by the MLC

Proposed paragraph (d) sets out how the MLC would need to implement and give effect to a change in payee.

i. Timing

The Office agrees with the MLC that some amount of processing time must be given between the time when the MLC receives the notice and the time by which the change must be implemented.¹²⁴ As the MLC requests,¹²⁵ and based on the Office's current rules governing its processing of DMP voluntary licenses,¹²⁶ the Office proposes to give the MLC at least 30 days to operationalize a payee change.

The supplemental proposed rule contains two scenarios of general applicability. The first covers where the MLC receives a compliant notice before the start of the first monthly reporting period to begin after the relevant change is effective. In such cases, the MLC would need to implement and give effect to the change beginning with the first distribution of royalties for that reporting period.¹²⁷

¹²³ 37 CFR 210.31(f).

¹²⁴ MLC Initial Comments at 10–11.

¹²⁵ *Id.*; see also ClearBox Rights Reply Comments at 5 (agreeing "that a minimum 30-day notice of a termination be required before the MLC has to implement the requested actions").

¹²⁶ 37 CFR 210.24(f) ("[T]he mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license for which the collective has not received the description required by paragraph (b)(8) of this section at least 30 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods.")

¹²⁷ For example, if the MLC receives a notice of a contractual ownership transfer on September 20, 2023, for a transfer that, under the terms of the agreement, is effective on September 1, 2023, then the MLC would need to implement the change starting with the January 2024 royalty distribution (because the first monthly reporting period to

The second scenario covers where the MLC receives the notice on or after the start of that reporting period. In those cases, the MLC would need to implement and give effect to the change beginning no later than the first distribution of royalties based on the first "payee snapshot" taken by the MLC at least 30 days after it receives the notice.¹²⁸ By "payee snapshot," the Office means the royalty payee information contained in the MLC's records as of a particular date that it will use for a particular monthly royalty distribution. According to the MLC, it currently takes the payee snapshot 10 days after the end of the monthly reporting period, and it is this information that it uses to make the royalty distribution for that reporting period, which occurs about 65 days later.¹²⁹

The supplemental proposal rule also contains a variant of both of these scenarios to accommodate the additional 45 days needed for the notice and dispute mechanism discussed above regarding a pre-termination copyright owner's ability to initiate a dispute with the MLC.

ii. Additional Provisions for Termination-Related Changes

The supplemental proposed rule contains two additional MLC implementation provisions concerning termination-related changes. First, the Office proposes that where the MLC needs additional information to implement the change and such information is received after the notice, the timing requirements discussed above would apply based on the date that the MLC receives the last piece of necessary information.

The second provision relates to where a compliant notice is accompanied by proof that the statutory notice of termination was submitted to the Office for recordation, but not proof that it was timely recorded. The supplemental proposed rule would prohibit the MLC

commence after the effective date of the transfer would be the October 2023 reporting period, and the first distribution of royalties for that period would occur in January 2024).

¹²⁸ For example, if the MLC receives a notice of a contractual ownership transfer on October 15, 2023, for a transfer that, under the terms of the agreement, is effective on September 1, 2023, then the MLC would need to implement the change no later than the February 2024 royalty distribution (because the first payee snapshot to occur at least 30 days after the MLC's receipt of the notice would be the December 2023 snapshot, which would be for the November 2023 reporting period, and the first distribution of royalties for that period would occur in February 2024).

¹²⁹ The MLC, *Blanket Royalty Distributions*, <https://www.themlc.com/blanket-payments> (last visited Sept. 20, 2023).

¹²¹ SGA et al. Initial Comments at 2, 6–8.

¹²² *Id.* at 2, 7–8 ("[T]he coerced signing by an author of such [a letter of direction] concerning the disposition by the MLC of post-termination royalties—as a pre-condition set by the publisher for execution of the underlying publishing agreement with such author—is easily within the future scope of imaginable, attempted publisher overreach should the Proposed Rulemaking be adopted without amendment."); see also Howard Reply Comments at 2 (agreeing with SGA et al.'s proposal and the reasons behind it).

from implementing any termination unless and until proof of timely recordation is received.¹³⁰ It would also make clear that the eventual receipt of proof that the statutory notice has been timely recorded should be treated as a type of additional information with respect to the timing of the MLC's implementation.

Even though the MLC would not implement the termination, to accommodate the fact that recordation is not an automatic process, the Office proposes that, after receiving notice that submission to the Office for recordation has been made, the MLC hold applicable royalties pending receipt of proof of timely recordation. After the MLC receives proof of timely recordation, it would need to implement the change in accordance with the above-discussed requirements, which would include distributing the held funds to the terminating party. If, on the other hand, the Office refuses to record the notice or the notice is recorded on or after the effective date of termination, and the termination is not effective, then the MLC would need to release the held funds to the pre-termination copyright owner. Under the supplemental proposed rule, if proof of timely recordation is not received within 6 months, the MLC would need to contact the Office to confirm the status of the relevant recordation submission and then act accordingly.

iii. Effect of Implementation

Multiple commenters, including the MLC, raise the issue of whether the MLC's implementation of a payee change should only be forward-looking or whether the MLC should be required to implement the change going back to the effective date of the change, regardless of when it implements it.¹³¹ For example, Linda Edell Howard explains that in the termination context "there will be a substantial delay in notifying the MLC (sometimes years) as to the correct and legal owner(s) of the copyright," and expresses concern that, as a result, there is "little doubt the MLC will innocently misdirect royalty payments" to the pre-termination copyright owner.¹³² The MLC states that implementation "on a retroactive basis would require The MLC to design, implement, and manage a new, manual

process to benefit a small group of members that would divert the limited resources of The MLC from critical services and activities that benefit all copyright owners."¹³³

The Office welcomes further comments on this issue, including with regard to Linda Edell Howard's termination-related concerns and what is standard in the industry. At this time, the Office is inclined to agree with the MLC that retroactive implementation may be too administratively burdensome to require for every payee change. Notably, the Office only requires prospective implementation with respect to the MLC's processing of DMP voluntary licenses.¹³⁴ The Office does not, however, wish to foreclose the possibility that there may be certain payee changes that the MLC could implement retroactively with little or no difficulty. Therefore, where a relevant change is effective prior to the MLC's implementation of it, the Office proposes to permit, but not require, the MLC to implement the change going back to its effective date, if the notice to the MLC requests it.¹³⁵

Relatedly, the Office proposes a savings clause to help allay Linda Edell Howard's concern that the pre-termination copyright owner "will claim they were the 'copyright owner' of record as of the last day of the monthly reporting period (because of the terminating party's delay) and refuse to turn over the misdirected royalties to the rightful copyright owners."¹³⁶ The proposed savings clause would make clear that even though the MLC may not be required to implement a change going back to its effective date, that fact does not affect a party's right to royalties previously distributed by the MLC to someone else or that party's ability to collect those royalties from that prior payee.¹³⁷ For example, if the MLC is not

¹³³ MLC Initial Comments at 8; *see also* MLC Reply Comments at 2.

¹³⁴ 37 CFR 210.24(f) ("[T]he mechanical licensing collective shall not be required to undertake any obligations otherwise imposed on it by this subpart with respect to any voluntary license for which the collective has not received the description required by paragraph (b)(8) of this section at least 30 calendar days prior to the delivery of a report of usage for such period, but such obligations attach and are ongoing with respect to such license for subsequent periods.")

¹³⁵ The Office declines to propose Linda Edell Howard's suggested solution involving the Office's records. Howard Initial Comments at 4. At least based on the current record, it is not clear how the mechanics of that proposal would work in practice.

¹³⁶ *Id.* at 3.

¹³⁷ To be clear, this proposed provision does not address the situation where the MLC simply makes a mistake. Where the MLC distributes royalties to the wrong payee due to an error on the MLC's part (as opposed to where the MLC does not receive sufficiently advanced notice of a payee change to

required to implement a payee change until six months after it is effective, the MLC would have made several royalty distributions to the prior payee instead of the new payee. The fact that the supplemental proposed rule would not require the MLC to recover the previously distributed royalties from the prior payee and redistribute them to the new payee does not mean that the new payee is not still legally entitled to those royalties or cannot seek to collect them from the prior payee.

G. Disputes

The MLC requests guidance from the Office on several matters relating to termination-related disputes.¹³⁸ The Office proposes to provide such guidance and to further elaborate on other dispute-related issues where it believes regulations would be helpful.

1. Royalty Holds

The MLC requests guidance "as to the types of disputes concerning termination claims for which The MLC should place relevant royalties on hold pending resolution."¹³⁹ It also states that its "general policy is to place royalties on hold when a legal proceeding is commenced that would impact the proper payee for those royalties," and asks the Office for clarification if it disagrees.¹⁴⁰

Under section 115(d)(3)(K)(i), the MLC must "establish policies and procedures" "for copyright owners to address in a timely and equitable manner disputes relating to ownership interests in musical works licensed under this section and allocation and distribution of royalties by the mechanical licensing collective."¹⁴¹ Section 115(d)(3)(K)(ii) then requires the MLC's "policies and procedures" to "include a mechanism to hold disputed funds . . . pending resolution of the dispute."¹⁴² Therefore, if there is a bona fide dispute among purported copyright owners over the ownership of a musical work (or share), the applicable funds must be held pending resolution of the dispute.¹⁴³ Because a dispute as to the

implement it before it is effective), the MLC must correct its error in a timely fashion.

¹³⁸ MLC Initial Comments at 11–14.

¹³⁹ *Id.* at 11–12.

¹⁴⁰ *Id.* at 12.

¹⁴¹ 17 U.S.C. 115(d)(3)(K)(i).

¹⁴² *Id.* at 115(d)(3)(K)(ii).

¹⁴³ In the NPRM, the Office proposed that the MLC be permitted to distribute royalties as directed "by the mutual written agreement of the parties to an ownership dispute." 87 FR 64405, 64412. The supplemental proposed rule would not allow this. On reflection, the Office is concerned about the administrative challenges that could ensue if distributed royalties need to be recovered. The Office, thus, seeks further comments on this issue,

¹³⁰ *See* 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A) ("A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.")

¹³¹ *See, e.g.*, MLC Initial Comments at 8; MLC Reply Comments at 2; Howard Initial Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 5 (June 28, 2023).

¹³² Howard Initial Comments at 3–4.

validity of a statutory termination—regardless of the grounds for the dispute—is a dispute as to the identity of the rightful copyright owner, it is an ownership dispute for which the MLC must hold applicable royalties.

In contrast, a dispute as to the application of the Exception is not a dispute over ownership, but rather over the legal effect of a concededly valid termination. The Office's final analysis and conclusions on the law in the current proceeding will govern the MLC's treatment of the Exception. As a result, a disagreement over the application of the Exception would generally not constitute grounds for the MLC to hold related royalties. There are, however, two potential exceptions.

The first is where litigation is commenced over the issue. In such cases—as with any type of dispute that is subject to a legal proceeding—the MLC should hold all applicable royalties pending the outcome of the proceeding unless the adjudicator orders otherwise. While the statute may not compel the MLC to implement legal holds in disputes unrelated to ownership, the Office believes it is prudent for the MLC to hold royalties whenever a litigation or other formal dispute procedure (*e.g.*, arbitration) is initiated that implicates the disposition of royalties.

Second, based on the Office's initial analysis, it recognizes that the Exception could potentially apply to at least some types of DMP voluntary licenses. Consequently, the Office proposes that a pre-termination copyright owner be able to initiate a dispute with the MLC over the application of the Exception to a particular voluntary license or its underlying grant of authority, and that the MLC should hold applicable royalties pending resolution of such a dispute.

2. Process and Documentation for Termination-Related Disputes

Under the supplemental proposed rule, only the pre-termination copyright owner or its representative would be permitted to initiate a termination-related dispute with the MLC. A terminating party would not need to initiate such a dispute because it would always have the ability to submit the notice of a payee change to the MLC that would obligate the MLC to implement the termination in the absence of a dispute.

The Office agrees with the MLC that a pre-termination copyright owner

should provide certain information to initiate the dispute and substantiate that it is bona fide.¹⁴⁴ The Office proposes requirements similar to those suggested by the MLC, but with some additions.¹⁴⁵ It proposes that the minimum information that must be delivered to the MLC to substantiate, and trigger a royalty hold for, a dispute as to the validity of a termination consists of: (1) a detailed explanation of the grounds for the dispute; (2) documentation sufficient to support those grounds, consisting of copies of (i) each grant in dispute, (ii) any other document necessary to support the grounds for the dispute, and (iii) any other reasonable information required by the MLC's dispute policy; (3) an identification satisfactory to the MLC of each musical work in dispute; and (4) an appropriate certification regarding the accuracy of the information made by the submitter.

Where the dispute is over the application of the Exception to a voluntary license, the Office proposes to additionally require: (1) a copy of each voluntary license at issue; (2) an identification satisfactory to the MLC of each relevant sound recording that constitutes a derivative work prepared with appropriate authority; and (3) the date of preparation for each such sound recording, which must be before the effective date of termination.

The Office proposes that any and all documentation provided to the MLC in connection with a termination-related dispute be shared with all parties to the dispute. If a party to the dispute is not a party or a successor to a party to an otherwise confidential document, then the supplemental proposed rule would require the disclosure to be subject to that party's acceptance of an appropriate written confidentiality agreement. The Office believes that all parties to a dispute have a right to know the basis for the dispute and to see the other party's supporting evidence. The proposed approach seeks to safeguard that right while ensuring that confidential information is not made public.

3. Disclosure and Confidentiality

The MLC seeks guidance as to whether it “should be required to disclose information about the royalties being held to the parties involved,” stating that it “typically does not disclose the amount of royalties on hold to the parties in a dispute pending agreement or resolution of a dispute.”¹⁴⁶ The Office is inclined to

agree with ClearBox Rights that the MLC should disclose information about such royalties to the parties to a dispute.¹⁴⁷ All parties to the dispute should know the amount in controversy so that they are on equal footing in developing a strategy for resolving the dispute, including the negotiation of a settlement. Therefore, the Office proposes an exception to its confidentiality regulations to clarify that such disclosures are required.

The supplemental proposed rule would further recognize that there are other circumstances, unrelated to an ownership dispute, where the MLC may put amounts on hold. In such cases, including where the MLC initiates the hold unilaterally (*e.g.*, in connection with an investigation),¹⁴⁸ the affected parties should have a right to know the grounds for the hold.

The supplemental proposed rule, thus, would require that where the MLC is holding royalties or other monies, it must disclose the amount being held and the reason for the hold to anyone with a bona fide legal claim to the funds. More specifically, the Office proposes that the MLC provide the equivalent of monthly royalty statements for the amounts held along with monthly updates concerning the status of the hold. The Office encourages the MLC to disclose required information and provide updates through its member portal.

4. Dispute Resolution

Though not raised by the commenters, the Office proposes regulations governing the resolution of disputes among purported copyright owners or royalty payees and the associated release of held funds. The Office proposes these regulations to provide certainty to both the MLC and disputing parties about what constitutes the resolution of a dispute, how held funds should be released, and how the MLC should implement any related change in payee that results from the resolution of the dispute. The Office also believes that it may be useful to adopt a rule to prevent the MLC having to hold disputed funds indefinitely. Indeed, the statute requires disputes to be “address[ed] in a timely and equitable manner.”¹⁴⁹

Accordingly, the supplemental proposed rule contemplates three scenarios. The first is where the dispute is resolved through the mutual

¹⁴⁷ ClearBox Rights Reply Comments at 6.

¹⁴⁸ See Letter from U.S. Copyright Office to The MLC (Apr. 20, 2023), <https://copyright.gov/ai/USCO-Guidance-Letter-to-The-MLC-Letter-on-AI-Created-Works.pdf>.

¹⁴⁹ 17 U.S.C. 115(d)(3)(K)(i).

¹⁴⁴ MLC Initial Comments at 13.

¹⁴⁵ *Id.* (listing proposed requirements).

¹⁴⁶ *Id.* at 13–14.

including as to whether it is permissible under the statute. See 17 U.S.C. 115(d)(3)(K)(ii).

agreement of the relevant parties. In such cases, released funds would be paid in accordance with the agreement. If the agreement changes the royalty payee, then the release of the held funds would be subject to the same notice and implementation requirements discussed above in Part II.F, except that payments would need to be made for applicable reporting periods predating the MLC's implementation of the change.

The second scenario is where the dispute is resolved by order of an adjudicative body (e.g., a court or arbitrator). In such cases, released funds would be paid in accordance with the order. The MLC's implementation of any associated payee change would be in accordance with the order, rather than the above-discussed notice and implementation requirements. Absent a stay issued by the adjudicatory body, the appeal or request for reconsideration of such order would not delay the distribution of the affected monies.

The last scenario is focused on preventing disputed funds from being held indefinitely. It would enforce a proposed requirement that all funds held by the MLC pursuant to a dispute among purported copyright owners or royalty payees be subject to active dispute resolution by the relevant parties.¹⁵⁰ It would do so by providing that if the disputed funds have been held for at least one year, and no legal proceeding has been commenced, then during every subsequent 6-month period the parties to the dispute would need to submit a jointly signed notice to the MLC stating that they are continuing to engage in active dispute resolution. If the MLC does not receive such notice, it would be required to release the funds to the party who would have received them if the funds had not been placed on hold. This would put the onus on the party who initiates the dispute to eventually commence a legal proceeding to maintain the hold. The Office proposes this approach because the initiating party is the one seeking to change the status quo. It welcomes comments on this proposal, including whether there are any industry analogues to consider.

H. Corrective Royalty Adjustment

In the NPRM, the Office proposed to require the MLC to adjust any royalties distributed under its (now-suspended) termination dispute policy within 90 days.¹⁵¹ The Office explained that the

¹⁵⁰ To be clear, this proposal would not cover other types of potential disputes that may arise in connection with the MLC's administration of the blanket license, such as a dispute involving a DMP or the MLC itself.

¹⁵¹ 87 FR 64405, 64412.

purpose of this proposal is to make copyright owners whole for any distributions the MLC made based on an erroneous understanding and application of the Exception.¹⁵²

In response, several commenters, including the MLC, seek further guidance from the Office as to how the proposed corrective royalty adjustment should work.¹⁵³ For example, Promopub states that the adjustment process "may take an unacceptably long time if the MLC must recoup sums from publishers whose other mechanical royalties are insufficient for full and prompt recoupment. In such instances, it may be appropriate to require such publishers to return the royalties received in error from their own funds rather than extending the adjustment period."¹⁵⁴ ClearBox Rights says that the MLC "should be responsible to recoup all payments known to have been incorrectly made to original publishers for effectively terminated works, and should not wait until recoupment of the sums incorrectly paid before paying the correct royalties to the terminated owners."¹⁵⁵ ClearBox Rights explains that this "is standard operating procedure for many if not most of the publishers in the industry when incorrect payments are made."¹⁵⁶ ClearBox Rights further states that "it is fair that any party that was ultimately overpaid in error, including publishers, writers, and other third party recipients, should be eligible to have their overpaid royalties recouped from future funds in order to correct the issue."¹⁵⁷

The MLC requests that the Office make clear that the MLC "is not required to pay [previously distributed] royalties to a new payee until The MLC is able to fully recover those royalties from the previously-paid payee."¹⁵⁸ The MLC further asks the Office to confirm that it "may recover those royalties at any time from any funds payable to the previously-paid payee, since there may not be any additional royalties payable to that payee for the works in question given that such payee's rights to those works have now been terminated."¹⁵⁹ The MLC, as well

¹⁵² *Id.*

¹⁵³ See, e.g., MLC Initial Comments at 6–8; ClearBox Rights Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023); Howard Initial Comments at 6; Promopub Initial Comments at 2; Promopub Reply Comments at 3; North Music Grp. Reply Comments at 2.

¹⁵⁴ Promopub Initial Comments at 2.

¹⁵⁵ ClearBox Rights *Ex Parte* Letter at 4 (June 28, 2023) (proposing that the MLC "borrow" from the unallocated, unidentified funds pool").

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ MLC Initial Comments at 7.

¹⁵⁹ *Id.* at 7–8.

as other commenters, also raise questions about the recovery of royalties from publishers who have already distributed a portion of those royalties to songwriters.¹⁶⁰ Additionally, commenters disagree over how complicated and burdensome it might be to administer the corrective royalty adjustment, with some opposing the proposed adjustment on this basis.¹⁶¹

Based on its review of these comments to date, the Office proposes to replace its original proposed rule with a more detailed one that would lay out the operational procedures for the corrective royalty adjustment. In making this proposal, the Office reiterates that it is continuing to evaluate comments regarding its authority to adopt regulations concerning a corrective royalty adjustment and welcomes further comments on the subject. By seeking comments on the revised proposal, the Office does not mean to suggest that it has reached any final conclusions about its authority to adopt the proposal.

While the Office welcomes comments on the *relative* burdens associated with its proposal versus some alternative adjustment process, it is inclined to disagree with commenters suggesting that there should not be *any* corrective adjustment because of the potential

¹⁶⁰ See, e.g., MLC Initial Comments at 7–8; ClearBox Rights Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 3–4 (June 28, 2023); Promopub Reply Comments at 3; NMPA Initial Comments at 5; CMPA Initial Comments at 2; McAnally & North *Ex Parte* Letter at 5–6, 9 (Mar. 14, 2023).

¹⁶¹ See, e.g., ClearBox Rights Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023) (stating that "[c]ompanies like ClearBox Rights . . . do these types of calculations all the time" and that it "is laughable" to suggest the process would be burdensome for the MLC); SONA et al. Reply Comments at 3 ("It is not 'undue hardship' to request a government-mandated body undertake a retroactive accounting—not where such an outcome could and should have been avoided by the very body that would undertake such an accounting."); Promopub Reply Comments at 3 ("We are confident that most, if not all, of the publishers who have benefitted from the Policy . . . have the means to promptly refund *all* royalties paid them in error[.]"); McAnally & North *Ex Parte* Letter at 3–4 (Mar. 14, 2023) ("Any suggestion that publishers cannot render retroactive payments or that doing so would be so difficult the process should require a change in the law is inconsistent with our lived experience."); Howard Reply Comments at 2; NMPA Initial Comments at 5 ("This would create a significant administrative and financial burden on the MLC, as well as on publishers or other recipients of these royalty payments who likely already distributed some portion of those amounts pursuant to their contractual obligations with their songwriters."); CMPA Initial Comments at 2 ("[T]he likelihood of recovering what was previously paid out to the songwriter(s) in order to create an accounting to the post-termination owner, whether or not that be the songwriter(s) themselves, would be both unlikely, and an onerous obligation to place on the pre-termination publisher.").

burdens involved. Corrective royalty adjustments are common in the music industry¹⁶² and explicitly contemplated by the statute and the Office's existing regulations.¹⁶³ Nothing in the current record suggests that this adjustment would be any more or less burdensome than others, whether for the MLC, publishers, or songwriters. Indeed, the MLC's own guidelines provide that adjustments, including "a correction of an overpayment," "may be made by The MLC retroactively to January 1, 2021 (i.e., the License Availability Date)." ¹⁶⁴

For similar reasons, the Office declines to propose any specific procedures at this time regarding where a publisher has already distributed a portion of the applicable royalties to its songwriters. That is a possibility with any type of adjustment for an overpayment. For example, at least one commenter asserts that "many of the standard songwriter agreements allow the publishers to recoup any overpayment made by the publishers to the writers."¹⁶⁵ The Office welcomes further comments on this issue, including on the feasibility of ClearBox Rights' proposal that the MLC only recoup the publisher's share.¹⁶⁶

The Office's proposal reflects its preliminary conclusions about the Exception discussed above in Part II.B. Under the supplemental proposed rule, the corrective adjustment would apply where the MLC's prior erroneous application of the Exception, whether or not through its termination dispute policy, affected: (1) the distribution of blanket license royalties or matched historical royalties; (2) the holding of such royalties;¹⁶⁷ or (3) the deduction

from a DMP's payable blanket license royalties made by matching usage to voluntary licenses or individual download licenses.

With respect to previous distributions, the MLC would be required to recover any overpayment from the prior payee and distribute it to the proper payee (i.e., the payee legally entitled to the royalties under the correct interpretation of the Exception under current law). The MLC would have thirty days from publication of the final rule to notify the prior payee of the overpayment, and then the prior payee would have thirty days to return it. If the prior payee fails to do so, then the MLC would be required to debit its future royalties, for all works (and shares), until the full amount of the overpayment is recovered. The Office proposes that the debit be limited to 50% of payable amounts to the prior payee each month.

While the Office is sympathetic to commenters calling for the corrective adjustment to be made quickly, it is also concerned that smaller publishers, who may no longer be in possession of the applicable funds, may be unable to repay the full overpayment all at once or financially withstand the debiting of most of their mechanical royalties each month. Additionally, the Office does not propose that the MLC should borrow against the pool of unclaimed royalties.¹⁶⁸ Assuming, without deciding, that the statute would even allow it,¹⁶⁹ the Office does not believe it would be prudent for the MLC to do so at this time. The total sum of such royalties is not yet known because of the adjustments DMPs will be making in connection with the recent final determination in the Copyright Royalty Judges' *Phonorecords III Remand* proceeding.

With respect to deducted royalties related to voluntary licenses or individual download licenses, the Office proposes that the same recovery procedures apply as for previously distributed royalties. For such purposes, the prior payee from whom the MLC would need to recover the royalties would be the copyright owner to whom the relevant usage was originally (and erroneously) matched. As for royalties the MLC is already holding, the supplemental proposed rule would give it thirty days after the effective date of the final rule to distribute them to the proper payee.

Lastly, the supplemental proposed rule would clarify that the Office's adoption of the corrective adjustment mechanism would not prejudice the proper payee's right or ability to otherwise recover the overpayment from the prior payee outside of the above-described process. If the overpayment, however, is recovered directly or a legal proceeding is commenced, the MLC would need to be notified by the parties. The MLC would then be required to discontinue the above-described recovery efforts.¹⁷⁰

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.22 as follows:

■ a. Redesignate paragraphs (d), (e), (f), (g), (h), (i), and (j) as paragraphs (e), (g), (h), (i), (j), (m), and (n), respectively.

■ b. Add paragraphs (d), (f), (k), and (l).

The additions read as follows:

§ 210.22 Definitions.

* * * * *

(d) The term *derivative works exception* means the limitations contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A).

* * * * *

(f) The term *historical unmatched royalties* means the accrued royalties transferred to the mechanical licensing collective by digital music providers pursuant to 17 U.S.C. 115(d)(10) and § 210.10.

* * * * *

(k) The term *matched historical royalties* means historical unmatched royalties attributable to a musical work (or share thereof) matched after being transferred to the mechanical licensing collective.

(l) The term *pre-termination copyright owner* means the owner of the relevant copyright immediately prior to:

¹⁷⁰ The Office proposes that the same rule also apply if there is a bona fide dispute regarding the application of the Exception to a relevant voluntary license or its underlying grant of authority.

¹⁶² See, e.g., Promopub Reply Comments at 2 ("[T]he concept of retroactive royalty adjustments is one with which the NMPA's members should be familiar because other collecting organizations regularly employ retroactive royalty adjustments when music publishing royalties have been paid erroneously."); McAnally & North *Ex Parte* Letter at 3–5 (Mar. 14, 2023) (explaining that "it is of the essence of the role of publishers large and small, including collectives like The MLC, to be able to make allocation corrections involving adjusting debits and credits," that "[t]hese adjustments necessarily require retroactive payments," and that "these bread-and-butter adjustments [are] a matter of routine practice").

¹⁶³ 17 U.S.C. 115(d)(4)(A)(iv)(II); 37 CFR 210.10(k), 210.27(k).

¹⁶⁴ The MLC, *Guidelines for Adjustments* secs. 2.1, 3.4 (Jan. 2022), <https://if-hubspotusercontent40.net/hubfs/8718396/files/2022-02/MLC%20Guidelines%20for%20Adjustments.pdf>.

¹⁶⁵ ClearBox Rights *Ex Parte* Letter at 4 (June 28, 2023).

¹⁶⁶ See *id.* at 3–4; ClearBox Rights Reply Comments at 3–4.

¹⁶⁷ The Office proposes to include held royalties to reflect the fact that the MLC states that it is presently holding applicable royalties pending the outcome of the current rulemaking proceeding. See The MLC, *Policies*, <https://www.themlc.com/dispute-policy> (last visited Sept. 20, 2023).

¹⁶⁸ See, e.g., ClearBox Rights *Ex Parte* Letter at 4 (June 28, 2023) (proposing that the MLC "'borrow' from the unallocated, unidentified funds pool").

¹⁶⁹ See 17 U.S.C. 115(d)(7)(C).

(1) The effective date of termination for an effective termination under 17 U.S.C. 203 or 304; or

(2) The purported effective date of termination for a claimed, disputed, or invalid termination under 17 U.S.C. 203 or 304.

* * * * *

■ 3. Amend § 210.27 as follows:

■ a. Redesignate paragraph (g)(2)(ii) as paragraph (g)(2)(ii)(A).

■ b. Add paragraph (g)(2)(ii)(B).

The addition reads as follows:

§ 210.27 Reports of usage and payment for blanket licensees.

* * * * *

(g) * * *

(2) * * *

(ii)(A) * * *

(B) To the extent applicable to the mechanical licensing collective’s efforts under paragraph (g)(2)(ii)(A) of this section:

(1) The derivative works exception does not apply to any individual download license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception.

(2) The derivative works exception does not apply to any voluntary license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception, unless and only to the extent that the mechanical licensing collective is directed otherwise pursuant to:

(i) The resolution of a dispute under § 210.30(f) regarding the application of the derivative works exception to a particular voluntary license or its underlying grant of authority; or

(ii) A notice submitted under § 210.30(c)(4) designating or changing an alternative royalty payee.

* * * * *

■ 4. Amend § 210.29 as follows:

■ a. In paragraph (a):

■ i. Remove “reporting obligations” and add in its place “reporting and payment obligations”.

■ ii. Add two sentences at the end of the paragraph.

■ b. Add paragraphs (b)(4), (j), and (k).

The additions read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) * * * This section also prescribes reporting and payment obligations of the mechanical licensing collective to copyright owners for the distribution of matched historical royalties. This

section does not apply to distributions of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(f).

(b) * * *

(4)(i)(A) The copyright owner of a musical work (or share thereof) as of the last day of a monthly reporting period in which such musical work is used pursuant to a blanket license is entitled to all royalty payments and other distributable amounts (e.g., accrued interest), including any subsequent adjustments, for the uses of that musical work occurring during that monthly reporting period. As used in the previous sentence, the term *uses* means all covered activities engaged in under blanket licenses as reported by blanket licensees to the mechanical licensing collective.

(B) The derivative works exception does not apply to any blanket license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to a blanket license based on the derivative works exception.

(ii) Subject to the requirements of and except to the extent permitted by § 210.30, the mechanical licensing collective shall not distribute royalties in a manner inconsistent with paragraph (b)(4)(i) of this section.

* * * * *

(j) *Matched historical royalties.* The mechanical licensing collective shall report and distribute matched historical royalties and related accrued interest and adjustments in the same manner and subject to the same requirements as apply to the reporting and distribution of royalties for musical works licensed under the blanket license, as if such matched historical royalties were royalties payable for musical works licensed under the blanket license, but subject to the following clarifications:

(1) Matched historical royalties shall be treated as accrued royalties distributable under paragraph (b)(1)(ii) of this section and shall be separately identified in applicable royalty statements.

(2) With respect to the requirements of paragraph (b)(2) of this section, royalty distributions based on adjustments to matched historical royalties reflected in cumulative statements of account delivered to the mechanical licensing collective by digital music providers pursuant to § 210.10(b)(3)(i) shall be made by the mechanical licensing collective at least once annually, upon submission of one or more statements of adjustment delivered to the mechanical licensing collective by digital music providers

pursuant to § 210.10(k), to the extent any such statement of adjustment is delivered to the mechanical licensing collective during such annual period.

(k) *Corrective royalty adjustment.* Any distribution under paragraph (b) of this section (including any distribution of matched historical royalties, including related accrued interest or adjustments) or deduction under § 210.27(g)(2)(ii) made by the mechanical licensing collective before [EFFECTIVE DATE OF FINAL RULE] and based on an application of the derivative works exception that is inconsistent with paragraph (b)(4)(i) of this section (including as such paragraph applies to matched historical royalties through paragraph (j) of this section) or § 210.27(g)(2)(ii), as each of those provisions exist on [EFFECTIVE DATE OF FINAL RULE], shall be adjusted by the mechanical licensing collective. Such adjustment shall also apply to any amounts held by the mechanical licensing collective in connection with such application of the derivative works exception as of [EFFECTIVE DATE OF FINAL RULE]. The adjustment shall be made as follows:

(1) To the extent required by this paragraph (k), where a royalty payee (the *prior payee*) received amounts from the mechanical licensing collective that such prior payee would not have received had the distribution been made in a manner consistent with the application of the derivative works exception embodied in paragraph (b)(4)(i) of this section, the mechanical licensing collective shall recover such overpayment from such prior payee and shall distribute it to the royalty payee (the *proper payee*) who is entitled to such funds under the application of the derivative works exception embodied in paragraph (b)(4)(i) of this section. The following requirements shall apply to the recovery and distribution of any such overpayment:

(i) The mechanical licensing collective shall notify the prior payee of such overpayment no later than [EFFECTIVE DATE OF FINAL RULE], and request that the prior payee return such overpayment no later than 30 calendar days after receipt of the notice. Any returned amounts shall be distributed to the proper payee with the next regular monthly royalty distribution.

(ii) If such overpayment is not returned in full in accordance with paragraph (k)(1)(i) of this section, then beginning with the first distribution of royalties to occur after the deadline specified in that paragraph, 50 percent of any and all accrued royalties and other distributable amounts (e.g.,

accrued interest) that would otherwise be payable to the prior payee from the mechanical licensing collective each month, regardless of the associated work (or share), shall instead be distributed to the proper payee until such time as the full amount of the overpayment is recovered. Where more than one proper payee is entitled to a corrective royalty adjustment from the same prior payee for different musical works, any amounts recovered and distributed under this paragraph (k)(1)(ii) shall be apportioned equally among such proper payees.

(2) Where, as of [EFFECTIVE DATE OF FINAL RULE], the mechanical licensing collective is holding amounts that would constitute an overpayment under paragraph (k)(1) of this section if such amounts had been distributed to the prior payee, such amounts shall be distributed to the proper payee no later than [DATE 30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE].

(3) The recovery and distribution processes described in paragraphs (k)(1) and (2) of this section shall also apply, as applicable, to amounts deducted, or held pending deduction, by the mechanical licensing collective under § 210.27(g)(2)(ii) where the proper payee is not the copyright owner to whom the relevant usage was originally matched. For purposes of this paragraph (k)(3), the copyright owner to whom the relevant usage was originally matched shall constitute the *prior payee* as that term is used in paragraphs (k)(1), (2), and (4) of this section. Where this paragraph (k)(3) applies, the mechanical licensing collective shall flag the change in payee, including by specifying the affected reporting periods, in the next response file delivered to the relevant digital music provider after [EFFECTIVE DATE OF FINAL RULE].

(4) Nothing in this paragraph (k) shall be construed as prejudicing the proper payee's right or ability to otherwise recover such overpayment from the prior payee outside of the adjustment process detailed in this paragraph (k). Where the overpayment is recovered outside of such adjustment process, a legal proceeding is commenced seeking recovery of the overpayment, or, with respect to paragraph (k)(3) of this section, a dispute is initiated with the mechanical licensing collective pursuant to § 210.30(e) regarding the application of the derivative works exception to a particular voluntary license or its underlying grant of authority, the mechanical licensing collective must be notified. Upon receipt of such notice, the mechanical licensing collective shall discontinue

any recovery efforts engaged in under this paragraph (k).

■ 5. Revise § 210.30 to read as follows:

§ 210.30 Transfers of copyright ownership, designating or changing an alternative royalty payee, and related disputes.

(a) *General.* This section prescribes rules governing the mechanical licensing collective's administration of transfers of copyright ownership, the designating or changing of an alternative royalty payee, and related disputes.

(b) *Requirements for the mechanical licensing collective to implement a change.* The mechanical licensing collective shall not take any action to implement or give effect to any transfer of copyright ownership (including a transfer resulting from an effective termination under 17 U.S.C. 203 or 304) or request to distribute royalties to a payee other than the copyright owner identified in § 210.29(b)(4)(i) (or request to change such alternative royalty payee), unless the requirements of paragraph (c) of this section are satisfied or the mechanical licensing collective is acting in connection with the resolution of a dispute pursuant to paragraph (f) of this section. Where the requirements of paragraph (c) of this section are satisfied, the mechanical licensing collective shall implement and give effect to such transfer or request in accordance with paragraph (d) of this section.

(c) *Notices of change.* The mechanical licensing collective must be appropriately notified in writing with respect to any transfer or request described in paragraph (b) of this section. Subject to the further requirements of this paragraph (c), such notice must comply with any reasonable formatting and submission requirements established by the mechanical licensing collective and made publicly available on its website. No fee may be charged for submitting such a notice. Upon submitting such a notice, or any additional information related to such notice, the submitter shall be provided with a prompt response from the mechanical licensing collective confirming receipt of the notice, or additional information, and the date of receipt.

(1) Specific requirements for notices about transfers of copyright ownership, other than transfers by will or operation of law, are as follows:

(i) The required notice shall include all of the following information:

(A) All relevant dates required for the mechanical licensing collective to properly implement and give effect to the transfer.

(B) The transferor (*i.e.*, the prior musical work copyright owner), identified by name and any known and appropriate unique identifiers, and appropriate contact information for the transferor or their administrator or other representative.

(C) The transferee (*i.e.*, the new musical work copyright owner), identified by name and any known and appropriate unique identifiers, appropriate contact information for the transferee or their administrator or other representative, and, if the transferee is not already receiving royalty distributions from the mechanical licensing collective, any additional information that is necessary for the transferee to receive royalty distributions from the mechanical licensing collective.

(D) A satisfactory identification of any applicable catalog exclusions from the transfer or a list of all transferred musical works identified by appropriate unique identifiers.

(ii) The required notice shall be submitted and signed by the transferor (or its duly authorized representative). Such signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that they have appropriate authority to submit the notice to the mechanical licensing collective and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(iii) Where there is more than one transferor or transferee, the required notice shall include a satisfactory identification of any applicable ownership shares for the transferred musical works. Where there is more than one transferor, the notice shall be effective only as to those transferors whose information is provided in accordance with paragraph (c)(1)(i)(B) of this section and whom have signed and certified the notice in accordance with paragraph (c)(1)(ii) of this section. Where there is more than one transferee, the notice shall be effective only as to those transferees whose information is provided in accordance with paragraph (c)(1)(i)(C) of this section.

(2) Specific requirements for notices about transfers of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 are as follows:

(i) The required notice shall include all of the following information:

(A) A true, correct, complete, and legible copy of the signed and as-served

notice of termination submitted to the Copyright Office for recordation pursuant to § 201.10.

(B) A true, correct, complete, and legible copy of the statement of service submitted to the Copyright Office for recordation pursuant to § 201.10, if one was submitted.

(C) Either:

(1) Proof that the notice of termination was recorded in the Copyright Office before the effective date of termination; or

(2) If the Copyright Office has not yet recorded the notice of termination, proof that the notice of termination was submitted to the Copyright Office for recordation, provided that proof that the notice of termination was recorded in the Copyright Office before the effective date of termination is delivered to the mechanical licensing collective at a later date.

(D) The terminating party (*i.e.*, the new musical work copyright owner), identified by name and any known and appropriate unique identifiers, appropriate contact information for the terminating party or their administrator or other representative, and, if the terminating party is not already receiving royalty distributions from the mechanical licensing collective, any additional information that is necessary for the terminating party to receive royalty distributions from the mechanical licensing collective.

(ii) With respect to the information required by paragraphs (c)(2)(i)(A) through (C) of this section, providing an official Copyright Office certification for any such information shall not be required. If the mechanical licensing collective has good cause to doubt the authenticity of any such information, the mechanical licensing collective shall seek verification from the Copyright Office.

(iii) Where the information required by paragraph (c)(2)(i) of this section is insufficient to enable the mechanical licensing collective to implement and give effect to the termination, the mechanical licensing collective shall engage in best efforts to identify the relevant musical works or other necessary information. To the extent necessary, the mechanical licensing collective shall correspond with the terminating party and the pre-termination copyright owner (or their respective representatives) to attempt to obtain the minimum necessary information.

(iv) The required notice shall be submitted and signed by either the terminating party or the pre-termination copyright owner (or their respective duly authorized representatives). Such

signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that they have appropriate authority to submit the notice to the mechanical licensing collective and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith. If the notice is submitted by the terminating party, the following additional requirements shall apply:

(A) The mechanical licensing collective shall notify the pre-termination copyright owner about the terminating party's notice within 15 calendar days of receiving either the notice or the last piece of information necessary for the mechanical licensing collective to implement the change, whichever is later.

(B) If the pre-termination copyright owner does not initiate a dispute with the mechanical licensing collective regarding the termination, in accordance with paragraph (e) of this section, within 30 calendar days of receiving such notice, the mechanical licensing collective shall implement and give effect to the transfer of copyright ownership resulting from the termination, in accordance with paragraph (d) of this section. Nothing in this paragraph (c)(2)(iv)(B) shall prevent the pre-termination copyright owner from disputing the termination with the mechanical licensing collective at a later date or challenging the termination in a legal proceeding.

(v) Where there is more than one terminating party or pre-termination copyright owner, the required notice shall include a satisfactory identification of any applicable ownership shares for the musical works that are subject to the termination. Where there is more than one terminating party, the notice shall be effective only as to those terminating parties whose information is provided in accordance with paragraph (c)(2)(i)(D) of this section. Where there is more than one terminating party, a notice that is signed and certified by any one terminating party in accordance with paragraph (c)(2)(iv) of this section is sufficient as to all terminating parties.

(3) Any transfer of copyright ownership that is not covered by paragraphs (c)(1) or (2) of this section (*e.g.*, transfers by will or intestate succession) shall be subject to any reasonable notice requirements established by the mechanical licensing collective and made publicly available on its website.

(4) Specific requirements for notices requesting that the mechanical licensing collective distribute royalties to a payee other than the copyright owner identified in § 210.29(b)(4)(i) and notices requesting to change such alternative royalty payee are as follows:

(i) The required notice shall include all of the following information:

(A) All relevant dates required for the mechanical licensing collective to properly implement and give effect to the request.

(B) The copyright owner identified in § 210.29(b)(4)(i), identified by name and any known and appropriate unique identifiers, and appropriate contact information for the copyright owner or their administrator or other representative.

(C) If the copyright owner identified in paragraph (c)(4)(i)(B) of this section is not also the current royalty payee, the current royalty payee (*i.e.*, the previously designated royalty payee who is being superseded by the payee identified in paragraph (c)(4)(i)(D) of this section), identified by name and any known and appropriate unique identifiers, and appropriate contact information for the payee or their administrator or other representative.

(D) The designated royalty payee (*i.e.*, the new payee designated by the copyright owner identified in § 210.29(b)(4)(i) to receive royalty distributions from the mechanical licensing collective that would otherwise be paid to such owner under § 210.29(b)(4)(i)), identified by name and any known and appropriate unique identifiers, appropriate contact information for the payee or their administrator or other representative, and, if the payee is not already receiving royalty distributions from the mechanical licensing collective, any additional information that is necessary for the payee to receive royalty distributions from the mechanical licensing collective.

(E) A satisfactory identification of any applicable catalog exclusions from the request or a list of all musical works subject to the request identified by appropriate unique identifiers.

(ii) The required notice shall be submitted and signed by the copyright owner identified in paragraph (c)(4)(i)(B) of this section (or its duly authorized representative). Such signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that they have appropriate authority to submit the notice to the mechanical licensing collective and that all

information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(iii) Where the required notice is made in connection with a notice about a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted under paragraph (c)(2) of this section, and the copyright owner identified in paragraph (c)(4)(i)(B) of this section is the terminating party and the designated royalty payee identified in paragraph (c)(4)(i)(D) of this section is the pre-termination copyright owner, the following additional requirements shall apply:

(A) The notice must be signed after the effective date of termination.

(B) The notice must set forth in plain language an acknowledgement that the requested action alters the royalty payee from the standard royalty payee established by § 210.29(b)(4)(i).

(C) The notice must include a clear statement stipulating that neither the notice nor the distribution of royalties by the mechanical licensing collective in accordance with the notice prejudices the rights of either party.

(iv) Where there is more than one copyright owner or designated royalty payee, the required notice shall include a satisfactory identification of any applicable ownership shares for the musical works subject to the request. Where there is more than one copyright owner, the notice shall be effective only as to those copyright owners whose information is provided in accordance with paragraph (c)(4)(i)(B) of this section and, subject to paragraph (c)(4)(iii) of this section to the extent it applies, whom have signed and certified the notice in accordance with paragraph (c)(4)(ii) of this section. Where there is more than one designated royalty payee, the notice shall be effective only as to those payees whose information is provided in accordance with paragraph (c)(4)(i)(D) of this section.

(v) The references to § 210.29(b)(4)(i) in paragraphs (b) and (c)(4) of this section shall, as applicable, be read to incorporate § 210.29(j).

(5) Where multiple transfers of copyright ownership occur prior to providing notice of the change to the mechanical licensing collective, a compliant notice for each transfer must be provided to the mechanical licensing collective. For example, where there is a termination followed by an assignment of the copyright in the musical work, notice of the termination under paragraph (c)(2) of this section and notice of the subsequent assignment

under paragraph (c)(1) of this section must both be provided to the mechanical licensing collective.

(6) Where a transfer of copyright ownership and a request to designate or change an alternative royalty payee are related, a compliant notice for both the transfer and request must be provided to the mechanical licensing collective. For example, where there is an assignment of the copyright in the musical work that includes a contractual right for the assignee to also be entitled to future royalty distributions for periods predating the transfer, notice of the assignment under paragraph (c)(1) of this section and notice of the designation of an alternative royalty payee under paragraph (c)(4) of this section must both be provided to the mechanical licensing collective.

(d) *Implementation of a change.* Upon receiving a notice that complies with the requirements of paragraph (c) of this section, the mechanical licensing collective shall implement and give effect to the identified transfer or request as follows:

(1)(i) Except as provided by paragraph (d)(1)(ii) of this section, where the mechanical licensing collective receives the notice before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning with the first distribution of royalties for such reporting period.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, then the mechanical licensing collective shall implement and give effect to the change as follows: Where the mechanical licensing collective receives the notice at least 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning with the first distribution of royalties for such reporting period.

(2)(i) Except as provided by paragraph (d)(2)(ii) of this section, where the mechanical licensing collective receives the notice on or after the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change,

on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the mechanical licensing collective receives the notice. As used in the previous sentence and in paragraph (d)(2)(ii) of this section, the term *payee snapshot* means the royalty payee information in the mechanical licensing collective's records as of a particular date that will be used for a particular monthly royalty distribution.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, then the mechanical licensing collective shall implement and give effect to the change as follows: Where the mechanical licensing collective receives the notice less than 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the pre-termination copyright owner's deadline to dispute under paragraph (c)(2)(iv)(B) of this section.

(3) Where additional information related to the notice is required to enable the mechanical licensing collective to implement and give effect to the change, and such information is received after receipt of the notice, the timing requirements described in paragraphs (d)(1) and (2) of this section shall be based on the date that the last piece of necessary information is received by the mechanical licensing collective.

(4) Where the change is effective as to one or more monthly reporting periods for which the mechanical licensing collective distributed royalties before implementing and giving effect to the change, the mechanical licensing collective may, but is not required to, make a corrective royalty adjustment if the notice requests one.

(5) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted under paragraph (c)(2) of this section, and the notice is accompanied by proof that the notice of termination was

submitted to the Copyright Office for recordation, but not that it was recorded in the Copyright Office before the effective date of termination, the mechanical licensing collective shall act as follows:

(i) The receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination shall be treated as a type of additional information under paragraph (d)(3) of this section. The mechanical licensing collective shall not implement or give effect to any such termination unless and until such proof is received.

(ii) Notwithstanding paragraph (d)(5)(i) of this section, the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination as follows:

(A) The mechanical licensing collective shall commence holding such amount no later than the implementation deadline that would apply under paragraphs (d)(1) through (3) of this section, as applicable, if proof of recordation had been provided with the notice.

(B) After proof that the notice of termination was recorded in the Copyright Office before the effective date of termination is received, the mechanical licensing collective shall implement and give effect to the termination as provided by paragraphs (d)(1) through (4) and (5)(i) of this section, as applicable.

(C) Where the Copyright Office refuses to record the notice of termination or the notice of termination is recorded on or after the effective date of termination, such that the termination is not effective, the mechanical licensing collective shall release the held funds to the pre-termination copyright owner.

(D) If proof that the notice of termination was recorded in the Copyright Office before the effective date of termination is not received by the mechanical licensing collective within 6 months after the mechanical licensing collective commences holding applicable accrued royalties and accrued interest, the mechanical licensing collective shall contact the Copyright Office to confirm the status of the relevant recordation submission. If the submission remains pending at that time, the mechanical licensing collective shall continue to check its status monthly. Upon confirmation from the Copyright Office regarding whether the applicable notice of termination has

been timely recorded or not, the mechanical licensing collective shall act in accordance with paragraph (d)(5)(ii)(B) or (C) of this section, as the case may be, except that no further proof shall be required to be submitted to the mechanical licensing collective for it to act.

(6) No action or inaction by the mechanical licensing collective with respect to implementing and giving effect to a payee change shall affect any party's right to royalties pursuant to such change or such party's ability to collect such royalties from someone other than the mechanical licensing collective if such royalties were not distributed to such party by the mechanical licensing collective.

(e) *Termination disputes.* The following requirements shall apply to any dispute initiated with the mechanical licensing collective regarding a termination under 17 U.S.C. 203 or 304:

(1) Such a dispute must be with regard to the validity of the termination or the application of the derivative works exception to a particular voluntary license or its underlying grant of authority.

(2) Only the pre-termination copyright owner (or its representative) may initiate such a dispute.

(3) If the pre-termination copyright owner (or its representative) initiates such a dispute and delivers the information required to substantiate the dispute to the mechanical licensing collective under paragraph (e)(4) of this section, the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending resolution of the dispute.

(4) The minimum information that must be delivered to the mechanical licensing collective to substantiate a termination-related dispute shall consist of the following:

(i) A cognizable explanation of the grounds for the dispute, articulated with specificity.

(ii) Documentation sufficient to support the grounds for the dispute, which shall consist of the following:

(A) A true, correct, complete, and legible copy of each grant in dispute.

(B) A true, correct, complete, and legible copy of any other agreement or document necessary to support the grounds for the dispute.

(C) Such other documentation or substantiating information as the mechanical licensing collective may reasonably require pursuant to a dispute policy adopted under 17 U.S.C. 115(d)(3)(K).

(iii) A satisfactory identification of each musical work in dispute.

(iv) A certification that the submitter has appropriate authority to initiate the dispute with the mechanical licensing collective and that all information submitted in connection with the dispute is true, accurate, and complete to the best of the submitter's knowledge, information, and belief, and is provided in good faith.

(v) If the dispute concerns the application of the derivative works exception to a particular voluntary license or its underlying grant of authority:

(A) A true, correct, complete, and legible copy of each voluntary license at issue.

(B) A satisfactory identification of each relevant sound recording that constitutes a derivative work within the meaning of 17 U.S.C. 101 that was prepared pursuant to appropriate authority.

(C) The date of preparation for each such sound recording, which must be before the effective date of termination.

(5) Notwithstanding anything to the contrary that may be contained in § 210.34, any and all documentation provided to the mechanical licensing collective pursuant to paragraph (e)(4) of this section shall be disclosed to all parties to the dispute. If a party to the dispute is not a party or successor to a party to an otherwise confidential document, such disclosure shall be subject to an appropriate written confidentiality agreement.

(f) *Resolution of a dispute and release of disputed funds.* All disputed funds held by the mechanical licensing collective pursuant to a dispute among purported copyright owners or royalty payees must be subject to active dispute resolution by the relevant parties. Such funds shall no longer be considered to be in dispute and the mechanical licensing collective shall release such funds under the following circumstances, which shall constitute the resolution of the dispute as to such funds:

(1) Where the mechanical licensing collective is directed to do so by mutual agreement of the relevant parties. Funds released under this paragraph (f)(1) shall be paid in accordance with such agreement, subject to the relevant requirements of paragraphs (c) and (d) of this section if the agreement changes the royalty payee, except that, notwithstanding paragraph (d)(4) of this section, payments of released funds shall be made for applicable monthly reporting periods predating the mechanical licensing collective's implementation of the change.

(2) Where the mechanical licensing collective is directed to do so by order

of an adjudicative body with appropriate authority. Funds released under this paragraph (f)(2) shall be paid in accordance with such order.

(3) Except where a legal proceeding is commenced, where, during any 6-month period starting one year after the disputed funds are placed on hold, the mechanical licensing collective does not receive a joint notice signed by all relevant parties that they are continuing to engage in active dispute resolution. Such notice must comply with any reasonable formatting and submission requirements established by the mechanical licensing collective and made publicly available on its website. Funds released under this paragraph (f)(3) shall be paid to the party who would have received such funds if the funds were not placed on hold pursuant to a dispute.

■ 6. Amend § 210.34 as follows:

■ a. Add paragraph (c)(6).

■ b. In paragraph (c)(5), remove “to paragraph (c)(4) of” and add in its place “to paragraph (c)(4) or (c)(6) of”.

The addition reads as follows:

§ 210.34 Treatment of confidential and other sensitive information.

* * * * *

(c) * * *

(6)(i) Notwithstanding paragraph (c)(1) of this section, where the mechanical licensing collective has placed any accrued royalties, accrued interest, or other monies on hold with respect to particular reported usage or a particular work (or share thereof) (e.g., where there is an ownership dispute or a legal proceeding has been commenced), the mechanical licensing collective shall disclose the amount being held and reason for the hold to any individual or entity with a bona fide legal claim to such funds or a portion thereof.

(ii) Such disclosure shall be made to each such claimant no later than 10 business days after placing the amount on hold, where the mechanical licensing collective is aware of the claimant’s claim at that time. Where the mechanical licensing collective is not aware of a claimant’s claim when the amount is placed on hold, such disclosure shall be made to that claimant no later than 10 business days after becoming aware. For any amounts placed on hold before [EFFECTIVE DATE OF FINAL RULE], where the mechanical licensing collective is aware of a claimant’s claim at that time, such disclosure shall be made to such claimant no later than [DATE 10 BUSINESS DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. Where the mechanical licensing collective is not

aware of a claimant’s claim as of [EFFECTIVE DATE OF FINAL RULE], such disclosure shall be made to that claimant no later than 10 business days after becoming aware.

(iii) Disclosure of the amount being held with respect to particular reported usage or a particular work (or share thereof) shall be accompanied by a statement that complies with the requirements of § 210.29 as if such held amount were to instead be distributed pursuant to § 210.29. Disclosure of the reason for the hold shall be made with specificity. The mechanical licensing collective shall provide all claimants with monthly updates concerning the status of the hold and the amount being held. The mechanical licensing collective shall respond to any inquiry from a claimant about the hold within 10 business days and shall provide any reasonably requested additional information about the hold within a reasonable period of time commensurate with the request.

* * * * *

Dated: September 21, 2023.

Suzanne V. Wilson,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2023–20922 Filed 9–25–23; 8:45 am]

BILLING CODE 1410–30–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2023–11; Order No. 6692]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Five). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 20, 2023.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Proposal Six
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I. Introduction

On September 15, 2023, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.¹ The Petition identifies the proposed analytical changes filed in this docket as Proposal Six.

II. Proposal Six

Background. Proposal Six relates to modifications to the mail processing and destination entry cost models for letter-shaped USPS Marketing Mail pieces to account for recent price structure changes. Petition, Proposal Six at 1. The cost models were last presented in Docket No. ACR2022, Library References USPS–FY22–10 and USPS–FY22–13, respectively. *Id.* If approved, the Postal Service intends to incorporate the requested modifications in the preparation of its the Fiscal Year (FY) 2023 Annual Compliance Review (ACR) and apply new cost avoidance figures in its “July 2024 Market Dominant price change.” *Id.*

As part of Docket No. R2023–2, the Commission approved two new workshare discounts for USPS Marketing Mail letter-shaped pieces prepared on sectional center facility (SCF) pallets: (1) USPS Marketing Mail Automation and Non-automation letters; and (2) USPS Marketing Mail Carrier Route, High Density, High Density Plus and Saturation letters. *Id.* at 1–2.

Proposal. Proposal Six presents four modifications to support the new discounts: (1) the addition of tray sorting cost data to Library Reference USPS–FY22–10, (2) the incorporation of a standalone tray sorting cost avoidance estimate into Library Reference USPS–FY22–10, (3) the reclassification of tray sorting cost pools in Library Reference USPS–FY22–10, and (4) the removal of tray sorting costs from Library Reference USPS–FY22–13. *Id.* at 2. The first three modifications are made to the mail processing cost model and the fourth modification is made to the destination entry cost model. *Id.* The Postal Service provided a modified mail processing cost model in the Excel file “USPS–

¹ Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), September 15, 2023 (Petition).

FY22–10.MM.PROP.Six” attached to the Petition. *Id.*

Rationale and impact. As it relates to the modification to tray sorting data, the Postal Service explains that the data cannot be estimated in the current version of the cost model; therefore, additional cost input data have been incorporated into the mail processing cost model to estimate these costs. *Id.* at 2–3.

As it relates to the modification to standalone cost avoidance estimates,² the Postal Service notes that cost model input data, including the new data described above, are used to estimate avoided tray sorting costs and that estimate is included in the mail processing cost model because SCF palletization is a form of presorting. *Id.* at 3. The Postal Service explains that “[t]his methodology is used because detailed letter tray sorting data are not readily available in postal data collection systems,” preventing tray sorting costs from being incorporated into the mail flow models and cost worksheets for all the letter price categories. *Id.* at 3–4. The Postal Service also presents an alternative to the methodology described above, by providing an estimation of the per-piece costs incurred in one outgoing tray sorting operation. *Id.* at 4.

As it relates to the modification for tray sorting cost pools, the Postal Service seeks to reclassify the “MODS 1TRAYSRT” cost pool and the “NDC TRAYSORT” cost pool as “worksharing-related fixed.” *Id.* at 4–5. Although the Commission previously classified these cost pools as “proportional,” the Postal Service explains that the cost pools should be “worksharing-related fixed” because SCF palletization results in some tray sorting costs being avoided³ and the modification would prevent tray sorting costs from effecting both the containerization and presort costs estimates.³

Finally, as it relates to the modification to destination entry cost model tray costs, the Postal Service explains that, because a standalone tray sorting cost avoidance estimate will now be included in the letters mail processing cost model, letter tray sorting costs should be removed from the USPS Marketing Mail destination entry cost

model. Petition, Proposal Six at 6. The Postal Service notes that it would prevent tray sorting costs from affecting both the presort and destination entry cost avoidance estimates. *Id.*

The impacts of these modifications are presented in Tables 1 through 3 of Proposal Six as well as Excel file “IMPACT.PROP.SIX.xlsx.” *See id.* at 6–9.

III. Notice and Comment

The Commission establishes Docket No. RM2023–11 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission’s website at <http://www.prc.gov>. Interested persons may submit comments on the Petition and Proposal Six no later than October 20, 2023. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2023–11 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), filed September 15, 2023.

2. Comments by interested persons in this proceeding are due no later than October 20, 2023.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–20630 Filed 9–25–23; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, 305, 307, 308, 309, and 310

RIN 0970–AC96

Parentage Establishment in the Child Support Services Program

AGENCY: Office of Child Support Services (OCSS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Notice of proposed rulemaking.

SUMMARY: Office of Child Support Services (OCSS) proposes to replace the gender-specific term “paternity” with the gender-neutral term “parentage” throughout the Child Support Services Program to be inclusive of all family structures served by the child support services program. While title IV–D (Child Support and Establishment of Paternity) requires States and Tribes to have laws permitting the establishment of paternity and requiring genetic testing in contested paternity cases, OCSS also recognizes that title IV–D does not preclude States and Tribes from having parentage establishment laws and procedures for all families. The proposed changes to chapter III of the child support regulations recognize developments in State laws regarding parentage establishment and provide States and Tribes optional flexibility to establish parentage for all children in accordance with their laws, regardless of the gender of their parents or family structure.

DATES: Consideration will be given to written comments on this Notice of Proposed Rulemaking (NPRM) received on or before November 27, 2023.

ADDRESSES: You may submit comments, identified by [docket number (ACF–2023–0006) and/or Regulatory Information Number (RIN) 0970–AC96], by one of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Written comments may be submitted to: Office of Child Support Services, *Attention:* Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All substantive comments received will be posted without change

²The Postal Service explains that the term “standalone” means the cost avoidance estimate is not used to develop Cost and Revenue Analysis (CRA) adjustment factors and does not affect the magnitude of the CRA proportional adjustment factor and that factor is not applied to the cost avoidance estimate. *Id.* at 3.

³*Id.*; see Docket No. R2006–1, Opinion and Recommended Decision Volume 1, March 14, 2007, at ¶¶ 5159–5161.

to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Darryl Watts, Division of Policy and Training, OCSS, telephone (202) 969-3621. Email inquiries to ocss.dpt@acf.hhs.gov. Telecommunications Relay users may dial 711 first.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are relevant and are received during the comment period. We will respond to these comments in the preamble to the final rule.

Proposal

OCSS proposes to replace the gender-specific term “paternity” with the gender-neutral term “parentage” throughout 45 CFR chapter III to be inclusive of all family structures served by the child support services program. OCSS further proposes to define “parentage” to mean the establishment of the legal parent-child relationship in accordance with the laws of the State or Tribe. These proposed changes to chapter III of the child support regulations recognize developments in State laws regarding parentage establishment. The proposed rulemaking explains that consistent with title IV–D, States and Tribes have the option to expand their parentage establishment laws and procedures to include establishment of parentage for children of same-sex parents when establishment of paternity does not apply and that such services are eligible for title IV–D matching funds. The proposed rule also allows States to include same-sex parentage establishments in program performance reports. This proposed rulemaking does not change program requirements related to paternity establishment in cases involving different-sex parents. While title IV–D requires States and Tribes to have laws permitting the establishment of paternity and requiring genetic testing in contested paternity cases, OCSS also recognizes that establishment of the parent-child relationship is a matter of State and Tribal laws, and that title IV–D does not preclude States and Tribes from having parentage establishment laws and

procedures for same-sex parent families. The proposed rule provides State and Tribal child support services programs needed flexibility to ensure that all children in their caseloads can receive services to enforce the support obligation of the parent who, under State or Tribal laws, has a duty to provide support, regardless of the parent’s gender or sexual orientation. The proposed regulation is consistent with the purpose of section 451 of the Social Security Act, which authorizes funding to States and Tribes to ensure that “assistance in obtaining support will be available under this part [Title IV–D of the Social Security Act] to all children . . . for whom such assistance is requested.” (Emphasis added).

This proposed regulation aligns with President Biden’s Executive orders on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, Executive Order 13985, 86 FR 7009 (January 20, 2021); *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, Executive Order 13988, 86 FR 7023 (January 20, 2021); *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals*, Executive Order 14075, 87 FR 37189 (June 15, 2022); and *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, Executive Order 14091, 88 FR 10825 (February 16, 2023). These Executive orders address how the Federal Government should pursue a comprehensive approach to advancing equity for all, including members of the LGBTQI+ communities. This regulation is also consistent with the recently enacted “Respect for Marriage Act,” Public Law 117–228 (December 13, 2022), which requires recognition of any marriage between two individuals that is valid where created “for the purposes of any federal law, rule, or regulation in which marital status is a factor” and requires States to provide full faith and credit to marriages entered into in another State. Like the Respect for Marriage Act, this proposed rule recognizes the existence of and legal needs of diverse family structures.

Public Consultations With Tribes

To obtain the broadest public participation possible on the proposed rule, OCSS plans to conduct a public consultation with tribes during the comment period. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004, 2009, and 2022. This NPRM does not impose any burden or cost on Tribes, nor does it

impact the relationship or distribution of power between the Federal Government and Tribes. This NPRM would permit, but not require, Tribes to establish same-sex parentage and recognize parentage established by other States and Tribes. In accordance with the Memorandum on Uniform Standards for Tribal Consultation (November 30, 2022), “agencies may still engage in Tribal Consultation even if they determine that a policy will not have Tribal implications and should consider doing so if they determine that a policy is of interest to a Tribe or Tribes.”

We plan to publish a separate public notice in the **Federal Register** with the specific location, date, and time of the consultation, and to disseminate public notices to all comprehensive and start-up Tribal child support services programs. Further information regarding this consultation, including last-minute changes, will be available on the OCSS website at <https://www.acf.hhs.gov/css/child-support-professionals/tribal-agencies>.

At the consultation, Federal officials will explain and answer questions to clarify the proposed rule. Persons who attend may make oral presentations and/or provide written comments for the record. They also may submit written comments to OCSS as explained earlier in this preamble.

We encourage persons who make oral presentations at the consultation to also submit written comments in support of their presentations. We encourage any person who wishes to make an oral presentation on the proposed rule at any of the consultation to preregister before or at the consultation. We will provide specific information on preregistration in the separate notice published on the consultation. At the time of preregistration, we will record identifying information about prospective presenters, such as name, organization (if any), address, email address, and telephone number, so that presenters can be accurately identified and properly introduced at the consultation. Persons who preregistered will make their presentations first; then, as time allows, persons who did not preregister will make their presentations. Presentations must be about the proposed rule, should be specific, and should include specific recommendations for changes where appropriate. In fairness to other participants, presentations should be concise and will be limited to a maximum of 10 minutes each. To clarify presentations, we may ask questions. Presentations will be recorded and included in the public record of

comments on the proposed rule unless a commenter does not want his or her comments to be on the record.

At the consultation, we cannot address participants' concerns or respond to questions about the proposed rule other than questions asking for clarification. Instead, we will consider comments and recommendations provided at the consultation, and written comments and recommendations submitted as described earlier in this preamble, as we draft the final rule. All comments made during consultation will be recorded or summarized and placed in the rulemaking docket.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102, 452(a)(1), and 454(13) of the Social Security Act (the Act) (42 U.S.C. 1302, 652(a)(1), and 654(13), respectively). Section 1102 of the Act authorizes the Secretary to publish regulations not inconsistent with the Act as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. Section 452(a)(1) of the Act authorizes the Secretary to “establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent’s child is living as he determines to be necessary to assure that such programs will be effective.” In addition, section 454(13) of title IV–D provides the Secretary with broad authority to require states to “comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.” The regulation is also consistent with section 451 of the Act, which authorizes funding under title IV–D for the purpose of “assuring that assistance in obtaining support will be available under this part [Title IV–D] to all children (whether or not eligible for assistance under a State program funded under part A [TANF]) for whom such assistance is requested.” (Emphasis added).

Background

The millions of families served by the child support services program are becoming increasingly diverse. In recognition of varied family structures, States have changed parentage establishment laws to address the financial and emotional needs of children and families. Federal laws related to marriage, impacting legal and financial parental responsibilities to children born of the marriage, have also changed. This NPRM recognizes these developments in State and Federal law by providing States and Tribes the option to provide full child support services to all children, regardless of family structure, consistent with the laws and procedures of their State or Tribe. These proposed changes are authorized by sections 1102, 452(a)(1), and 454(13) of the Act, which provide the Secretary authority to establish requirements and standards necessary for the effective operation of the child support services program, and section 451 of the Act, authorizing title IV–D funds for the purpose of ensuring all children receive assistance in obtaining financial support from their parents. Replacing the term “paternity” with the broader gender-neutral term “parentage” allows States and Tribes the option to provide essential child support services to all families recognized under their laws. We also propose to define “parentage” to mean the establishment of the legal parent-child relationship in accordance with the laws of the State or Tribe. The proposed changes clarify that title IV–D funded services are available to all families and that States and Tribes have the option to provide parentage establishment services to all families without risking title IV–D plan compliance and include such establishments in their title IV–D performance reports. The proposed rule does not require States or Tribes to implement any changes to their laws or procedures for establishing parentage.

Changes in Federal Law

In an effort to alleviate childhood poverty, title IV–D was enacted in 1975 to focus on nonsupport by fathers, thus requiring states to establish paternity, when appropriate, for all children born to unmarried parents who either received public assistance benefits or applied for title IV–D services. Since title IV–D includes only “paternity” establishment requirements, some States have been concerned that funding under Title IV–D cannot be used to provide child support services assistance to same-sex parents and their children,

which would effectively deny government services intended to ensure that children receive financial support from their parents, regardless of gender or sexual orientation, or existence of a biological connection to their child. In the last several years, however, Federal and State laws have changed in recognition of the growing diversity of the American family-scape, to ensure that laws are applied equitably and provide for the legal needs of families, regardless of their structure.

In 2015, following the United States Supreme Court landmark civil rights decision in *United States v. Windsor*, 570 U.S. 744 (2013),¹ the Court held in *Obergefell v. Hodges*, 576 U.S. 644, that same-sex couples have a fundamental right to marry, and that State law cannot prohibit couples from exercising that right. The Court recognized that marriage is part of a spectrum of personal choices concerning family relationships, procreation, and childrearing protected by the Constitution and that same-sex couples—like different-sex couples—have the right to marry, establish a home, and bring up children, and to have access to the “rights, benefits, and responsibilities” of marital status, including identification in “birth and death certificates.”² The Supreme Court found that the due process and equal protection clauses of the Fourteenth Amendment guaranteed same-sex couples a right to enjoy the same access to legal marriage, and its “constellation of benefits” that different-sex couples traditionally enjoy.³

In 2017, the Supreme Court applied *Obergefell* to conclude that one of those benefits was a presumption of parentage based on marriage. In *Pavan v. Smith*, 582 U.S. 563 (2017), the Supreme Court held that a State may not, consistent with Constitutional due process and equal protection rights recognized in *Obergefell*, deny married same-sex couples' inclusion on their children's birth certificates that the State grants to married different-sex couples. The changes made by the proposed rule are consistent with the fundamental rights analysis in *Windsor*, *Obergefell* and *Pavan*. Those changes describe how title IV–D programs should operate in light of the developments in State laws

¹ In *Windsor*, the Supreme Court struck section 3 of the Defense of Marriage Act (DOMA) under the Due Process Clause of the Fifth Amendment, holding that the Federal Government cannot define the terms “marriage” and “spouse” in a way that excludes married same-sex couples from the benefits and protections that married different-sex couples receive.

² *Obergefell v. Hodges*, 576 U.S. 644, 670 (2015).

³ *Id.*

prompted by those decisions and broader societal shifts. This NPRM does not address the constitutionality of those State laws on establishment and recognition of parentage but seeks to implement title IV–D, pursuant to HHS’s authority under the statute.

In 2022, in response to inquiries from States, OCSS issued Policy Interpretation Question 22–02 (PIQ–22–02)⁴ clarifying that States may, consistent with title IV–D plan requirements, establish same-sex parentage to ensure that the State can establish child support orders against the parent who, under State law, owes a duty of support. PIQ–22–02 also clarified that Federal financial participation (FFP) under title IV–D is allowable for such establishments. As stated in PIQ–22–02, “[t]he Act does not preclude States from adopting additional laws on parentage, surrogacy, and assisted reproduction that define and afford parental rights to same-sex parent families.” PIQ–22–02 further explained that:

OCSE recognizes that all children are entitled to child support regardless of the gender or sexual orientation of their parents, and that the main purpose of the program is to ensure that assistance in obtaining support is available to all children for whom such assistance is requested. We also recognize that establishment of the parent-child relationship is a matter of state law and state child support programs need flexibility to provide core child support services, which include establishing support orders against the parent who, under state law, has a duty to provide support. Therefore, parentage establishment services provided to same-sex parent families, though not required under title IV–D, are permissible and eligible for FFP under 45 CFR 304.20(a)(1), which authorizes FFP for reasonable and necessary expenses related to the core title IV–D program functions of establishing and enforcing support orders. (Citation omitted).

By defining “parentage” to mean the establishment of the legal parent-child relationship in accordance with the laws of the State or Tribe and replacing the term “paternity” where it appears in the child support regulations in 45 CFR chapter III with the term “parentage,” the proposed rule provides States and Tribes further assurance that their same-sex parentage establishment laws, though not required under title IV–D, are permissible and consistent with title IV–D child support enforcement requirements, and that title IV–D funds are available to provide child support services.

⁴ PIQ–22–02, Same-Sex Parents and Child Support Program Requirements (March 29, 2022) is available at: <https://www.acf.hhs.gov/css/policy-guidance/same-sex-parents-and-child-support-program-requirements>.

In December 2022, Congress enacted the Respect for Marriage Act (RMA), Public Law 117–228 (Dec. 13, 2022), requiring the recognition of marriage between two individuals that is valid where created “for the purposes of any Federal law, rule, or regulation in which marital status is a factor.” Congress recognized that “millions of people, including interracial and same-sex couples, have entered into marriages and have enjoyed the rights and privileges associated with marriage. Couples joining in marriage deserve to have the dignity, stability, and ongoing protection that marriage affords to families and children.” While the RMA does not address parental rights of same-sex parent families, other rights such as parental rights and responsibilities flow from marriage under state family law principles. These recent developments in Federal law support the need to clarify parentage establishment options under title IV–D.

Changes in State Law

The Uniform Parentage Act (UPA), first promulgated by the Uniform Law Commission⁵ (ULC) in 1973, provides States with a uniform framework for establishing parent-child relationships. The 1973 UPA provided and established a network of presumptions used to determine a child’s legal parentage and removed the legal status of illegitimacy for children born to unmarried parents. At the time, the ULC observed that States needed new legislation on parentage establishment because “the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.”⁶ Notably, the UPA has used the term “parentage” since 1973. In response to dramatically changing genetic and reproductive technology, the ULC revised the UPA in 2002 to address acknowledgment of paternity procedures, genetic testing, and surrogacy. Following the Supreme Court decisions in *Obergefell* and *Pavan*, the ULC revised the UPA again in 2017 to ensure the equal treatment of children born to same-sex couples. Recognizing that the child support services program is an important voice on changes to the UPA, the ULC invited

⁵ The ULC develops model laws. States may adopt the laws through their legislative process. On occasion, Federal law requires states to adopt a model law as a condition of receiving Federal funding, e.g., the Uniform Interstate Family Support Act, but the UPA is not one of those laws. States may adopt the UPA at their discretion.

⁶ See Prefatory Note to the 1973 UPA, available at: <https://www.uniformlaws.org/viewdocument/final-act-with-comments-117?CommunityKey=10720858-ebe1-4e85-a275-40210e3f3f87&tab=librarydocuments>.

OCSS and the National Child Support Engagement Association (NCSEA) to participate as official observers in the drafting process. The UPA (2017) contains gender-neutral language and provides for parentage establishment processes based on the marital presumption and voluntary acknowledgment of parentage for unmarried same-sex parents. Additionally, it includes provisions for the establishment of parentage for individuals who do not have a biological relationship to the child, specifically the intended parents of surrogacy agreements and unwed *de facto* parents, as well as for children born through assisted reproductive technology whose parent do not have a biological relationship to their child. OCSS determined that these changes to the UPA are not inconsistent with title IV–D of the Social Security Act requirements. The proposed changes to chapter III will allow states that have adopted the 2017 UPA to establish support orders against the individual who, under State and Tribal laws, owes a duty of support, without risking noncompliance with title IV–D requirements.

According to the Census Bureau, approximately 15 percent (14.7 percent) of the 1.1 million same-sex couples in the United States in 2019 had at least one child under 18 in their household.⁷ Overall, about 292,000 children had parents living with a same-sex partner or spouse.⁸ To meet the needs of children with diverse family structures in their States, many States have laws, either through State legislation or case law, that recognize parental rights for intended, but not genetically related, *de facto* parents—including nonmarital families, families headed by same-sex couples, and families formed through assisted reproduction.⁹ In addition, a growing number of States have updated their laws regarding parentage establishment to be able to address the legal, emotional, and financial needs of children in diverse family structures where establishment of paternity would not be appropriate. As of June 2023, seven States have adopted the 2017 UPA,¹⁰ and five States have introduced

⁷ *Fifteen Percent of Same-Sex Couples Have Children in Their Household*, U.S. Census Bureau (January 17, 2020), available at: <https://www.census.gov/library/stories/2020/09/fifteen-percent-of-same-sex-couples-have-children-in-their-household.html>.

⁸ *Id.*

⁹ *Conover v. Conover*, 141 A.3d 31, 47–48 (Md. 2016).

¹⁰ See UPA (2017), available at: <https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256->

legislation to adopt the 2017 UPA.¹¹ At least 12 States and the District of Columbia have enacted laws and adopted forms and procedures allowing same-sex parents to use the voluntary acknowledgment process to establish parentage.¹² We also note that the Uniform Interstate Family Support Act (UIFSA 2008), which all States are required to adopt under title IV–D,¹³ uses the term “parentage” instead of paternity for requirements governing interstate child support cases. We further note that title IV–D does not preclude States from adopting laws on parentage, surrogacy, and assisted reproduction that define and afford parental rights to diverse families, including same-sex parents and parents who do not have a biological relationship to the child. Title IV–D also does not prohibit States and Tribes from providing full faith and credit to same-sex parentage establishments made by any other State or tribe according to its laws and procedures.

OCSS and stakeholders within the child support community, including the NCSEA, believe strongly that all children should be served equitably by the Federal-State child support program.¹⁴ Child support services programs play a critical role in addressing the changing needs of families by providing family-centered services that best support the financial and emotional needs of all children. The ability to provide all children with services to obtain needed financial support is at the heart of the title IV–D program. The proposed regulation implements section 451 of the Act, which authorizes funding under to title

22dd73af068f. The seven states that have enacted the 2017 UPA are California, Colorado, Connecticut, Maine, Rhode Island, Vermont, and Washington. The 2017 changes to the UPA also address parentage establishment for parents without a biological relationship to the child, *i.e.*, surrogacy, assisted reproduction. The changes to the regulatory language will also allow such parents to participate in the program without the state risking noncompliance with title IV–D requirements.

¹¹ Hawaii, Kansas, Nevada, Pennsylvania, and Massachusetts have introduced legislation to adopt the 2017 UPA.

¹² The 12 states are Maine, California, Connecticut, Massachusetts, Vermont, Washington, Maryland, New York, Rhode Island, Nevada, Colorado, and Delaware.

¹³ See section 466(f) of the Act, 42 U.S.C. 666(f), providing that “In order to satisfy section 454(20)(A), each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, including any amendments officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws.”

¹⁴ Quick Facts: Same Sex Parents, NCSEA, May 2020, available at: <https://www.ncsea.org/wp-content/uploads/2020/07/Quick-Facts-Same-Sex-Parents-2020.pdf>.

IV–D for the purpose of “assuring that assistance in obtaining support will be available under [part IV–D] to all children (whether or not eligible for assistance under a State program funded under part A [TANF]) for whom such assistance is requested.” (Emphasis added). Since establishment of a parent-child relationship is a preliminary step to establishing a support obligation, and numerous States have adopted laws and procedures to be able to serve the needs of the children in their caseload, regardless of the gender and sexual orientation of their parents or whether they are genetically related to their parent, it is necessary that the language of the child support services program regulations reflect such changes. The proposed changes assure that children can receive assistance in obtaining financial support from the parent who, under State or Tribal laws, has a duty to provide support. This proposed rulemaking recognizes the changes in Federal and State laws concerning the rights of individuals in LGBTQI+ communities, in particular, State laws expanding the establishment of the parent-child relationship and provides State and Tribal child support services programs needed flexibility to serve all the families in their caseloads.

Genetic Testing Requirements in Contested Paternity Cases

As we stated in PIQ 22–02, sections 454 and 466 of the Act require States to have laws permitting the establishment of paternity in cases involving different-sex parents. These laws also require states to have procedures requiring that the child and parties submit to genetic testing, upon request, in any contested paternity case unless otherwise barred by law. Section 454(20) of the Act requires States, to the extent required by section 466 of the Act, have laws in effect and implement laws to improve child support services program effectiveness. Section 466(a)(5)(B) of the Act requires that States have procedures for genetic testing in contested “paternity” cases upon request by a party “alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties.” This provision also states that genetic testing may not be required if “otherwise barred by State law” and recognizes that “good cause and other exceptions for refusing to cooperate” with genetic testing may exist. Section 466(a)(5)(B), therefore, generally will not impact parentage laws for cases involving same-sex parent families.

Similarly, section 466(a)(5)(G) of the Act requires that States have

“[p]rocedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.” Congress added this provision to the Act in 1993, when genetic testing was emerging as scientifically reliable evidence to establish whether a man was biologically related to a child. As OCSS explained in its final rule issued in 1994, the presumption based on genetic test results was intended to “expedite paternity resolution”¹⁵ by requiring that “a presumption of paternity be based upon genetic test results indicating a threshold probability of the alleged father being the father of the child.”¹⁶

The proposed regulation would not modify these requirements. States must still comply with title IV–D requirements for establishment of paternity and genetic testing in contested paternity cases “as appropriate.” See section 454(4)(A) of the Act and 45 CFR 303.5. To ensure that these title IV–D requirements continue to apply, in nine places in chapter III, we incorporate by cross-reference the requirements of section 466(a)(5)(B) of the Act regarding genetic testing in contested paternity cases. These provisions are 45 CFR 302.70(a)(5)(ii), (v) and (vi), 303.5(c), (d)(1), (e)(1) and (3), 303.11(b)(6)(ii), and 304.12(4)(iv). Since title IV–D’s paternity establishment provisions do not address contested parentage cases between same-sex parents, States and Tribes have flexibility to resolve such cases in accordance with State or Tribal laws and procedures.

Full Faith and Credit of Parentage Establishment

Section 451 of title IV–D provides funding to States and Tribes to assure all children receive assistance in obtaining financial support from their parents. This provision does not limit Federal funding of child support services to children born to different-sex parents. Section 452(a)(1) of the Act provides authority to establish standards “to assure that [State child support] programs will be effective” in obtaining child support orders. Section 454(13) of the Act provides authority to establish such other requirements in the title IV–D program necessary for the program to be effective “in locating noncustodial parents, establishing

¹⁵ Final Rule: *Child Support Enforcement Program: Paternity Establishment and Revision of Child Support Enforcement Program and Audit Regulations* 59 FR 66204, 66208 (December 23, 1994).

¹⁶ *Id.* at 66228.

paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.” Together, these provisions make clear that the ultimate goal of the child support services program is to ensure that children receive financial support from their parents. These title IV–D program statutes provide the legal basis for rulemaking that allows State programs to be more effective in serving the child support needs of all children, regardless of the gender or sexual orientation of their parents.

Parentage Established by Order of Adoption

While Federal law defers to State law on parentage establishment, with regard to interstate recognition of another State’s parentage order, current law requires States to recognize parentage established by judicial determination of another State, even if such determination may be at odds with the State’s own parentage laws. The Full Faith and Credit Clause of Article IV, Section 1 of the Constitution requires States to recognize and give effect “to the public acts, records and judicial proceedings of every other State.” This Constitutional provision requires States to recognize parentage of same-sex parents established through adoption. After *Obergefell*, the Supreme Court in *V.L. v. E.L.*, 577 U.S. 404 (2016), summarily reversed a State court’s decision refusing to provide full faith and credit to another State’s order of adoption by a same-sex parent.¹⁷ In doing so, the Supreme Court reaffirmed that court judgments, including adoption decrees of same-sex parents, are entitled to the most “exacting form” of full faith and credit, meaning that they are enforceable in every state regardless of which State issued the decree. Many same-sex parents use the adoption process to establish the legal relationship with their children and secure their rights and obligations as parents. Although many States have streamlined the adoption process for married parents, which reduces the cost and time involved in the adoption process, OCSS recognizes that even with streamline procedures, the cost of adoption makes the adoption process difficult to access for many parents.

¹⁷ See also *Finstuen v. Crutcher*, 496 F.3d 1139, 1156 (10th Cir. 2007).

Parentage Established by Marital Presumption

States also recognize another state’s parentage establishment through the application of the marital presumption. Under the marital presumption doctrine, when a woman gives birth to a child, her spouse is presumed to be the biological parent. OCSS policy since 1995 has recognized that birth certificates provide sufficient evidence of parentage.¹⁸ The marital presumption establishes legal rights and obligations of spouses to the child born during the marriage, unless rebutted under strict procedural State laws and procedures. As described earlier, in *Pavan*, the Supreme Court held that States must provide married same-sex parents the same right as married different-sex parents to be included on their child’s birth certificate. In so holding, the Court noted that “differential treatment infringes *Obergefell*’s commitment to provide same-sex couples “the constellation of benefits that the States have linked to marriage.””¹⁹ Thus, application of the marital presumption, if not rebutted, establishes the parentage of children born to the marriage, and applies even when a birth parent spouse is not the biological parent of the child, and regardless of the spouse’s gender or sexual orientation.

Parentage Under UIFSA

In addition, parentage established in another State, that is the basis of an interstate child support proceeding under UIFSA, must be accepted by the responding State. States adopted UIFSA 2018 verbatim as required by sections 454(a)(20) and 466(f) of the Act.²⁰

¹⁸ See OCSS DCL–95–40, *Determining Paternity for Children Born Out of Wedlock*, available at <https://www.acf.hhs.gov/css/policy-guidance/determining-paternity-children-born-out-wedlock>.

¹⁹ *Pavan v. Smith*, 582 U.S. 563, 564, quoting *Obergefell*, 576 U.S. at 646–647; see also *McLaughlin v. Jones*, 401 P.3d 492 (Ariz. 2017) (relying on *Obergefell* and *Pavan* in holding that the state’s refusal to apply the marital presumption equally to same-sex spouses would violate the due process and equal protection clauses of the U.S. Constitution). The holdings in *Obergefell* and *Pavan* have also been extended by the U.S. District Court of Utah to require recognition of married same-sex spouse of a mother who gave birth to their child through assisted reproduction to the same extent as the state recognizes parentage of male spouses in the same situation. See *Roe v. Patton*, 2015 WL 4476734.

²⁰ See section 466(f) of the Act, 42 U.S.C. 666(f), providing that “In order to satisfy section 454(20)(A), each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, including any amendments officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws.” See also AT–14–11, *Pub. L. 113–183 UIFSA 2008 Enactment*, available at: <https://www.acf.hhs.gov/css/policy-guidance/pl-113-183->

Section 315 of UIFSA 2008 prohibits non-parentage to be raised as a defense in an interstate child support proceeding.²¹ Thus, any challenge to parentage must be resolved in the State that issued the parentage determination. If a challenge is not brought in the issuing State, or is unsuccessful, the State receiving the interstate child support services request must recognize the parent-child relationship established in accordance with the laws of the issuing State.

Voluntary Acknowledgement of Parentage (VAP)

Section 466(a)(5)(C) of title IV–D requires States to enact laws ensuring a simple civil process for voluntarily acknowledging parentage (VAP). The changes made by the proposed rule provide States and Tribes the option to update forms used in the voluntary acknowledgment of parentage process to include gender-neutral terms. In addition, States and Tribes may extend use of the form, in accordance with State and Tribal laws and procedure, to establish parentage of children born to unmarried same-sex couples. A small but growing number of States now explicitly allow parents of any gender and non-biological parents to sign VAPs. Sections 466(a)(5)(C)(iv) and (a)(11) of the Act, 42 U.S.C. 666(a)(5)(C)(iv) and (a)(11), require States to give full faith and credit to voluntary acknowledgment of parentage signed in any other State according to its procedures, however, the plain language of title IV–D imposes this requirement of recognition on paternity determinations only. This rulemaking does not propose to change this title IV–D requirement established by statute. Accordingly, under this proposed rule, States and Tribes may, at their option, recognize same-sex parentage established through the laws and procedures for the voluntary acknowledgment process in another State. OCSS encourages States and Tribes to do so to promote cooperation in interstate child support cases and to ensure that children can receive financial assistance from their parent and are not denied the benefit of having a relationship with, and emotional support of both their parents, regardless of their family’s structure.

uifsa-2008-enactment, requiring states to adopt UIFSA 2008 verbatim.

²¹ Section 315 of UIFSA provides states: “SECTION 315. NONPARENTAGE AS DEFENSE. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this [Act].”

Impact on Performance Measures

Section 452(g) of the Act, 42 U.S.C. 652(g), requires States to achieve certain performance levels in order to avoid program penalties and makes them eligible to receive incentive funds under section 458 of the Act, 42 U.S.C. 658a, based on performance. The incentive and penalty provisions of title IV–D are implemented through 45 CFR 305.0 through 305.66. The incentive system measures State performance levels in the following five program areas: paternity establishment, support order establishment, current collections, arrearage collections, and cost-effectiveness. The penalty system measures State performance in the following three areas: paternity establishment, support order establishment, and current collections. Under the current interpretation of title IV–D, a State that provides parentage establishment services for same-sex parents may not include those establishments in reporting program performance measures. This rulemaking would provide States the option to include parentage establishment for same-sex parents for the purposes of measuring their parentage establishment performance.

A State’s paternity establishment percentage (PEP) is determined by dividing the total number of children in the IV–D caseloads in the fiscal year (or, at the option of the State, as of the end of the fiscal year) born out-of-wedlock with paternity established or acknowledged by the total number of children in the IV–D caseloads as of the end of the preceding fiscal year who were born out-of-wedlock.²² As States have moved forward with updating State law and child support services program policies to meet the needs of same-sex parents and their children, several States have asked OCSS for guidance on Federal reporting requirements. In 2022, OCSS issued PIQ–22–02 to clarify that the provisions in title IV–D of the Social Security Act mandating paternity establishment laws do not preclude States from adopting parentage laws and procedures for same-sex parent families. The establishment of the parent-child relationship is a matter of State law. State child support services programs need flexibility to provide core child support services, which include establishing support orders against the parent who, under State law, has a duty to provide support. PIQ–22–02 clarified that parentage establishment services provided to same-sex parent families,

though not required under title IV–D, are reasonable and necessary expenses related to the core title IV–D program functions of establishing and enforcing orders, thus making them eligible for FFP under 45 CFR 304.20(a)(1).

Section 452(g)(3)(A) allows the Secretary to “modify the requirements of [subsection 452g] to take into account such additional variables as the Secretary identifies (including the percentage of children in a State who are born out of wedlock or for whom support has not been established) that affect the ability of a State to meet the requirements of this subsection.” Section 458(e) grants the Secretary the authority to “prescribe such regulations as may be necessary governing the calculation of incentive payments under this section.” In addition, section 454(13) of title IV–D provides the Secretary with broad authority to require States to “comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.” These authorities provide the legal basis for allowing States to report same-sex parentage establishments for program performance purposes to ensure that the program is effective in establishing support orders and collecting support, regardless of the structure of their families. Accordingly, the proposed rule provides States the option to include parentage established for children under the laws and procedures of the State or Tribe for same-sex parents in reporting the PEP.

Section by Section Discussion

The NPRM proposes to make a nomenclature change, to remove the term “paternity” wherever it appears throughout 45 CFR chapter III, within titles, images, sections, and paragraphs, and replace it with the gender-neutral term “parentage.” This proposed change recognizes that numerous States have updated their laws and procedures to meet the legal, financial, and emotional needs of the families in their jurisdiction ensuring that all children in their caseloads can receive child support services and support from their parents, regardless of the structure of their family. The proposed change makes clear that title IV–D accommodates those updated State laws. This change will take place in the

parts of chapter III shown in the following table:

Part	Sections
301	301.1.
302	302.17, 302.31, 302.33, 302.34 and 302.70.
303	303.4, 303.5, 303.11, 303.20, 303.70 and 303.101.
304	304.12 and 304.20.
305	305.1, 305.2, 305.31, 305.33, 305.40, 305.61, 305.62, and 305.63.
307	307.10 and 307.11.
308	308.2.
309	309.05, 309.15, 309.55, 309.65, 309.80, 309.85, 309.90, 309.100, 309.145 and 309.170.
310	310.10.

In § 301.1 *General Definitions*, OCSS proposes to add a definition for the term “parentage” as used in chapter III to mean “the establishment of the legal parent-child relationship in accordance with the laws and procedures of the State or Tribe.”

The NPRM further proposes to cross-reference section 466(a)(5)(B) of the Act regarding genetic testing requirements in the following sections to make clear that title IV–D requirements regarding genetic testing continue to apply in cases involving different-sex parents, where paternity is contested. These cross-references are included in §§ 302.70(a)(5)(ii), (v) and (vi), 303.5(c), (e)(1) and (3), 303.11(b)(6)(ii), and 304.12(b)(4)(iv). States must continue to require genetic testing to establish paternity in contested cases as appropriate. Under § 303.11(b)(6)(iv) we propose to remove “biological” and add “putative” in its place. OCSS proposes to amend § 309.145(b)(2) by adding the word “putative” immediately following the word “child’s” in the sentence.

OCSS also proposes to make changes to replace the gender-specific terms “mother” and “father” with the gender-neutral term “parent” where such terms appear in chapter III. These provisions are §§ 302.70(a)(5)(iii) and (vi), 303.4(d), 303.5(a)(1), (c), (e)(3), (g)(2)(i) and (ii) and (3), 303.7(e)(1), 303.11(b)(4) and (6), 303.70(a) and (d)(1), 303.101(b)(2)(iii), 304.20(b)(2)(i), 305.1(a), 307.11(e)(ii), (f)(1)(ix), 307.13(a)(4)(iii), 308.2(h)(2), 309.100(a)(2) and (c), 309.145(b)(2), 310.10(a)(3)(iii). Additionally, in § 303.20(c)(2) we propose to remove the words, “his or her” and replace it with “their.” Under § 305.2, we propose replacing images below paragraph (a)(1)(i) and paragraph (a)(1)(ii) with images that represents the equation to compute “IV–D Parentage Establishment Percentage” and “Statewide Parentage

²² 42 U.S.C. 652(g)(2).

Establishment Percentage” respectively. Under § 303.101(c)(3), we propose adding the words “made by judicial or administrative process” to immediately follow the word “determination.”

OCSS further proposes to cross-reference sections 466(a)(5)(C)(iv) and (a)(11) of the Act addressing full faith and credit requirements for parentage determinations in § 302.70(a)(11) that continue to apply to paternity determinations. Accordingly, the proposed change requires States to “give full faith and credit to a determination of parentage made by any other State in accordance with sections 466(a)(5)(C)(iv) and (a)(11) of the Act, whether established through voluntary acknowledgment or through administrative or judicial processes.” The proposed change makes clear that full faith and credit requirements apply to paternity determinations, however, States and Tribes may, at their option, recognize same-sex parentage establishment determined in accordance with the laws and procedures of another State or Tribe.

Effective Dates

The proposed effective date will be 60 days from the date of publication of the final rule. There are no compliance dates for this proposed regulation because the inclusion of parentage establishment in the Child Support Services program is an optional criterion.

Impact Analysis

Paperwork Reduction Act of 1995

The Department has determined that this proposed rule does not impose new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Analysis

The Secretary proposes to certify, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed rule, if finalized, would not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule, if finalized, would not result in economic impacts that exceed the monetary threshold for significance in section 3(f)(1) of Executive Order 12866 (as amended by Executive Order 14094). However, the regulation is significant and has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, Tribal and Local governments, in the aggregate, or by the private sector of \$100 million or more in any one year. This \$100 million threshold was based on 1995 dollars. The current threshold, adjusted for inflation is \$177 million. This proposed rule, if finalized, would not impose a mandate that will result in the expenditure by State, Local, and Tribal governments, in the aggregate, or by the private sector, of more than \$177 million in any one year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency’s determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the regulations and policies to determine their effect on family well-being has been completed, and this rulemaking will have a positive impact on family well-being as defined in the legislation by helping to ensure that parents support their children, even when they reside in separate jurisdictions, and will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements

of section 6 of the Executive order. This proposed rule does not have a federalism impact as defined in the Executive order.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on August 30, 2023.

List of Subjects

45 CFR Part 301

Child support, State Plan Approval and Grant Procedures.

45 CFR Part 302

Child support, State Plan Requirements.

45 CFR Part 303

Child support, Standards for Program Operations.

45 CFR Part 304

Child support, Federal Financial Participation.

45 CFR Part 305

Child support, Program Performance Measures, Standards, Financial Incentives, and Penalties.

45 CFR Part 307

Child support, Computerized Support Enforcement Systems.

45 CFR Part 308

Child support, Annual State Self-Assessment Review and Report.

45 CFR Part 309

Child support, Tribal Child Support Enforcement (IV–D) program.

45 CFR Part 310

Child support, Computerized Tribal IV–D Systems and Office Automation.

Dated: September 19, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 45 CFR chapter III as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1301, and 1302.

■ 2. Amend § 301.1 by removing the word “paternity” and adding in its place the word “parentage” in the definition for “Attorney of a Child”, and adding, in alphabetical order, the definition for “Parentage” to read as follows:

§ 301.1 General definitions.

Parentage means the establishment of the legal parent-child relationship in accordance with the laws of the State or Tribe.

PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Amend part 302 by:

- a. Removing the word "paternity" wherever it appears, and adding in its place the word "parentage";
b. Removing the word "mother" wherever it appears, and adding in its place the word "parent"; and
c. Removing the word "father" wherever it appears, and adding in its place the word "parent".

5. Amend § 302.70 by:

- a. In paragraph (a)(5)(ii), adding the words "as required by section 466(a)(5)(B) of the Act" immediately following the words "genetic tests"; and
b. Revising paragraphs (a)(5)(v) and (vi) and (a)(11).

The revisions read as follows:

§ 302.70 Required State laws.

- (a) * * *
(5) * * *

(v) Procedures which provide that any objection to results of genetic testing required under section 466(a)(5)(B) of the Act must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a report of the test results, which is reflected in a record, is admissible as evidence of parentage without the need for foundation testimony or other proof of authenticity or accuracy;

(vi) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of parentage upon the results of genetic testing required under section 466(a)(5)(B) of the Act indicating a threshold probability of the alleged parent being the parent of the child;

(11) Procedures under which the State must give full faith and credit to a determination of parentage made by any other State in accordance with sections 466(a)(5)(C)(iv) and (a)(11) of the Act, whether established through voluntary acknowledgment or through administrative or judicial processes.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

6. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k), and 25 U.S.C. 1603(12) and 1621e.

7. Amend part 303 by:

- a. Removing the word "paternity" wherever it appears, and adding in its place the word "parentage";
b. Removing the word "mother" wherever it appears, and adding in its place the word "parent"; and
c. Removing the word "father" wherever it appears, and adding in its place the word "parent".

8. Amend § 303.5 by revising the section heading, paragraphs (c), (e)(1) and (3), and (g)(2)(i)(C) to read as follows:

§ 303.5 Establishment of parentage.

(c) The IV-D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests required under section 466(a)(5)(B) of the Act which tend to identify the parent or exclude the alleged parent. The IV-D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

(e)(1) Except as provided in paragraph (e)(3) of this section, the IV-D agency may charge any individual who is not a recipient of aid under the State's title IV-A or XIX plan a reasonable fee for performing genetic tests required under section 466(a)(5)(B) of the Act.

(3) If parentage is established and genetic tests were ordered by the IV-D agency in accordance with section 466(a)(5)(B) of the Act, the IV-D agency must pay the costs of such tests, subject to recoupment (if the agency elects) from the alleged parent who denied parentage. If a party contests the results of an original test, the IV-D agency shall obtain additional tests but shall require the contestant to pay for the costs of any such additional testing in advance.

- (g) * * *
(2) * * *
(i) * * *

(C) Notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights,

if a parent is a minor, due to minority status) and responsibilities of acknowledging parentage, and

§ 303.11 [Amended]

- 8. Amend § 303.11 by:
a. In paragraph (b)(6)(ii), adding the words "as required by section 466(a)(5)(B) of the Act" immediately following the words "genetic test"; and
b. In paragraph (b)(6)(iv) by removing the word "biological" and adding in its place the word "putative".

§ 303.20 [Amended]

9. Amend § 303.20, in paragraph (c)(2), by removing the words "his or her" and in adding in their place the word "their".

§ 303.70 [Amended]

10. Amend § 303.70, in paragraph (a), by removing the word "fathers" and adding in its place the word "parents".

§ 303.101 [Amended]

11. Amend § 303.101, in paragraph (c)(3), by adding the words "made by judicial or administrative process" immediately following the word "determination".

PART 304—FEDERAL FINANCIAL PARTICIPATION

12. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

13. Amend part 304 by:

- a. Removing the word "paternity" wherever it appears, and adding in its place the word "parentage"; and
b. Removing the word "father" wherever it appears, and adding in its place the word "parent".

§ 304.12 [Amended]

14. Amend § 304.12, in paragraph (b)(4)(iv), by adding the words "in accordance with section 466(a)(5)(B) of the Act" immediately following the words "determining parentage".

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

15. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

16. Amend part 305 by removing the word "paternity" wherever it appears, and adding in its place the word "parentage".

§ 305.1 [Amended]

■ 17. Amend § 305.1, in paragraph (a), by removing the text “(mother, father, or

putative father)” and adding in its place the text “or putative parent”.
 ■ 18. Amend § 305.2 by revising the equations in paragraphs (a)(1)(i) and (ii) to read as follows:

§ 305.2 Performance measures.

- (a) * * *
- (1) * * *
- (i) * * *

Total # of Children in IV - D Caseload in the Fiscal Year or,
 at the option of the State, as of the end of the Fiscal Year who were
Born Out - of - Wedlock with Parentage Established or Acknowledged
 Total # of Children in IV - D Caseload as of the end of the preceding
 Fiscal Year who were Born Out - of - Wedlock

(ii) * * *

Total # of Minor Children who have been Born Out - of - Wedlock and for
 Whom Parentage has been Established or Acknowledged During the Fiscal Year
Total # of Children Born Out of Wedlock During the Preceding Fiscal Year

* * * * *

■ 19. Amend part heading for part 307 to read as follows:

PART 307—COMPUTERIZED SUPPORT SERVICES SYSTEMS

■ 20. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

■ 21. Amend part 307 by:

- a. Removing the word “paternity” wherever it appears, and adding in its place the word “parentage”; and
- b. Removing the word “father” wherever it appears, and adding in its place the word “parent”.

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

■ 22. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 654(15)(A) and 1302.

§ 308.2 [Amended]

■ 23. Amend § 308.2 by:

- a. In paragraphs (b), (b)(2)(iv), and (h)(1), removing the word “paternity” and adding in its place the word “parentage”; and
- b. In paragraph (h)(2), removing the word “father” and adding in its place the word “parent”.

* * * * *

PART 309—TRIBAL CHILD SUPPORT SERVICES (IV-D) PROGRAM

■ 25. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

■ 26. Revise the heading to part 309 to read as set forth above.

■ 27. Amend part 309 by:

- a. Removing the word “paternity” wherever it appears, and adding in its place the word “parentage”; and
- b. Removing the word “father” wherever it appears, and adding in its place the word “parent”

§ 309.145 [Amended]

■ 28. Amend § 309.145, in paragraph (b)(2), by adding the word “putative” immediately following the word “child’s”.

PART 310—COMPUTERIZED TRIBAL IV-D SYSTEMS AND OFFICE AUTOMATION

■ 29. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

§ 310.10 [Amended]

■ 30. Amend § 310.10 by:

- a. In paragraph (a):
 - i. Removing the word “paternity” and adding in its place the word “parentage”; and
 - ii. Removing the word “father” and adding in its place the word “parent”.

[FR Doc. 2023-20607 Filed 9-25-23; 8:45 am]

BILLING CODE 4184-41-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PSHSB: PS Docket No. 23-239; DA 23-852; FR ID 173197]

Cybersecurity Labeling for Internet of Things

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment periods; and correction.

SUMMARY: In this document, the Federal Communications Commission extends the comment and reply comment periods of the Notice of the Proposed Rulemaking (NPRM) in PS Docket No. 23-239 that was released on August 10, 2023. This document also corrects a Uniform Resource Locator (URL) link in the summary of the NPRM that was published in the **Federal Register** on August 25, 2023.

DATES: The deadline for filing comments is extended to October 6, 2023, and the deadline for filing reply comments is extended to November 10, 2023.

ADDRESSES: You may submit comments, identified by PS Docket No. 23-239 by any of the following methods:

- *Federal Communications Commission’s Website:* <https://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must

submit two additional copies for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

• *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: Erika Olsen, Acting Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-2868, or by email to erika.olsen@fcc.gov; or James Zigouris, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0697, or by email to james.zigouris@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's (Commission's) *Order* in PS Docket No. 23-239, adopted and released on September 15, 2023. For the full text of this document, visit FCC's website at <https://www.fcc.gov/document/comment-deadline-extended-cybersecurity-iot-labeling-nprm> or obtain access via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) 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).

In addition, in the **Federal Register** of August 25, 2023, (88 FR 58211, Document No. 2023-18357) in the **ADDRESSES** section on page 58211, in the second column, the URL in the first bullet is corrected to provide that comments may be filed as follows: *Federal Communications Commission's website: <https://apps.fcc.gov/ecfs/>*. Follow the instructions for submitting comments.

I. Synopsis

1. By this Order, the Public Safety and Homeland Security Bureau (PSHSB) grants in part Motions filed by (1) a "Joint Trade Association" and (2) a coalition of organizations including the Alliance for Automotive Innovation; Information Technology Industry Council (ITI); National Electrical Manufacturers Association (NEMA); Security Industry Association (SIA); and U.S. Chamber of Commerce (Coalition). The Motions seek an extension of time for filing comments and reply comments in response to the Notice of Proposed Rulemaking (NPRM) in PS Docket No. 23-239 that was released on August 10, 2023. See "Joint Trade Assn Request for Extension of Comment Deadline," PS Docket No. 23-239 (filed Aug. 31, 2023)(Joint Trade Association Motion). See also "090623 Coalition Letter FCC_Extension of Comments_Final," PS Docket No. 23-239 (filed Sept. 6, 2023)(Coalition Motion). For the reasons stated below, PSHSB finds that the extension requests within the Motions are warranted in-part and thus extends the comment and reply comment deadlines to October 6, 2023, and November 10, 2023, respectively.

2. On August 10, 2023, the Commission released the NPRM seeking comment on a proposed voluntary cybersecurity labeling program to provide consumers with clear information about the security of their Internet of Things (IoT) devices. 88 FR 58211 (Aug. 25, 2023). The NPRM seeks comment on who should oversee and manage the program, how to develop the security standards that could apply to different types of devices or products, how to demonstrate compliance with those security standards, and how to safeguard the cybersecurity label against unauthorized use, amongst other considerations. *Id.* The summary of the **Federal Register** publication provides that comments must be filed on or before September 25, 2023, and reply

comments must be filed on or before October 10, 2023. *Id.*

3. In the Joint Trade Association Motion, the Joint Trade Association requests a 30-day extension of the comment filing deadline, *i.e.*, October 24, 2023, and an extension of the reply comment deadline until 45 days after the comment filing deadline, *i.e.*, December 8, 2023. Similarly, in the Coalition Motion, the Coalition requests the comment filing deadline to be extended to October 24, 2023, and the reply comment deadline extended to December 8, 2023. The Joint Trade Association supports their request by stating there is good cause to extend the deadlines due to "(1) the highly technical and complex nature of the NPRM, and (2) the breadth of affected stakeholders," among other arguments. The Coalition supports their request by providing that the extensions are needed "to give the private sector sufficient time to assess the potential effects of the rulemaking and develop thoughtful comments for the Commission's consideration," among other arguments. No opposition to these Motions have been filed.

4. The Commission grants a 11-day extension of time to file comments and extension of time to file reply comments in this proceeding until 35 days after the comment date. As set forth in section 1.46 of the Commission's rules, 47 CFR 1.46, the Commission does not routinely grant extensions of time for filing comments. In this case, however, the extension requests are unopposed and will allow commenters sufficient time to file meaningful comments and reply comments and still provide a robust record on which the Commission can make a decision. Further, in view of the dozens of comments already received, extending the comment deadline beyond 11 days is unnecessary since a robust record will develop without needing a 30-day extension. Therefore, the Commission partially grants the unopposed Motions and extends the comment and reply comment deadlines to October 6, 2023, and November 10, 2023, respectively.

II. Ordering Clauses

5. Accordingly, *it is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 0.204, 0.392, and 1.46 of the Commission's rules, 47 CFR 0.204, 0.392, 1.46, the Motions for Extension of Time are *granted in part and otherwise denied*.

6. *It is further ordered* that the date to file comments and reply comments in response to the NPRM are *extended to*

October 6, 2023, and November 10, 2023, respectively.

Federal Communications Commission.

Maureen Bizhko,

Chief of Staff, Public Safety and Homeland Security Bureau.

[FR Doc. 2023-20921 Filed 9-25-23; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2023-0123; FF09E21000 FXES1111090FEDR 234]

Endangered and Threatened Wildlife and Plants; Species Status Assessment for the Northern California-Southern Oregon Distinct Population Segment of Fisher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are requesting new information to develop a species status assessment (SSA) for the Northern California-Southern Oregon (NCSO) distinct population segment (DPS) of fisher (*Pekania pennanti*). We plan to initiate a status review to determine whether the NCSO DPS of fisher is warranted for listing as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We request new information since 2019 regarding the NCSO DPS of fisher to inform our SSA. Per a court-approved settlement agreement, we will submit a new final listing determination to the **Federal Register** on or before August 21, 2025.

DATES: To ensure our full consideration and incorporation of new information, the Service requests submittal of new information by October 26, 2023. Information submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit new information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2023-0123, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document

Type heading, check the Proposed Rule box to locate this document. You may submit information by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R1-ES-2023-0123, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send new information only by the methods described above. We will post all new information received on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jim Thraikill, Field Supervisor, Roseburg Field Office, U.S. Fish and Wildlife Service, 777 NW Garden Valley Boulevard, Roseburg, Oregon 97471; email: jim_thraikill@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

In 2014, we proposed to list the West Coast DPS of fisher (encompassing all fishers throughout California, Oregon, and Washington) as threatened under the Act (79 FR 60419, October 7, 2014). However, we withdrew that proposed rule on April 18, 2016 (81 FR 22710). The withdrawal was subsequently challenged by the Center for Biological Diversity, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and the Sierra Forest Legacy. The District Court for the Northern District of California remanded the Service’s final determination for reconsideration and preparation of a new determination. We reopened the comment period on January 31, 2019 (84 FR 645), followed by publication of a revised proposed listing rule on November 7, 2019, based on new information and a reevaluation of the best available information, including reconfiguration of multiple DPSs within the area previously described as a single DPS called the West Coast DPS of fisher (84 FR 60278). The new delineation of DPSs included two original native populations (the NCSO and Southern Sierra Nevada

(SSN) DPSs) and three reintroduced populations (Northern Sierra Nevada, Southern Oregon Cascades, and the Olympic Peninsula). On May 15, 2020, we issued a final rule that added the SSN DPS as an endangered species to the List of Endangered and Threatened Wildlife, and we presented our finding that the NCSO DPS did not warrant listing under the Act (85 FR 29532).

On September 13, 2022, the Center for Biological Diversity, Environmental Protection Information Center, and Klamath-Siskiyou Wildlands Center filed a complaint in the United States District Court, Northern District of California, alleging that our determination on the NCSO DPS of fisher violated the Act. Per the stipulated settlement agreement dated June 7, 2023, which the court approved on June 8, 2023, the Service will submit to the Office of the Federal Register by August 21, 2025, a new 12-month finding as to whether listing the NCSO DPS of fisher as an endangered or threatened species is warranted under the Act. The terms of the settlement agreement include publication of this document “as soon as practicable” to announce a public comment period seeking new information to assist with reevaluation of the NCSO DPS of fisher and preparation of a new determination.

Additional information on Federal actions concerning the DPSs of fisher are outlined in the following **Federal Register** documents: a final rule of May 15, 2020 (85 FR 29532) and a proposed rule of October 7, 2014 (79 FR 60419).

Information Requested

Although an analysis and biological report were completed in 2016 for fishers throughout Washington, Oregon, and California (Service 2016a, entire), a scientific analysis using the SSA framework (which considers the principles of resiliency, redundancy, and representation; Service 2016b, entire) has not been developed for the NCSO DPS of fisher. New information from 2016 through 2019 was incorporated into our May 15, 2020, final rule (85 FR 29532). We will reevaluate the information already included in our files, along with any new information received, for an SSA. At this time, we are seeking new information that has become available after 2019 regarding the NCSO DPS of fisher. The range of this DPS for which we seek information is approximately southwest Oregon (west of Klamath Falls and south of approximately the Rogue River), the northern California coast as far south as Point Reyes National Seashore and inland through the Northern Coast Ranges of California,

the Klamath-Siskiyou Mountains, and continuing east through the Southern Cascades (excluding the Sacramento Valley). This geographic area includes the following counties for new information: Coos, Curry, Douglas, Josephine, Jackson, Klamath, and Lane Counties in southern Oregon; and Butte, Del Norte, Humboldt, Lake, Mendocino, Plumas, Shasta Siskiyou, Tehama, and Trinity Counties in northern California. We will consider information from all interested parties. We are particularly interested in information concerning:

(1) The historical and current status, range, distribution, and population size of this DPS, including information on denning sites. This includes information regarding population trend studies or occurrence data specific to this DPS, information regarding areas that have been surveyed compared to areas that have not been surveyed, and all positive and negative survey results to help us assess distribution and population trends.

(2) The biological or ecological requirements for fishers, as well as information on population connectivity between occurrences of fishers across the NCSO DPS range.

(3) Anticoagulant and neurotoxicant rodenticides, and other toxicants, including law enforcement information and trend data.

(4) The threat of wildfire, including studies or information pertaining to current and future trends in wildfire frequency and severity, as well as information pertaining to the response of fishers to post-fire landscapes in the NCSO DPS of fisher.

(5) Changes in low- to mid-elevation forests within the range of the NCSO DPS of fisher, including scope and extent of vegetation management on Federal and non-Federal lands.

(6) The projected and reasonably likely impacts of climate change on the NCSO DPS of fisher and its habitat, including impacts to reproductive habitat.

(7) Any effects associated with population size and isolation relevant to the NCSO DPS of fisher (e.g., low reproductive capacity, inbreeding depression, demographic and environmental stochasticity), and information on genetic diversity on the fisher.

(8) Any conservation efforts designed to benefit fishers and their habitat within the NCSO DPS that have been planned or implemented after 2019, including both current, ongoing, or planned activities and possible effects of these activities on the species or its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit information by one of the methods listed in **ADDRESSES**. We request that you send information only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Information and materials we receive will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R1-ES-2023-0123.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023-20826 Filed 9-25-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 230914-0218; RTID 0648-XR122]

Listing Endangered or Threatened Species; 12-Month Finding on a Petition To Revise the Critical Habitat Designation for the North Pacific Right Whale

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

ACTION: Notice of 12-month petition finding.

SUMMARY: We, NMFS, announce a 12-month determination on a petition to revise the critical habitat designation for the North Pacific right whale

(*Eubalaena japonica*) under the Endangered Species Act (ESA). Based on our review of the best available information on North Pacific right whale habitat use, we intend to revise the critical habitat. This finding describes how we intend to proceed, particularly regarding analysis and review of the relevant data and information that have become available since North Pacific right whale critical habitat was designated in 2008.

DATES: The finding announced in this document was made on September 26, 2023.

ADDRESSES: Copies of the petition, 90-day finding, and list of references for this 12-month finding are available online at: <https://www.regulations.gov> or from the NMFS website (see <https://www.fisheries.noaa.gov/action/critical-habitat-north-pacific-right-whales>).

FOR FURTHER INFORMATION CONTACT: Jenna Malek, NMFS Alaska Region, jenna.malek@noaa.gov or (907) 271-1332.

SUPPLEMENTARY INFORMATION:

Background

In April 2008, we issued a final rule designating approximately 95,325 square kilometers (36,800 square miles) of critical habitat for North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea (73 FR 19000, April 8, 2008). On March 10, 2022, NMFS received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. The requested revision triggers a process for agency response as outlined in the ESA (16 U.S.C. 1531 *et seq.*) and explained below.

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)). Joint NMFS-U.S. Fish and Wildlife Service regulations for designating critical habitat at 50 CFR 424.12(b)(1)(ii) state that the agencies will identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available

scientific data. A physical and biological feature may be a single habitat characteristic or a more complex combination of characteristics, may include characteristics that support ephemeral or dynamic habitat conditions, and may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02). “Special management considerations or protection” means methods or procedures useful in protecting physical or biological features essential to the conservation of the species (50 CFR 424.02).

Section 4(b)(2) of the ESA requires the Secretary, through NMFS, to designate, and make revisions to, critical habitat for listed species based on 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. We may exclude any particular area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Section 4(a)(3)(A)(ii) of the ESA provides that NMFS may, from time-to-time, revise critical habitat as appropriate. Section 4(b)(3)(D)(i) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to revise a critical habitat designation, NMFS make a finding on whether that petition presents substantial scientific information indicating that the petitioned revision may be warranted, and to promptly publish such finding in the **Federal Register**. On July 12, 2022 (87 FR 41271), NMFS published a 90-day finding that the petition, viewed in the context of the information readily available in our files, presented substantial information indicating that revising North Pacific right whale critical habitat may be warranted and initiated a review of the current critical habitat designation. To ensure that our review of critical habitat is comprehensive and based on the best available scientific and commercial information, we requested scientific and commercial information concerning the petitioned action.

Within 12 months of receiving a petition that presents substantial information indicating that a revision of critical habitat may be warranted, NMFS is required to determine how we intend

to proceed with the requested revision and promptly publish notice of our intention in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(ii)). The statute does not further specify any options or requirements regarding this determination, nor does it establish a timeline for issuance of any proposed rule to revise critical habitat in response to a petition. This notice describes the currently designated critical habitat and the petition for revision, summarizes comments on the 90-day finding, and describes how we intend to proceed with the requested revisions to critical habitat for the North Pacific right whale.

Current Critical Habitat Designation

Right whales in the North Pacific and North Atlantic were considered the same species, known as Northern right whales, until the late-2000s. North Pacific and North Atlantic right whales were listed as two unique species under the ESA in 2008 (73 FR 12024, March 6, 2008) based on genetic analysis conducted in the early-mid 2000s (Rosenbaum *et al.* 2000, Gaines *et al.* 2005, Kaliszewska *et al.* 2005). The critical habitat that had been originally designated for the North Pacific population in 2006 was finalized for the newly distinguished species in 2008 (73 FR 19000, April 8, 2008). The final critical habitat designation identified two areas within the area known to be occupied by the whales and which contained essential features. The first area consists of approximately 3,050 square kilometers (1,175 square miles) south of Kodiak Island. The second area is approximately 91,850 square kilometers (35,460 square miles) in the southeastern Bering Sea, just north of the Alaska Peninsula and the eastern Aleutian Islands.

The critical habitat designation for North Pacific right whales uses the term primary constituent element (PCE) (50 CFR 226.215; 73 FR 19000, April 8, 2008). In 2016, as part of revisions to critical habitat implementing regulations in 50 CFR 424, the term “PCE” was removed and the regulations maintained the statutory term, “physical or biological features” (PBFs) (81 FR 7414, February 11, 2016). The shift in terminology did not change the approach used by NMFS in determining what areas qualify as critical habitat under the ESA. While little was known about the PBFs that might be essential for North Pacific right whale conservation at the time critical habitat was designated, based on known natural history of the whale and its habitat needs, the PBFs necessary for conservation were identified as concentrations of the copepod species

Calanus marshallae, *Neocalanus cristatus*, and *N. plumchrus*, and the euphausiid species *Thysanoessa raschii*, in areas where right whales are known or thought to feed. In addition to the occurrence of large zooplankton, NMFS concluded that it is likely that certain physical forcing mechanisms are present in these areas and act to concentrate the identified prey species in densities that allow for efficient foraging by right whales (73 FR 19000, April 8, 2008).

In the final critical habitat designation, NMFS determined that the economic benefits of excluding any particular areas within the overall area designated as critical habitat did not outweigh the benefits of designation, and therefore did not exclude any areas based on economic impacts. The final critical habitat designation considered the impacts to national security and did not find any national security interests or other relevant impacts that warranted the exclusion of any particular areas.

Petition To Revise Critical Habitat

On March 10, 2022, NMFS received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. The petition lists recent sources of information on North Pacific right whale presence and habitat use in and around currently designated critical habitat in the northern Gulf of Alaska and the southeast Bering Sea. The petitioners proposed that the critical habitat be revised to connect the two existing critical habitat areas by extending the Bering Sea area boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Kodiak Island critical habitat area. The petitioners state that this revision encompasses “a key migratory point” and provides “connectivity between two essential foraging grounds” (Center for Biological Diversity and Save the North Pacific Right Whale, 2022, p. ii).

The standard for determining whether a petition includes substantial information is whether the information is credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(i)(1)(i)). Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specified in 50 CFR 424.14(c) and (e), NMFS found that the petitioners had

met this standard. NMFS therefore published a 90-day finding stating the petitioned action may be warranted and requesting information to inform our review of the current critical habitat designation (87 FR 41271, July 12, 2022).

Summary of Public Comments

The public comment period announced in the 90-day finding closed on September 12, 2022, and all of the comments received can be viewed at <https://www.regulations.gov> by searching for docket number “NOAA–NMFS–2022–0050.” NMFS received 11 comments from a variety of individuals and organizations, including researchers, concerned citizens, state and federal agencies, and nonprofit organizations. Of these, eight supported a revision of North Pacific right whale critical habitat. Three of the comments expressed concerns about the lack of data supporting the requested revision and the need to consider the economic impacts of such an action. Some commenters offered additional information, including information on recently funded projects on North Pacific right whales, sightings of North Pacific right whales since 1979, and reports describing organizational sustainability policies aimed at protecting marine mammals. The information included in the comments was taken into consideration during our review of the petitioned action and will be utilized in the process outlined in the “How We Intend to Proceed” section of this document. A summary of the substantive comments and information submitted is below. Where appropriate, we have combined similar comments.

Quantity and Quality of Currently Available Information

Comment 1: One commenter expressed that the petition overstates the quantity and quality of the information that is available with respect to the essential habitat needs of North Pacific right whales. Though additional research conducted since the original designation of critical habitat in 2008 suggests certain areas within the petitioned revision may be important for North Pacific right whales (e.g., Unimak Pass), the commenter stated that the data collected are still quite limited for making many of the assertions in the petition. For example, the commenter referred to the lack of data supporting connecting the currently designated critical habitat areas in the Bering Sea and Gulf of Alaska. The commenter urged that any revisions NMFS makes to critical habitat be based on the best available, albeit limited, data.

Restrictions to Marine Shipping and Commercial Fishing, and Potential Economic Impacts

Comment 2: Several commenters cautioned that any revision to critical habitat for North Pacific right whales needs to balance potential economic impacts with benefits to the species. Multiple comments addressed the implications in the petition that a revision to critical habitat for North Pacific right whales would allow NMFS to implement regulatory measures and protections that could affect commercial shipping and fishing activities, leading to economic impacts. Commenters stated that many communities in rural Alaska rely upon arrival of goods through commercial shipping and that changes to shipping regulations, such as reduced speeds through major transportation corridors (e.g., Unimak Pass), would cause financial and logistical difficulties in maintaining timely and efficient services to Alaskan ports and residents, while having little benefit for North Pacific right whales.

Commenters pointed out that fishing is an economic driver for many coastal Alaskan communities. One commenter described how the designation of critical habitat for Steller sea lions (58 FR 45269, August 27, 1993), and resulting fisheries closures, severely impacted commercial fisheries and the economies of communities that rely on this industry. The commenter expressed concern about similar impacts occurring as the result of a revision to North Pacific right whale critical habitat. It was also pointed out that there are multiple commercial fisheries of high value in the petitioned area that could suffer from substantial economic loss should closures or restrictions occur as a result of changes to critical habitat.

Scope of Regulatory Requirements

Comment 3: One commenter pointed out that the petition cites 50 CFR 424.12(d) as support for adding all of the habitat between the two currently designated areas into a revision of critical habitat, but noted that these areas are over 350 mi (563 km) apart and therefore do not fit the regulatory criteria of being “in proximity to one another.”

The same commenter also referenced NMFS’ criteria for designating critical habitat under 50 CFR 424.12, asserting that the petitioned revision to North Pacific right whale critical habitat would be different from other NMFS designations due to its very large size. Additionally, the commenter stated that the petition provides no evidence that the essential PBFs of North Pacific right

whale critical habitat are present in large portions of the petition’s proposed area, and that NMFS must adhere to the requirements of the ESA by demonstrating that these features are present in any areas included in a critical habitat revision.

Adequacy of Existing Regulatory Mechanisms

Comment 4: Multiple commenters stated that the current regulatory mechanisms in place are inadequate to mitigate death and serious injury of North Pacific right whales from threats such as vessel strikes and entanglement in fishing gear, which are known to be the two biggest anthropogenic threats to North Atlantic right whales. Revision of critical habitat for North Pacific right whales could allow NMFS to require reasonable and prudent measures for avoiding threats from vessel strikes, entanglement in fishing gear, oil and chemical spills, and exploratory activities associated with the oil and gas industry.

Comment 5: One commenter conducted their own analysis of vessel traffic in the petition’s proposed area and currently designated critical habitat. That comment contained a figure showing Unimak Pass as a bottleneck for vessel traffic, which could overlap with whales migrating through this area. Though the commenter acknowledged that NMFS could implement conservation measures and protections such as restricting ship speeds, they also acknowledged there would be challenges to enacting regulations and that proper analysis (i.e., economic, national security impacts) must be conducted and notice given to potentially affected parties.

New Information on North Pacific Right Whale Habitat and Habitat Use

New information on habitat use has become available since critical habitat was designated for North Pacific right whales in 2008. NMFS has been collecting passive acoustic data in the Bering Sea, as well as in parts of the northern Gulf of Alaska, that has advanced the scientific understanding of North Pacific right whale habitat use, including in currently designated critical habitat. Sightings have been reported through dedicated research surveys (2007–2010), opportunistic research cruises, and opportunistic reports from fishers and local community members. While there have been sightings of North Pacific right whales in the currently designated critical habitat areas since 2008, numerous sightings have occurred outside of the critical habitat in both the

Gulf of Alaska and the Bering Sea. For example, between 2010 and 2020, there were three sightings in the Gulf of Alaska in Shelikof Strait and along the Alaska Peninsula (J. Grance, NOAA Alaska Fisheries Science Center, personal communication, April 2023), as well as a sighting of two right whales feeding just north of Unimak Pass in February 2022 (NMFS 2022). Additionally, acoustic monitoring with sonobuoys (expendable sonar buoys) indicated that right whales were present outside the boundaries of critical habitat near Kodiak Island in the Gulf of Alaska in 2021, and off St. Lawrence Island in the northern Bering Sea in 2018 (Wright et al. 2019). These sightings and acoustic detections suggest that North Pacific right whales are utilizing habitat outside of the currently designated critical habitat areas. Given that the 2008 designation relied on right whale sightings as a proxy for the presence of the essential features for determining the critical habitat boundaries (73 FR 19000, April 8, 2008), the areas where North Pacific right whales have been sighted or detected in the last 15 years are likely candidates for critical habitat designation, and will be considered further in conjunction with other available scientific information.

The North Pacific has undergone substantial oceanographic shifts since 2008, including marine heatwaves in 2013–2016, 2017–2018, and 2019–2021, that have affected the distribution and abundance of zooplankton, multiple species of which are the essential feature NMFS identified for the existing North Pacific right whale critical habitat. There has also been a trend toward decreasing sea ice extent in the Bering Sea, with 2018 having the lowest sea ice extent on record (Stabeno and Bell 2019). As discussed below, the extent of sea ice and resulting ocean temperature conditions are closely linked to the abundance and distribution of zooplankton species that North Pacific right whales rely on for prey. Using the best available information, all of these factors need to be considered, along with the potential impacts of a revised critical habitat designation, to assess any revision NMFS will propose for North Pacific right whale critical habitat.

How We Intend To Proceed

Given the acoustic detections and sightings supporting North Pacific right whales' use of areas outside of the currently designated critical habitat and the recent shifts in the essential features of critical habitat (*i.e.*, certain zooplankton species), we intend to revise critical habitat. We will proceed

by analyzing the available acoustic detections, sightings, and relevant habitat data with the expectation of developing a proposed rule to revise critical habitat for North Pacific right whales. Below, we identify key steps we will take to help ensure that, in developing a proposed rule, we rely on the best scientific and commercial data available and meet the statutory requirements for designating or revising critical habitat.

Step 1: Analyze Acoustic Data Collected in Areas Recommended by the Petitioners and Currently Designated as Critical Habitat

NMFS has been using year-round passive acoustic moorings to collect data in the Bering Sea since 2007, and in the western Gulf of Alaska starting in 2019. Acoustic data relevant to the revision that can be processed and summarized in a timely manner will be made available in a report. NMFS anticipates that this report will be one of the best sources of information to aid in the decision on how to revise critical habitat (Baumgartner et al. 2013, Wright et al. 2018, 2019).

Step 2: Assess Spatial and Temporal Patterns of Prey Species (i.e., Copepods and Euphausiids) in Conjunction With Oceanographic Information

The PBFs for currently designated North Pacific right whale critical habitat include prey species (*i.e.*, copepods and euphausiids) in areas where right whales are known or believed to forage. In the original designation of critical habitat, evidence of right whales feeding for prolonged periods in a specific area in spring and summer was used as a proxy for the existence of densities of prey suitable for foraging whales.

Oceanographic conditions have shifted since the initial designation of critical habitat, with changes occurring in sea ice distribution and timing, impacting the availability of zooplankton species that make up the PBFs of North Pacific right whale habitat (*e.g.*, Kimmel et al. 2018). As North Pacific right whales are dependent on certain zooplankton as prey, understanding how copepods, specifically *C. marshallae*, *Neocalanus spp.*, and euphausiids (krill) have and are responding to environmental cues in the Bering Sea and northern Gulf of Alaska is central to assessing how to revise the critical habitat. We will utilize available data on spatial and temporal zooplankton trends in our analysis outlined in Step 4 below.

Step 3: Analyze Sighting Data for Evidence of Feeding Behavior

As described in the previous section, we used sightings of feeding North Pacific right whales as a proxy for suitable abundances of prey in the 2008 critical habitat designation. There have been some subsequent sightings for which it can be confirmed by photo or video, or through visual confirmation of the reporting party, that North Pacific right whales were feeding. We will analyze available sighting reports to better understand where right whale feeding activity has been documented since critical habitat was designated.

Step 4: Synthesize Available Acoustics Data, Trends in Zooplankton, and Sightings Data To Identify Areas That Meet the Definition of Critical Habitat

Available acoustic data, relevant information on zooplankton and oceanographic features, and sighting records providing evidence of feeding will be evaluated by NMFS together with any other best available scientific data. This synthesis will help identify where zooplankton prey species and North Pacific right whale foraging are likely to occur and provide support for the revision of critical habitat, as well as any revisions to the PBFs that may be appropriate. These results will then be used to identify areas that meet the definition of critical habitat and will be included in the proposed rule described in Step 6.

Step 5: Section 4(b)(2) Impacts Analysis

Section 4(b)(2) of the ESA requires us to use the best scientific data available in designating critical habitat. It also requires that we consider the economic impact, impact on national security, and any other relevant impact of designating any particular area as critical habitat. Therefore, we will analyze and consider potential economic, national security, and any other relevant impacts prior to proposing any revisions to the designated critical habitat. This analysis will inform our decision whether to propose the exclusion of any areas that fit the definition of critical habitat.

Step 6: Develop Proposed Rule for Public Comment

Steps 1–5 will inform our determination of what areas qualify as critical habitat for North Pacific right whales and thus what revisions to propose to the currently designated areas. The underlying science will be subject to peer review according to the Office of Management and Budget Bulletin for Peer Review, implemented under the Information Quality Act (Pub. L. 106–554). We will publish a proposed

rule in the **Federal Register** and seek public comment on all aspects of the proposed revisions to North Pacific right whale critical habitat prior to issuing any final revision.

References Cited

The complete citations for the references used in this document are available (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 14, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023-20794 Filed 9-25-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230921-0230]

RIN 0648-BM51

Fisheries of the Northeastern United States; Framework Adjustments to Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Northeast Skate Complex, and Atlantic Herring Fisheries; Southern New England Habitat Area of Particular Concern Designation

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to implement the New England Fishery Management Council's Framework Adjustment that would identify a Habitat Area of Particular Concern offshore of Southern New England. This rule would adjust the following fishery management plans: Northeast Multispecies; Atlantic Sea Scallop; Monkfish; Northeast Skate Complex; and Atlantic Herring. The proposed Habitat Area of Particular Concern would be within and around wind lease areas in Southern New England, including Cox Ledge, to focus conservation recommendations on cod spawning habitats and complex benthic habitats that are known to serve important habitat functions to Council-managed fishery species.

DATES: Comments must be received by October 26, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0101, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov>, and enter "NOAA-NMFS-2023-0101" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through <https://www.regulations.gov>, contact Sabrina Pereira (see **FOR FURTHER INFORMATION CONTACT**).

Copies of the Southern New England Habitat Area of Particular Concern Framework and other supporting documents for this action are available upon request from Dr. Catherine O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: <https://d23h0vhsm26o6d.cloudfront.net/220822-SNE-HAPC-Framework.pdf>.

FOR FURTHER INFORMATION CONTACT: Sabrina Pereira, Marine Habitat Resource Specialist, email: Sabrina.Pereira@noaa.gov; phone: (978) 675-2178.

SUPPLEMENTARY INFORMATION:

Background

This action proposes the identification of a Habitat Area of Particular Concern (HAPC) in and around offshore wind lease areas in Southern New England (SNE), including Cox Ledge. The New England Fishery Management Council (Council) recommended the HAPC designation due to concerns about the potential adverse impact on essential fish habitat (EFH) from the development of offshore wind energy projects. The proposed designation would focus on important cod spawning grounds and areas of

complex habitat that are known to serve important habitat functions to federally managed species within and adjacent to offshore wind development areas. Complex benthic habitat provides shelter for certain species during their early life history, refuge from predators, and feeding opportunities.

HAPCs highlight specific types or areas of habitat within EFH that may be particularly vulnerable to human impacts. HAPC designations should be based on one or more of the following criteria: (1) The importance of the ecological function provided by the habitat, including both the historical and current ecological function; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). As detailed below, if adopted, the HAPC designated by this action is based on all four of these attributes.

An area's status as an HAPC should lead to special attention regarding potential adverse effects on habitats within areas of particular concern from various activities (*e.g.*, fishing, offshore wind energy). An HAPC designation does not provide any specific habitat management measures, such as restrictions on gear types, harvest levels, fishing locations, offshore wind survey and construction activities, or other activities with adverse effects on habitat in the area.

Proposed Habitat Area of Concern Designation

This action proposes the Council's preferred alternative for the Southern New England HAPC designation, which would identify as an HAPC certain habitats in the area overlapping offshore wind lease sites in southern New England. The spatial extent of the HAPC is based on the footprint of the lease areas, buffered by approximately 10 km on all sides, combined with the footprint of the Cox Ledge spawning ground, which is based on recent evidence of cod spawning activity. Maps for the proposed HAPC designation are provided in the Council's document (see **ADDRESSES**).

The HAPC area would be designated EFH for the following species that occupy complex habitats within the footprint: Atlantic cod egg, larvae, juveniles, and adults; Atlantic herring eggs; Atlantic sea scallop eggs, juveniles, and adults; little skate juveniles and adults; monkfish juveniles and adults; ocean pout eggs, juveniles, and adults; red hake juveniles and

adults; winter flounder eggs, juveniles, and adults; and winter skate juveniles and adults.

Complex habitats are defined as hard bottom substrates, defined by the Coastal and Marine Ecological Classification Standard (CMECS) as Substrate Class Rock Substrate, and by the four Substrate Groups: Gravels; gravel mixes; gravelly; and shell. This CMECS modifier was developed by NMFS for habitat mapping recommendations, including both large-grained and small-grained hard habitats. Hard bottom substrates with epifauna or macroalgae cover are also defined as complex habitat.

Evidence of cod spawning activity at a site could be based on: Capture of ripe, running, or spent cod during fishery independent surveys; detections of acoustically tagged fish between November and April; detections of cod grunts in acoustic surveys; capture of cod larvae in ichthyoplankton surveys; and/or evidence of eggs in ichthyoplankton surveys (not species specific but indicative of spawning success).

Designation of this HAPC would place a focus on areas that are experiencing current development stresses. The designated area overlaps areas leased for renewable energy development. Some projects are already permitted, others are currently undergoing environmental review, and others are still within the site assessment phase. The proposed HAPC's spatial footprint closely aligns with the wind lease areas because these areas face differential levels of foreseeable on-going development-related threats compared to surrounding areas. The HAPC boundary includes a buffer of approximately 10 km beyond the leased areas, recognizing that some types of development activities can generate impacts at scales of tens of kilometers beyond the site of construction and operations. For example, acoustic impacts may extend kilometers from a pile driving site. Greater scrutiny would be given to activities within the HAPC designated area when data indicate that cod spawning and/or complex habitats occur within or near a project or activity footprint. An HAPC focused on these conservation objectives is consistent with the Council's Offshore Wind Energy Policy as well as prior offshore

wind project specific comments provided by the Council in recent years.

The cod spawning habitats within the proposed HAPC meet all four of the HAPC criteria identified above, and the complex bottom habitats meet all criteria except for "rarity." The proposed HAPC area is important for current ecological function because it includes spawning sites, juvenile settlement areas, and feeding areas for species with EFH in the area, including various cod species. Georges Bank Atlantic cod, which is in poor stock condition (*i.e.*, overfished and experiencing overfishing), spawns in the area, and SNE cod represent a genetically distinct sub-population. The subpopulation also contributes to the Georges Bank (GB) cod stock, thus, any impacts to SNE cod could also detrimentally impact the GB stock. With regard to sensitivity to anthropogenic stresses, cod spawning activities are particularly sensitive to adverse impacts from fishing and non-fishing activities, namely from offshore wind development (construction, operations, and maintenance), and complex habitats are susceptible to conversion and sedimentation. The proposed HAPC appears to meet the "extent of current or future development stresses" criterion because this area is facing an existing on-going development-related threat from offshore wind. Finally, regarding "rarity," cod spawning habitats (based on acoustic environment, seafloor and water column setting) are rare with only one known grouping of active sites in Southern New England. Relative to complex habitat, these features are not considered rare (*i.e.*, spatially or temporally very limited).

The proposed HAPC is a non-regulatory designation. It is important to note that HAPC designations are intended to provide for increased attention when habitat protection measures are considered. HAPCs that are vulnerable to the potential impacts from anthropogenic activities warrant special attention when determining appropriate management measures to minimize, compensate, or mitigate those impacts.

Classification

Pursuant to section 305(d) of the Magnuson Stevens Fishery Conservation

and Management Act (Magnuson-Stevens Act), this action is necessary to implement adjustments to fishery management plans as identified below and as adopted and proposed by the New England Fishery Management Council. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies Fishery Management Plan (FMP); Atlantic Sea Scallop FMP; Monkfish FMP; Northeast Skate Complex FMP; and Atlantic Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment. In a previous action taken pursuant to section 304(b), the Council designed the FMP to specify the process for NMFS to take this action pursuant to MSA section 305(d), and this action puts in place administrative designations that are not implementing any associated management measures.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, as amended by Executive Order 14094.

This proposed rule would not have a significant economic impact on a substantial number of small businesses pursuant to the Regulatory Flexibility Act (RFA). The HAPC designation does not impose any burdens on small businesses as there are no reporting requirements resulting from this action, and there are no operational requirements or regulations (*i.e.*, fishing operations or effort, prices/revenues, or fishery behavior) resulting from this action.

This action, if adopted, would not establish any new reporting or record-keeping requirements.

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

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

Dated: September 21, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023-20938 Filed 9-25-23; 8:45 am]

BILLING CODE 3510-22-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0024]

Notice of Decision To Authorize the Importation of Fresh Baby Kiwi Fruit From France Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh baby kiwi fruit from France into the continental United States. Based on findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh baby kiwi fruit from France.

DATES: Imports may be authorized beginning September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, PPQ, APHIS, USDA, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2114; marc.phillips@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L–Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being

introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on findings of a PRA, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS will issue a subsequent **Federal Register** notice announcing whether or not we will authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

In accordance with that process, we published a notice¹ in the **Federal Register** on June 22, 2022 (87 FR 37301–37302, Docket No. APHIS–2022–0024) in which we announced the availability, for review and comment, of a PRA that evaluated the risks associated with the importation of fresh baby kiwi fruit (*Actinidia arguta*) from France into the continental United States. The PRA consisted of a risk assessment identifying pests of quarantine significance that could follow the pathway of the importation of fresh baby kiwi fruit into the continental United States from France and a risk management document (RMD) identifying phytosanitary measures to be applied to that commodity to mitigate the pest risk.

We solicited comments on the notice for 60 days, ending on August 22, 2022. We received no comments by that date.

Therefore, in accordance with § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation into the continental United States of fresh baby kiwi fruit from France subject to the phytosanitary

measures identified in the RMD that accompanied the initial notice.

These conditions will be listed in the USDA, APHIS Agricultural Commodity Import Requirements (ACIR) database (<https://acir.aphis.usda.gov/s/>).² In addition to these specific measures, each shipment must be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS’ Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of September 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–20873 Filed 9–25–23; 8:45 am]

BILLING CODE 3410–34–P

¹ To view the notice and the supporting documents, go to www.regulations.gov. Enter APHIS–2022–0024 in the Search field.

² On September 30, 2022, the APHIS Fruits and Vegetables Import Requirements (FAVIR) database was replaced by the ACIR database.

DEPARTMENT OF AGRICULTURE**Forest Service****Sanders Resource Advisory Committee**

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meetings.

SUMMARY: The Sanders Resource Advisory Committee (RAC) will hold two public meetings according to the details shown below. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Lolo National Forest within Sanders County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on October 5, 2023, 5:30 p.m.–7:30 p.m., mountain daylight time (MDT) and on October 11, 2023, 5:30 p.m.–7:30 p.m. MDT.

Written and Oral Comments: Anyone wishing to provide in-person and virtual oral comments must pre-register by 4:30 p.m. MDT on October 4, 2023. Written public comments will be accepted by 4:30 p.m. MDT on October 4, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meetings.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: These meetings will be held in-person and virtually at the Thompson Falls Courthouse located at 1111 West Main Street, Thompson Falls, MT 59873. The public may also join virtually via teleconference and/or videoconference meeting at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGFiNDUyNzgtYjBmMy00NmZiLWl4OTMtNDIjZDM4NDQ0NWl5%40thread.v2/0?context=%7b%22id%22%3a%22ed5b36e7-01ee-4ebc-867e-e03cfa0d4697%22%2c%22oid%22%3a%22612624ea-0e98-45de-a1ac-eb3270c472dd%22%7d. RAC information and meeting details can be

found at the following website: https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467 or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to heather.berman@usda.gov or via mail (*i.e.*, postmarked) to Heather Berman, P.O. Box 429, Plains, MT 59859. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 4:30 p.m. MDT, October 4, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to heather.berman@usda.gov or via mail (*i.e.*, postmarked) to Heather Berman, P.O. Box 429, Plains, MT 59859.

FOR FURTHER INFORMATION CONTACT: Abigail Lane, Designated Federal Officer (DFO), by phone at 406–361–1186 or email at abigail.lane@usda.gov or Heather Berman, RAC Coordinator, at 406–210–5287 or email at heather.berman@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to:

1. Hear from Title II project proponents and discuss Title II project proposals; and
2. Approve meeting minutes.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda for that particular meeting. Written comments may be submitted to the Forest Service up to seven days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meetings. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed

under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 20, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–20773 Filed 9–25–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via ZoomGov at 2:00 p.m. Pacific on Friday, November 17, 2023. The purpose of the meeting is to review the Committee's report on teacher shortages and equity in education.

DATES: Friday, November 17, 2023, from 2:00 p.m.–3:30 p.m. PT.

Zoom Link To Join (Audio/Visual): <https://www.zoomgov.com/meeting/>

register/vJlIsf-2hqj8rEvo7GA
qt1Go9b0egHK10maQ.

Telephone (Audio Only): Dial (833)
435-1820 USA Toll Free; Meeting ID:
161 849 4418

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at afortes@usccr.gov or (202) 519-2938.

SUPPLEMENTARY INFORMATION:

Committee meetings are 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 Angelica Trevino, Support Specialist, at atrevino@usccr.gov at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Ana Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>.

Please click on the “Committee Meetings” tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission’s website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at (312) 353-8311.

Agenda

- I. Welcome and Roll Call
- II. Review Committee’s Report

- III. Public Comment
- IV. Adjournment

Dated: September 20, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-20820 Filed 9-25-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via ZoomGov at 2:00 p.m. Pacific on Thursday, November 2, 2023. The purpose of the meeting is to review the Committee’s report on teacher shortages and equity in education.

DATES: Thursday, November 2, 2023, from 2:00 p.m.–3:30 p.m. PT.

Zoom Link to Join (Audio/Visual):
<https://www.zoomgov.com/meeting/register/vJlSdeisrjJHAgwracoPpKJlKIUN4eWvw>.

Telephone (Audio Only): Dial (833)
435-1820 USA Toll Free; Meeting ID:
161 214 0996.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at afortes@usccr.gov or (202) 519-2938.

SUPPLEMENTARY INFORMATION:

Committee meetings are 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 Angelica Trevino, Support Specialist, at atrevino@usccr.gov at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Ana Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>.

Please click on the “Committee Meetings” tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission’s website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at (312) 353-8311.

Agenda

- I. Welcome and Roll Call
- II. Review Committee’s Report
- III. Public Comment
- IV. Adjournment

Dated: September 20, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-20822 Filed 9-25-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Delaware Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 (FACA), that the Delaware Advisory Committee to the Commission will hold virtual meetings on the first Wednesday of each month at 1:00 p.m. ET: October 4, November 1, December 6, 2023; and January 3, February 7, March 6, 2024. The purpose of the meetings is to continue discussions on reviewing and voting to approve the Committee’s

report on COVID-19 health disparities and people of color in Delaware.

DATES: 1st Wednesday of the month at 1:00 p.m. ET: 10/4/23, 11/1/23, 12/6/23, 1/3/24, 2/7/24 and 3/6/24.

Meeting Link (Audio/Visual): <https://tinyurl.com/2sstbf6v>; password: USCCR-DE.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 160 832 3278#.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at ero@usccr.gov or by phone at 1-202-539-8468.

SUPPLEMENTARY INFORMATION: Members of the public may attend these Committee meetings 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 brief statements as time allows. Per the Federal Advisory Committee Act, public minutes of the meetings will include a list of persons who attend the meetings. 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 Evelyn Bohor, ebohor@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 each meeting. Written comments may be emailed to the attention of Ivy Davis at ero@usccr.gov. Persons who desire additional information may contact Evelyn Bohor at ebohor@usccr.gov.

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, Delaware 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 Evelyn Bohor at ebohor@usccr.gov.

Agenda

I. Welcome and Roll Call

II. Project Planning, Report Discussion, and Potential Report Vote
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: September 20, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-20823 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Workforce System Metrics

AGENCY: Economic Development Administration, Department of 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 November 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments via email to Patrick Bourke, Good Jobs Program Lead, Economic Development Administration, at PBourke@eda.gov or PRAComments@doc.gov. 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 Patrick Bourke, Good Jobs Program Lead, Economic Development Administration, at (202) 579-0218 or PBourke@eda.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by

promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be driven locally, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at www.eda.gov.

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a revision to the information collected from recipients of awards under the EDA American Rescue Plan Act (ARPA) Good Jobs Challenge. This is aligned with ensuring that Federal workforce investments are evidence-based and data-driven, and accountable to participants and the public. The original data collection instrument was filed under OMB 0610-0109. This request is to revise an existing question and add a new question to the current data collection instrument. The revised question will ask grantees to report participants' training status instead of asking if they have completed training, this will provide further disaggregated data. The new question will be asked of training providers to provide the total number of participants that completed the training program and have no plans to re-enroll in further training.

II. Method of Collection

Data will be collected electronically.

III. Data

OMB Control Number: 0610-0109.

Form Number(s): None.

Type of Review: Revision.

Affected Public: Recipients of ARPA Good Jobs Challenge awards, which may

include a(n): District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a state or local government engaged in economic or infrastructure development activities or a consortium of political subdivisions; Institution of Higher Education or a consortium of institutions of higher education; or Public or private non-profit organization

or association, including labor unions, acting in cooperation with officials of a political subdivision of a State. Additionally, training providers and participants in regional workforce training systems will be affected.

Estimated Number of Respondents: System Lead Entities: 32 respondents, responding semiannually; Training Providers: 200 respondents, responding quarterly; and Participants: 10,000 respondents, responding once. As the

Good Jobs Challenge is a new program, EDA anticipates that these estimates will continue to be further refined based on data determined post-award.

Estimated Time per Response: System Lead Entity: 2 hours; Training Providers: 45 minutes per provider; Participants: 5 minutes.

Estimated Total Annual Burden Hours: 2,728 hours.

Type of respondent (annual)	Number of respondents	Hours per response	Number of responses per year	Total estimated time (hours)
System Lead Entities	32	2	2 (Semiannual)	128
Training Providers	* 400	45 minutes per training provider	4 (Quarterly)	1,200
Participants	* 4,200	5 minutes per participant	4 (Quarterly)	1,400
Total	4,632	.....	.....	2,728

* The number of responses should be considered estimates given the Good Jobs Challenge intended impact. Given investment alignment and program priorities are founded on equity, there could be lower number of stakeholders participating given their efforts to work with individuals most underserved.

Estimated Total Annual Cost to Public: \$161,007 (cost assumes application of U.S. Bureau of Labor Statistics third quarter 2021 mean hourly employer costs for employee compensation for professional and related occupations of \$59.02).

Respondent's Obligation: Mandatory for System Lead Entities and Training Providers.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq).

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 Chief Information Officer, Commerce Department.

[FR Doc. 2023–20232 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–35–2023]

Foreign-Trade Zone (FTZ) 207; Authorization of Production Activity; LEGO Manufacturing Richmond, Inc. (LEGO® Bricks and Toy Sets), Chester and Colonial Heights, Virginia

On May 24, 2023, the LEGO Group submitted a notification of proposed production activity to the FTZ Board on behalf of LEGO Manufacturing Richmond, Inc., within FTZ 207, for its facilities in Chester and Colonial Heights, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 35832, June 1, 2023). On September 21, 2023, the applicant was notified of the FTZ Board's decision that no further review

of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 21, 2023.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2023–20885 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 2023, the U.S. Department of Commerce (Commerce) published the initiation and preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on large power transformers (LPTs) from the Republic of Korea (Korea). For these final results, Commerce continues to find that HD Hyundai Electric Co., Ltd. (HDHE) is the successor-in-interest to Hyundai Electric & Energy Systems Col, Ltd. (HEES) in the context of the AD order on LPTs from Korea. Furthermore, HDHE is entitled to the AD cash deposit rate assigned to HEES with respect to entries

of subject merchandise in the above-referenced proceeding.

DATES: Applicable September 26, 2023.

FOR FURTHER INFORMATION CONTACT: John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0195.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2023, Commerce published the initiation and preliminary results of this CCR, finding that HDHE is the successor-in-interest to HEES, and should be assigned the same AD cash deposit rate assigned to HEES in the AD order on large power transformers from Korea.¹ In the *Initiation and Preliminary Results*, interested parties were provided an opportunity to comment and to request a public hearing regarding our preliminary findings. HDHE submitted comments agreeing with our preliminary findings, and we received no other comments from interested parties.² Additionally, we received no requests for a hearing from interested parties.

Scope of the Order

The products covered by the order are LPTs from Korea. For a full description of the scope of the order, see the *Initiation and Preliminary Results*.³

Final Results of Changed Circumstances Review

For the reasons stated in the *Initiation and Preliminary Results*, and because we received no comments from interested parties to the contrary, Commerce continues to find that HDHE is the successor-in-interest to HEES for purposes of the AD order on large power transformers from Korea. As a result of this determination, HDHE is entitled to the same AD cash deposit rate as HEES with respect to entries of subject merchandise in the above-noted proceeding. As there are no changes from the *Initiation and Preliminary Results*, there is no decision memorandum accompanying this notice and the determination in the *Initiation and Preliminary Results* is hereby adopted as the final results of this CCR.

¹ See *Large Power Transformers from the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 88 FR 53866 (August 9, 2023) (*Initiation and Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See HDHE's Letter, "Case Brief," dated August 16, 2023.

³ See *Initiation and Preliminary Results* PDM.

Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by HDHE and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the current AD cash deposit rate on LPTs in effect for HEES. These cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e) and 351.221(b).

Dated: September 20, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-20884 Filed 9-25-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Steel Import License

AGENCY: International Trade Administration, Enforcement & Compliance, 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 November 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Julie Al-Saadawi, Director, Industrial Monitoring and Analysis Unit, International Trade Administration or by email to *julie.al-saadawi@trade.gov*. Please reference OMB Control Number 0625-0245 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 Leo Kim, ITA Paperwork Reduction Act Officer, International Trade Administration; by telephone at (202) 989-5979, or by email to (*pra@trade.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The President's Proclamation on Steel Safeguards mandated that the Departments of Commerce and Treasury institute an import licensing system to facilitate the monitoring of certain steel imports in 2002. In 2005, Commerce enacted regulations that implemented the Steel Import Monitoring and Analysis (SIMA) System and expanded on the licensing system for steel that was part of those safeguards. Most recently, in October 2020, Commerce modified its SIMA regulations to require that steel import license applicants identify the country of melt and pour as an additional field on the steel import license application and expanded the licensing requirement to apply to all steel products.

The import license information is necessary to assess import trends of steel products. In order to effectively monitor steel imports, Commerce must collect and provide timely aggregated summaries about the imports. The Steel Import License is the tool used to collect the necessary information. The Census Bureau currently collects import data and disseminates aggregate information about steel imports. However, the time required to collect, process, and disseminate this information through Census can take up to 90 days after importation of the product, giving interested parties and the public far less time to respond to injurious sales.

II. Method of Collection

The license application can be submitted electronically via the Commerce website (<https://trade.gov/steel>) or completed electronically and emailed to the Department.

III. Data

OMB Control Number: 0625–0245.

Form Number(s): ITA–4141P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,250.

Estimated Time per Response: Less than 10 minutes.

Estimated Total Annual Burden Hours: 78,820 minutes, including 416 burden hours for low-value licenses.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 301(a) and 302.

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. 2023–20231 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; CHIPS Pre-application Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 12, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: CHIPS Pre-application Information Collection.

OMB Control Number: 0693–0095.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 140.

Average Hours per Response: 60 hours.

Burden Hours: 8400 hours.

Needs and Uses: Businesses and other entities applying for CHIPS Act funding under the CHIPS Incentive Program may, but are not required to, submit a pre-application via a form available at <https://applications.chips.gov/> to obtain feedback before submitting a full application. The pre-application phase creates an opportunity for dialogue between the Department of Commerce and the applicant to ensure the applicant is ready to meet program requirements and address program priorities.

Information to be collected includes:

- A Cover Page with general contact and project information;
- A Project Plan that describes each project expected to be included in the future full application. The project plan should explain how each project satisfies the program description and the evaluation criteria in the CHIPS Incentive Program—Commercial Fabrication Facilities Notice of Funding Opportunity;

Information to be collected includes:

- Financial Information summarizing financial information for the applicant and the project(s), as well as a detailed sources and uses of funds, including overview of CHIPS incentive request;
- Workforce Development Information describing the applicant's approach to recruit, train, and retain a diverse and skilled set of workers to fill the good jobs that will be created to operate its semiconductor facilities.

Affected Public: Business or other for-profit organizations.

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0095.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20937 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Manufacturing Extension Partnership (MEP) Client Impact Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information

collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 7, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Manufacturing Extension Partnership (MEP) Client Impact Survey.

OMB Control Number 0693–0021.

Form Number(s): None.

Type of Request: Extension of current information collection.

Number of Respondents: 14,500.

Average Hours per Response: 12 minutes.

Burden Hours: 2,900 hours.

Needs and Uses: The objective of the NIST Manufacturing Extension Partnership Program (MEP) is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms. Through this client impact survey, the MEP will collect data necessary for program accountability; analysis and research into the effectiveness of the MEP program; reports to stakeholders; GPRAs; continuous improvement efforts; knowledge sharing across the MEP system; and identification of best practices. Collection of this data is needed in order to comply with the MEP charter, as mandated by Congress.

Affected Public: Private Sector.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0021.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–20933 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD278]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Maintenance and Rehabilitation of the Bellingham Shipping Terminal

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Port of Bellingham for authorization to take marine mammals incidental to the maintenance and rehabilitation of the Bellingham Shipping Terminal in Bellingham, WA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than October 26, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.cockrell@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or

received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and

NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 5, 2023, NMFS received a request from the Port of Bellingham for an IHA to take marine mammals incidental to pile driving and removal. Following NMFS' review of the application, the Port of Bellingham submitted a two revised versions on June 16, 2023 and August 28, 2023. The application was deemed adequate and complete on September 6, 2023. The Port of Bellingham's request is for take

of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and harbor porpoise (*Phocoena phocoena*) by Level B harassment and, for harbor seals, Level A harassment. Neither the Port of Bellingham nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The Port of Bellingham would conduct construction activities to repair the wharf and pier structure of the Bellingham Shipping Terminal. The activity includes removal of existing piles and the installation of both temporary and permanent piles of various sizes. Takes of marine mammals by Level A and Level B harassment would occur due to both impact and vibratory pile driving and removal. The project would occur in Bellingham Bay in Northwest Washington within the city of Bellingham. The construction would occur for 87 non-consecutive days.

The Bellingham Shipping Terminal is located on the western shore of Bellingham Bay and is a major port that connects the Burlington Northern Santa Fe railway and Interstate 5 to commercial ships. The terminal is bordered by Port and heavy industrial properties, berths and industry, and

Bellingham Bay. This project would replace aging components of the terminal to current maritime safety standards to handle cargo demands, including up-to-standards for modern electrical infrastructure.

Dates and Duration

This IHA would be valid from one year of the date of issuance. It is expected to take up to 87 non-consecutive days of in water work over a 4-month work window to complete the pile driving and removal activities. Pile driving would be completed intermittently throughout the daylight hours. All pile driving is expected to be completed during one phase of construction.

Specific Geographic Region

Bellingham bay is located in the northeast corner of the Salish Sea in northwest Washington. The bay is relatively shallow with the deepest depths around 30 meters (m) (100 feet (ft)). Bellingham bay is dominated by a sandy gravely bottom. The city of Bellingham adjacent to the bay is heavily industrialized. Floating log booms are located near the project site in an adjacent industrial pond (Farrer and Acevedo-Gutierrez 2010). Although the port is industrialized the mean ambient sound pressure levels Pile driving at the Bellingham Shipping Terminal would occur in waters less than 9 m (30 ft).

BILLING CODE 3510–22–P

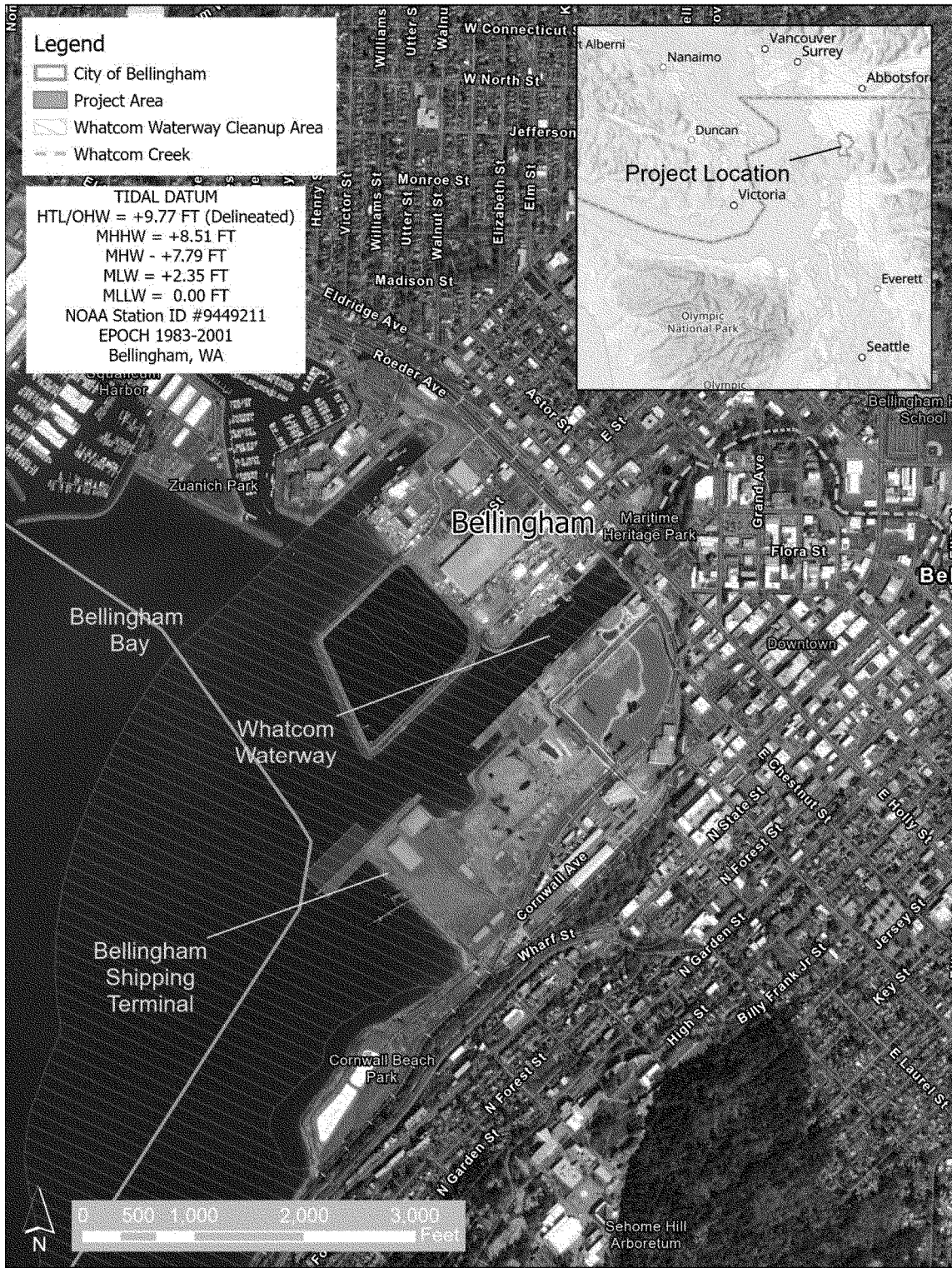


Figure 1. Project location in Bellingham Bay, WA.

BILLING CODE 3510-22-C

Detailed Description of the Specified Activity

The Bellingham Shipping Terminal rehabilitation project includes the

removal of 36 existing 24-inch (in) diameter (61 centimeter (cm)) steel piles, 15 existing 14-in to 16-in (36 cm to 41 cm) timber fender piles, and 2 existing 18-in to 20-in (46 cm to 51 cm) timber piles. Fifty-six 24-in steel piles

would be installed to support the main deck of the shipping terminal and in addition 14, 24-in steel piles would be installed behind the existing bulkhead. The existing fender piles would be replaced by 13 16-in steel H-piles. Two

18-in to 20-in timber piles would be installed on the south portion of the terminal. Vibratory and impact hammers would be used for the installation and removal of all piles (Table 1). Removal of piles would be

conducted using a straight pull method or vibratory hammers. After new piles are set with a vibratory hammer, installed piles would be proofed with an impact hammer to verify the structural capacity of the pile embedment. The

work would be completed at the existing Bellingham Shipping Terminal in Bellingham, Washington. Work on the terminal would be completed within 1-year.

TABLE 1—NUMBER AND TYPES OF PILES TO BE INSTALLED AND REMOVED

Pile diameter/type	Number of piles	Strikes per pile (impact)	Vibratory duration per pile (mins)	Piles per day	Days of Activity
Pile Installation					
24-in Steel Piles	56	1,725	90	1–2	67
16-in Steel Piles H-Piles	13	150	30	6	3
18 to 20-in Timber piles	2	800	N/A	2	2
Pile Removal					
24-in Steel Piles	36	.....	30	6	10
14 to 16-in Timber Fender Piles	15	.....	15	8	3
18 to 20-in Timber piles	2	.....	15	2	2
Total	124	.....	.....	.....	87

Dredging work is expected to take place in berths one and two of the shipping terminal to ensure sufficient draft for ships to use the berths in a safe manner. The expected depth at each berth after dredging is 35 ft (11 m) during mean lower low water. The dredging work proposed is not expected to produce in water noise that would cause take by Level A or Level B harassment, and therefore is not considered further in this document.

Above water construction would include replacement of the decking on the terminal, upgrading the utility systems to meet current standards, and addition of fill to the existing bulkhead of the terminal. This above-water work is not expected to result in any take. Noise generated above the water would not be transmitted into the water to the degree that resulting underwater noise would be expected to cause disturbance and, none of the pinniped haulouts are located close enough to the project area to cause disturbance, therefore airborne noise is not considered further in this document.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 4 and 5 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS’ Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’ website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural

mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’ SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’ stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’ U.S. 2022 SARs. All values presented in Table 2 are the most recent available at the time of publication (including from the final 2022 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES ¹

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Phocoenidae (porpoises):</i> Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters	-, -; N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i> California Sea Lion	<i>Zalophus californianus</i>	U.S	-, -; N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-, -; N	43,201 (N/A, 43,201, 2017) ...	2,592	112
<i>Family Phocidae (earless seals):</i> Harbor Seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	-, -; N	UNK (UNK, UNK, 1999)	UNK	9.8

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

² ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.nmfs.noaa.gov/pr/sars/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species (with four managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project area are included in Table 1 of the IHA application. While killer whales (*Orcinus orca*), humpback whales (*Megaptera novaeangilae*), gray whales (*Eschrichtius robustus*), and minke whales (*Balaenoptera acutorostrada*) have been sighted in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The applicant and NMFS expect the occurrence of these species is infrequent for Bellingham Bay based on sightings data from Orca Network (2021). Furthermore, if these species are sighted approaching the Level B harassment zone construction activities would be shut down in order to avoid harassment. Therefore, take is not expected for killer whales, humpback whales, gray whales, or minke whales and are not discussed further in this document.

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Barrow, along the Alaskan coast, and down the west coast of North America to Point

Conception, California (Gaskin 1984). Harbor porpoise are known to occur year-round in the inland trans-boundary waters of Washington and British Columbia, Canada (Osborne *et al.*, 1988), and along the Oregon/Washington coast (Barlow 1988; Barlow *et al.*, 1988, Green *et al.* 1992). There was a significant decline in harbor porpoise sightings within southern Puget Sound between the 1940s and 1990s but sightings have increased seasonally in the last 10 years (Carretta *et al.*, 2019).

Annual winter aerial surveys conducted by the Washington Department of Fish and Wildlife from 1995 to 2015 revealed an increasing trend in harbor porpoise in Washington inland waters, including the return of harbor porpoise to Puget Sound. The data suggest that harbor porpoise were already present in Juan de Fuca, Georgia Straits, and the San Juan Islands from the mid-1990s to mid-2000s, and then expanded into Puget Sound and Hood Canal from the mid-2000s to 2015, areas they had used historically but abandoned. Changes in fishery-related entanglement was suspected as the cause of their previous decline and more recent recovery, including a return to Puget Sound (Evenson *et al.*, 2016). Seasonal surveys conducted in spring, summer, and fall 2013–2015 in Puget Sound and Hood Canal documented substantial numbers of harbor porpoise. Observed porpoise numbers were twice as high in spring as in fall or summer,

indicating a seasonal shift in distribution of harbor porpoise (Smultea, 2015). The reasons for the seasonal shift and for the increase in sightings is unknown.

Monitors during a 2017 U.S. Navy construction project at the Coast Guard Air Station in Port Angeles, Washington (roughly 60 mi (97 km)) observed a total of six individual harbor porpoises within the Level B harassment zone during the project. No take observations of harbor porpoises within the Level A harassment zone occurred during the project.

California Sea Lions

The California sea lion is the most frequently sighted pinniped found in Washington waters and uses haul-out sites along the outer coast, Strait of Juan de Fuca, and in Puget Sound. Haul-out sites are located on jetties, offshore rocks and islands, log booms, marina docks, and navigation buoys. Only male California sea lions migrate into Pacific Northwest waters, with females remaining in waters near their breeding rookeries off the coast of California and Mexico. The California sea lion was considered rare in Washington waters prior to the 1950s. More recently, peak numbers of 3,000 to 5,000 animals move into the Salish Sea during the fall and remain until late spring, when most return to breeding rookeries in California and Mexico. There are no known haulouts in Bellingham Bay (Jeffries *et al.*, 2000). Infrequent

sightings of California sea lions by port staff have occurred in the fall and winter when prey is available in Bellingham Bay.

California sea lions feed primarily in coastal waters. They are opportunistic predators and eat a variety of prey including squid, anchovies, mackerel, rockfish and sardines (NMFS, 2019). California sea lion breeding areas are mostly in southern California and are not expected to spatially overlap with the project area. One California sea lion per day was seen in the vicinity of this project site by port staff.

Steller Sea Lions

Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.*, 1984). There are two separate stocks of Steller sea lions, the eastern U.S. stock, which occurs east of Cape Suckling, Alaska (long. 144° W), and the western U.S. stock, which occurs west of that point. Only the western stock of Steller sea lions, which is designated as the western distinct population segment (DPS) of Steller sea lions, is listed as endangered under the ESA (78 FR 66139; November 4, 2013). Unlike the western U.S. stock of Steller sea lions, there has been a sustained and robust increase in abundance of the eastern U.S. stock throughout its breeding range. The eastern stock of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years a new rookery has become established on the outer Washington coast (at the Carroll Island and Sea Lion Rock complex), with more than 100 pups born there in 2015 (Muto *et al.*, 2020).

Steller sea lions use haul-out locations in Puget Sound, and may occur at the same haul-outs as California sea lions. Similar to California sea lions, there are no known Steller sea lion haulouts in Bellingham Bay. Sighting of Steller sea lions are infrequent by port staff in the fall and winter when prey is available in Bellingham Bay. One Steller sea lion per day was seen in the vicinity of this project site by port staff.

Steller sea lions are opportunistic predators, feeding primarily on a wide variety of fishes and cephalopods,

including Pacific herring (*Clupea pallasii*), walleye pollock (*Gadus chalogramma*), capelin (*Mallotus villosus*), Pacific sand lance (*Ammodytes exapterus*), Pacific cod (*Gadus macrocephalus*), salmon (*Oncorhynchus spp.*), and squid (*Teuthida spp.*) (Jefferson *et al.*, 2008; Wynne *et al.*, 2011).

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Carretta *et al.*, 2014). They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp 1944; Fisher, 1952; Bigg 1969, 1981). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Harbor seals in the project areas would be from the Washington Northern Inland Waters stock.

Harbor seals are the only pinniped species that occurs year-round and breeds in Washington waters. Pupping seasons vary by geographic region, with pups born in coastal estuaries (Columbia River, Willapa Bay, and Grays Harbor) from mid-April through June; Olympic Peninsula coast from May through July; San Juan Islands and eastern bays of Puget Sound from June through August; southern Puget Sound from mid-July through September; and Hood Canal from August through January (Jeffries *et al.*, 2000). Recent line transect surveys have estimated the harbor seal stock size at 7,513 individuals for Washington Northern

Inland Waters stock (Jefferson *et al.*, 2021). Pupping by harbor seals on haulouts located in Bellingham Bay has not been observed.

There are three document haulouts in Bellingham Bay that range from 0.10 mile (mi) (0.16 kilometer (km)) to 1.75 mi (2.82 km) from the project area. Counts of harbor seals at the closest haulout (log pond and pier) to this project area were completed by Western Washington University students from 2017 to 2021. During that period an average of 7.7 seals per day were on the haulout during the month of August. August was the month with the highest average daily count of harbor seals compared to the rest of the year.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS—Continued
[NMFS, 2018]

Hearing group	Generalized hearing range*
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sounds Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard

to hearing (*e.g.*, Ward, 1997 and Southall, *et al.* 2007).

Two types of pile hammers would be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman, *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson, *et al.*, 2005).

The likely or possible impacts of the Port of Bellingham's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature.

Auditory Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from the Port of Bellingham's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and behavioral effects, ranging in magnitude from none to severe (Southall *et al.*, 2007 and Southall *et al.* 2021). Exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to

non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; e.g., Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there

are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiakororientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.*,

mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Effects

Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005; Southall *et al.*, 2021).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out

time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007, 2021; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012, Southall *et al.*, 2021), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see Southall *et al.*, 2007; Gomez *et al.*, 2016; and Southall *et al.*, 2021 reviews.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

The area likely impacted by the project is relatively small compared to the available habitat in the surrounding waters of the Salish Sea.

In 2017, the U.S. Navy documented observations of marine mammals during construction activities (*i.e.*, pile driving) at the U.S. Coast Guard Air Station Sector Field Office, Port Angeles, Washington (81 FR 67985, October 3,

2016). This project was roughly 60 mi from the proposed project cite and features that are very similar (*i.e.* a shallow bay of the Salish Sea). In the marine mammal monitoring report for that project (Northwest Environmental Consulting, 2018), 261 harbor seals were observed within the behavioral disturbance zone during pile driving or drilling (*i.e.*, documented as Level B harassment take). Twelve California sea lions and 2 Steller sea lions were observed within the disturbance zone during pile driving activities. Six harbor porpoise were sighted in the Level B harassment zone during construction. No visible signs of disturbance were noted for any of these species that were present in the harassment zones. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (e.g., small area movements). Monitoring reports from other recent pile driving projects have observed similar behaviors.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under

quieter conditions and would itself be masked. Bellingham Bay is home to a busy industrial ports as well as large numbers small private vessels that transit the area on a regular basis; therefore, background sound levels in the bay are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been "taken" because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The Port of Bellingham's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving, elevated levels of underwater noise would ensnifi

Bellingham Bay where both fish and mammals may occur and could affect foraging success.

In-water pile driving and pile removal would also cause short-term effects on water quality due to increased turbidity. Local currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. The Port of Bellingham would employ standard construction best management practices (except for reduced Level A shutdown zones), thereby reducing any impacts. Considering the nature and duration of the effects, combined with the measures to reduce turbidity, the impact from increased turbidity levels is expected to be discountable.

Pile installation and removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. The Port of Bellingham must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-ft radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to enter the harbor and be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would likely be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Effects on Prey

Construction activities would produce continuous (*i.e.*, vibratory pile driving) and impulsive (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of

sufficient strength have been known to cause injury to fish and fish mortality.

Impacts on marine mammal prey (*i.e.*, fish or invertebrates) of the immediate area due to the acoustic disturbance are possible. The duration of fish or invertebrate avoidance or other disruption of behavioral patterns in this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Further, significantly large areas of fish and marine mammal foraging habitat are available in the nearby vicinity in the Salish Sea.

The duration of the construction activities is relatively short, with pile driving and removal activities expected to take only 87 days. Each day, construction would occur for no more than 12 hours during the day and pile driving activities would be restricted to daylight hours. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the relatively short daily duration of sound associated with individual pile driving and events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed

for authorization through this IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the construction (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids. Auditory injury is unlikely to occur for other authorized species. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be

behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-

squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 microPascal μPa) for continuous (e.g., vibratory pile driving) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (e.g., impact pile driving) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Port of Bellingham’s proposed activity includes the use of continuous (vibratory driving and removal) and impulsive (impact pile driving), and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable. Originally the applicant had recommended a RMS SPL thresholds of 130 1 μPa to predict take by Level B harassment, based on ambient sound

measurements in Bassett *et al.* (2010). After further review of measurements in the area, the mean underwater noise levels was 117 re 1 μPa and, therefore, NMFS determined the 120 RMS SPL threshold was more appropriate for calculating the level B harassment zone.

Level A harassment—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Port of Bellingham’s proposed activity includes the use of (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS’ 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa , and cumulative sound exposure level (L_E) has a reference value of 1 $\mu\text{Pa}^2\text{s}$. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound

generated by the primary components of the project (i.e., impact pile driving, vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 11.66 km^2 (7.25 mi^2), and would consist of the majority of Bellingham Bay (see Figure 10 in the IHA application). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to

elevated background noise levels which may mask sounds produced by the project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography.

The general formula for underwater *TL* is:

$$TL = B * \text{Log}_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient

*R*₁ = the distance of the modeled SPL from the driven pile, and

*R*₂ = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each

doubling of distance from the source (20 * log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10 * log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the

methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of steel and timber piles and vibratory removal of steel and timber piles. Pile sizes range from 14-in to 24-in, and the applicant has decided to implement mitigation and monitoring measures and take estimates associated with 24-in. piles for all pile types and sizes. Source levels for the 24-in. pile size and driving methods are presented in Table 5. The source levels for vibratory and impact installation of 24-in. steel piles are based on the averaged source level of the same type of pile reported by California Department of Transportation (Caltrans) in pile driving source level compendium documents (Caltrans, 2015, 2020).

TABLE 5—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Proxy source level			Literature source
		dB RMS re 1μPa	dB SEL re 1μPa ² sec	dB peak re 1μPa	
24 in	Vibratory	166	N/A	N/A	Caltrans 2020.
24 in	Impact	190	174	203	Caltrans 2015.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an

overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

Although many different pile types and sizes are proposed to be used

during the construction project, the Port of Bellingham is implementing mitigation and reporting measures and take estimates for the 24-in. steel pipe piles. Use of this pile size results in the largest Level A and Level B harassment zones and most conservative mitigation measures. Therefore the only calculations the applicant ran were using the 24-in. piles. The applicant also plans to limit the number of impact strikes per day for all piles to 1,725 and the vibratory install of all piles to 90 minutes per day and the vibratory removal of all piles to 30 minutes per day.

TABLE 6—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
24-in vibratory installation	A.1 Vibratory pile driving	2.5	N/A	1	90
24-in vibratory removal	A.1 Vibratory pile driving	2.5	N/A	1	30
24-in impact installation	E.1 Impact pile driving	2	1,725	1	N/A

TABLE 7—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)			Level B harassment zone (m)
	HF-cetaceans	Phocids	Otariids	
24-in vibratory installation	29	12	1	11,659
24-in vibratory removal (temporary)	14	6	1	
24-in impact installation (1 pile per day; 1,725 strikes per pile)	430	193	14	25

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. Some data from monitoring reports from previous projects near Bellingham Bay were used. However, scientific surveys and resulting data, such as population estimates, densities, and other quantitative information, are lacking for some marine mammal populations. Therefore, the applicant gathered qualitative information from discussions with knowledgeable local people in the Bellingham Bay area.

Here we describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Since reliable densities are not available, the applicant requests take based on the maximum number of animals that may occur in the harbor in a specified measure of time multiplied by the total duration of the activity.

Harbor Porpoise

The applicant did not initially request take of harbor porpoise for this project. Harbor porpoises are known to be an inconspicuous species and are challenging for protected species observers (PSOs) to sight, making any approach to a specific area potentially difficult to detect. Because harbor porpoises move quickly and elusively, it is possible that they may enter the Level B harassment zone during vibratory pile driving and removal. NMFS reviewed monitoring data from the 2017 U.S. Navy construction project at the Coast Guard Air Station in Port Angeles, Washington in order to determine a take estimate for harbor porpoise.

During that project the Level B harassment zone was 13.6 km (8.6 mi) which could only partially be observed by monitors during the project. Therefore, take estimates were

extrapolated from the observations to account for unobserved area where take may have occurred. It was assumed that 87 takes by Level B harassment may have occurred in the unobserved area, for a total of 93 takes during the project. Given 93 total takes it was expected that 3 harbor porpoise were taken per day during the construction project (Northwest Environmental Consulting, 2018). Thus, NMFS recommended 3 animals per day for a total of 261 takes by Level B harassment.

The largest Level A harassment zone results from impact driving of 24-in piles, and extends 430 m from the source for high frequency cetaceans (Table 7). The Port of Bellingham would implement a shutdown zone for harbor porpoises that encompasses the largest Level A harassment zone (see Proposed Mitigation section). Although harbor porpoises can be challenging to observe, given the relatively confined and observable ensonified area combined with the fact that harbor porpoises are generally considered more likely than some other species to avoid louder areas of higher activity, takes by Level A harassment has not been proposed to be authorized.

California Sea Lion

California sea lions are infrequent visitors to Bellingham Bay. It is expected that the occasional presence of California sea lions would occur during the fall and winter following forage (fish runs) into the bay. Based on anecdotal evidence from port staff sightings, the applicants estimated that one California sea lion per day may enter the Level B harassment zone during vibratory pile driving and removal. The total number of takes by Level B harassment would be 87 California sea lions.

The largest Level A harassment zone for otariid pinnipeds extends 14 m from the source (Table 7). The Port of Bellingham is planning to implement larger shutdown zones than the Level A harassment zones during all pile installation and removal activities (see Proposed Mitigation section), which is expected to eliminate the potential for take by Level A harassment of California

sea lions. Therefore, no takes of California sea lions by Level A harassment were requested or are proposed to be authorized.

Steller Sea Lions

Steller sea lions from the eastern DPS, are also rare visitors to Bellingham Bay that typically occur during the fall and winter following prey into the bay. Based on anecdotal evidence from port staff sightings, the applicants estimated that one Steller sea lion per day may enter the Level B harassment zone during vibratory pile driving and removal. The total number of takes by Level B harassment would be 87 Steller sea lions.

Similar to California sea lions, the largest Level A harassment zone for otariid pinnipeds extends 14 m from the source (Table 7). The Port of Bellingham is planning to implement larger shutdown zones than the Level A harassment zones during all pile installation and removal activities (see Proposed Mitigation section), which is expected to eliminate the potential for take by Level A harassment of Steller sea lions. Therefore, no takes of Steller sea lions by Level A harassment were requested or are proposed to be authorized.

Harbor Seal

The applicant originally estimated that up to 15 harbor seals per day could be taken by Level A harassment during impact driving and 20 harbor seals per day could be taken by Level B harassment during vibratory pile driving and removal. The applicant expected to take 275 harbor seals by Level A harassment and 2,000 seals by Level B harassment.

After further analysis of the survey data provided by the applicant the NMFS recommended a daily rate of 7.7 harbor seals per day in the project area per haulout. The Level B harassment zone encompasses three haulouts and it is expected that roughly the same amount of seals haulout at each location per day. It is expected that up to 23 harbor seals per day could be present in the Level B harassment zone during vibratory pile driving and removal.

Therefore, NMFS expects that 2,029 harbor seal takes by Level B harassment over the course of constructions.

The largest Level A harassment zone for phocid pinnipeds extends 193 m from the source (Table 7). The Port of Bellingham expressed concern with the ability to complete work in an efficient

manner with the common occurrence of harbor seals in the project area. The applicant and NMFS agreed on the implementation of a 50 m shutdown zone in order to shutdown for those animals closest to the pile driving activity but allow for pile driving to

continue for animals that may beyond 50 m (see Proposed Mitigation section). It is expected that 7.7 harbor seals per day may be subject to Level A harassment during 17 days of impact pile driving for a total of 264 takes by Level A harassment.

TABLE 8—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance ^a	Level A	Level B	Total proposed take	Proposed take as percentage of stock
Harbor porpoise	Washington Inland Waters	11,233	0	261	261	2.3
Steller sea lion	Eastern U.S	43,201	0	87	87	.2
California sea lion	U.S	257,606	0	87	87	<0.1
Harbor seal	Lynn Canal/Stephens Passage.	^b 7,513	264	2,029	3,050	30.5

^a Stock or DPS size is Nbest according to NMFS 2022 Final Stock Assessment Reports.

^b Stock abundance estimate derived from Jefferson *et al.* 2021.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

The following measures would apply to the Port of Bellingham’s mitigation requirements:

Implementation of Shutdown Zones for Level A Harassment—For all pile driving/removal activities, the Port of Bellingham would implement shutdowns within designated zones.

The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid or minimize incidental Level A harassment exposures from vibratory and impact pile driving for all four species for which take may occur (see Table 8). Shutdown zones for impact and vibratory pile driving activities are based on the Level A harassment zones for the 24-in steel piles, strikes (impact) or duration (vibratory) per day, and marine mammal hearing group (Table 9). The shutdown zone for harbor seals during impact pile driving is less than the Level A harassment zone in order to facilitate efficient work operations during the project. The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting Section) would ensure the full extent of shutdown zones are visible to PSOs.

TABLE 9—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Shutdown zones (m)		
	HF cetaceans	Phocids	Otariids
Vibratory installation (90 minutes)	30	20	10
Vibratory removal (30 minutes)	20	10	10
Impact installation (1,725 strikes)	430	50	20

Establishment of Monitoring Zones—The Port of Bellingham has identified monitoring zones that would be in effect for all pile driving activities. Vibratory installation and removal is expected to

occur on all day of construction and the zone for 24-in steel piles would be implemented at all times (Table 10) Monitoring zones provide utility for observing by establishing monitoring

protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the

shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. PSOs would monitor the entire visible area to maintain the best sense of where animals are moving relative to the zone boundaries defined in Tables 9 and 10. Placement of PSOs on the Port of Bellingham facility or in a small boat in the Bellingham Bay would allow PSOs to observe marine mammals within and near the bay.

TABLE 10—MARINE MAMMAL MONITORING ZONE

Activity	Monitoring zone (m)
24-in vibratory installation and removal	11,660

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day’s impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, activities may begin. No work may begin unless the entire shutdown zone is visible to the PSOs. If

work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Bubble Curtain—A bubble curtain would be employed during impact installation or proofing of steel piles. A noise attenuation device would not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects would prevent full mudline contact.

Based on our evaluation of the applicant’s proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or

environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers in accordance with section 13.2 of the application. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of one PSO would be on duty during impact pile driving activities and a minimum of two PSOs during vibratory installation/removal. Locations from which PSOs would be able to monitor for marine mammals are readily available from the Port of Bellingham property and, if necessary, on small boats in Bellingham Bay. PSOs would monitor for marine mammals entering the Level B harassment zones; the position(s) may vary based on construction activity and location of piles or equipment.

PSOs would scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. The Port of Bellingham would adhere to the following observer qualifications:

- (i) Independent observers (*i.e.*, not construction personnel) are required;
- (ii) One PSO would be designated as the lead PSO or monitoring coordinator and that observer must have prior experience working as an observer;
- (iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and
- (iv) The applicant must submit observer Curriculum Vitae for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals

observed within a defined shutdown zone; and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact driving) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species.

• Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, the Port of Bellingham would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the Port of Bellingham to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Port of Bellingham would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Port of Bellingham discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), the Port of Bellingham would immediately report the incident to the Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov), NMFS and to the West Coast Region regional stranding coordinator as soon

as feasible. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Port of Bellingham to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 4033; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 8, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or proposed for authorization given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.*, Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014; ABR, 2016). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the proposed project may produce sound at distances of many kilometers from the project site, thus overlapping with some likely less-disturbed habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the

harbor. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.*, the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals’ habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals’ foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.*, to harbor seals, only) are anticipated to result in slight PTS (*i.e.*, of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior

that would not result in fitness impacts to individuals;

- The ensoufied areas from the project is very small relative to the overall habitat ranges of all species and stocks
- or any other areas of known biological importance; with the exception of three haulout locations in Bellingham Bay that would be affected by the project. Currently those haulout locations are not known to be pupping locations for harbor seals but are important areas throughout the year. Harbor seals at these haulouts would likely result in repeated exposure of the same animals. Repeated exposures of individuals to this pile driving activity could cause Level A and Level B harassment but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stock as a whole.
- The proposed mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of instances in which individuals of a given species could be exposed to

receive noise levels that could cause Level A and Level B harassment for the proposed work in Bellingham Bay. Our analysis shows that less than 3 percent of all but one stock could be taken by harassment, and less than 30 percent of harbor seals, noting that the percentage of individual harbor seals is likely notably lower because some portion of the estimated instances of take are expected to represent repeated takes of the same individuals on multiple days. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to The Port of Bellingham for conducting pile driving at the Port of Bellingham from one year of the date of

issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed pile driving by the Port of Bellingham. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned, or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS

determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: September 20, 2023.

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2023–20752 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD352]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a weeklong online work session that is open to the public. The purpose of the meeting is to prepare materials for the 2025–2026 harvest specifications and management measures and discuss other items on the Pacific Council's November 2023 meeting agenda.

DATES: The online webinar meeting for the work session will be held Monday, October 16, 2023, from 1 p.m., Pacific time until business is completed for the day. The GMT will reconvene on Tuesday, October 17 through Friday, October 20, 2023, from 8:30 a.m., Pacific time until business for each day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT meeting is to develop recommendations on the development of the 2025–2026 harvest specifications and management measures for consideration by the Pacific Council at its November 2023 meeting. The GMT will also consider new management measures proposed by the Pacific Council at their September meeting.

The GMT will dedicate their session on Friday, October 20, 2023, from 8:30 a.m. to 12:30 p.m. Pacific time to specifically discuss items on the Pacific Council's November meeting. The primary purpose of this dedicated session is to prepare for the Pacific Council's November 2023 meeting agenda items. The GMT will discuss items related to groundfish management and administrative matters on the Pacific Council's agenda. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for this weeklong webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 21, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–20927 Filed 9–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD389]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Wednesday, October 11, 2023, beginning at 9:30 a.m.

ADDRESSES: Meeting address: The meeting will be held at the DoubleTree by Hilton, 363 Maine Mall Road, South Portland, ME 04106.

Webinar Registration information: <https://attendee.gotowebinar.com/register/8548092010829152606>. Call in information: +1 (631) 992–3221, Access Code: 434–460–639.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to: review the information provided by the Council's Plan Development Teams, and stock assessment information where appropriate, and recommend the overfishing limits (OFL) and acceptable biological catches (ABC) for: Atlantic sea scallops for fishing year (FY) 2024 and the default for FY 2025; Gulf of Maine haddock for FY 2024 and 2025 and Northeast skate complex for FY 2024–2025. They will discuss other business as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this

notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: September 21, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-20925 Filed 9-25-23; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the new 12-month cap on duty- and quota-free benefits.

DATES: The new limitations become effective October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Newberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)-510-3982.

SUPPLEMENTARY INFORMATION:

Authority: Title I, section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106-200, as amended by division B, title XXI, section 3108 of the Trade Act of 2002, Public Law 107-210; section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108-274; division D, title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109-432, and section 1 of The African Growth and Opportunity Amendments (Public Law 112-163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and title I, section 103(b)(2) and (3) of the Trade

Preferences Extension Act of 2015, Public Law 114-27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114-27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the 12-month period beginning October 1, 2023 will be an amount not to exceed seven percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2023, and extending through September 30, 2024, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,830,796,723 square meters equivalent. Of this amount, 915,398,361 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Jennifer Knight,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2023-20795 Filed 9-25-23; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the

“Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038–0097, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹ The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Daniel O’Connell, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5583; email: doconnell@cftc.gov, and refer to OMB Control No. 3038–0097.

SUPPLEMENTARY INFORMATION:

Title: Process for Review of Swaps for Mandatory Clearing (OMB Control No. 3038–0097). This is a request for extension of a currently approved information collection.

Abstract: The Commodity Exchange Act and Commission regulations require a derivatives clearing organization (DCO) that wishes to accept a swap for clearing to be eligible to clear the swap and to submit the swap to the Commission for a determination as to whether the swap is required to be cleared. Commission Regulation 39.5

sets forth the process for these submissions. The Commission will use the information in this collection to determine whether a DCO that wishes to accept a swap for clearing is eligible to clear the swap and whether the swap should be required to be cleared. 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. On June 28, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 41932 (“60-Day Notice”). The Commission did not receive any relevant comments that addressed its PRA burden estimates.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents:

15.

Estimated Average Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 600.

Frequency of Collection: On occasion. A DCO is only required to make a one-time submission before it first accepts a swap for clearing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 21, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–20904 Filed 9–25–23; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[23–RI–L–05]

Notice of Intent to Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license to Paterson Aerospace Systems, Corp. duly organized, validly existing, and in good standing in the State of Delaware having a place of business at 24a Trolley Sq. #1401, Wilmington, DE 19806.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; or Email: stephen.colenzo@us.af.mil. Include Docket No. 23–RI–L–05 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; or Email: stephen.colenzo@us.af.mil; Office: 315–330–7665

SUPPLEMENTARY INFORMATION:

Abstract of Patent Application(s)

Various embodiments of the disclosed subject matter provide systems, methods, architectures, mechanisms, apparatus, computer implemented method and/or frameworks configured for tracking Earth orbiting objects and adapting SSN tracking operations to improve tracking accuracy while reducing computational complexity and resource consumption associated with such tracking.

Intellectual Property:

—DIGGINS ET AL, U.S. Patent No. 11,584,550, issued on 21 February 2023, and entitled “*System and Method of Space Object Tracking and Surveillance Network Control.*”

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–20923 Filed 9–25–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Human Resources Activity, Department of Defense (DoD).

¹ 17 CFR 145.9.

ACTION: Notice of revised per diem rates in non-foreign areas outside the Continental U.S.

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 324. Bulletin Number 324 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States. The fiscal year (FY) 2023 lodging and meal rate review for the U.S. Virgin Islands resulted in rate changes for multiple locations.

DATES: The updated rates take effect October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. David Maly, 571-372-1316, david.j.maly.civ@mail.mil.

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel, and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2023 lodging and meal rate review for the U.S. Virgin Islands resulted in rate changes for multiple locations. Bulletin Number 324 is published in the **Federal Register** to ensure that Government travelers outside the DoD are notified of

revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office's Per Diem Rate Review Frequently Asked Questions (FAQ) page at <https://www.travel.dod.mil/Travel-Transportation-Rates/Per-Diem/>.

Dated: September 21, 2023.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	193	121	314	11/01/2022
ALASKA	ADAK	01/01	12/31	193	121	314	11/01/2022
ALASKA	ANCHORAGE	01/01	12/31	229	145	374	11/01/2022
ALASKA	BARROW	05/01	08/31	301	129	430	11/01/2022
ALASKA	BARROW	09/01	04/30	266	129	395	11/01/2022
ALASKA	BARTER ISLAND LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	BETHEL	01/01	12/31	219	101	320	11/01/2022
ALASKA	BETTLES	01/01	12/31	193	121	*314	11/01/2022
ALASKA	CAPE LISBURNE LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	CAPE NEWENHAM LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	CAPE ROMANZOF LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	CLEAR AB	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLD BAY	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLD BAY LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLDFOOT	01/01	12/31	249	93	342	11/01/2022
ALASKA	COPPER CENTER	01/01	12/31	193	121	314	11/01/2022
ALASKA	CORDOVA	01/01	12/31	174	106	280	11/01/2022
ALASKA	CRAIG	05/01	09/30	139	94	233	11/01/2022
ALASKA	CRAIG	10/01	04/30	109	94	203	11/01/2022
ALASKA	DEADHORSE	01/01	12/31	193	121	*314	11/01/2022
ALASKA	DELTA JUNCTION	01/01	12/31	193	106	299	11/01/2022
ALASKA	DENALI NATIONAL PARK.	05/01	09/30	189	118	307	11/01/2022
ALASKA	DENALI NATIONAL PARK.	10/01	04/30	99	118	217	11/01/2022
ALASKA	DILLINGHAM	01/01	12/31	320	113	433	11/01/2022
ALASKA	DUTCH HARBOR-UNALASKA.	01/01	12/31	154	129	283	11/01/2022
ALASKA	EARECKSON AIR STATION.	01/01	12/31	146	74	220	11/01/2022
ALASKA	EIELSON AFB	05/16	09/30	204	108	312	11/01/2022
ALASKA	EIELSON AFB	10/01	05/15	129	108	237	11/01/2022
ALASKA	ELFIN COVE	01/01	12/31	193	121	314	11/01/2022
ALASKA	ELMENDORF AFB	01/01	12/31	229	145	374	11/01/2022
ALASKA	FAIRBANKS	05/16	09/30	204	108	312	11/01/2022
ALASKA	FAIRBANKS	10/01	05/15	129	108	237	11/01/2022
ALASKA	FORT YUKON LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	FT. GREELY	01/01	12/31	193	106	299	11/01/2022
ALASKA	FT. RICHARDSON	01/01	12/31	229	145	374	11/01/2022
ALASKA	FT. WAINWRIGHT	05/16	09/30	204	108	312	11/01/2022
ALASKA	FT. WAINWRIGHT	10/01	05/15	129	108	237	11/01/2022
ALASKA	GAMBELL	01/01	12/31	193	121	314	11/01/2022
ALASKA	GLENNALLEN	01/01	12/31	193	121	314	11/01/2022
ALASKA	HAINES	05/01	09/30	184	113	297	11/01/2022
ALASKA	HAINES	10/01	04/30	159	113	272	11/01/2022
ALASKA	HEALY	05/01	09/30	189	118	307	11/01/2022

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	HEALY	10/01	04/30	99	118	217	11/01/2022
ALASKA	HOMER	05/01	09/30	210	124	334	11/01/2022
ALASKA	HOMER	10/01	04/30	129	124	253	11/01/2022
ALASKA	JB ELMENDORF- RICHARDSON.	01/01	12/31	229	145	374	11/01/2022
ALASKA	JUNEAU	02/01	09/30	249	118	367	11/01/2022
ALASKA	JUNEAU	10/01	01/31	189	118	307	11/01/2022
ALASKA	KAKTOVIK	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	KAVIK CAMP	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	KENAI- SOLDOTNA.	05/01	09/30	171	113	284	11/01/2022
ALASKA	KENAI- SOLDOTNA.	10/01	04/30	129	113	242	11/01/2022
ALASKA	KENNICOTT	01/01	12/31	193	121	314	11/01/2022
ALASKA	KETCHIKAN	05/01	09/30	250	118	368	11/01/2022
ALASKA	KETCHIKAN	10/01	04/30	160	118	278	11/01/2022
ALASKA	KING SALMON	01/01	12/31	193	121	314	11/01/2022
ALASKA	KING SALMON LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	KLAWOCK	05/01	09/30	139	94	233	11/01/2022
ALASKA	KLAWOCK	10/01	04/30	109	94	203	11/01/2022
ALASKA	KODIAK	03/01	09/30	223	109	332	11/01/2022
ALASKA	KODIAK	10/01	02/28	121	109	230	11/01/2022
ALASKA	KOTZEBUE	01/01	12/31	193	121	314	11/01/2022
ALASKA	KULIS AGS	01/01	12/31	229	145	374	11/01/2022
ALASKA	MCCARTHY	01/01	12/31	193	121	314	11/01/2022
ALASKA	MCGRATH	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	MURPHY DOME	05/16	09/30	204	108	312	11/01/2022
ALASKA	MURPHY DOME	10/01	05/15	129	108	237	11/01/2022
ALASKA	NOME	05/01	08/31	250	118	368	11/01/2022
ALASKA	NOME	09/01	04/30	242	118	360	11/01/2022
ALASKA	NOSC ANCHOR- AGE.	01/01	12/31	229	145	374	11/01/2022
ALASKA	NUIQSUT	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	OLIKTOK LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	PALMER	01/01	12/31	196	131	327	11/01/2022
ALASKA	PETERSBURG	01/01	12/31	130	108	238	11/01/2022
ALASKA	POINT BARROW LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	POINT HOPE	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	POINT LONELY LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	PORT ALEX- ANDER.	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	PORT ALSWORTH.	01/01	12/31	193	121	314	11/01/2022
ALASKA	PRUDHOE BAY	01/01	12/31	193	121	* 314	11/01/2022
ALASKA	SELDOVIA	05/01	09/30	210	124	334	11/01/2022
ALASKA	SELDOVIA	10/01	04/30	129	124	253	11/01/2022
ALASKA	SEWARD	04/01	09/30	284	164	448	11/01/2022
ALASKA	SEWARD	10/01	03/31	129	164	293	11/01/2022
ALASKA	SITKA-MT. EDGECUMBE.	04/01	09/30	245	116	361	11/01/2022
ALASKA	SITKA-MT. EDGECUMBE.	10/01	03/31	199	116	315	11/01/2022
ALASKA	SKAGWAY	05/01	09/30	250	118	368	11/01/2022
ALASKA	SKAGWAY	10/01	04/30	160	118	278	11/01/2022
ALASKA	SLANA	01/01	12/31	193	121	314	11/01/2022
ALASKA	SPARREVOHN LRRS.	01/01	12/31	193	121	314	11/01/2022
ALASKA	SPRUCE CAPE	03/01	09/30	223	109	332	11/01/2022
ALASKA	SPRUCE CAPE	10/01	02/28	121	109	230	11/01/2022
ALASKA	ST. GEORGE	01/01	12/31	193	121	314	11/01/2022
ALASKA	TALKEETNA	01/01	12/31	193	123	316	11/01/2022
ALASKA	TANANA	05/01	08/31	250	118	368	11/01/2022
ALASKA	TANANA	09/01	04/30	242	118	360	11/01/2022
ALASKA	TATALINA LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	TIN CITY LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	TOK	01/01	12/31	105	113	218	11/01/2022
ALASKA	VALDEZ	05/16	09/15	230	110	340	11/01/2022
ALASKA	VALDEZ	09/16	05/15	105	110	215	11/01/2022
ALASKA	WAINWRIGHT	01/01	12/31	295	77	372	11/01/2022
ALASKA	WASILLA	06/01	09/30	216	104	320	11/01/2022
ALASKA	WASILLA	10/01	05/31	108	104	212	11/01/2022

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	WRANGELL	05/01	09/30	250	118	368	11/01/2022
ALASKA	WRANGELL	10/01	04/30	160	118	278	11/01/2022
ALASKA	YAKUTAT	06/01	09/30	350	111	461	11/01/2022
ALASKA	YAKUTAT	10/01	05/31	150	111	261	11/01/2022
AMERICAN SAMOA.	AMERICAN SAMOA.	01/01	12/31	149	103	252	05/01/2023
AMERICAN SAMOA.	PAGO PAGO	01/01	12/31	149	103	252	05/01/2023
GUAM	GUAM (INCL ALL MIL INSTAL).	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (ANDERSEN).	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (NAVAL BASE).	01/01	12/31	159	124	283	02/01/2023
GUAM	TAMUNING	01/01	12/31	159	124	283	02/01/2023
HAWAII	[OTHER]	01/01	12/31	229	157	386	02/01/2023
HAWAII	CAMP H M SMITH	01/01	12/31	202	157	359	02/01/2023
HAWAII	CNI NAVMAG	01/01	12/31	202	157	359	02/01/2023
HAWAII	PEARL HARBOR-HICKAM.						
HAWAII	FT. DERUSSEY ...	01/01	12/31	202	157	359	02/01/2023
HAWAII	FT. SHAFTER	01/01	12/31	202	157	359	02/01/2023
HAWAII	HICKAM AFB	01/01	12/31	202	157	359	02/01/2023
HAWAII	HONOLULU	01/01	12/31	202	157	359	02/01/2023
HAWAII	ISLE OF HAWAII: HILO.	01/01	12/31	199	146	345	02/01/2023
HAWAII	ISLE OF HAWAII: LOCATIONS OTHER THAN HILO.	01/01	12/31	229	173	402	02/01/2023
HAWAII	ISLE OF KAUAI	01/01	12/31	325	165	490	02/01/2023
HAWAII	ISLE OF LANAI	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF MAUI	01/01	12/31	354	153	507	02/01/2023
HAWAII	ISLE OF MOLOKAI.	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF OAHU	01/01	12/31	202	157	359	02/01/2023
HAWAII	JB PEARL HARBOR-HICKAM.	01/01	12/31	202	157	359	02/01/2023
HAWAII	KAPOLEI	01/01	12/31	202	157	359	02/01/2023
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC.	01/01	12/31	325	165	490	03/01/23
HAWAII	KILAUEA MILITARY CAMP.	01/01	12/31	199	146	345	02/01/2023
HAWAII	LIHUE	01/01	12/31	325	165	490	02/01/2023
HAWAII	MCB HAWAII	01/01	12/31	202	157	359	02/01/2023
HAWAII	NCTAMS PAC WAHIAWA.	01/01	12/31	202	157	359	02/01/2023
HAWAII	NOSC PEARL HARBOR.	01/01	12/31	202	157	359	02/01/2023
HAWAII	PEARL HARBOR	01/01	12/31	202	157	359	02/01/2023
HAWAII	PMRF BARKING SANDS.	01/01	12/31	325	165	490	02/01/2023
HAWAII	SCHOFIELD BARRACKS.	01/01	12/31	202	157	359	02/01/2023
HAWAII	TRIPLER ARMY MEDICAL CENTER.	01/01	12/31	202	157	359	02/01/2023
HAWAII	WHEELER ARMY AIRFIELD.	01/01	12/31	202	157	359	02/01/2023
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	05/01/2023
NORTHERN MARIANA ISLANDS.	ROTA	01/01	12/31	130	125	255	05/01/2023
NORTHERN MARIANA ISLANDS.	SAIPAN	01/01	12/31	161	113	274	05/01/2023
NORTHERN MARIANA ISLANDS.	TINIAN	01/01	12/31	145	95	240	05/01/2023
PUERTO RICO	[OTHER]	01/01	12/31	159	100	259	05/01/2021
PUERTO RICO	AGUADILLA	01/01	12/31	149	90	239	05/01/2021
PUERTO RICO	BAYAMON	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	BAYAMON	06/01	11/30	167	115	282	05/01/2021

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
PUERTO RICO	CAROLINA	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	CAROLINA	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	CEIBA	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	CULEBRA	01/01	12/31	159	105	264	05/01/2021
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT].	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	HUMACAO	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS.	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS.	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	LUQUILLO	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	MAYAGUEZ	01/01	12/31	109	94	203	05/01/2021
PUERTO RICO	PONCE	01/01	12/31	149	130	279	05/01/2021
PUERTO RICO	RIO GRANDE	01/01	12/31	169	85	254	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILI- TARY].	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILI- TARY].	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA.	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA.	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	VIEQUES	01/01	12/31	159	94	253	05/01/2021
VIRGIN ISLANDS (U.S.)	ST. CROIX	05/01	10/31	247	115	362	10/01/2023
VIRGIN ISLANDS (U.S.)	ST. CROIX	11/01	04/30	299	115	414	10/01/2023
VIRGIN ISLANDS (U.S.)	ST. JOHN	04/15	12/15	274	150	424	10/01/2023
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/16	04/14	364	150	514	10/01/2023
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	274	150	424	10/01/2023
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	364	150	514	10/01/2023
WAKE ISLAND	WAKE ISLAND	01/01	12/31	133	73	206	05/01/2023

*Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2023-20926 Filed 9-25-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee closed meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of

the U.S. Strategic Command Strategic Advisory Group will take place.

DATES: Day 1—Closed to the public Wednesday, October 25, 2023, from 9 a.m. to 5 p.m. and Day 2—Closed to the public Thursday, October 26, 2023, from 9 a.m. to 5 p.m.

ADDRESSES: 900 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Derrick J. Besse, Designated Federal Officer (DFO), (402) 912-0322 (Voice), derrick.j.besse.civ@mail.mil (Email). Mailing address is 900 SAC Boulevard, Suite N3.170, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 United

States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”), 5 U.S.C. 552b (commonly known as the “Government in the Sunshine Act”), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation’s strategic war plans.

Agenda: Topics include: Annual Stockpile Assessment, Technologies and Expertise for Strategic Deterrence, Capability Integration Constraints and Impacts, Strategy Adapted for Current Geopolitical Environments, Strategic Deterrence Planning Assessment,

Integration and Improvement, Assessment of Strategic Risk Drivers in Out Years, and Next-Generation Nuclear Command, Control, and Communication Capabilities inclusion in Analytic Framework.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the DoD has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Anthony J. Cotton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.140(c), the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's DFO; the DFO's contact information can be obtained from the GSA's FACA Database—<http://www.facadatabase.gov/>. Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Dated: September 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–20883 Filed 9–25–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Regional Advisory Committees

AGENCY: Office of Elementary and Secondary Education, U.S. Department of Education.

ACTION: Amendment to notice of open meetings.

SUMMARY: The Department of Education (Department) announces an amendment to the dates and times of Meeting 2 for each of the Regional Advisory Committee (RACs).

ADDRESSES: The meetings will be conducted virtually. See the “Public Participation” heading in the **SUPPLEMENTARY INFORMATION** section of this document for instructions on how to access the virtual meetings.

DATES: The virtual, open meetings for each of the RACs will be held on the dates and times listed under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Michelle Daley, Group Leader, Comprehensive Centers Group, Office of Program and Grantee Support Services, U.S. Department of Education. Telephone: 202–987–1057. Email: OESE.RAC@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

For specific RACs, contact the Designated Federal Official (DFO), listed below:

Appalachia and West RAC: Muhammad Kara, email: Muhammad.Kara@ed.gov

Central and Southwest RAC: Rebekka Meyer, email: Rebekka.Meyer@ed.gov

Mid-Atlantic RAC: Esley Newton, email: Esley.Newton@ed.gov

Midwest and Northwest RAC: Bryan Keohane, email: Bryan.Keohane@ed.gov

Northeast and Islands RAC: Sarah Zevin, email: Sarah.Zevin@ed.gov

Pacific RAC: Erin Kelts, email: Erin.Kelts@ed.gov

Southeast RAC: Elisabeth Lembo, email: Elisabeth.Lembo@ed.gov

SUPPLEMENTARY INFORMATION: On August 18, 2023, the Department published in the **Federal Register** a notice of open meetings of the RACs (88 FR 56608). The notice established the agenda, dates and times, and instructions for accessing the upcoming virtual meetings. This notice amends the dates and times for Meeting 2 for each RAC and provides information about the meetings to members of the public who may be interested in attending the meetings or providing written comments related to the work of the RACs. Notice of these meetings is required under the Federal Advisory Committee Act.

Statutory Authority: The RACs are authorized by the Educational Technical Assistance Act of 2002 (ETAA) (Pub. L. 107–279; 20 U.S.C. 9605). Information on the RACs can be found at <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/>. The RACs advise the Secretary of Education (Secretary) regarding the educational needs of their regions, as

described in section 174(b) of the Education Sciences Reform Act of 2002, in order to assist in making decisions regarding the regional educational priorities.

The RACs' responsibilities include assessing the educational needs within their regions (Assessment). In conducting the Assessment, RACs seek input from chief executive officers of States, chief State school officers, educators, and parents. The RACs conduct open hearings to solicit the views and needs of schools (including public charter schools), teachers, administrators, members of the regional educational laboratory governing board, parents, local educational agencies, librarians, businesses, State educational agencies, and other customers, such as adult education programs, within the region regarding the need for the activities described in 20 U.S.C. 9564 and 9602, and how those needs would be most effectively addressed. RACs submit the Assessment to the Secretary and to the Director of the Institute of Education Sciences, at such time, in such a manner, and containing such information as the Secretary may require.

Purpose of Open Meetings: The open meetings are designed to—

(1) Provide members of the 10 RACs an opportunity to participate in two open virtual meetings to assess the educational needs within the region served and to deliberate on the findings to prepare their region's Assessment.

(2) Provide members of the RACs the opportunity to review and discuss the reports that they will submit to the Secretary in October 2023.

(3) Provide an opportunity for the public to observe and listen to RAC discussions on the top challenges in each region for improving student academic achievement and educational outcomes.

(4) Provide an opportunity for the public to observe and listen to RAC discussions on recommendations on the educational needs of each region and how those needs may be addressed through technical assistance activities provided by comprehensive centers described in section 203 of the Educational Technical Assistance Act (ETAA) that would help States, districts, and schools successfully address the critical educational challenges identified by each of the RACs.

(5) Provide an opportunity for the public to observe and listen to discussions and recommendations from each of the RACs on the priorities for federally funded technical assistance in their region.

Agenda

Meeting 1: The RACs will (1) review educational data from each region and public comments received and deliberate and make recommendations about the critical education needs of the region; and (2) discuss how those needs can most effectively be addressed through technical assistance activities.

Meeting 2: The RACs will (1) review additional input received from stakeholders and public comments received and, based on the information received, finalize their assessment of the critical educational needs of each region; and (2) deliberate on the education needs assessment for their region and finalize recommendations to be included in the Assessment.

Meeting agendas will be posted on the RAC website: <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/>.

Meeting Dates and Times: Meeting times are listed in Eastern time and local time zones for each region.

Appalachia RAC (Kentucky, Tennessee, Virginia, and West Virginia)

Meeting 1: September 5, 2023, from 1:30 p.m. to 3 p.m. ET/12:30 p.m. to 2 p.m. CT.

Meeting 2: October 13, 2023, from 11 a.m. to 12:30 p.m. ET/10 a.m. to 11:30 a.m. CT.

Northwest RAC (Alaska, Idaho, Montana, Oregon, and Washington)

Meeting 1: September 6, 2023, from 2 p.m. to 3:30 p.m. ET/10 a.m. to 11:30 a.m. AKT/11 a.m. to 12:30 p.m. PT/12 p.m. to 1:30 p.m. MT.

Meeting 2: October 13, 2023, from 2 p.m. to 3:30 p.m. ET/10 a.m. to 11:30 a.m. AKT/11 a.m. to 12:30 p.m. PT/12 p.m. to 1:30 p.m. MT.

Central RAC (Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming)

Meeting 1: September 6, 2023, from 11 a.m. to 12:30 p.m. ET/9 a.m. to 10:30 a.m. MT/10 a.m. to 11:30 a.m. CT.

Meeting 2: October 16, 2023, from 2 p.m. to 3:30 p.m. ET/12 p.m. to 1:30 p.m. MT/1 p.m. to 2:30 p.m. CT.

Southeast RAC (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina)

Meeting 1: September 5, 2023, from 4 p.m. to 5:30 p.m. ET.

Meeting 2: October 11, 2023, from 9 a.m. to 10:30 a.m. ET/8 a.m. to 9:30 a.m. CT.

Mid-Atlantic RAC (Delaware, District of Columbia, Maryland, New Jersey, and Pennsylvania)

Meeting 1: September 7, 2023, from 11 a.m. to 12:30 p.m. ET.

Meeting 2: October 17, 2023, from 4 p.m. to 5:30 p.m. ET.

Southwest RAC (Arkansas, Bureau of Indian Education, Louisiana, New Mexico, Oklahoma, and Texas)

Meeting 1: September 7, 2023, from 2 p.m. to 3:30 p.m. ET/12 p.m. to 1:30 p.m. MT/1 p.m. to 2:30 p.m. CT.

Meeting 2: October 12, 2023, from 2 p.m. to 3:30 p.m. ET/12 p.m. to 1:30 p.m. MT/1 p.m. to 2:30 p.m. CT.

Pacific RAC (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Palau, and Republic of the Marshall Islands)

Meeting 1: September 7, 2023, from 6 p.m. to 7:30 p.m. ET/11 a.m. to 12:30 p.m. SST/8 a.m. to 9:30 p.m. ChST/9 a.m. to 10:30 a.m. PONT/12 p.m. to 1:30 p.m. HST/7 a.m. to 8:30 a.m. PWT/10 a.m. to 11:30 a.m. MHT.

Meeting 2: October 16, 2023, from 6 p.m. to 7:30 p.m. ET/12 p.m. to 1:30 p.m. HST/11 a.m. to 12:30 p.m. SST/October 17, 2023 from 8 a.m. to 9:30 a.m. ChST/9 a.m. to 10:30 a.m. PONT/7 a.m. to 8:30 a.m. PWT/10 a.m. to 11:30 a.m. MHT.

Northeast and Islands RAC (Connecticut, Massachusetts, Maine, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands)

Meeting 1: September 8, 2023, from 11 a.m. to 12:30 p.m. ET.

Meeting 2: October 12, 2023, from 11 a.m. to 12:30 p.m. ET.

West RAC (Arizona, California, Nevada, and Utah)

Meeting 1: September 8, 2023, from 2 p.m. to 3:30 p.m. ET/11 a.m. to 12:30 p.m. PT/12 p.m. to 1:30 p.m. MT.

Meeting 2: October 11, 2023, from 2 p.m. to 3:30 p.m. ET/11 a.m. to 12:30 p.m. PT/12 p.m. to 1:30 p.m. MT.

Midwest RAC (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin)

Meeting 1: September 5, 2023, from 11 a.m. to 12:30 p.m. ET/10 a.m. to 11:30 a.m. CT.

Meeting 2: October 16, 2023, from 11 a.m. to 12:30 p.m. ET/10 a.m. to 11:30 a.m. CT.

Public Participation: Members of the public who wish to observe and listen to RAC discussions and recommendations may access the RAC

meetings via virtual teleconference. Pre-registration is required by 11:59 p.m. ET, two business days before the RAC meeting date. Information on how to register for and access the RAC meetings is on the RACs' website at <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/>.

Public Comments: Members of the public may submit written comments at <https://app.smartsheet.com/b/form/58f2ccc2542a44c9b6f83d567d5aa40b>. Comments must be submitted by 11:59 p.m. ET, two business days before the RAC meeting date. Written comments should pertain to the work of RACs.

Reasonable Accommodations: The virtual RAC meetings are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than 48 hours before the scheduled meeting date. Although we will attempt to meet a request received after that date, we cannot guarantee availability of the requested accommodation because of insufficient time to arrange it.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009(b), the public may inspect the meeting materials on the RACs' website, <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/>. The public may also inspect the meeting materials and other RAC records at the U.S. Department of Education, 400 Maryland Ave SW, Washington DC 20202, by emailing the DFO for the RAC to schedule an appointment. Records of open meetings, including the official transcripts of the open meetings will be available for public inspection no later than 10 business days following each meeting and will be posted on the RACs' website. Requests for an official transcript may be made via email to the DFO for each RAC.

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.

Electronic Access to this Document: The official version of this document is the document published in the **Federal**

Register. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Section 206 of the ETAA, as amended (20 U.S.C. 9605).

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2023–20905 Filed 9–25–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for CSP CMO Grants, Assistance Listing Number (ALN) 84.282M. This notice relates to the approved information collection under OMB control number 1810–0767.

DATES: *Applications Available:* September 26, 2023.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by October 2, 2023. Applicants that do not meet this deadline may still apply.

Deadline for Transmittal of Applications: January 5, 2024.

Deadline for Intergovernmental Review: March 5, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar to provide technical assistance to

prospective applicants. Detailed information regarding this webinar will be provided at <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-grants-for-replications-and-expansion-of-high-quality-charter-schools/>.

Note: For prospective new applicants unfamiliar with grantmaking at the Department, please consult our funding basics resource at <https://www2.ed.gov/fund/grant/about/discretionary/index.html>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>. Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Jones, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–5563. Email: CMOCompetition2024@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CSP CMO Grant program (ALN 84.282M) is authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through CSP CMO Grants, the Department awards grants to *charter management organizations (CMOs)*¹ on a competitive basis to enable them to *replicate or expand* one or more *high-quality charter schools*. Grant funds may be used to significantly increase the enrollment of, or add one or more grades to, an existing high-quality charter school or to open one or more new charter schools or new campuses of a high-quality charter school based on the educational model of an existing high-quality charter school. Charter schools that receive financial assistance

¹ Terms defined in this notice are italicized the first time each term is used.

through CSP CMO Grants provide elementary or secondary education programs, or both, and may also serve students in *early childhood education programs* or postsecondary students, consistent with the terms of their charter.

Background: The major purposes of the CSP are to expand opportunities for all students, particularly for *children with disabilities, English learners*, and other traditionally *underserved students*, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; support efforts to strengthen the charter school authorizing process; and support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies (SEAs) and local educational agencies (LEAs) (see section 4301 of the ESEA).

“Raise the Bar: Lead the World” (RTB) is the Department’s recent call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around *evidence-based* strategies that advance educational equity and excellence for all students.² When we raise the bar in education, all our Nation’s students will be able to build the skills to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.³ This competition, through the program as authorized and through the competitive preference and invitational priorities, advances several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student and provide every student with a pathway to multilingualism.

In July 2022, the Department published in the **Federal Register** a

² <https://www.ed.gov/raisethebar/>.

³ The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the educator shortage, investing in mental health, ensuring every student has a postsecondary pathway, and a pathway to multilingualism.

notice of final priorities, requirements, definitions, and selection criteria for this program (87 FR 40406) (2022 NFP), which supplements the program statute and notice of final priorities, requirements, definitions, and selection criteria for CSP CMO Grants published in the **Federal Register** in November 2018 (83 FR 61532) (2018 NFP). The 2022 NFP is intended to help ensure the creation, replication, and expansion of high-quality charter schools that promote positive student outcomes, *educator* and community empowerment, promising practices, and school diversity. The 2022 NFP also promotes greater fiscal and operational transparency and accountability for CSP-funded charter schools. This notice includes two competitive preference priorities from the 2018 NFP and 2022 NFP, and two invitational priorities.

The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse, and equitable learning opportunities, which is consistent with the RTB initiative and the Department's goals for all public schools. To that end, this competition also includes a statutory priority from section 4305(b)(5)(A) of the ESEA to promote racially and socioeconomically diverse student bodies. The Department used the same priority in the FY 2023 competition (87 FR 67876).

Invitational Priority 1 encourages collaboration between charter schools and traditional public schools or traditional school districts that benefit students and families across schools. These types of collaborations can support improved outcomes for students in both charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, and developing principal pipeline programs. Invitational Priority 2, which complements the first competitive preference priority,⁴ encourages high-quality charter schools to create pathways to multilingualism for students, particularly underserved students. High-quality multilingual programming provides English learners and native English speakers with the opportunity to become bilingual and biliterate and may support Native American language education and preservation. It also celebrates the assets

of English learners while supporting English language acquisition and promoting academic excellence. Using invitational priorities allows the Department to encourage beneficial collaborations and pathways to multilingualism that can better prepare all students for a global society and economy.

Priorities: This notice includes three competitive preference priorities and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 1 is from section 4305(b)(5)(A) of the ESEA. Competitive Preference Priority 2 is from the 2018 NFP. Competitive Preference Priority 3 is from the 2022 NFP.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities.

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 7 points to an application that meets Competitive Preference Priority 1, up to an additional 7 points to an application that meets Competitive Preference Priority 2, and up to an additional 7 points to an application that meets Competitive Preference Priority 3, depending on how well the application meets one or more of these priorities.

An applicant must identify on the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority for an application that fails to clearly identify the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. An application may receive a total of up to 21 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Racially and Socioeconomically Diverse Student Bodies (up to 7 points).

Under this priority, applicants must propose to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies. (Section 4305(b)(5)(A) of the ESEA)

Competitive Preference Priority 2—High School Students (up to 7 points).

Under this priority, applicants must propose to—

(a) Replicate or expand high-quality charter schools to serve high school

students, including *educationally disadvantaged students*;

(b) Prepare students, including educationally disadvantaged students, in those schools for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests;

(c) Provide support for students, including educationally disadvantaged students, who graduate from those schools and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution; and

(d) Propose one or more project-specific *performance measures*, including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a CSP CMO Grant must provide data that are responsive to the measure(s), including *performance targets*, in its annual performance reports to the Department.

(e) For purposes of this priority, postsecondary education institutions include *institutions of higher education*, as defined in section 8101(29) of the ESEA, and one-year training programs that meet the requirements of section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA). (2018 NFP)

Competitive Preference Priority 3—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students (up to 7 points).

(a) Under this priority, an applicant must propose to open a new charter

⁴ Kotok, Stephen, and David DeMatthews. "Challenging School Segregation in the Twenty-First Century: How Districts Can Leverage Dual Language Education to Increase School and Classroom Diversity." *Clearing House: A Journal of Educational Strategies, Issues and Ideas* 91.1 (2018): 1–6.

school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other educators; and

(2) Using a community-centered approach that includes an assessment of *community assets*, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school. (2022 NFP)

Invitational Priorities: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is particularly interested in funding applications that propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following—

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with

educator preparation programs to support teaching residencies.

(3) Evidence-based practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (e.g., discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (e.g., transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners.

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, the grantee provides evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Invitational Priority 2—Promoting Pathways to Multilingualism.

The Secretary is particularly interested in funding applications that propose to replicate or expand high-quality charter schools with multilingual programming that is centered on the needs and assets of the community the schools serve and is designed to provide students, particularly underserved students, with pathways to multilingualism through any of the following—

(a) Dual language programs that offer academic instruction in two languages and are designed to enroll both English learners and native English speakers on an equitable basis and ensure all students become bilingual and biliterate in both languages.

(b) A mission and focus on supporting Native American language education and development, such as through dual language programs or other instructional models and teaching methods that reflect and preserve Native American language, culture, and history.

(c) A mission and focus on meeting the unique educational needs and celebrating the assets of English learners using evidence-based practices to support English language acquisition and promote academic excellence.

(d) Other innovative or evidence-based strategies to promote multilingualism, including approaches to recruit, support, and retain multilingual educators.

Definitions:

The following definitions are from sections 4310 (20 U.S.C. 7221i) and 8101 (20 U.S.C. 7801) of the ESEA, 34 CFR 77.1, the 2018 NFP, and the 2022 NFP.

Ambitious means promoting continued, meaningful improvement for

program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the *baseline* for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school. (Section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight. (Section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a *developer* as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency*;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;⁵

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*),

section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which *parents* choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Note: Pursuant to section 4310(1) of the ESEA, for a school to qualify as a *charter school* under this definition and receive federal CSP funds, the *authorized public chartering agency* that issues the charter or performance contract must be an SEA, LEA, or other *public* entity with authority pursuant to State law to approve a charter school. Under 34 CFR 77.1, *public*, “as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.”

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. (Section 8101(4) of the ESEA)

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities. (2022 NFP)

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (Section 4310(5) of the ESEA)

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution. (2022 NFP)

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

⁵ The Department will apply this element of the definition of “charter school” consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), and *Carson v. Makin*, 142 S. Ct. 1987 (2022).

(2) A State licensed or regulated child care program;

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is (A) a State prekindergarten program; (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA; or (C) a program operated by an LEA. (ESEA section 8101(16))

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2018 NFP)

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (e.g., school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty. (2022 NFP)

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101(20) of the ESEA)

Evidence-based means—

(1) In general.—The term 'evidence-based', when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that—

(i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(A) strong evidence from at least one well-designed and well-implemented experimental study;

(B) moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(C) promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(A) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(B) includes ongoing efforts to examine the effects of such activity, strategy, or intervention. (Section 8101(21) of the ESEA)

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school. (Section 4310(7) of the ESEA)

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4310(8) of the ESEA)

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. (2018 NFP)

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (i.e., the active "ingredients" that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). (Section 8101(38) of the ESEA)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (e.g., training teachers on instructional practices for

English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Public as applied to an agency, organization, or institution means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law. (Section 4310(9) of the ESEA)

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner.

(5) A child or student with a disability.

(6) A *disconnected youth*.

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level. (2022 NFP)

Application Requirements:

Applications for CSP CMO Grant funds must address the following application requirements. These requirements are from sections 4303(f)(1)⁶ and 4305(b)(3) of the ESEA, the 2018 NFP, and the 2022 NFP. The Department will not fund an application that does not meet each application requirement. The source of each requirement is provided in parentheses following each requirement.

In addressing the application requirements, applicants must clearly

identify which application requirement they are addressing. An applicant must respond to application requirement (a) in a stand-alone section of the application or in an appendix. For all other application requirements, an applicant may choose to respond to each requirement separately or in the context of the applicant's responses to the selection criteria in section V.1 of this notice.

Applications for funding under the CSP CMO Grant program must—

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out, including—

(1) A description of how the applicant will ensure that charter schools receiving funds under this program meet the educational needs of their students, including children with disabilities and English learners (Section 4303(f)(1)(A)(x) of the ESEA); and

(2) A description of how the applicant will ensure that each charter school receiving funds under this program has considered and planned for the transportation needs of the school's students (Section 4303(f)(1)(E) of the ESEA);

(b) For each charter school currently operated or managed by the applicant, provide—

(1) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(2) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available 4-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(3) Information on any significant compliance and management issues encountered within the last 3 school years by any school operated or managed by the eligible entity, including in the areas of student safety and finance (Section 4305(b)(3)(A) of the ESEA);

(c) Describe the educational program that the applicant will implement in each charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used (Section 4305(b)(3)(B)(ii) of the ESEA);

(d) Demonstrate that the applicant currently operates or manages more than one charter school. For purposes of this program, multiple charter schools

are considered to be separate schools if each school—

(1) Meets each element of the definition of charter school under section 4310(2) of the ESEA; and

(2) Is treated as a separate school by its authorized public chartering agency and the State in which the charter school is located, including for purposes of accountability and reporting under title I, part A of the ESEA (2018 NFP);

(e) Provide information regarding any compliance issues, and how they were resolved, for any charter schools operated or managed by the applicant that have—

(1) Closed;

(2) Had their charter(s) revoked due to problems with statutory or regulatory compliance, including compliance with sections 4310(2)(G) and (J) of the ESEA; or

(3) Had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (2018 NFP);

(f) Provide a complete *logic model* for the grant project. The logic model must include the applicant's objectives for replicating or expanding one or more high-quality charter schools with funding under this program, including the number of high-quality charter schools the applicant proposes to replicate or expand (2018 NFP);

(g) If the applicant currently operates, or is proposing to replicate or expand, a single-sex charter school or coeducational charter school that provides a single-sex class or extracurricular activity (collectively referred to as a "single-sex educational program"), demonstrate that the existing or proposed single-sex educational program is in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its implementing regulations, including 34 CFR 106.34 (2018 NFP);

(h) Describe how the applicant currently operates or manages the high-quality charter schools for which it has presented evidence of success and how the proposed replicated or expanded charter schools will be operated or managed, including the legal relationship between the applicant and its schools. If a legal entity other than the applicant has entered or will enter into a performance contract with an authorized public chartering agency to operate or manage one or more of the applicant's schools, the applicant must also describe its relationship with that entity (2018 NFP);

(i) Describe how the applicant will solicit and consider input from parents and other members of the community on the implementation and operation of

⁶Per section 4305(c) of the ESEA, CSP CMO Grants have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, the Department has replaced the term "State entity" with "applicant" in the requirements that derive from section 4303.

each replicated or expanded charter school, including in the area of school governance (2018 NFP);

(j) Describe the lottery and enrollment procedures that will be used for each replicated or expanded charter school if more students apply for admission than can be accommodated, including how any proposed weighted lottery complies with section 4303(c)(3)(A) of the ESEA (2018 NFP);

(k) Describe how the applicant will ensure that all eligible children with disabilities receive a free appropriate public education in accordance with Part B of the Individuals with Disabilities Education Act (2018 NFP);

(l) Describe how the proposed project will assist educationally disadvantaged students in mastering challenging State academic standards (2018 NFP);

(m) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities (2018 NFP);

(n) Provide the applicant's most recent independently audited financial statements prepared in accordance with generally accepted accounting principles (2018 NFP);

(o) Describe the applicant's policies and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools (2018 NFP);

(p) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter schools to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived, or otherwise not apply, to such schools (2018 NFP);

(q) Provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following—

(1) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will

achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(2) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(3) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socioeconomically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school because the charter school would be located in a racially or socioeconomically segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(i) Why it is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school;

(ii) How the anticipated racial and socioeconomic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) The anticipated impact of the proposed charter school on the racial and socioeconomic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(4) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following—

(i) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(ii) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(iii) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(5) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including holding enrollment and recruitment events on weekends or during nonstandard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.*, hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.*, online and at community locations).

(6) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(7) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.*, access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(8) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (1) would not hamper, delay, or negatively affect any desegregation efforts in the local community in which the charter school would be located or in the public school districts from

which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (2) to ensure that the proposed charter school would not otherwise increase racial or socioeconomic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school (2022 NFP);

(r) For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(1) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.*, fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(3) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of

interest to ensure compliance with 2 CFR 200.318(c);

(4) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization);

(5) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(6) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP); and

(s) Provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application. (2022 NFP)

Assurances:

Each applicant for a CSP CMO Grant must provide the following assurances. These assurances are from sections 4303(f)(2) and 4305(b)(3)(C) of the ESEA and the 2022 NFP. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide assurances that—

(a) The grantee will support charter schools in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA. (Section 4303(f)(2)(B) of the ESEA)

(b) The grantee will ensure that each charter school receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(1) Information on the educational program;

(2) Student support services;

(3) Parent contract requirements (as applicable), including any financial obligations or fees;

(4) Enrollment criteria (as applicable); and

(5) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4303(f)(2)(G) of the ESEA)

(c) The eligible entity has sufficient procedures in effect to ensure timely closure of low-performing or financially mismanaged charter schools and clear plans and procedures in effect for the students in such schools to attend other high-quality schools. (Section 4305(b)(3)(C) of the ESEA)

(d) Each charter school it funds has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization or its related entities exercises full or substantial administrative control over the charter school and, thereby, the CSP project. (2022 NFP)

(e) Any management contract between a charter school that the applicant funds and a for-profit management organization, including a nonprofit

CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.*, food or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization. (2022 NFP)

(f) Each charter school that the applicant funds will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department, including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.*, fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding; the duration, roles, and responsibilities of the management organization; the steps the charter school will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization; and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school and a list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close. (2022 NFP)

(g) Each charter school that the applicant funds will disclose, as part of the enrollment process, any policies and requirements (*e.g.*, purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.*, transportation services or participation in the National School Lunch Program). (2022 NFP)

(h) Each charter school that the applicant funds will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socioeconomic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socioeconomic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.*, provide widespread and

timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.*, hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above. (2022 NFP)

(i) Each charter school that the applicant funds will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP)

(j) Each applicant must provide an assurance that, within 120 days of the date of the grant award notification (GAN), the grantee will post on its website:

(1) A list of the charter schools slated to receive CSP funds, including the following for each school:

(i) The name, address, and grades served.

(ii) A description of the educational model.

(iii) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(iv) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(v) The grant (redacted as necessary).

(2) As applicable for CMO grants, such a list must be updated at least annually and provide the anticipated number of charter schools that will receive CSP planning funds before securing a facility.

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, a grantee may request a waiver from the Department under section 4303(d)(5), to enable the grantee to amend its approved application to extend the 18-month planning period prescribed by section 4303(d)(1)(B). Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of “charter school” in section 4310(2) of the ESEA, provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. A grantee also may request approval from the Department, as appropriate, to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

Program Authority: Title IV, part C of the ESEA, as amended.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2018 NFP. (e) The 2022 NFP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$12,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: \$300,000 to \$20,000,000 per year.

Estimated Average Size of Awards: \$2,500,000 per year.

Maximum Award: See Reasonable and Necessary Costs in section III.4 for information regarding the maximum amount of funds that may be awarded per charter school.

Estimated Number of Awards: 15–20.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA)

III. Eligibility Information

1. *Eligible Applicants:* CMOs. Eligible applicants may apply individually or as part of a group or consortium.

Note: Under 34 CFR 75.51, an applicant may show that it is a nonprofit organization by any of the following means: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant’s certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or (5) for an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under (1) through (4) above.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect

cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be used to replicate or expand a high-quality charter school.

For this competition, the maximum limit of grant funds that may be used to replicate or expand a single charter school is \$2,000,000.

In accordance with 2 CFR 200.404, applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

5. *Other CSP Grants:* A charter school that previously received funds for replication or expansion under this program, or that has been awarded a subgrant or grant for opening or preparing to operate a new charter school, replication, or expansion under the CSP Grants to State Entities (SE Grants) program (ALN 84.282A) or CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants) program (ALNs 84.282B and 84.282E), may not receive funds under this grant to carry out the same activities. However, such a charter school may be eligible to receive funds through a CSP CMO Grant awarded under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that is included in an approved application for funding under this competition is ineligible to receive a subgrant or grant to carry out the same activities under the CSP SE Grant program (ALN 84.282A) or CSP Developer Grant program (ALNs 84.282B and 84.282E), including for opening or preparing to operate a new charter school or for

replication or expansion of a high-quality charter school.

6. *Build America, Buy America Act*: This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions*: Grantees under this program must use the grant funds to replicate or expand the charter school model or models for which the applicant has presented evidence of

success. Specifically, grant funds must be used to carry out allowable activities, as described in section 4305(b)(1) of the ESEA. In addition, grant funds must be used to carry out one or more of the activities described in section 4303(h), which include—

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the eligible applicant’s planning period, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel;

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials);

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction);

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school;

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment; and

(f) Providing for other appropriate, non-sustained costs related to the replication or expansion of high-quality charter schools when such costs cannot be met from other sources.

Further, within the context of opening and preparing for the operation of one or more replicated high-quality charter schools or expanding one or more high-quality charter schools, a portion of grant funds can be used for appropriate, non-sustained costs associated with the expansion or improvement of the grantee’s oversight or management of its charter schools, provided that (i) the specific charter schools being replicated or expanded under the grant are the intended beneficiaries of such expansion or improvement; (ii) such expansion or improvement is intended to improve the grantee’s ability to manage or oversee the charter schools being replicated or expanded under the grant; and (iii) the costs cannot be met from other sources. In order to use grant funds for this purpose, an applicant must describe how the proposed costs are necessary to meet the objectives of the project and reasonable in light of the overall cost of the project.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement*: The project narrative is where you, the applicant, address the priorities, selection criteria, and application requirements that peer reviewers use to evaluate your application. We recommend that you (1) limit the project narrative to no more than 60 pages, and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; any request to waive requirements and the justification; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the project narrative.

6. *Notice of Intent to Apply*: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line “Intent to Apply,” and include the applicant’s name, a contact person’s name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210, the 2018 NFP, and the 2022 NFP. The maximum possible score for addressing all of the selection criteria is 100 points. The maximum possible

score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application for a CSP CMO Grant, the Secretary considers the following criteria:

(a) *Quality of the Eligible Applicant and Adequacy of Resources* (up to 30 points).

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments, annual student attendance and retention rates, and, where applicable and available, student academic growth, high school graduation rates, college attendance rates, and college persistence rates) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (up to 15 points). (2018 NFP)

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (up to 5 points). (2018 NFP)

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (up to 5 points). (2018 NFP)

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support (up to 5 points). (34 CFR 75.210)

(b) *Quality of the Needs Analysis* (up to 25 points).

In determining the quality of the needs analysis, the Secretary considers the following factors:

(1) The extent to which the needs analysis demonstrates that the proposed charter school will address the needs of all students served by the charter school, including underserved students; will ensure equitable access to high-quality learning opportunities; and demonstrates sufficient demand for the charter school (up to 10 points). (2022 NFP)

(2) The extent to which the needs analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of underserved students and their families (up to 10 points). (2022 NFP)

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis, including in the academic, financial, organizational, and operational performance of the charter school (up to 5 points). (2022 NFP)

(c) *Quality of the Project Design and Evaluation Plan for the Proposed Project* (up to 10 points).

In determining the quality of the evaluation plan for the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework (up to 2 points). (34 CFR 75.210)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the proposed project, as described in the applicant's logic model, and that will produce quantitative and qualitative data by the end of the grant period (up to 6 points). (2018 NFP)

(3) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 2 points). (34 CFR 75.210)

(d) *Quality of the Management Plan* (up to 35 points).

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 6 points). (34 CFR 75.210(g)(2)(i))

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 6 points). (34 CFR 75.210(f)(2)(iv))

(3) The extent to which the time commitments of the project director and principal investigator and other key

project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points). (34 CFR 75.210(g)(2)(iv))

(4) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 6 points). (2022 NFP)

(5) The adequacy of the applicant's plan to make all programmatic decisions (up to 6 points). (2022 NFP)

(6) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 6 points). (2022 NFP)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the

integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* (a) For the purposes of Department reporting under 34 CFR 75.110, the Secretary has

established two performance indicators: (1) the number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project;

whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. Project Directors' Meeting:

Applicants approved for funding under this competition must attend a meeting for project directors either virtually or at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition must participate in all technical assistance offerings required by the CSP Office, including project directors' meetings and other on-site and virtual gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the performance period.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023-20838 Filed 9-25-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project (ICP). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 25, 2023; 9:00 a.m.–4:15 p.m. MDT.

Opportunities for public comment will be at 10:45 a.m. and 2:30 p.m. MDT.

These times are subject to change; please contact the ICP Citizens Advisory Board (CAB) Administrator (below) for confirmation of times prior to the meeting.

ADDRESSES: This meeting will be open to the public in-person at the Sun Valley Lodge (address below) or virtually via Zoom. To attend virtually, please contact Mariah Porter, ICP CAB Administrator, by email mariah.porter@em.doe.gov or phone (208) 557-7857, no later than 5:00 p.m. MDT on Monday, October 23, 2023.

Board members, Department of Energy representatives, agency liaisons, and Board support staff will participate in-person at: Sun Valley Lodge, Limelight C, 1 Sun Valley Road, Sun Valley, ID 83353.

FOR FURTHER INFORMATION CONTACT: Mariah Porter, ICP CAB Administrator, by phone (208) 557-7857 or email mariah.porter@em.doe.gov or visit the Board's internet homepage at <https://energy.gov/em/icpcab>.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda (agenda topics may change up to the day of the meeting; please contact Mariah Porter for the most current agenda):

1. Recent Public Outreach
2. ICP Overview
3. Program Presentations

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Sun Valley Lodge or via Zoom. To sign-up for public comment, please contact the ICP CAB Administrator (above) no later than 5:00 p.m. MDT on Monday, October 23, 2023. In addition to participation in the live public comment sessions identified above, written statements may be filed with the Board either five days before or five days after the meeting by sending them to the ICP CAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by calling or emailing Mariah Porter, ICP CAB Administrator, phone (208) 557-7857 or email mariah.porter@em.doe.gov. Minutes will also be available at the following website: <https://www.energy.gov/em/icpcab/listings/cab-meetings>.

Signed in Washington, DC, on September 20, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-20763 Filed 9-25-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a subcommittee meeting of the whole of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 25, 2023; 9:00 a.m.–3:00 p.m.

ADDRESSES: Washington State University, Tri-Cities, Consolidated Information Center, Room 120/120A, 2770 University Drive, Richland, WA 99354.

FOR FURTHER INFORMATION CONTACT: Lindsay Somers, Deputy Designated Federal Officer, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA 99354; Phone: (509) 376-0923; or Email: lindsay.somers@rl.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Department of Energy Budget Simulation
- Hanford Site Cleanup Priorities Advice Kickoff

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lindsay Somers at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Lindsay Somers. Requests must be received five days prior to the meeting and reasonable provision will be made. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: <https://www.hanford.gov/page.cfm?page=466>.

Signed in Washington, DC, on September 20, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-20762 Filed 9-25-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[EERE-2023-BT-CE-0001]

**Energy Conservation Program:
Proposed Agency Information
Collection Extension**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Information collection extension; notice and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) intends to extend for three years with the Office of Management and Budget (OMB), the Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, and Recordkeeping for Consumer Products and Commercial/Industrial Equipment subject to Energy or Water Conservation Standards Package under OMB No. 1910-1400.

DATES: DOE will accept comments, data, and information regarding this proposal no later than November 27, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE-2023-BT-CE-0001. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2023-BT-CE-0001, by any of the following methods:

Email:

ApplianceStandardsQuestions@ee.doe.gov. Include the docket number EERE-2023-BT-CE-0001 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building

Technologies Office, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2023-BT-CE-0001. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-5904. Email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910-1400;

(2) *Information Collection Request Title:* Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, Application for Extension of Representation Requirements, Labeling, and Recordkeeping for Consumer Products and Commercial/Industrial Equipment

subject to Federal Energy or Water Conservation Standards;

(3) *Type of Request*: Revision with changes;

(4) *Purpose*: Pursuant to the Energy Policy and Conservation Act, as amended (“EPCA” or “the Act”),¹ Public Law 94–163 (42 U.S.C. 6291–6317, as codified), DOE regulates the energy efficiency of a number of consumer products, and commercial and industrial equipment. Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency of covered consumer products (“covered products”). Title III, Part C³ of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency of covered commercial and industrial equipment (collectively referred to as “covered equipment”).

Covered products and covered equipment are described in 10 CFR parts 429, 430, and 431. These covered products and covered equipment, including all product or equipment classes, include: (1) Consumer refrigerators, refrigerator-freezers and freezers; (2) Room air conditioners; (3) Central air conditioners and central air conditioning heat pumps; (4) Consumer water heaters; (5) Consumer furnaces and boilers; (6) Dishwashers; (7) Residential clothes washers; (8) Clothes dryers; (9) Direct heating equipment; (10) Cooking products; (11) Pool heaters; (12) Television sets; (13) Fluorescent lamp ballasts; (14) General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps; (15) Faucets; (16) Showerheads; (17) Water closets; (18) Urinals; (19) Ceiling fans; (20) Ceiling fan light kits; (21) Torchiere; (22) Compact fluorescent lamps; (23) Dehumidifiers; (24) External power supplies; (25) Battery chargers; (26) Candelabra base incandescent lamps and intermediate base incandescent lamps; (27) Commercial warm air furnaces; (28) Commercial refrigerators, freezers, and refrigerator-freezers; (29) Commercial heating and air

conditioning equipment;⁴ (30) Commercial water heating equipment; (31) Automatic commercial ice makers; (32) Commercial clothes washers; (33) Distribution transformers; (34) Illuminated exit signs; (35) Traffic signal modules and pedestrian modules; (36) Commercial unit heaters; (37) Commercial pre-rinse spray valves; (38) Refrigerated bottled or canned beverage vending machines; (39) Walk-in coolers and walk-in freezers and certain components; (40) Metal halide lamp ballasts and fixtures; (41) Integrated light-emitting diode lamps; (42) General service lamps; (43) Furnace fans; (44) Pumps; (45) Commercial packaged boilers; (46) Consumer miscellaneous refrigeration equipment; (47) Portable air conditioners; (48) Compressors; (49) Electric motors; (50) Small electric motors; (51) rough service lamps; (52) vibration service lamps; (53) dedicated-purpose pool pump motors; and (54) air cleaners.

Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. For consumer products, relevant provisions of the Act specifically include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296). For covered equipment, relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). DOE is seeking to renew its information collection related to the following aspects of the appliance standards program: (1) Gathering data and submitting certification and compliance reports for each basic model distributed in commerce in the U.S. including supplemental testing instructions for certain commercial equipment; (2) maintaining records underlying the certified ratings for each basic model including test data and the

associated calculations; (3) applications for a test procedure waiver, which manufacturers may elect to submit if they manufacture a basic model that cannot be tested pursuant to the DOE test procedure; (4) applications requesting an extension of the date by which representations must be made in accordance with any new or amended DOE test procedure; and (5) labeling.

DOE’s certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to-date efficiency information and support effective enforcement.

As the result of a several changes to its regulatory provisions for covered products and equipment enacted through rulemakings since the last review of the current information collection, DOE has also proposed several updates to its certification provisions for the affected products and equipment. DOE proposed these changes in a notice of proposed rulemaking issued on August 28, 2023 (“Certification NOPR”). The total annual estimated respondents, responses, burden hours, and reporting and recordkeeping cost burden that are reported in this notice include the additional costs that DOE estimated would result from the changes to certification reporting requirements proposed in the Certification NOPR. The notice of proposed rulemaking for these certification provisions is included in docket number EERE–2023–BT–CE–0001.

(5) *Proposed changes to the information collection, including*

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

³ For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

⁴ Commercial heating and air conditioning equipment includes Computer Room Air Conditioners; Air-Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps w/ a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase Variable Refrigerant Flow Air Conditioners and Heat Pumps w/a Cooling Capacity of Less Than 65,000 Btu/h; Single Packaged Vertical Air Conditioners and Heat Pumps; and Direct-expansion Dedicated Outdoor Air Systems.

description of additional information that would be collected.

In a proposed rule issued on August 28, 2023,⁵ the U.S. Department of Energy (“DOE”) proposed to establish and amend the certification provisions, labeling requirements, and enforcement provisions for the following products and equipment: central air conditioners and heat pumps; dishwashers; residential clothes washers; pool heaters; dehumidifiers; external power supplies; battery chargers; computer room air conditioners; direct-expansion outdoor air systems; Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps with a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps with a Cooling Capacity of Less Than 65,000 Btu/h; commercial water heating equipment; automatic commercial ice makers; walk-in coolers and freezers; commercial and industrial pumps; portable air conditioners; compressors; dedicated-purpose pool pump motors; air cleaners; single-package vertical air conditioners and heat pumps; and ceiling fan light kits. These proposed amendments are described in sections II and III of the proposed rule. DOE is proposing these amendments to align reporting that is consistent with currently applicable energy conservation standards and test procedures and to ensure DOE has the information necessary to determine the appropriate classification of products for the application of standards.

(6) *Annual Estimated Number of Respondents:* 2,083;

(7) *Annual Estimated Number of Total Responses:* 32,255;

(8) *Annual Estimated Number of Burden Hours:* 776,310 (35 hours per certification, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information; 16 additional hours for creating supplement testing instructions for commercial HVAC, water heating, and refrigeration equipment manufacturers; 160 hours for test procedure waiver preparation; 160 hours for representation extension request preparation), 1 hour for creating and applying a label for walk-in cooler and freezer, commercial and industrial pump, and electric motor manufacturers).

⁵ The pre-publication proposed rule can be accessed at https://www.energy.gov/sites/default/files/2023-08/cce-nop.pdf?utm_medium=email&utm_source=govdelivery.

(9) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$51,795,000.

Statutory Authority: Section 326(d) of the Energy Policy and Conservation Act, Public Law 94–163, as amended (42 U.S.C. 6296); 10 CFR parts 429, 430, and 431.

Signing Authority

This document of the Department of Energy was signed on September 19, 2023, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–20827 Filed 9–25–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–298–000.

Applicants: Sky Ranch Solar, LLC.

Description: Sky Ranch Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/19/23.

Accession Number: 20230919–5120.

Comment Date: 5 p.m. ET 10/10/23.

Docket Numbers: EG23–299–000.

Applicants: Hardin Solar Energy II LLC.

Description: Hardin Solar Energy II LLC submits Notice of Self-Certification of Exempt Generator Status.

Filed Date: 9/20/23.

Accession Number: 20230920–5098.

Comment Date: 5 p.m. ET 10/11/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–99–000.
Applicants: City of Corona, California v. California Independent System Operator Corporation.

Description: Complaint of City of Corona, California v. California Independent System Operator Corporation.

Filed Date: 9/19/23.

Accession Number: 20230919–5119.

Comment Date: 5 p.m. ET 10/10/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2816–001.

Applicants: Rocket Solar, LLC.

Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 11/12/2023.

Filed Date: 9/20/23.

Accession Number: 20230920–5104.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: ER23–2894–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4022 Cheyenne Light, Fuel and Power Co WEIS Market Part. Agr to be effective 9/1/2023.

Filed Date: 9/20/23.

Accession Number: 20230920–5018.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: ER23–2895–000.

Applicants: Hardin Solar Energy II LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 11/20/2023.

Filed Date: 9/20/23.

Accession Number: 20230920–5078.

Comment Date: 5 p.m. ET 10/11/23.

Docket Numbers: ER23–2896–000.

Applicants: Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii): Penelec amends 10 ECSAs (5388 5393 5394 5396 5397 5398 5399 5400 5404 5405) to be effective 12/31/9998.

Filed Date: 9/20/23.

Accession Number: 20230920–5113.

Comment Date: 5 p.m. ET 10/11/23.

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.

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: September 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-20889 Filed 9-25-23; 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 Instituting Proceedings

Docket Numbers: RP23-1040-000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—9/20/2023 to be effective 9/20/2023.

Filed Date: 9/20/23.

Accession Number: 20230920-5010.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: RP23-1041-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 9.20.23 Negotiated Rates—Equinor Natural Gas LLC R-7120-19 to be effective 11/1/2023.

Filed Date: 9/20/23.

Accession Number: 20230920-5041.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: RP23-1042-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 9.20.23 Negotiated Rates—Equinor Natural Gas LLC R-7120-20 to be effective 11/1/2023.

Filed Date: 9/20/23.

Accession Number: 20230920-5043.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: RP23-1043-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 9.20.23 Negotiated Rates—Vitol Inc. R-7495-19 to be effective 11/1/2023.

Filed Date: 9/20/23.

Accession Number: 20230920-5044.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: RP23-1044-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 9.20.23 Negotiated Rates—Vitol Inc. R-7495-20 to be effective 11/1/2023.

Filed Date: 9/20/23.

Accession Number: 20230920-5045.

Comment Date: 5 p.m. ET 10/2/23.

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.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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: September 20, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-20888 Filed 9-25-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23-98-000]

Stony Creek Wind Farm, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 18, 2023, the Commission issued an order in Docket No. EL23-98-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Stony Creek Wind Farm, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Stony Creek Wind Farm, LLC*, 184 FERC ¶ 61,163 (2023).

The refund effective date in Docket No. EL23-98-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23-98-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <https://www.ferc.gov>.

In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: September 20, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-20887 Filed 9-25-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0445; FRL-11370-01-OCSPP]

Pesticides; Concept for a Framework To Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on the concept for developing a framework to improve assessments of potential risks to human and animal health where the use of certain pesticides could potentially result in antimicrobial resistance (AMR) that compromises the effectiveness of medically important antibacterial and antifungal drugs. EPA is also seeking feedback on research gaps and other information to help inform the risk assessment and mitigation processes. The concept document was developed in collaboration with the U.S. Department of Health and Human

Services (HHS), the U.S. Department of Agriculture (USDA), and offices within the White House Executive Office of the President. A pesticide must be registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) before it can be legally sold or distributed in the United States. During the registration process, EPA considers whether the pesticide will cause unreasonable adverse effects on people or the environment. Because resistance is considered an adverse effect under FIFRA, the U.S.

government is working to develop a structured and coordinated approach to assess and manage these risks. EPA is seeking public comment on a concept document for a proposed framework and on potential solutions, research, or mitigation approaches to reduce the spread of AMR. The agencies will consider feedback in developing a proposed framework that will also be shared for public review and comment.

DATES: Submit your comments on or before November 13, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0445, 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: Susan Jennings, Immediate Office (7501M), Office of Pesticide Programs, Environmental Protection Agency, 1201 Constitution Ave. NW, Washington, DC 20004; telephone number: (706) 355-8574; email address: jennings.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

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

This action is being taken under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*).

B. What action is the Agency taking?

EPA is announcing the availability of and soliciting public comment on a document that describes the concept for developing a proposed framework to improve assessments of potential risks to human and animal health where the

use of certain pesticides could potentially result in antimicrobial resistance that compromises the effectiveness of medically important antibacterial and antifungal drugs. EPA is also seeking feedback on research gaps and other information to help inform the risk assessment and mitigation processes. The concept document was developed in collaboration with the U.S. Department of Health and Human Services (HHS), the U.S. Department of Agriculture (USDA), and offices within the White House Executive Office of the President. A pesticide must be registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) before it can be legally sold or distributed in the United States. During the registration process, EPA considers whether the pesticide will cause unreasonable adverse effects on people or the environment. Because resistance is considered an adverse effect under FIFRA, the U.S. government is working to develop a structured and coordinated approach to assess and manage these risks. EPA is seeking public comment on a concept document for a proposed framework and on potential solutions, research, or mitigation approaches to reduce the spread of AMR. The agencies will consider feedback in developing a proposed framework that will also be shared for public review and comment.

C. Why is the Agency taking this action?

In the United States, more than 2.8 million antimicrobial-resistant infections occur each year, resulting in more than 35,000 annual deaths. Some antibacterial and antifungal pesticides used in agriculture as well as some pesticides used in other settings, belong to the same class as or share mechanisms of action with medically important antimicrobial drugs used in human and veterinary medicine. Recent evidence indicates that the use of some antifungal pesticides can select for resistant organisms that pose a potential risk to human and animal health. As new pesticides and uses are proposed, the potential exists for these pesticides to select for pathogenic bacteria or fungi that are resistant to medically important antimicrobial drugs, including both FDA-approved drugs and those still undergoing clinical trials.

D. Does this action apply to me?

This action is directed to the public in general, although this action may be of particular interest to those persons who may be interested in assessments of potential risks to human and animal health where the use of certain pesticides could potentially result in

antimicrobial resistance that compromises the effectiveness of medically important antibacterial and antifungal drugs. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit CBI information to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the part or all of the information that you claim to be 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 and instructions at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Request for Comments

EPA is seeking comment on the document entitled “Soliciting Feedback from Stakeholders on the Structure of a Proposed Framework to Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides” (also referred to as the concept document), a copy of which is available in the docket. EPA is also requesting public comments on potential solutions, research, or mitigation approaches to reduce the spread of AMR, and is specifically seeking public comment on the following questions for the proposed framework:

- Is the concept for the proposed framework (see Figure 1 in the concept document) appropriately defined and clear to stakeholders?
- Are there specific types of pesticides that should be evaluated under the framework, either by class or function?
- What factors that should be considered in determining if a proposed pesticide use constitutes a potential risk to human or animal health due to AMR?

- How to determine which human and animal antimicrobial drugs should be considered ‘medically important’ and how should this term be defined?

- What mitigation strategies are currently available to address the risk of AMR developing because of pesticide use?

Comment is also requested on the list of research gaps that could help inform risk assessment and mitigation addressed in this framework, including agricultural methods or other processes that could minimize the potential for these pesticides to select for resistant organisms and strategies to prevent infection or colonization related to pathogen exposure, including:

- How do organisms that might have developed resistance by exposure to these pesticides come into contact with and cause illness in humans or animals (e.g., through direct contact, inhalation, ingestion, healthcare-associated transmission), and which human or animal populations are most affected (e.g., agricultural workers, persons handling compost, persons with immunocompromising conditions, persons living near treated fields, animals for food production, companion animals)?

- What are effective strategies to reduce the potential for these pesticides to select for antimicrobial-resistant bacteria and fungi? For example, which agricultural practices are effective in reducing the potential for these pesticides to select for AMR, including strategies to reduce the need for pesticide use and practices that reduce the likelihood that pesticide use will result in resistance emergence (e.g., crop rotations, specific pesticide formulations)?

- By which mechanisms do human or animal pathogenic bacteria and fungi spread through populations after becoming resistant through selection by these pesticides?

- What are the best approaches to determine the potential for pesticides to select for antimicrobial-resistant pathogens, and do chemical criteria exist that could help determine whether pesticides are more or less likely to pose health risks to humans or animals?

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 21, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–20929 Filed 9–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11421–01–OA]

Establishment of Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs) Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; establishment of the Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), the United States Environmental Protection Agency (EPA) is giving notice that it is establishing the Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council. The purpose of this committee is to provide advice and recommendations to the EPA Administrator on critical policy and technical issues to advance equity in economic and social opportunities for all Americans and strengthen the capacity of HBCUs and MSIs to provide the highest-quality education, participate in and benefit from federal programs, and support key Administration policies. The EPA has determined that this federal advisory committee is necessary and in the public interest to provide critical advice and recommendations to assist the EPA in increasing outreach to underrepresented and underserved communities by developing a stronger partnership with HBCUs and MSIs.

FOR FURTHER INFORMATION CONTACT: Pradnya Bhandari, Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW (Mail code 1448K), Washington, DC 20460, at 202–564–0381 or by email to bhandari.pradnya@epa.gov.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities and Minority Serving Institutions Advisory Council will be established for a two-year period. Copies of the committee charter will be filed with the appropriate congressional committees and the Library of Congress.

Kathryn Jakob,

Director, Office of Public Engagement.

[FR Doc. 2023–20878 Filed 9–25–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA-10-2023-0121; FRL-11364-01-R10]

Notice of Proposed Administrative Settlement Agreement for Recovery of Past Response Costs for the Klamath Falls Motel Mercury Spill Response Site, Klamath County, Oregon

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given that the Environmental Protection Agency (EPA) has entered into a proposed settlement, embodied in an Administrative Settlement Agreement for Recovery of Past Response Costs (Settlement Agreement), with the following settling party: Sugar Pine Hotel, Inc. Under the Settlement Agreement, the settling party agrees to pay a total of \$44,192 plus interest to reimburse the EPA for costs the EPA has incurred at the Klamath Falls Motel Mercury Spill Response Site (Site).

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

ADDRESSES: You may send comments, identified by the EPA Docket Number for the Settlement Agreement, CERCLA-10-2023-0121, by any of the following methods: Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments. Email: Ms. Christina Vieira da Rosa, VieiraDaRosa.Christina@epa.gov. Mail: EPA Region 10, ATTN: Christina Vieira da Rosa, Assistant Regional Counsel, Office of Regional Counsel, 1200 Sixth Avenue, Suite 155, M/S: 11-C07, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Christina Vieira da Rosa, Assistant Regional Counsel, EPA Region 10, 1200 Sixth Avenue, Suite 155, M/S: 11-C07, Seattle, WA 98101; Email: VieiraDaRosa.Christina@epa.gov; Phone (206) 553-2601.

SUPPLEMENTARY INFORMATION:

Written Comments

Submit your comments, identified by the EPA Docket Number for the Settlement Agreement, CERCLA-10-2023-0121, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about Confidential Business Information or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Background Information

Notice of this proposed Settlement Agreement is made in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). The Settlement Agreement concerns costs incurred by the EPA in connection with the Klamath Falls Motel Mercury Spill Response Site

(Site) a CERCLA response action in Klamath County, Oregon, where mercury contamination has come to be located. Sugar Pine Hotel, Inc., which agrees to pay the EPA a total of \$44,192, plus interest, is the only party to the Settlement Agreement. Because the EPA is not recovering one hundred percent of its past costs, this Settlement Agreement represents a compromise of the EPA's costs. The settlement includes a covenant not to sue the settling party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C 9606 and 9607(a).

The EPA will consider all comments received on the Settlement Agreement in accordance with the DATES and **ADDRESSES** sections of this Notice and may modify or withdraw its consent to the Settlement Agreement if comments received disclose facts or considerations that indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at: <https://semspub.epa.gov/src/collection/10/AR66854>.

Authority: 42 U.S.C. 9601-9657.

Calvin Terada,

Director, Superfund and Emergency Management Division, Region 10.

[FR Doc. 2023-20934 Filed 9-25-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 173776]

Deletion of Item From September 21, 2023 Open Meeting

The following item was adopted by the Commission on September 18, 2023 and deleted from the list of items scheduled for consideration at the Thursday, September 21, 2023, Open Meeting. The item was previously listed in the Commission's Sunshine Notice on Thursday, September 14, 2023.

4	MEDIA	<p>TITLE: Updating Obsolete TV Broadcasting Rules (MB Docket No. 22-227)</p> <p>SUMMARY: The Commission will consider a Report and Order which would amend Part 73 of the Commission's Rules to update Television and Class A Television Broadcast Station Rules as well as certain rules applicable to all broadcast stations. This would ensure the FCC's rules better reflect the current broadcast TV operating environment including changes related to major developments like the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels.</p>
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Federal Communications Commission.

Dated: September 19, 2023.

Marlene Dortch,

Secretary.

[FR Doc. 2023-20842 Filed 9-25-23; 8:45 am]

BILLING CODE 6712-01-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)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than October 26, 2023.

A. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to Comments.applications@rich.frb.org:

1. *Southern Bancshares (N.C.), Inc., Mount Olive, North Carolina*; to acquire up to 19.9 percent of the voting shares of Old Point Financial Corporation, Hampton, Virginia, and thereby indirectly acquire voting shares of The Old Point National Bank of Phoebus, Hampton, Virginia, and Old Point Trust & Financial Services, N.A., Newport News, Virginia. In addition, Southern Bancshares (N.C.), Inc., through the acquisition of Old Point Trust & Financial Services, N.A., will engage in providing trust company functions and securities brokerage services pursuant to sections 225.28(b)(5) and (b)(7)(i) of the Board's Regulation Y, respectively. This notice replaces and supersedes FR Doc 2023-62785 published on 09-13-2023.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-20935 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-0840; Docket No. CDC-2023-0078]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled "Formative Research and Tool Development". This information collection request is designed to allow CDC's National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) to conduct formative research information collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP's four priority diseases (HIV/AIDS), sexually transmitted diseases/infections (STD/STI), viral hepatitis, tuberculosis elimination (TB), and school and adolescent health (DASH).

DATES: CDC must receive written comments on or before November 27, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0078 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and

Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Formative Research and Tool Development (OMB Control No. 0920-

0840, Exp. 7/31/2024)—Extension—National Center for HIV, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) requests approval for an Extension and a three-year approval for the previously approved Generic Clearance, “Formative Research and Tool Development”. This information collection request is designed to allow NCHHSTP to conduct formative research information collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP’s four priority diseases (HIV/AIDS, sexually transmitted diseases/infections (STD/STI), viral hepatitis, tuberculosis elimination and the Division of School and Adolescent Health (DASH)). Formative research is the basis for developing effective strategies including communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics—interests, behaviors and needs—of target populations that influence their decisions and actions.

Formative research is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which a public health intervention is being, or will be implemented, and helps the project staff understand the interests, attributes and needs of different populations and persons in that community. Formative research is research that occurs before a program is designed and implemented, or while a program is being conducted. NCHHSTP formative research is necessary for developing new programs or adapting programs that deal with the

complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S, as well as for school and adolescent health. CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the development of a product.

Products from these formative research studies will be used for prevention of HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis. Findings from these studies may also be presented as evidence to disease-specific National Advisory Committees, to support revisions to recommended prevention and intervention methods, as well as to develop new recommendations. Much of CDC’s health communication takes place within campaigns that have lengthy planning periods—timeframes that accommodate the standard federal process for approving data collections. Short-term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of scientifically valid and population-appropriate methods, interventions, and instruments.

This request includes studies investigating the utility and acceptability of proposed sampling and recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced. This request also includes collection of information from public

health programs to assess needs related to initiation of a new program activity or expansion or changes in scope or implementation of existing program activities to adapt them to current needs. The information collected will be used to advise programs and provide capacity-building assistance tailored to identified needs.

Overall, these development activities are intended to provide information that will increase the success of the surveillance or research projects through increasing response rates and decreasing response error, thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) structured and qualitative interviewing for surveillance, research, interventions and material development; (2) cognitive interviewing for development of specific data collection instruments; (3) methodological research; (4) usability testing of technology-based instruments and materials; (5) field testing of new methodologies and materials; (6) investigation of mental models for health decision-making, to inform health communication messages; and (7) organizational needs assessments to support development of capacity.

Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer assisted development activities) are selected purposively from those who respond to recruitment advertisements. In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project.

CDC requests OMB approval for an estimated 6,657 annual burden hours. Participation of respondents is voluntary, and there is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total response burden (hours)
General public	Screener	56,840	1	10/60	9,473
Health care providers	Screener	24,360	1	10/60	4,060
General public	Consent Forms	28,420	1	5/60	2,368
Health care providers	Consent Forms	12,180	1	5/60	1,015
General public	Individual Interview	4,620	1	1	4,620
Health care providers	Individual Interview	1,980	1	1	1,980
General public	Focus Group Interview	2,800	1	2	5,600
Health care providers	Focus Group Interview	1,200	1	2	2,400
General public	Survey of Individual	21,000	1	30/60	10,500
Health care providers	Survey of Individual	9,000	1	30/60	4,500

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total response burden (hours)
Total	46,516

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–20761 Filed 9–25–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1305]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Chronic Q Fever in the United States: Enhanced Clinical Surveillance” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on June 27, 2023 to obtain comments from the public and affected agencies. CDC received no comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Chronic Q Fever in the United States: Enhanced Clinical Surveillance (OMB Control No. 0920–1305, Exp. 9/30/2023)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Q fever is a worldwide zoonosis caused by *Coxiella burnetii* with acute and chronic disease presentations. Chronic Q fever can manifest months to years after the primary infection and is rare, occurring in <5% of persons with an acute infection. Chronic Q fever can

take on several clinical forms, including endocarditis, chronic hepatitis, chronic vascular infections, osteomyelitis, and osteoarthritis. In the United States, Q fever cases are reported via the National Notifiable Disease Surveillance System; however, limited information is collected on the various clinical manifestations of chronic Q fever or patients pre-existing risk factors. Data on outcomes other than death or hospitalizations are not collected by the current surveillance. Because of this lack of data, the true burden and proportion of cases exhibiting endocarditis and other forms of chronic Q fever in the United States is unknown. We plan to establish an enhanced medical surveillance for chronic Q fever by working with consulting clinicians to gather additional and more specific clinical data not otherwise collected during the course of routine public health surveillance for chronic Q fever. This information will allow for better characterization of the clinical presentation and risk factors of chronic Q fever in the United States. The results will help characterize an under-recognized disease and provide valuable data to educate physicians on identifying and diagnosing these cases.

Recently, there has been an increased volume of clinical consultation requests. To reflect this, we are proposing an increase in the number of respondents to 50 each year. Additionally, the clinical course for these patients is often complex, and clinical relapse or prolonged infection has been reported. To capture these important clinical details, we propose increasing the number of total instruments to two, with a follow-up survey that will take five minutes each at six, 12, 18, and 24 months from the date of the initial consult.

CDC requests OMB approval for an estimated 34 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Physician	Chronic Q fever Enhanced Surveillance Report Form—Initial Consult.	50	1	20/60
Physician	Chronic Q fever Enhanced Surveillance Report Form—Follow-up.	50	2	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–20759 Filed 9–25–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23IE; Docket No. CDC–2023–0077]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Social and Economic Barriers to Receiving Optimal Services Along the Cancer Care Continuum. This mixed methods data collection effort will help CDC understand the social and economic barriers that colorectal, breast, and cervical cancer survivors and their caregivers face at each stage of the cancer care continuum, from screening through survivorship, and how these barriers may vary by population.

DATES: CDC must receive written comments on or before November 27, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0077 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Social and Economic Barriers to Receiving Optimal Services Along the Cancer Care Continuum—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The purpose of this project is to: (1) examine and better understand social and economic barriers faced by colorectal, breast, and cervical cancer survivors and their caregivers at each stage of the Cancer Care Continuum (CCC); and (2) quantify the impact of individual and compounded barriers on health outcomes along the CCC for survivors. CDC will use a mixed methods data collection approach.

First, CDC plans to pull our sample from cancer registry data in California, North Carolina, and Texas based on inclusion criteria (received first cancer diagnosis of either breast, cervical or colorectal cancer in 2021; 18–75 years of age at time of diagnosis; are non-Hispanic Black/African American, non-Hispanic White, or Hispanic; alive at the time of data extraction/sample selection). Then, CDC will administer a Wave 1 (baseline) and Wave 2 (follow-up) survey to cancer survivors, as well as a survey to their caregivers. Additionally, CDC will conduct interviews with survivors and caregivers as well as focus groups with

representatives from patient/survivor advocacy organizations. CDC will incorporate cancer registry data into the quantitative data analysis, and triangulate findings from the quantitative and qualitative data

collection efforts. Results will be used to inform efforts aimed at increasing access to cancer care services, reducing the burden of cancers and closing the disparities gap.

CDC requests OMB approval for an estimated 1,681 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Wave 1 Survivor Survey Respondents.	W1 Survey Instrument	3,000	1	20/60	1,000
Wave 2 Survivor Survey Respondents.	W2 Survey Instrument	1,200	1	20/60	400
Survivor Interviewees	Survivor Interview Guide	20	1	1	20
Caregiver Survey Respondents	Caregiver Survey Instrument	900	1	15/60	225
Caregiver Interviewees	Caregiver Interview Guide	20	1	1	20
Patient Advocacy Group—Focus Group Participants.	Advocacy Representatives Focus Group Guide.	16	1	1	16
Total .....	.....	.....	.....	.....	1,681

Jeffrey M. Zirger,
Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.
 [FR Doc. 2023–20760 Filed 9–25–23; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

Proposed Reallotment of Fiscal Year 2022 Funds for the Low Income Home Energy Assistance Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Service (OCS), Division of Energy Assistance announces a preliminary determination that funds from the Federal fiscal year (FFY) 2022 Low Income Home Energy Assistance Program (LIHEAP) are available for reallotment to States, Territories, Tribes, and Tribal organizations that received FFY 2023 direct LIHEAP grants. The purpose of this award is to redistribute FFY 2022 annual LIHEAP funds that grant recipients were unable to obligate or carry over to FFY 2023. No sub-recipients of these grant recipients or other entities may apply for these funds.

DATES: Comments are due by: October 26, 2023.
ADDRESSES: Comments may be submitted to: Peter Edelman, Program Analyst, Office of Community Services, Administration for Children and Families, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC 20201 or via email: peter.edelman@acf.hhs.gov. Comments may also be faxed to 202–401–5661.

FOR FURTHER INFORMATION CONTACT: Akm Rahman, Program Operations Branch Chief, Division of Energy Assistance, Office of Community Services, 330 C Street SW, 5th Floor; Mail Room 5425; Washington, DC, 20201. Telephone: 202–401–5306; email: Akm.Rahman@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: After receiving Federal Financial Reports (FFRs) and Carryover and Reallotment Reports (CRRs) from FFY 2022 LIHEAP recipients, ACF has determined that \$21,985,238 in FFY 2022 LIHEAP funds were available for reallotment for FFY 2023. This determination was based on the reports of 73 recipients, the total obligations of 3 recipients, and minor corrections to certain amounts available for carryover. LIHEAP recipients submitted the FFY 2022 CRRs to OCS, as required by regulations applicable to LIHEAP at 45 CFR 96.81(b).

The LIHEAP statute allows grant recipients who have funds unobligated at the end of the FFY for which they are awarded to request that they be allowed to carry over up to 10 percent of their full-year allotments to the next FFY (42 U.S.C. 8626(b)(2)). Funds in excess of this amount must be returned to the U.S. Department of Health and Human

Services and are subject to reallotment under 42 U.S.C. 8626(b)(1).

FFY 2022 funds appropriated under the American Rescue Plan Act of 2022 (Pub. L. 117–2) were not subject to 42 U.S.C. 8626(b)(2)(B), which caps carryover at 10 percent. Therefore, these funds were not included in the reallotment calculation.

In accordance with 42 U.S.C. 8626(b)(3), ACF notified each of the 76 recipients that reported or, in the absence of reporting, had potentially \$21,985,238 of unobligated funds above their carryover caps. In these notices, ACF told each about the amount it returned for de-obligation and the amount that will be redistributed to FFY 2023 grant recipients as part of the reallotment. It also gave each recipient 30 calendar days to provide comments directly to ACF.

If funds are reallotted, then they will be allocated in accordance with 42 U.S.C. 8623 and must be treated by LIHEAP grant recipients that receive them as an amount appropriated for FFY 2023. As FFY 2023 funds, they will be subject to all requirements of the LIHEAP statute, including 42 U.S.C. 8626(b)(2), which requires that a grantee obligate at least 90 percent of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated; that is, by September 30, 2023.

All LIHEAP grant recipients that receive a portion of these funds will be notified of the final reallotment amount redistributed to them for obligation in FFY 2023. This decision will also be published in the **Federal Register** and in a Dear Colleague Letter that is posted to

ACF's website under LIHEAP Dear Colleague Letters.

The FFY 2022 LIHEAP funds that ACF preliminarily expects to become available for reallocation determination

come from the following grant recipients in the following amounts:

Name of grant recipient that has funds to be returned for reallocation	Preliminary amount available for reallocation ¹
Alabama	\$2,378,088
Alaska	2,431,911
American Samoa	2,828
Delaware	199,360
Idaho	6,505,338
Michigan	2,087,677
Wyoming	81,133
Absentee Shawnee Tribe of Indians of Oklahoma	20,409
Berry Creek Rancheria	747
Big Valley Band of Pomo Indians	1,759
Bishop Paiute Tribe	13,779
Blackfeet Tribe	264,815
Catawba Indian Nation	10,164
Cherokee Nation	134,641
Cheyenne and Arapaho Tribes	18,097
Cocopah Indian Tribe	11,011
Colorado River Indian Tribes	6,166
Comanche Nation	26,315
Confederated Salish and Kootenai Tribes	212,244
Confederated Tribes and Bands of the Yakama Nation	551,163
Confederated Tribes of Siletz Indians of Oregon	79,365
Confederated Tribes of the Colville Indian Reservation	12,018
Confederated Tribes of the Grand Ronde Community of Oregon	28,859
Confederated Tribes of Warm Springs	11,141
Delaware Nation	275
Eastern Band of Cherokee Indians	6,466
Eastern Shoshone Tribe	45,858
Fort Belknap Indian Community	109,264
Fort Peck Assiniboine and Sioux Tribes	66,553
Gila River Indian Community	17,267
Hoh Tribe	4,404
Hoopa Valley Tribe	45,051
Indian Township Tribal Government	309,325
Inter-Tribal Council of MI, Inc	1,363
Jicarilla Apache Nation	15,384
Kalispel Tribe of Indians	657
Kaw Nation	3,441
Kialegee Tribal Town	50
Kickapoo Tribe of Oklahoma	25,505
Kiowa Tribe of Oklahoma	64,055
Little River Band of Ottawa Indians	159,939
Lower Elwha Klallam Tribe	1,928
Makah Tribe	1,890
Modoc Nation	2,078
Mowa Band of Choctaw Indians	49,621
Nanticoke Lenni-Lenape Indians of New Jersey	56,056
Narragansett Indian Tribe	2,927
Navajo Nation	1,153,394
Nooksack Indian Tribe	18,243
Northern Arapaho Tribe	12,853
Northern Cheyenne Tribe	12,378
Oglala Sioux Tribe	867,529
Osage Nation	22,894
Otoe-Missouria Tribe of Indians	3,960
Ottawa Tribe of Oklahoma	4,457
Pawnee Nation of Oklahoma	5,866
Penobscot Indian Nation	6,885
Poarch Band of Creek Indians	81,075
Pueblo of Jemez	7,428
Pueblo of Zuni	28,762
Quapaw Nation	13,244
Quileute Tribe	5,009
Quinault Indian Nation	3,026
Round Valley Indian Tribes	28,912
Sac and Fox Nation of Oklahoma	2,123
Seldovia Village Tribe	11,278
Seneca—Cayuga Nation	8,961

Name of grant recipient that has funds to be returned for reallocation	Preliminary amount available for reallocation ¹
Seneca Nation of Indians	20,244
South Puget Intertribal Planning Agency	739
Spirit Lake Nation	287,077
Standing Rock Sioux Tribe	396,242
Thlopthocco Tribal Town	9,446
Turtle Mountain Band of Chippewa Indians	2,376,042
United Keetoowah Band of Cherokee Indians	272,128
Ute Indian Tribe	1,672
Yankton Sioux Tribe	244,986
Total	21,985,238

¹ Preliminary funds for reallocation consist of the funds in excess of LIHEAP's 10 percent carryover cap that (1) 73 recipients indicated on the FFRs or reported on the CRRs as unobligated; or (2) amounted to 100 percent of regular funds or IJA funds for the 3 recipients that failed to submit the associated FFRs and their CRRs.

If funds are reallocated, then grant recipients may use them for any purpose authorized under LIHEAP and must add these funds to their total LIHEAP funds payable for FFY 2023 for purposes of calculating statutory caps on administrative costs, carryover, Assurance 16 activities, and weatherization assistance.

Additionally, all recipients of these funds must (1) ensure that they are included in the amounts on Lines 1.1 of their FFY 2023 CRRs; (2) reconcile these funds, to the extent that they received them, on a separate FFR; and (3) record, on their FFY 2023 Household Reports, households that receive benefits at least partly from these funds. State recipients must also ensure that these funds are included in the Grantee Survey sections of their FFY 2023 LIHEAP Performance Data Forms.

Statutory Authority: 42 U.S.C. 8626(b).

Karen D. Shields,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2023-20788 Filed 9-25-23; 8:45 am]

BILLING CODE 4184-80-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Title V State Sexual Risk Avoidance Education (Office of Management and Budget #0970-0551)

AGENCY: Family and Youth Services Bureau, Administration for Children

and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) is accepting mandatory formula grant applications and State plans from States and Territories for the development of and implementation for Title V State Sexual Risk Avoidance Education (SRAE) Program. The Title V State SRAE Notice of Funding Opportunity (NOFO) sets forth the application requirements for recipients. This request is to extend Office of Management and Budget (OMB) approval of the request for information. No changes are proposed.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION: The Title V SRAE Program has mandatory, formula allotments for State and Territories to apply. The application process is for States and Territories to submit and for ACYF/FYSB to collect an application, State plan, and semi-annual performance progress reports.

Purpose and Use of the Information Collection

The application and State plans will offer information about the proposed State project and it will be used as the primary basis to determine whether or not the project meets the minimum requirements of the NOFO for the grant award.

The Performance Progress Reports are collected semi-annually and will inform the monitoring of the grantees' program design, program evaluation, management improvement, service quality and compliance with agreed upon goals. ACYF/FYSB will use the information to assure effective service delivery for program participants. Finally, the data from this collection will be used to report outcomes and efficiencies and will provide valuable information to policy makers and key stakeholders in the development of program and research efforts.

Respondents: Thirty-eight States and nine Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Applications	47	1	24	1,128
State Plans	47	1	40	1,880
Performance Progress Reports	47	2	16	1,504

Estimated Total Annual Burden Hours: 4,512.

Authority: Section 510 of the Social Security Act (42 U.S.C. 710), as amended by section 50502 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) and extended by Division CC, title III, section 303 of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

Mary B. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2023–20758 Filed 9–25–23; 8:45 am]
BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
[Docket No. FDA–2023–N–0001]

Advancing the Development of Pediatric Therapeutics on Drug Dosing in Pediatric Patients With Renal Impairment; Public Workshop

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled “Advancing the Development of Pediatric Therapeutics (ADEPT 8) on Drug Dosing in Pediatric Patients With Renal Impairment.” The purpose of the public workshop is to discuss the current landscape of drug dosing in pediatric patients with renal impairment, understand the gaps in knowledge, and consider innovative approaches to improve the current paradigm for dosing in pediatric patients with renal impairment.

DATES: The public workshop will be held on November 30, 2023, and December 1, 2023, from 9 a.m. to 5 p.m. eastern time each day. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus Great Room and online. Entrance for the registered public workshop participants (non-FDA employees) is through

Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <https://www.fda.gov/about-fda/visitor-information>.

FOR FURTHER INFORMATION CONTACT: Julie Levin, Office of New Drugs Public Meeting Support, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6481, Silver Spring, MD 20993–0002, 202–567–7565, ONDPublicMTGSupport@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The pharmacokinetics of drugs excreted by the kidneys may be altered by renal (kidney) impairment, requiring dosing adjustments. However, the majority of drugs that are predominantly renally excreted and have dosage recommendations for adults with renal impairment lack dose adjustment recommendations for pediatric patients with renal impairment. This is largely due to the lack of generation of pharmacokinetic data in pediatric patients with renal impairment, which is attributable to both the ethical and the practical limitations of conducting dedicated renal impairment studies in pediatric patients, as well as the exclusion of pediatric patients with renal impairment from most clinical efficacy and safety studies. For drugs that are renally cleared, exposures can be impacted by both the maturation of kidney function and the renal impairment due to kidney disease.

II. Topics for Discussion at the Public Workshop

The main objective of the “Advancing the Development of Pediatric Therapeutics (ADEPT 8) on Drug Dosing in Pediatric Patients With Renal Impairment” workshop is to discuss current approaches to classifying renal impairment in the pediatric population, identify data gaps, and explore scientifically supported approaches and methods for providing information on dosing adjustment. The workshop will specifically focus on measurements of renal function, extrapolation of adult data, and approaches to generating clinical trial data to assess the impact of

renal impairment on the pharmacokinetics of drugs in pediatric patients. In addition, the workshop will allow for an open dialogue around the use of these approaches among regulators, industry, academia, and patient organizations.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: <https://www.eventbrite.com/e/adept-8-pediatric-renal-impairment-workshop-tickets-687423571407>. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by November 15, 2023, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted.

If you need special accommodations due to a disability, please contact Julie Levin at ONDPublicMTGSupport@fda.hhs.gov no later than November 15, 2023.

Streaming Webcast of the Public Workshop: This public workshop will also be via Zoom. A link will be provided via email to registered participants. If you have never attended a Zoom event before, test your internet connection by joining a test meeting at <https://zoom.us/test>. FDA has verified the website addresses in this document, as of the date this document is published in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that when a transcript of the public workshop is available, it will be accessible at <https://www.regulations.gov>. It may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20903 Filed 9–25–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2925]

Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry (GFI) #273 entitled “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals.” This draft guidance document, when finalized, will provide recommendations on how sponsors may voluntarily establish defined durations of use for certain antimicrobial new animal drugs used in or on the medicated feed of food-producing animals that are currently approved with one or more indications that lack a defined duration of use. Establishing defined durations of use within the approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) is intended to mitigate development of antimicrobial resistance for these antimicrobial drugs, which are important to human medicine. It also, when finalized, will propose timelines for stakeholders wishing to voluntarily align their affected applications with this guidance.

DATES: Submit either electronic or written comments on the draft guidance by December 26, 2023, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to [https://](https://www.regulations.gov)

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–2925 for “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Mussman, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0589, John.Mussman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft GFI #273 entitled “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals.” This draft guidance, when finalized, will provide information to sponsors of certain antimicrobial animal drug products who are interested in establishing appropriately defined durations of therapeutic administration to food-producing animals where none currently exist. The draft guidance, when finalized, will also propose timelines for stakeholders wishing to comply voluntarily with this guidance.

In response to recommendations made by FDA in GFI #213,¹ as part of a strategy to address antimicrobial resistance associated with the use of antimicrobial drugs in animal agriculture, sponsors of all NADAs and ANADAs for antimicrobial drugs important to human medicine (medically important antimicrobial drugs) approved for use in or on the feed or in the drinking water of food-producing animals worked with FDA over a 3-year period from 2013 to 2016 to voluntarily withdraw approval of indications that were not considered necessary for ensuring animal health (production indications). In response to FDA recommendations made in GFI #263,² sponsors also voluntarily worked with FDA to change the marketing status of all remaining approved uses of such new animal drugs from over-the-counter (OTC) to either by veterinary prescription (Rx) or by veterinary feed directive, as applicable.

In September 2016, FDA announced that it intended to enter the next phase of its efforts to mitigate antimicrobial resistance by focusing on medically important antimicrobials used in animal feed or water that have at least one therapeutic indication without a defined duration of use. In a notice published in the **Federal Register** of September 14, 2016 (81 FR 63187), the Agency requested comments from the public about how to establish appropriately targeted durations of use for therapeutic products within the scope of GFI #213 with no currently defined duration of use. Public feedback received in response to that request for information was taken into consideration during subsequent development of a concept paper released in 2021.

On September 14, 2018, FDA released a 5-year action plan for supporting antimicrobial stewardship in veterinary settings.³ This plan includes an action item intended “to ensure that all medically important antimicrobial drugs used in the feed or drinking water of

food-producing animals have an appropriately targeted duration of use.”⁴

In a notice published in the **Federal Register** of January 11, 2021 (86 FR 1979), FDA requested comments from the public on a concept paper that outlined a potential framework for how sponsors of NADAs and ANADAs for products containing medically important antimicrobial drugs approved for use in or on the feed of food-producing animals could voluntarily work with FDA to change the approved conditions of use of these drugs to establish appropriately defined durations of use for those indications that currently have an undefined duration of use. The concept paper generated invaluable public comment; FDA considered all information and feedback received on the concept paper as it developed this draft guidance.

This level 1 draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in section 512(n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(n)(1)) have been approved under OMB control number 0910–0669. The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: September 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20920 Filed 9–25–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0313–60D]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 27, 2023.

ADDRESSES: Submit your comments to Sherrette.Funn@hhs.gov or by calling (202) 264–0041 and PRA@HHS.GOV.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0313 and project title for reference, to Sherrette A. Funn, email: Sherrette.Funn@hhs.gov, PRA@HHS.GOV or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Blood Collection & Utilization Survey (NBCUS).

Type of Collection: Revision.

OMB No.: 0990–0313 Office of the Assistant Secretary for Health/HHS.

Abstract: The Office of the Assistant Secretary for Health (OASH) is requesting approval for a three-year revised information collection request (ICR) titled “National Blood Collection & Utilization Survey (NBCUS).” The NBCUS is a biennial survey that

¹ See GFI #213, “New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209,” December 2013. (<https://www.fda.gov/media/83488/download>)

² See GFI #263, “Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to be Available Over-the-Counter,” June 2021. (<https://www.fda.gov/media/130610/download>)

³ See FDA’s 5-year action plan entitled “Supporting Antimicrobial Stewardship in Veterinary Settings: Goals for Fiscal Years 2019–2023.” (<https://www.fda.gov/media/115776/download>)

⁴ See Action item 1.1.2 of the 5-year plan.

includes a core of standard questions on blood collection, processing, and utilization practices. Questions on transfusion-transmitted infections, transfusion associated circulatory overload, acute hemolysis, delayed hemolysis, and severe allergic reactions are also included in the survey. The rapidly changing environment in blood supply and demand makes it important

to have regular, periodic data describing the state of U.S. blood collections and transfusions for understanding the dynamics of blood safety and availability. In 2023, two sections were removed from the survey related to the impact of the COVID-19 pandemic on the blood supply during the course of 2020.

Survey respondents will consist of blood collection centers and hospitals that perform blood transfusions, except those reporting fewer than 100 inpatient surgeries per year. For the purposes of this ICR, federal burden is only being placed on facilities located within the fifty states and the District of Columbia. The total estimated burden is 5,106 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Transfusing Hospitals	2754	1	1 hour, 46 min	4,865
Hospital Blood Banks	83	1	1 hour, 46 min	147
Community-based blood center	53	1	1 hour, 46 min	94
Total	2,890	.....	.....	5,106

Sherrette A. Funn,
Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.
 [FR Doc. 2023-20865 Filed 9-25-23; 8:45 am]
BILLING CODE 4150-41-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 Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Study Section Diabetes, Endocrinology and Metabolic Diseases B Study Section.

Date: October 25-27, 2023.
Time: 10:00 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, (301) 594-7791, *charlene.repique@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: September 20, 2023.
Miguelina Perez,
Program Analyst, Office of Federal Advisory Committee Policy.
 [FR Doc. 2023-20753 Filed 9-25-23; 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; Genomics Centers for Infectious Diseases (U19 Clinical Trial Not Allowed).

Date: October 24-25, 2023.
Time: 10:00 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Feili-Hariri, 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 3F21B, Rockville, MD 20852, 240-669-5026, *haririmf@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: September 20, 2023.
Tyeshia M. Roberson-Curtis,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20867 Filed 9-25-23; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Understanding Suicide Risk and Protective Factors Among Black Youth.

Date: October 25, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301-500-5829 serena.chu@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 20, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20864 Filed 9-25-23; 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; T32/T35 Institute Training Grants Jan 2024.

Date: November 6, 2023.

Time: 10:00 a.m. to 6:00 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: Kaitlyn Noel Lewis-Hardell, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, 7201 Wisconsin Ave., Rm. 2E405, Bethesda, MD 20814, (301) 555-1234, kaitlyn.hardell@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20754 Filed 9-25-23; 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 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; Large Scale T Cell Immune Epitope Discovery and Mechanisms of T Cell Protection (N01).

Date: October 25-26, 2023.

Time: 9:00 a.m. to 1:00 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 3G54, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Hitendra S. Chand, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20852, (240) 627-3245, hiten.chand@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20868 Filed 9-25-23; 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; International Centers of Excellence for Malaria Research (U19 Clinical Trial Not Allowed).

Date: November 13-15, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761-7792, caitlin.brennan2@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: September 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20875 Filed 9-25-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Understanding Suicide Risk and Protective Factors Among Black Youth.

Date: October 25, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301-500-5829, serena.chu@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 20, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20790 Filed 9-25-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development (Ks) and Conference Support (R13) Review.

Date: November 9, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Alexander O. Komendantov, Ph.D., MS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451-3397, alexander.komendantov@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: September 20, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20756 Filed 9-25-23; 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; Global Infectious Disease Research Administration Development

Award for Low-and Middle-Income Country Institutions (G11 Clinical Trial Not Allowed).

Date: October 27, 2023.

Time: 9:00 a.m. to 2:00 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 3F36, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noton K. Dutta, 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 3F36, Rockville, MD 20852, 240-669-2857, noton.dutta@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: September 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20879 Filed 9-25-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, Thyroid Cancer and other Malignancies in Belarus, November 9, 2023, 11:00 a.m. to 2:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 which was published in the **Federal Register** on August 30, 2023, FR Doc. 2023-18703, 88 FR 59930.

This notice is being amended to change the meeting title from National Cancer Institute Special Emphasis Panel Thyroid Cancer and other Malignancies in Belarus to National Cancer Institute Special Emphasis Panel Cancer and Other Health Effects Following Chernobyl Accident. The meeting location, date and time will stay the same. The meeting is closed to the public.

Dated: September 20, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-20866 Filed 9-25-23; 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 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; NIHAI75N93023R00003: Pre-clinical Models of Infectious Diseases—Task Area A.

Date: October 20–27, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Rekha Dhanwani, Ph.D., Scientific Review Program, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852, (240) 627–3076 rekha.dhanwani@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: September 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20876 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Population Sciences and Epidemiology Integrated Review Group Reproductive, Perinatal and

Pediatric Health Study Section, October 12, 2023, 9:00 a.m. to October 13, 2023, 8:00 p.m., Cambria Hotel College Park, 8321 Baltimore Avenue, College Park, MD, 20740 which was published in the **Federal Register** on September 18, 2023, 2023–20104, 88 FR 63969.

This meeting is being amended to change the location from Cambria Hotel College Park, 8321 Baltimore Avenue, College Park, MD 20740 to Sheraton Rockville Hotel, 920 King Farm Boulevard, Rockville, MD 20850. The meeting is closed to the public.

Dated: September 21, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20896 Filed 9–25–23; 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; AD Research Centers.

Date: November 17, 2023.

Time: 10:00 a.m. to 6:00 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: Maurizio Grimaldi, M.D., Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2W200, Bethesda, MD 20892, 301–496–9374, maurizio.grimaldi@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20748 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, Thyroid Cancer and other Malignancies in Belarus, November 9, 2023, 11:00 a.m. to 2:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 which was published in the **Federal Register** on August 30, 2023, FR Doc. 2023–18703, 88 FR 59930.

This notice is being amended to change the meeting title from National Cancer Institute Special Emphasis Panel Thyroid Cancer and other Malignancies in Belarus to National Cancer Institute Special Emphasis Panel Cancer and Other Health Effects Following Chernobyl Accident. The meeting location, date and time will stay the same. The meeting is closed to the public.

Dated: September 20, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20787 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: October 19–20, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Hilton, 1919 Connecticut Avenue NW, Washington, DC 20009.

Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, tami.kingsbury@nih.gov.

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics B Study Section.

Date: October 19–20, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Dolores Arjona Mayor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806D, Bethesda, MD 20892, (301) 827–8578, dolores.arjonamayor@nih.gov.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: October 19–20, 2023.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, lowss@csr.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Host Interactions Study Section.

Date: October 19–20, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710–C, MSC 7806, Bethesda, MD 20892, (301) 435–1715, nga@csr.nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: October 19–20, 2023.

Time: 9:30 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Michael Lovering, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 867–5309, lovingrm@mail.nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: October 19–20, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, mollie.manier@nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: October 19–20, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shahrzad Mavandadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4792, shahrzad.mavandadi@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20755 Filed 9–25–23; 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 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; NIHA175N93023R00003: Pre-clinical Models of Infectious Diseases—Task Area A.

Date: October 27–November 1, 2023.

Time: 10:00 a.m. to 3:00 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 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, aabbey@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: September 20, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20877 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Maximizing Investigators' Research Award B Study Section.

Date: October 19–20, 2023.

Time: 9:30 a.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sudha Veeraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7846, Bethesda, MD 20892, (301) 827–5263, sudha.veeraghavan@nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, drammehbs@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Chemical Biology and Probes Study Section.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 435–1722, eissenstatma@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 19–20, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victoria Martinez Virador, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4703, victoria.virador@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neuropathophysiology of Decision Making and Chemobrain.

Date: October 19, 2023.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, (301) 435–1042, aleksey.kazantsev@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: October 19, 2023.

Time: 2:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Benjamin G. Shaper, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, shaperobg@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20895 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Review of National and Regional Research Resources.

Date: November 6, 2023.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Marc Rigas, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institute of Health, 45 Center Drive, Room 3AN18C, Bethesda, Maryland 20892, 301–827–0648, marc.rigas@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 20, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–20749 Filed 9–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP (Corpus Christi, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Saybolt LP (Corpus Christi, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Corpus Christi, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 1, 2021.

DATES: Saybolt LP (Corpus Christi, TX) was approved and accredited as a commercial gauger and laboratory as of September 1, 2021. The next inspection date will be scheduled for September 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2937.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 414 Westchester Dr., Corpus Christi, TX 78408, has been approved to gauge petroleum and certain petroleum

products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 1, 2021.¹

Saybolt LP (Corpus Christi, TX) is approved for the following gauging procedures for petroleum and certain

petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Saybolt LP (Corpus Christi, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27-48	D4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27-58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20870 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 9, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX) was approved and accredited as a commercial gauger and laboratory as of

September 9, 2021. The next inspection date will be scheduled for September 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc., 4717 Santa Elena, Corpus Christi, Texas 78405, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 9, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

API chapters	Title	API chapters	Title
3	Tank Gauging	17	Marine Measurement
7	Temperature Determination		
8	Sampling		
12	Calculations		

Bureau Veritas Commodities and Trade, Inc. (Corpus Christi, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: October 19, 2022.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 21, 2023.

[FR Doc. 2023-20844 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMK Resources, Inc. (Kenner, LA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of NMK Resources, Inc. (Kenner, LA) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. (Kenner, LA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of July 15, 2021.

DATES: NMK Resources, Inc. (Kenner, LA) was approved and accredited as a commercial gauger and laboratory as of July 15, 2021. The next inspection date will be scheduled for July 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc., 2330 Helena St., Kenner, LA 70062, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 15, 2021.¹

NMK Resources, Inc. (Kenner, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

NMK Resources, Inc. (Kenner, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20857 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (El Paso, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (El Paso, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (El Paso, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of April 8, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (El Paso, TX) was approved and accredited as a commercial gauger and laboratory as of April 8, 2021. The next inspection date will be scheduled for April 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc, 3773 Shell Street, Suite F, El Paso, Texas 79925, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of April 8, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (El Paso, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Bureau Veritas Commodities and Trade, Inc. (El Paso, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27-54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
27-57	D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	D5188	Standard Test Method for Vapor-Liquid Ratio Temperature Determination of Fuels (Evacuated Chamber and Piston Based Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

Dated: October 5, 2022.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 21, 2023.

[FR Doc. 2023-20845 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Martinez, CA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Martinez, CA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Martinez, CA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 11, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (Martinez, CA) was approved and accredited as a commercial gauger and laboratory as of August 11, 2021. The next inspection date will be scheduled for August 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc., 3773 Pacheco Boulevard, Suite D, Martinez, California 94553, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 11, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (Martinez, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
2	Tank Calibration.
3	Tank Gauging.
4	Proving Systems.
6	Metering Assemblies.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Bureau Veritas Commodities and Trade, Inc. (Martinez, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved

by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited

or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-20847 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of V-TIC Services, Inc. (Houston, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of V-TIC Services, Inc. (Houston, TX) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that V-TIC Services, Inc. (Houston, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of December 15, 2021.

DATES: V-TIC Services, Inc. (Houston, TX) was approved and accredited as a commercial gauger and laboratory as of December 15, 2021. The next inspection date will be scheduled for December 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that V-TIC Services, Inc., 12140 Almeda Rd., Houston, TX 77045, has been approved to gauge petroleum and certain petroleum

products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of December 15, 2021.¹

V-TIC Services, Inc. (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

V-TIC Services, Inc. (Houston, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20863 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of The Strawn Group (Houston, TX) as a Commercial Gauger

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

ACTION: Notice of approval of The Strawn Group (Houston, TX) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that The Strawn Group (Houston, TX) has been approved to gauge petroleum and

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

certain petroleum products and accredited to test petroleum and certain petroleum products for the next four years as of December 14, 2021.

DATES: The Strawn Group (Houston, TX) was approved as a commercial gauger as of December 14, 2021. The next inspection date will be scheduled for December 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that The Strawn Group, 3855 Villa Ridge Road, Houston, TX 77068, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of December 14, 2021.¹

The Strawn Group (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
8.2	Standard practice for automatic sampling of petroleum and petroleum products.
8.3	Standard practice for mixing and handling of liquid samples of petroleum and petroleum products.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the gauger service requested.

CBPL No.	ASTM	Title
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023–20871 Filed 9–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. (Nederland, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Nederland, TX) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Nederland, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 29, 2021.

DATES: Intertek USA, Inc. (Nederland, TX) was approved and accredited as a commercial gauger and laboratory as of

September 29, 2021. The next inspection date will be scheduled for September 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2780 Hwy. 69 N., Nederland, TX 77627, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 29, 2021.¹

Intertek USA, Inc. (Nederland, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Marine Measurement.

Intertek USA, Inc. (Nederland, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27-54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
N/A	D4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20855 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of WFR Metering, Inc. (Houston, TX) as a Commercial Gauger

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

ACTION: Notice of accreditation and approval of WFR Metering, Inc. (Houston, TX) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that WFR Metering, Inc. (Houston, TX) has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of December 16, 2021.

DATES: WFR Metering, Inc. (Houston, TX) was approved and accredited as a commercial gauger as of December 16, 2021. The next inspection date will be scheduled for December 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-

A North, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 19 CFR 151.13, that WFR Metering, Inc. 450 Gears Road, Ste 105, Houston, TX 77067 has been approved to gauge petroleum and certain petroleum products, in accordance with the provisions of 19 CFR 151.13 as of December 16, 2021.¹

WFR Metering, Inc. (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapter	Title
8	Sampling.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20872 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Houston, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Houston, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Houston, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of July 28, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (Houston, TX) was approved and accredited as a commercial gauger and laboratory as of July 28, 2021. The next inspection date will be scheduled for July 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc., 16025-C Jacintoport Boulevard, Houston, Texas 77015, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 28, 2021.¹

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85

Continued

Bureau Veritas Commodities and Trade, Inc. (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Bureau Veritas Commodities and Trade, Inc. (Houston, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-20846 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Laboratory Service, Inc. (Savannah, GA) as a Commercial Gauger

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

ACTION: Notice of approval of Laboratory Service, Inc. (Savannah, GA), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Laboratory Service, Inc. (Savannah, GA) has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of October 6, 2021.

DATES: Laboratory Service, Inc. (Savannah, GA) was approved as a commercial gauger as of October 6, 2021. The next inspection date will be scheduled for October 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501-A North, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13,

that Laboratory Service, Inc., 1084 West Lathrop, Savannah, GA 31415, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of October 6, 2021.¹

Laboratory Service, Inc. (Savannah, GA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs->

FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See

19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

scientific/commercial-gaugers-and-laboratories.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023–20856 Filed 9–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that

Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of April 15, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX) was approved and accredited as a commercial gauger and laboratory as of April 15, 2021. The next inspection date will be scheduled for April 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc., 2700 RL Ostos Road, Brownsville, Texas 78526, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain

petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of April 15, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Bureau Veritas Commodities and Trade, Inc. (Brownsville, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560–2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs->

scientific/commercial-gaugers-and-laboratories.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023–20843 Filed 9–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc. (Thorofare, NJ) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc. (Thorofare, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Thorofare, NJ) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of November 5, 2021.

DATES: Camin Cargo Control, Inc. (Thorofare, NJ) was approved and accredited as a commercial gauger and laboratory as of November 5, 2021. The next inspection date will be scheduled for November 2025.

¹ As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

FOR FURTHER INFORMATION CONTACT: Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1301 Metropolitan Ave., Thorofare, NJ 08086, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in

accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of November 5, 2021.¹ Camin Cargo Control, Inc. (Thorofare, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.

API chapters	Title
12	Calculations.
17	Marine Measurement.

Camin Cargo Control, Inc. (Thorofare, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27-48	D4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27-58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).
N/A	D130	Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test.
N/A	D2699	Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.
N/A	D2700	Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.
N/A	D3606	Standard Test Method for Determination of Benzene and Toluene in Spark Ignition Fuels by Gas Chromatography.
N/A	D5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	D5769	Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs->

scientific/commercial-gaugers-and-laboratories.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-20851 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Thionville Surveying Company, Inc., (Harahan, LA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Thionville Surveying Company, Inc., (Harahan, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Thionville Surveying Company, Inc., (Harahan, LA) has been approved to gauge animal and vegetable oils and accredited to test certain animal and

vegetable oils for customs purposes for the next four years as of July 13, 2021.

DATES: Thionville Surveying Company, Inc., (Harahan, LA) was approved and accredited as a commercial gauger and laboratory as of July 13, 2021. The next inspection date will be scheduled for July 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Thionville Surveying Company, Inc., 5440 Pepsi Street, Harahan, LA 70123, has been approved to gauge animal and vegetable oils and accredited to test certain animal and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 13, 2021.¹

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of

Thionville Surveying Company, Inc., (Harahan, LA) is approved for the following gauging procedures for animal and vegetable oils per the National Institute of Oilseed Products (NIOP) standards:

Method	Title
NIOP 5.10.5	Weight Determination/ Gauging.
ISO 5555	Animal and vegetable fats and oils-Sampling.

Thionville Surveying Company, Inc., (Harahan, LA) is accredited for the

following laboratory analysis procedures and methods for certain animal and vegetable oils set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL), the International Standards Organization (ISO), and the American Oil Chemists' Society (AOCS):

CBPL No.	Method	Title
15-02	AOCS Ca 5a-40	Free Fatty Acids in Crude and Refined Fats and Oils.
15-12	AOCS Ce 1h-05	Determination of <i>cis</i> -, <i>trans</i> -, Saturated, Monounsaturated and Polyunsaturated Fatty Acids in Vegetable or Non-Ruminant Animal Oils and Fats by Capillary GLC.
27-48	ASTM D-4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
33-08	USP 621	Chromatography.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20860 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 14, 2021.

DATES: Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR) was approved and accredited as a commercial gauger and laboratory as of September 14, 2021. The next inspection date will be scheduled for September 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc, Road 127 Km. 19.1, Penuelas, Puerto Rico 00624, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 24, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Marine Measurement.

Bureau Veritas Commodities and Trade, Inc. (Penuelas, PR) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85

FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
27-58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-20848 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. (Harvey, LA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc (Harvey, LA) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc (Harvey, LA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of July 14, 2021.

DATES: Intertek USA, Inc (Harvey, LA) was approved and accredited as a commercial gauger and laboratory as of July 14, 2021. The next inspection date will be scheduled for July 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2604 Moss Lane, Harvey, LA 70058, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 14, 2021.¹

Intertek USA, Inc (Harvey, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

Intertek USA, Inc (Harvey, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20854 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMK Resources, Inc. (Pasadena, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of NMK Resources, Inc. (Pasadena, TX) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. (Pasadena, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of September 14, 2021.

DATES: NMK Resources, Inc. (Pasadena, TX) was approved and accredited as a commercial gauger and laboratory as of September 14, 2021. The next inspection date will be scheduled for September 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc., 1107 Center St., Pasadena, TX 77506, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of September 14, 2021.¹

NMK Resources, Inc. (Pasadena, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

NMK Resources, Inc. (Pasadena, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border

Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

scientific/commercial-gaugers-and-laboratories.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20869 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc. (Linden, NJ) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc. (Linden, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Linden, NJ) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of December 9, 2021.

DATES: Camin Cargo Control, Inc. (Linden, NJ) was approved and accredited as a commercial gauger and laboratory as of December 9, 2021. The next inspection date will be scheduled for December 2025.

FOR FURTHER INFORMATION CONTACT: Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1301 W Blancke St., Linden, NJ 07036, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of December 9, 2021.¹

Camin Cargo Control, Inc. (Linden, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Camin Cargo Control, Inc. (Linden, NJ), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-02	D1298	Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27-58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method).
N/A	D1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	D2699	Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.
N/A	D2700	Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs->

scientific/commercial-gaugers-and-laboratories.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services.

[FR Doc. 2023-20850 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMK Resources, Inc. (Thorofare, NJ) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of NMK Resources, Inc. (Thorofare, NJ) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. (Thorofare, NJ) has been

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of November 5, 2021.

DATES: NMK Resources, Inc. (Thorofare, NJ) was approved and accredited as a commercial gauger and laboratory as of November 5, 2021. The next inspection date will be scheduled for November 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–

A North, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc., 650 Grove Road, Suite 111, Thorofare, NJ 08066, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of November 5, 2021.¹

NMK Resources, Inc. (Thorofare, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

NMK Resources, Inc. (Thorofare, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023–20858 Filed 9–25–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP (Nederland, TX) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Saybolt LP (Nederland, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Nederland, TX) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of August 25, 2021.

DATES: Saybolt LP (Nederland, TX) was approved and accredited as a commercial gauger and laboratory as of August 25, 2021. The next inspection date will be scheduled for August 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2937.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 4144 N Twin City Hwy., Nederland, TX 77627, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of August 25, 2021.¹

Saybolt LP (Nederland, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID–19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

¹ As a result of the SARS–CoV–2 (COVID–19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

API chapters	Title		
12	Calculations.	Saybolt LP (Nederland, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs	and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):
17	Marine Measurement.		

CBPL No.	ASTM	Title
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
N/A	D4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.
 [FR Doc. 2023-20859 Filed 9-25-23; 8:45 am]
BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Coastal Gulf and International (Luling, LA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Coastal Gulf and International (Luling, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Luling, LA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next four years as of July 16, 2021. **DATES:** Coastal Gulf and International (Luling, LA) was approved and accredited as a commercial gauger and laboratory as of July 16, 2021. The next inspection date will be scheduled for July 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Coastal Gulf and International, 13615 River Road, Luling, LA 70070, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of July 16, 2021.¹

Coastal Gulf and International (Luling, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Coastal Gulf and International (Luling, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the

scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924,

85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

CBPL No.	ASTM	Title
27-05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27-46	D5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27-48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.
27-58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<https://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

[FR Doc. 2023-20852 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DATES: Bureau Veritas Commodities and Trade, Inc. (Sulphur, Louisiana) was approved as a commercial gauger as of October 13, 2021. The next inspection date will be scheduled for October 2025.

FOR FURTHER INFORMATION CONTACT: Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281-560-2900.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc., 384 North Post Oak Road, Sulphur, LA 70663 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of October 13, 2021.¹

Bureau Veritas Commodities and Trade, Inc. (Sulphur, Louisiana) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560-2900. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: November 23, 2022.

James D. Sweet,

Laboratory Director, Houston, Laboratories and Scientific Services Directorate.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 21, 2023.

[FR Doc. 2023-20849 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Bureau Veritas Commodities and Trade, Inc. (Sulphur, Louisiana) as a Commercial Gauger

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

ACTION: Notice of approval of Bureau Veritas Commodities and Trade, Inc. (Sulphur, Louisiana), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Sulphur, Louisiana) has been approved to gauge petroleum and certain petroleum products for customs purposes for the next four years as of October 13, 2021.

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should

¹ As a result of the SARS-CoV-2 (COVID-19) pandemic, Laboratories and Scientific Services implemented a one-time quadrennial timeframe for reoccurring audits originally scheduled to take place in 2020, 2021, and 2022. This postponed the scheduled deadline for audits and the payment of reaccreditation or reapproval fees by one year, after which audits will return to a triennial schedule. See 19 U.S.C. 1499; Presidential Proclamation 9994, 85 FR 15337 (March 13, 2020); Executive Order 13924, 85 FR 31353 (May 19, 2020); and U.S. Customs & Border Protection, COVID-19 Laboratory and Gauger Postponement Letter (May 26, 2021), <https://www.cbp.gov/document/guidance/covid-19-gauger-postponement-letter>.

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2023-0017]

Agency Information Collection Activities: Generic Information Collection: USSS Customer Satisfaction Surveys; Correction

AGENCY: United States Secret Service, Homeland Security (DHS).

ACTION: 30-Day Notice and request for comments; Correction.

SUMMARY: The Department of Homeland Security (DHS) published a document in the **Federal Register** on August 31, 2023, regarding the Generic Information Collection: USSS Customer Satisfaction Surveys. The document listed incorrect instructions to address comments regarding the inquiry and an incorrect comment closing date.

FOR FURTHER INFORMATION CONTACT: Haley Tacogue, Management and

Program Analyst, USSS, Department of Homeland Security, *ETP-PRA@uss.s.dhs.gov*, 202–997–3594.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 31, 2023, at FR Doc 2023–18829, on page 60221, in the third column, correct the **ADDRESSES** to read “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.” Additionally, in the **Federal Register** of August 31, 2023, at FR Doc 2023–18829, on page 60221, in the third column, correct the **DATES** caption to read “Comments are encouraged and will be accepted until September 30, 2023. This process is conducted in accordance with 5 CFR 1320.1.”

Frances Humphrey,

*Information Technology Program Manager,
Office of the Chief Information Officer.*

[FR Doc. 2023–20151 Filed 9–25–23; 8:45 am]

BILLING CODE 9110–18–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0037]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Refugee/Asylee Relative Petition

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 26, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden

and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS–2007–0030. All submissions received must include the OMB Control Number 1615–0037 in the body of the letter, the agency name and Docket ID USCIS–2007–0030.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommnes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 12, 2023, at 88 FR 38087, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2007–0030 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies

should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–730 is 13,000 and the estimated hour burden per response is .667 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,671 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,592,500.

Dated: September 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination
Division, Office of Policy and Strategy, U.S.
Citizenship and Immigration Services,
Department of Homeland Security.

[FR Doc. 2023-20861 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0111]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for CNMI-Only Nonimmigrant Transition Worker and Semiannual Report for CW-1 Employers

AGENCY: U.S. Citizenship and
Immigration Services, Department of
Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 27, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0111 in the body of the letter, the agency name and Docket ID USCIS-2012-0011. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2012-0011.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommès, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case

status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2012-0011 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant

Transition Worker and Semiannual Report for CW-1 Employers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-129CW; I-129CWR; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on Form I-129CW to determine eligibility for the requested immigration benefits. An employer uses Form I-129CW to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CW-1 worker. An employer also uses Form I-129CW to request an extension of stay or change of status on behalf of the alien worker. The Form I-129CW serves the purpose of standardizing requests for these benefits and ensuring that the basic information required to determine eligibility is provided by the petitioners.

Form I-129CWR, Semiannual Report for CW-1 Employers, is used by employers to comply with the reporting requirements imposed by the Workforce Act. Form I-129CWR captures data USCIS requires to help verify the continuing employment and payment of the CW-1 worker. DHS may provide such semiannual reports to other Federal partners, including the US Department of Labor (DOL) for investigative or other use as DOL may deem appropriate. Congress expressly provided for these semiannual reports to be shared with DOL. 48 U.S.C. 1086(d)(3)(D)(ii).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-129CW is 5,975 and the estimated hour burden per response is 3.5 hours; the estimated total number of respondents for the information collection Form I-129CWR is 5,975 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 35,850 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,809,062.50.

Dated: September 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-20930 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0005]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Family Unity Benefits

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 26, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2009-0021. All submissions received must include the OMB Control Number 1615-0005 in the body of the letter, the agency name and Docket ID USCIS-2009-0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshombres, Chief, Telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS

Contact Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 12, 2023, at 88 FR 38083, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2009-0021 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-817 is approximately 346 and the estimated hour burden per response is 1.9 hours per response; the estimated number of respondents providing biometrics is 346 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,063 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$42,385.

Dated: September 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-20862 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0057]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Certificate of Citizenship

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 30 days until October 26, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0057 in the body of the letter, the agency name and Docket ID USCIS-2006-0023. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0023.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on July 13, 2023, at 88 FR 44812, allowing for a 60-day public comment period. USCIS did receive one unrelated comment in connection with the 60-day notice.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2006-0023 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be

posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Form N-600 collects information from applicants who are requesting a Certificate of Citizenship because they acquired United States citizenship either by birth abroad to a U.S. citizen parent(s), adoption by a U.S. citizen parent(s), or after meeting eligibility requirements including the naturalization of a foreign-born parent. Form N-600 can also be filed by a

parent or legal guardian on behalf of a minor child. The form standardizes requests for the benefit and ensures that basic information required to assess eligibility is provided by applicants. USCIS uses the information collected on Form N-600 to determine if a Certificate of Citizenship can be issued to the applicant. Citizenship acquisition laws have changed over time and different laws apply to determine whether the applicant automatically became a U.S. citizen depending on the dates of relevant events, such as the child's date of birth. USCIS may request that applicants who reside within the United States attend an appointment at a USCIS Application Support Center to have a photograph taken. USCIS may also require applicants to submit additional biometrics under 8 CFR 103.2(b)(9).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N-600 (paper-filed) is 26,810 and the estimated hour burden per response is 1.5 hours; the estimated total number of respondents for the information collection N-600 (online filing) is 28,190 and the estimated hour burden per response is 0.75 hours; the estimated total number of respondents for the information collection biometrics submission is 36,500 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 104,063 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$7,081,250.00.

Dated: September 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-20882 Filed 9-25-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.: FR-7077-N-19]

Privacy Act of 1974; System of Records

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Public and Indian Housing (PIH) is modifying system of records notice, the Inventory Management System (IMS), also known as the Public and Indian Housing Information Center (IMS/PIC), to amend and replace the current system of records with one that encompasses both the IMS/PIC and the Housing Information Portal (HIP) system, add three new routine uses and a new collection authority. The updates are explained in the “Supplementary Section” of this notice. The system name is changing from IMS/PIC to IMS/PIC–HIP because HUD is adding functionality from HIP to the IMS/PIC system. The existing scope, objectives, business processes, and uses being made of the data by the HUD remains unchanged.

DATES: Comments will be accepted on or before October 26, 2023. The SORN becomes effective immediately, while the routine uses become effective after the comment period immediately upon publication except for the routine uses, which will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of these methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. Ladonne White, Chief Privacy Officer, Office of the Executive Secretariat; 451 Seventh Street, SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: LaDonne White, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001, telephone number (202) 708–3054 (this is not a toll-free number). HUD

welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: The Housing Information Portal (HIP) system will replace, enhance, and augment the functionality currently performed by Inventory Management System and Public and Indian Housing Information Center (IMS/PIC), while reducing the administrative burden on Public Housing Authorities (PHAs) for providing information to HUD through a new form/data submission mechanism. HIP is a modernized, flexible, scalable, internet-based integrated system, which enables PHA, Tribe/Tribally Designated Housing Entities (TDHE) and HUD users to access a common database of affordable housing information via the internet. IMS/PIC and HIP will operate in parallel until such time as HIP is able to fully replace IMS/PIC. The enhanced technology used by the HIP system will also enable critical new policy initiatives, including the expansion of the Moving to Work (MTW) Expansion program mandated by the 2016 Consolidated Appropriations Act and several programmatic changes resulting from the Housing Opportunities Through Modernization Act of 2016 (HOTMA). HUD is publishing this notice to amend and replace the current system of records titled as IMS/PIC with one that encompasses both the IMS/PIC and HIP systems, add three new routine uses to the Routine Use Section and add to the collection authority section published in the **Federal Register** on March 25, 2019, at 84 FR 11117. The three new additions to the Routine Uses section allow for sharing of data with Universal Service Administrative Company (USAC)/Federal Communications Commission (FCC) to establish eligibility for benefits administered by USAC for families which also participate in a HUD rental assistance program, and to any Federal, State, or local agency to verify the accuracy and completeness of the eligibility data for HUD rental assistance program, and HUD to enter into cooperative agreements and other types of agreements for the purposes of statistical analysis and research in support of program operations. The addition to the collection authority covers the data collected by Tribes/TDHE and their-hired management

agents and entered HIP via the Tribal HUD-Veterans Affairs Supportive Housing (VASH) reporting tool. The changes also include an update to the name of the system manager.

SYSTEM NAME AND NUMBER:

Inventory Management System, Public and Indian Housing Information Center (IMS/PIC) and Housing Information Portal (HIP), HUD/PIH–01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at these locations: U.S. Department of Housing and Urban Development Headquarters, 451 Seventh Street SW, Washington, DC 20410–0001; IMS/PIC servers are in Charleston, WV; and are accessed through the internet. The servers are maintained by HUD Information Technology Services (HITS) contractor, and HUD’s information technology partner: Perspecta. 15052 Conference Center Drive, Chantilly, VA 20151.

SYSTEM MANAGER(S):

Ashley Sheriff, Deputy Assistant Secretary, Real Estate Assessment Center (REAC), 550 12th Street SW, Suite 100, Washington, DC 20410. (202) 475–7949.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*); Title VI of the Civil Rights Act of 1962 (42 U.S.C. 2000d); The Fair Housing Act (42 U.S.C. 3601–3619); The Housing Community Development Act of 1981, Public Law 97–35, 85 Stat. 348,408; The Housing and Community Development Act of 1987 (42 U.S.C. 3543); and the Native American Housing Assistance and Self-Determination Act of 1996, Public Law 104–330, 110 Stat. 4016.

PURPOSE(S) OF THE SYSTEM:

IMS/PIC and HIP serve as a national repository of information related to PHAs, Tribally Designated Housing Entities (TDHE), HUD-assisted families, HUD assisted properties, and other HUD programs, for the purpose of monitoring and evaluating the effectiveness of PIH rental housing assistance programs. IMS/PIC and HIP allow PHAs, TDHEs, and their-hired management agents to electronically submit information to HUD that is related to the administration of HUD’s PIH programs. They collect data for PIH operations, including data submitted via the internet from HUD’s field offices, and accurately tracks activities and processes. IMS/PIC and HIP also help to increase sharing of information

throughout PIH and HUD, which improves staff awareness of activities related to the administration of HUD subsidized housing programs. IMS/PIC and HIP are flexible, scalable, internet-based integrated systems, which enables PHA and TDHE users, and HUD personnel to access a common database via their web browser. IMS/PIC and HIP aids HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of Federal rental assistance programs; (b) detecting abuses in assisted housing programs; (c) taking administrative or legal actions to resolve past and current abuses of assisted housing programs; (d) monitoring compliance with HUD program requirements; (e) deterring abuses by verifying the employment and income of tenants at the time of annual and interim reexaminations of family income and composition via the PIH Enterprise Income Verification (EIV) system; (f) evaluating program effectiveness; (g) improving PHA and TDHE IMS/PIC and HIP reporting rates; (h) forecasting budgets; (i) controlling funds; (j) updating tenant information; and (k) updating building and unit data.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families residing in a HUD-assisted property and/or receiving rental housing assistance via programs administered by the Department of Housing and Urban Development; PHAs and their hired management agents; TDHEs and their hired management agents; and individuals who have received or applied for housing-related disaster assistance from the Federal Emergency Management Agency (FEMA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the following information as reported to HUD by PHAs, TDHEs, and their hired management agents, and other governmental agencies:

1. Agency information: Agency name, HUD-assigned code, HUD program type family participates in; project number, building number, building entrance number, and unit number (applicable to only the Public Housing program).

2. Agency contact information.

a. Agency point of contact information for individuals that work for, and access IMS/PIC and HIP and oversee the agency's administration (*i.e.*, Mayors, board members, managers, directors, etc.): Individual's name, agency's physical address, agency's mailing address, agency's telephone

numbers, and email addresses for point of contacts).

b. PHA and TDHE IMS/PIC and HIP system user's information: Name, telephone number, fax number, email address, mailing address, agency website address.

3. Action information: Type of action (new admission, annual reexamination, interim reexamination, portability move-in, portability move-out, end of participation, other change of unit, Family Self-sufficiency (FSS), annual reexamination searching (Section 8 program only), issuance of voucher (Section 8 program only), expiration of voucher (Section 8 program only), flat rent annual updated (Public Housing program only), annual HQS inspection (Section 8 program only), historical adjustment, and void); effective date of action, indication of correction of previous submitted information, type of correction, date family was admitted into a PIH rental assistance program, projected effective date of next reexamination of family income and/or composition, projected date of next flat rent annual updated (applicable only to the Public Housing program), indication of whether or not the family is or has participated in the FSS program within the last year, identification of special Section 8 program (applicable only to the Section 8 program), identification of other special HUD rental program(s) the family is participating in, and "PHA Use Only" fields which are used by PHAs for general administrative purposes or other uses as prescribed by HUD.

4. Family composition (which includes the following personally identifiable information) as reported by the family and verified by PHAs, TDHEs, and their-hired management agents: Last name, first name, middle initial, date of birth, age on effective date of action, sex, relationship to head of household, citizenship status, disability status, race, ethnicity, social security number, alien registration number, compliance with community service or self-sufficiency requirement for public housing tenants, total number of household members, family subsidy status under the noncitizens rule, eligibility effective date, and former head of household's social security number.

5. Geographical and unit information:

a. Background at admission information as reported by the family: Date family entered the waiting list, zip code before admission, whether or not the family was homeless at time of admission, whether or not the family qualifies for admission over the very low-income limit, whether or not the family is continuously assisted under

the 1937 Housing Act, whether or not there is a HUD-approved income targeting disregard.

b. Subsidized Unit information: Unit number and street address, city, State and zip code in which the subsidized unit is located, city, State and zip code in which the subsidized unit is located, whether or not the family's mailing address is the same address of the unit to be occupied by the family, family's mailing address (unit number and street address, city, State, and zip code) if different from the address of the subsidized unit, number of bedrooms, whether or not the unit is an accessible unit (applicable to the Public Housing program only), whether or not the family has requested accessibility features (applicable to the Public Housing program only), whether or not the family has received the requested accessibility features (applicable to the Public Housing program only), date the unit last passed Housing Quality Standards (HQS) inspection (applicable to the Section 8 program only, except Homeownership and Project-Based Vouchers programs), date of last annual HQS inspection (applicable to the Section 8 program only, except Homeownership and Project-Based Vouchers programs), year the unit was built (applicable to the Section 8 program only), and the structure type of the unit (applicable to the Section 8 program only).

6. Family assets information, as reported by the family and verified by PHAs, TDHEs, and their hired management agents, which includes the type of asset, cash value of the asset, anticipated annual income derived from the asset, passbook rate, imputed asset income, and final asset income.

7. Family income information, as reported by the family and verified by PHAs, TDHEs, and their hired management agents, which includes the income source, Income calculations, annual income derived from the income source, income exclusion amount in accordance with HUD program requirements and annual income amount after deducting allowable income exclusion for each household member of the family, total household annual income, amounts of permissible deductions and other deductions to annual income in accordance with HUD program requirements, and amount of family adjusted annual income.

8. Total tenant payment (TTP), minimum rent amount, most recent TTP amount, and tenant rent calculation information in accordance with HUD requirements for the specific PIH rental assistance program the family is currently participating in.

9. Family Self-sufficiency (FSS) program information: Type of self-sufficiency program the family is participating in, FSS report category, FSS effective date, PHA code of PHA administering FSS contract, and general information pertaining to the employment status of the head of household, date current employment began, type of employment benefits head of household receives from employer, number of years of school completed by the head of household, type of other Federal assistance received by the family, number of children receiving childcare services, and optional information related to the type of family services the family needs, whether or not the need was met during participation in the FSS program, and the name of the service provider; FSS contract, account and exit information; and FSS contract, account and exit information.

10. Disaster assistance information: Records from FEMA, shared with HUD pursuant to an approved computer matching agreement, to enable effective delivery of aid in the wake of a disaster. Includes information about applicants for FEMA assistance, including name, social security number, address, type and amount of disaster damage, type and amount of assistance provided by FEMA.

RECORD SOURCE CATEGORIES:

Individuals, HUD staff; HUD contractors; PHAs, TDHEs, and their hired management agents; the Social Security Administration; the Department of Veteran Affairs; the Federal Emergency Management Agency; and other Federal, State and local agencies. The IMS/PIC and HIP data reported by PHAs, TDHEs, and their hired management agents is electronically transmitted to IMS/PIC and HIP using agency owned software or via HUD's Family Reporting Software (FRS). The Tribal HUD-VASH module in HIP is used by the TDHEs and their hired management agents to record data as required by the Tribal HUD-VASH program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between

persons making FOIA requests and administrative agencies.

2. To the HUD Geocoding Service Center (GSC) to obtain geographic information for records in the system.

3. To individuals under contract to HUD or under contract to another agency with funds provided by HUD: For the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing reexaminations (individuals provided information under this routine use are subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees).

4. To PHAs, TDHEs, and their hired management agents, and auditors of HUD rental housing assistance programs: To verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received.

5. To PHAs, TDHEs, and their hired management agents of HUD rental housing assistance programs: To identify and resolve discrepancies in tenant data.

6. To researchers affiliated with academic institutions, with not-for-profit organizations, or with Federal, State or local governments, or to policy researchers: Without personally identifiable information: For the performance of research and statistical activities on housing and community development issues (individuals provided information under this routine use are subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees).

7. To HUD contractors, independent public auditors and accountants, PHAs, and TDHEs: For the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and financial reporting requirements (individuals provided information under this routine use are subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees).

8. To the U.S. Department of Veterans Affairs (VA) for statistical analysis to advance the goals of the nation's Federal strategic plan to prevent and end homelessness through the collection, analysis, and reporting of quality and

timely data on veterans homelessness to assist VA with the establishment and/or verification of the following: Reducing homelessness among our nation's veterans; identify and understand the needs of homeless veterans and to develop programs and services to address those needs; effective administration of the HUD Veterans Affairs Supportive Housing (VASH) program by HUD and VA business partners; HUD-VASH program monitoring and evaluation; and the production of aggregate statistical data without any personal identifiers, which will not be used to make decisions concerning the rights, benefits, or privileges of specific individuals, or providers of services with respect to assistance provided under the HUD-VASH program.

9. To the U.S. Department of Veterans Affairs (VA), under an approved computer matching agreement, or data sharing agreement pursuant to a Presidential Executive Order (E.O.) mandate and in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act: To identify and recover overpayments (improper payments) of rental assistance, determine compliance with program requirements by program administrators and participants of HUD rental housing assistance programs, deter future abuses in rental housing assistance programs, reduce administrative costs associated with manual program evaluation and monitoring efforts, and ensure that only eligible participants receive rental assistance in the correct amount.

10. To the FEMA, under an approved computer matching agreement, or data sharing agreement pursuant to a Presidential E.O. mandate in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act: To identify existing families which participate in a HUD rental assistance program and are currently receiving housing assistance.

11. To State, local and Tribal governments receiving HUD disaster recovery grants, and to PHAs: To ensure effective delivery of disaster recovery aid, to prevent duplication of benefits between HUD and other Federal agencies, and to address unmet needs of disaster victims.

12. To appropriate agencies, entities, and persons when (1) [the agency] suspects or has confirmed that there has been a breach of the system of records, (2) [the agency] has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, [the agency] (including its information systems, programs, and

operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. To another Federal agency or Federal entity, when [the agency] determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

14. To the Universal Service Administrative Company (USAC), which is designated by the Federal Communications Commission (FCC) as the Federal administrator of the Universal Service Fund (USF or Fund) Lifeline Program (Lifeline), the Emergency Broadband Benefit (EBB) program and other Federal Telecommunications Benefit (FTB) programs that utilizes Lifeline eligibility criteria as specified by the Lifeline program, 47 CFR 54.409. The purpose of this routine use is to establish eligibility for the Lifeline, EBB and other FTB programs for families which also participate in a HUD rental assistance program.

15. To any Federal, State, or local agency (e.g., State agencies administering the State's unemployment compensation laws, Temporary Assistance to Needy Families, or Supplemental Nutrition Assistance Program agencies, U.S. Department of Health and Human Services, and U.S. Social Security Administration): To verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, to identify and recover improper payments under the Payment Integrity Information Act of 2019, Public Law 116-117., and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs.

16. To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and

research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Research and analysis activities may include the matching of the records in this system with information from any other source.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name and Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Electronic records are maintained and destroyed in accordance with requirements of the HUD Records Disposition Schedule, 2225-6. In accordance with 24 CFR 908.101 and HUD record retention requirements at 24 CFR 85.42, PHAs are required to retain at least 'three years' worth of IMS/PIC and HIP data either electronically or in paper form.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained at the U.S. Department of Housing and Urban Development in Washington, DC with limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. User's access, updates access, read-only access, and approval access are granted based on the user's role and security access level.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of

Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. FR-7077-N-07 published on March 25, 2019, at 88 FR 17004.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023-20830 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-58]

30-Day Notice of Proposed Information Collection: Disclosure of Adjustable-Rate Mortgage (ARM) Rates OMB Control No.: 2502-0322

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 26, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451

7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 6, 2023 at 88 FR 43136.

A. Overview of Information Collection

Title of Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates.

OMB Approval Number: 2502–0322.

OMB Expiration Date: 8–31–2023.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: Mortgage lenders must provide loan applicants wishing to obtain an FHA-insured Adjustable Rate Mortgage (ARM) with a pre-loan disclosure that includes a written explanation of the ARM loan features. Loan servicers must also provide mortgagors with adjustable rate mortgages an annual ARM Disclosure Notice at least 25 days before any adjustment to a mortgagor’s monthly payment may occur, advising the borrower of the new interest rate, the new monthly payment, index value and how the adjustment was calculated. Lenders generate the ARM Disclosures electronically and generally provide these disclosures on paper to their borrowers or in electronic formats. HUD collects the pre-loan ARM disclosure as part of the origination case binder. HUD may collect post-closing ARM disclosures as part of HUD’s program monitoring and enforcement activities, e.g., when a loan is selected for HUD’s

post-endorsement quality review, or the lender sends the file to HUD for claim. HUD may review collected disclosures to ensure compliance with the ARM disclosure requirements.

Respondents: Lenders.

Estimated Number of Respondents: 2250.

Estimated Number of Responses: 60,401.

Frequency of Response: One per FHA-insured adjustable rate loan.

Average Hours per Response: .05.

Total Estimated Burden: 3,020.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–20829 Filed 9–25–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–59]

30-Day Notice of Proposed Information Collection: Mortgage Insurance Termination, Application for Premium Refund, Tracer Claimant Refund Case Request, Online HUD–27050–B; OMB Control No.: 2502–0414

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 26, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 6, 2023 at 88 FR 43135.

A. Overview of Information Collection

Title of Information Collection: Mortgage Insurance Termination.

Application for Premium Refund, Tracer Claimant Refund Case Request.

OMB Approval Number: 2502–0414.

OMB Expiration Date: 12/31/2023.

Type of Request: Revision of currently approved OMB collection.

Form Number: Mortgage Insurance Termination HUD–27050–A is submitted electronically; Application for Premium Refund HUD–27050–B.

Description of the need for the information and proposed use: Mortgage Insurance Termination information is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This information is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. This information is submitted on the internet or via EDI and is used to issue mortgage insurance premium (MIP) refunds directly to eligible claimants. This condition occurs when the form passes the criteria of certain system edits. As a result, the system generates a disbursement to the eligible claimant for the refund consisting of the unused portion of the paid premium. The information collected is used to

update HUD’s Single Family Insurance System. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information, the premium collection/monitoring function would be severely impeded and program data would be unreliable. Currently when the form is processed but does not pass the criteria in the series of system edits, the system generates the HUD 27050–B Application for Premium Refund for the claimant to complete and return to HUD for further processing of the refund. In general, a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated. The Tracer Claimant Refund Case Request is used to collect information on the claimant from the tracer.

Information collection	Number of respondents	Frequency of response	Total annual responses	Hours per response	Total annual hours
Mortgage Insurance Termination HUD–27050–A	1,898	Varies	1,310,031	0.08	104,802
Application for Premium Refund HUD–27050–B	10,394	1	10,394	0.25	2,599
Tracer—Claimant Refund Case Request	360	1	360	.25	90
Online Application for Premium Refund HUD 27050–B	15,592	1	15,592	.25	3,898
Totals	28,244	.....	1,336,377	.....	111,389

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–20831 Filed 9–25–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–13]

Notice of Proposed Information Collection for Public Comment: Mod Rehab Single Room Occupancy—Renewal Housing Assistance Payments & Rent Calculation Form; OMB Control No.: 2506–0216

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* November 27, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room

7272, Washington, DC 20410; telephone (202) 708-5015 (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from *PaperworkReductionActOffice@hud.gov*.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Information Collection

OMB Approval Number: 2506-0216.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: This submission is to request an extension of a currently approved collection for reporting burden associated with the Renewal Housing Assistance Payments (HAP) Contract and Rent Calculation Form for the renewal of expiring contracts under the Section 8 Moderate

Rehabilitation Single Room Occupancy (SRO) Program. This submission is limited to the SRO renewal process under the Multifamily Assisted Housing Reform and Affordability Act of 1997 Act (MAHRA). The information to be collected will be used to facilitate the execution of a renewal HAP contract for expiring SRO projects set at the correct renewal rents as required by MAHRA. HUD will use this detailed information to determine the correct renewal rents as observed in the renewal HAP contract. The regulations covering Section 8 SRO renewals are contained in 24 CFR part 402.5 (b) (1-2).

Respondents: Public Housing Agencies (PHAs) administering the SRO HAP contracts and owner/sponsors of the SRO project.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.
Frequency of Response: 1 time annually.

Average Hours per Response: 5.

Total Estimated Burdens: The total number of hours needed for all reporting is 1,500 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Renewal HAP Contract	300	1	300	2	600	40.00	60,000
Rent Calculation Worksheet	300	1	300	3	900	.....	.....
Submission Sub-total	300	1	300	5	1,500	40.00	60,000
Total Grant Program Application Collection .....	.....	.....	.....	.....	.....	.....	.....
Total	300	1	300	5	1,500	40.00	60,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023-20908 Filed 9-25-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2023-0161; FXIA1671090000-234-FF09A30000]

Wild Bird Conservation Act; Receipt of Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on permit applications regarding foreign bird species for which the Service has jurisdiction under the Wild Bird Conservation Act (WBCA). With some exceptions, the WBCA prohibits activities with listed species unless Federal authorization is issued that

allows such activities. The WBCA also requires that we invite public comment before issuing permits for any activity it otherwise prohibits.

DATES: We must receive comments by October 26, 2023.

ADDRESSES:

Obtaining Documents: The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <https://www.regulations.gov> in Docket No. FWS-HQ-IA-2023-0161.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-HQ-IA-2023-0161.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2023-0161; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703-358-2185 or via email at DMAFR@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

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.

You may submit your comments and materials by one of the methods in **ADDRESSES.** We will not consider comments sent by email, or to an address not in **ADDRESSES.** We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at <https://www.regulations.gov> unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 112(4) of the Wild Bird Conservation Act of 1992 (WBCA; 16 U.S.C. 4901-4916), we invite public comments on permit applications before final action is taken. With some exceptions, the WBCA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Service regulations regarding permits for any activity otherwise prohibited by the WBCA with respect to any wild birds are available in title 50 of the Code of Federal Regulations in part 15.

III. Permit Application

We invite comments on the following application.
Applicant: Christine Touchton, Lecanto, FL; Permit No. PER3341600

The applicant wishes to re-issue the cooperative breeding program permit (CBP-044) covering cardinal lory (*Chalcopsitta cardinalis*), blue-crowned lorikeet (*Vini australis*), and collared lory (*Phigys solitarius*), and amend it by changing the lead cooperator from Greg Sercel to Christine Touchton.

IV. Next Steps

After the comment period closes, we will make a decision regarding permit issuance. If we issue the permit to the applicant listed, we will publish a notice in the **Federal Register.** You may locate the notice announcing the permit issuance by searching <https://www.regulations.gov> for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to <https://www.regulations.gov> and search for "12345A".

V. Authority

We issue this notice under the authority of the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901-4916). This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992 and 50 CFR 15.26(c).

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2023-20901 Filed 9-25-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2023-N077;
FXES1113060000-234-FF06E00000]

**Endangered and Threatened Species;
Receipt of Recovery Permit
Application**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on this application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the application by October 26, 2023.

ADDRESSES:

Document availability and comment submission: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant and application number, *i.e.*, U.S. Fish and Wildlife Service, Colorado Field Office; PER4054943.

- *Email:* permitsR6ES@fws.gov.
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT:

Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or permitsR6ES@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 an application we have received for a permit to conduct certain activities with endangered 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 application are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA’s definition of “take” includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted

for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. 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 Application 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 request are for the recovery and enhancement of propagation or survival of the species in the wild:

Permit No.	Applicant	Species	Location	Activity	Permit action
PER4054943	U.S. Fish and Wildlife Service, Colorado Field Office, Lakewood, CO.	• Gray wolf (<i>Canis lupus</i>) • Mexican wolf (<i>Canis lupus baileyi</i>).	Arizona, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Utah.	Capture, handle, anesthetize, collar, track, tag, administer first aid, transport, hold, relocate, collect tissue, collect biological samples, and euthanize moribund individuals.	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 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. 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.*).

Marjorie Nelson,

Acting Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2023–20833 Filed 9–25–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FAC–2023–N078; FF03F43100–XXXF1611NR; OMB Control Number 1018–0179]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Sea Lamprey Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection, without change.

DATES: Interested persons are invited to submit comments on or before October 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference “1018–0179” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On June 26, 2023, we published in the **Federal Register** (88 FR 41414) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 25, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on [Regulations.gov](https://www.regulations.gov) (Docket No. FWS–R3–FAC–2023–0096) to provide the public with an additional method to submit comments (in addition to the typical [\[fws.gov\]\(mailto:fws.gov\) email and U.S. mail submission methods\). We received one comment in response to that notice which did not address the information collection requirements. No response to that comment is required.](mailto:Info_Coll@</p></div><div data-bbox=)

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Service staff at the Service’s Marquette and Ludington biological stations fulfill U.S. obligations under the Convention on Great Lakes Fisheries Between the United States of America and Canada, Washington, 1954, and the Great Lakes Fishery Act of 1956 (16 U.S.C. 931 *et seq.*). The Service works with State, Tribal, and other Federal agencies to monitor progress towards fish community objectives for sea lampreys in each of the Great Lakes, and also to develop and implement actions to achieve these objectives. Activities are closely coordinated with those of State, Tribal, and other Federal and provincial management agencies, nongovernmental organizations, private landowners, and the public. Our

primary goal is to conduct ecologically sound and publicly acceptable integrated sea lamprey control.

The Sea Lamprey Control Program is administered and funded by the Great Lakes Fishery Commission (GLFC) and implemented by two control agents, the U.S. Fish and Wildlife Service and Fisheries and Oceans Canada, who often partner on larger projects. The sea lamprey (*Petromyzon marinus*), a parasitic fish species native to the Atlantic Ocean, parasitizes other fish species by sucking their blood and other bodily fluids. Having survived through at least four major extinction events, the species has remained largely unchanged for more than 340 million years. The sea lamprey differs from many other fishes, in that it does not have jaws or other bony structures, but instead has a skeleton made of cartilage. Sea lampreys prey on most species of large Great Lakes fish such as lake trout, salmon, lake sturgeon, whitefish, burbot, walleye, and catfish.

In the 1800s, sea lampreys invaded the Great Lakes system via locks and shipping canals. Their aggressive behavior and appetite for fish blood wreaked havoc on native fish populations, decimating an already vulnerable lake trout fishery. The first recorded observation of a sea lamprey in the Great Lakes was in 1835 in Lake Ontario. For a time, Niagara Falls served as a natural barrier, confining sea lampreys to Lake Ontario and preventing them from entering the remaining four Great Lakes. However, in the early 1900s, modifications were made to the Welland Canal, which bypasses Niagara Falls and provides a shipping connection between Lakes Ontario and Erie. These modifications allowed sea lampreys access to the rest of the Great Lakes system. Within a short time, sea lampreys spread throughout the system: into Lake Erie by 1921, Lakes Michigan and Huron by 1936 and 1937, and Lake Superior by 1938. Sea lampreys were able to thrive once they invaded the Great Lakes, because of the availability of excellent spawning and larval habitat, an abundance of host fish, a lack of predators, and their high reproductive potential—a single female can produce as many as 100,000 eggs.

The Sea Lamprey Control Program (SLCP) maintains an internal database. In existence for more than 20 years, it contains information critical to the delivery and evaluation of an integrated control program to manage invasive sea lamprey populations in the five Great Lakes. The storage of data in this database not only documents the history of the SLCP since inception in 1953, but

it also provides data to steer assessment and control of invasive sea lamprey populations in the Great Lakes in partnership with the GLFC. We provide annual population data to Federal and State regulatory agencies to inform critical evaluations used to receive the appropriate permits to allow us to conduct sea lamprey control actions.

The SLCP database maintains the points of contact for landowners to request landowner permission to access their land for treatment. The Service collects basic contact information for the landowner (name, home address, phone number, cell phone number, and email address), along with alternate contact information, whether they allow access to their land, methods of transportation allowed on property, whether a gate key or gate combination is needed to access the land, whether the landowner irrigates the land, and an opportunity to ask additional questions about treatment or sea lamprey management.

Title of Collection: Sea Lamprey Control Program.

OMB Control Number: 1018–0179.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 640.

Total Estimated Number of Annual Responses: 640.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 53 (rounded).

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–20832 Filed 9–25–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500172230]

Temporary Closure of Public Lands for the 2023–2027 Rise Lantern Festival, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: The Las Vegas Field Office announces the temporary closure of certain public lands under its administration in Clark County, Nevada. This temporary closure is being made in the interest of public safety for the Rise Lantern Festival over a 2-day period the first full weekend of October of each year from 2023 to 2027. This closure controls access to multiple points of entry to the festival located on the Jean Dry Lake to minimize the risk of vehicle collisions involving festival participants and workers. The temporary closure also ensures adequate time to conduct clean-up of the festival location.

DATES: The temporary closure will take effect over a 2-day period the first full weekend of October of each year from 2023 to 2027.

ADDRESSES: The temporary closure order and map of the closure area will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, and on the BLM website: www.blm.gov. These materials will also be posted at the access point of Jean Dry Lake and the surrounding areas.

FOR FURTHER INFORMATION CONTACT: Braden Yardley, Outdoor Recreation Planner, (702) 515–5089, or byardley@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Las Vegas Field Office announces the temporary closures of certain public lands under its administration. This action is being taken to help ensure public safety during the official permitted running of the Rise Lantern Festival. The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 24 S., R. 60 E.,

Secs. 20 and 21, those portions lying easterly and southerly of the easterly and

southerly right-of-way boundary of State Route 604;

Secs. 22 and 27, those portions lying westerly and southerly of the westerly and southerly right-of-way boundary of the Southern Nevada Lightweight Road;

Sec. 28;

Sec. 29, those portions lying easterly and southerly of the easterly and southerly right-of-way boundary of the State Route 604;

Sec. 31, those portions of the E1/2 lying easterly and southerly of the easterly and southerly right-of-way boundary of the State Route 604, excepting NVCC–0000360;

Sec. 32, those portions lying easterly and southerly of the easterly and southerly right-of-way boundary of the State Route 604;

Secs. 33 and 34.

T. 25 S., R. 60 E.,

Sec. 2, W1/2;

Secs. 3 thru 5;

Sec. 6, those portions lying easterly and southerly of the easterly and southerly right-of-way boundary of the State Route 604, excepting NVCC–0000360;

Sec. 7, excepting NVCC–0000360;

Secs. 8 thru 10;

Sec. 11, W1/2;

Sec. 14, W1/2;

Secs. 15 thru 17.

The area described contains approximately 12,030 acres, according to the BLM National PLSS CadNSDI and the official plats of the surveys of the said lands, on file with the BLM.

Temporary closure information will be posted along roads leading into the public lands to notify the public. The closure area includes the Jean Dry Lake and is bordered by Hidden Valley to the east, Sheep Mountain to the southwest, and the right-of-way boundary of State Route 604. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733[a]), 43 CFR 8360.0–7 and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description earlier is closed to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants, and spectators. Access routes leading to the closed area will be signed to indicate a closure ahead. No vehicle stopping or parking in the closed area, except in designated parking areas, will be permitted. Event participants and spectators are required to remain within designated areas only.

The following restrictions will be in effect for the duration of the closure to ensure public safety of participants and spectators. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping;

- Possession and/or consuming any alcoholic beverage unless the person has reached the age of 21 years;

- Discharging or use of firearms or other weapons;

- Possession and/or discharging of fireworks;

- Allowing any pet or other animal in one's care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet;

- Operating any vehicle, including any off-highway vehicle or golf carts, within the closure area, except along designated event routes to and from entrance/exit points and parking areas; or designated event vehicles and official vehicles;

- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, which creates a safety hazard, or endangers any person, property, or feature. Vehicles so parked are subject to citation, removal, and impoundment at the owner's expense; and

- Operating a vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier or device.

Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

Exceptions: Temporary closure restrictions do not apply to activities conducted under contract with the BLM, agency personnel monitoring the event, or activities conducted under an approved plan of operation. Authorized users must have in their possession a written permit or contract from the BLM, signed by the authorized officer.

Enforcement: Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1)

Bruce Sillitoe,

Field Manager, Las Vegas Field Office.

[FR Doc. 2023–20898 Filed 9–25–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0006; DS63644000 DRT000000.CH7000 234D1113RT OMB Control Number 1012–0009]

Agency Information Collection Activities: Outer Continental Shelf (OCS) Net Profit Share Payment

AGENCY: Office of Natural Resources Revenue (“ONRR”), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), ONRR is proposing to renew an information collection. Through this Information Collection Request (“ICR”), ONRR seeks renewed authority to collect information necessary to determine net profit share payments due the United States pursuant to Outer Continental Shelf oil and gas leases.

DATES: You must submit your written comments on or before October 26, 2023.

ADDRESSES: All comment submissions must (1) reference “OMB Control Number 1012–0009” in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

- *Electronically via the Federal eRulemaking Portal:* Please visit <https://www.regulations.gov>. In the Search Box, enter the Docket ID Number for this ICR renewal (“ONRR–2011–0006”) and click “search” to view the publications associated with the docket folder. Locate the document with an open comment period and click the “Comment Now!” button. Follow the prompts to submit your comment prior to the close of the comment period.

Docket: To access the docket folder to view the ICR **Federal Register** publications, go to <https://www.regulations.gov> and search “ONRR–2011–0006” to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at <https://www.regulations.gov>.

OMB ICR Data: OMB also maintains information on ICR renewals and approvals. You may access this information at <https://www.reginfo.gov/public/do/PRASearch>. Please use the following instructions: Under the “OMB Control Number” heading enter “1012–

0009” and click the “Search” button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the latest entry (based on the most recent date). On the “View ICR—OIRA Conclusion” page, check the box next to “All” to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Aaron Lindquist, Data Intake, Solutioning, and Coordination, ONRR, by email at Aaron.Lindquist@onrr.gov or by telephone at (303) 231–3020.

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: Pursuant to the PRA, 44 U.S.C. 3501, *et seq.*, and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of ONRR's estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

As required in 5 CFR 13208.8(d), ONRR published a 60-day notice, for review and comment, in the **Federal Register** on January 26, 2023 (88 FR 5038). ONRR did not receive any comments in response to the **Federal Register** notice available at www.regulations.gov.

ONRR reached out to members of industry soliciting comments for our information collection request renewal and received four comments. Three members of industry provided comments agreeing with the content of this information collection, while one member of industry suggested moving to reporting on a quarterly, semi-annual, or annual basis. ONRR provided responses to each commenter accordingly.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: (a) General Information: ONRR collects information necessary to receive and verify net profit share payments due the United States pursuant to Outer Continental Shelf oil and gas leases. The requirement to accurately and timely maintain and provide this information is mandatory.

(b) Information Collections: Title 30 CFR part 1220 requires a lessee of a net profit share lease to maintain and provide the following categories of information:

(1) Capital Accounts and Reports: Sections 1220.010 and 1220.021 require the lessee to establish and maintain a capital account for the lease. Section 1220.031(a) requires the lessee to file annual reports with ONRR until production revenues are credited to the capital account. Section 1220.031(b) requires the lessee to file monthly reports with ONRR once production revenues are credited to the capital account. Section 1220.031(e) requires the lessee to file a final report with ONRR upon cessation of production.

(2) Inventories: Section 1220.032(a) and (b) require the lessee to take

inventories at reasonable intervals not to exceed three years. Section 1220.032(b) requires the lessee to notify BOEM of its intent to take inventory. Section 1220.032(d) requires the lessee to reconcile the physical inventory with the capital account and to make a list of overages and shortages available to the BOEM Director for audit. Section 1220.031(d) requires the lessee to file an inventory report following the inventory taking.

(3) Records and Audits: Section 1220.030(a) requires the lessee to establish and maintain certain records related to the lease. Section 1220.033(e) authorizes ONRR to inspect the records. Section 1220.033(a) authorizes ONRR to audit accounts of the lessee or its contractor related to lease operations. Section 1220.033(b)(1) requires nonoperators of the lease to notify ONRR of an audit call.

Title of Collection: 30 CFR part 1220, OCS Net Profit Share Payment Reporting.

OMB Control Number: 1012–0009.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 9 lessees.

All nine lessees report monthly because all current net profit share leases are in producing status. ONRR estimates that these lessees will file a total of 180 monthly reports annually. ONRR excluded estimates of certain requirements performed in the normal course of business that are considered usual and customary.

Total Estimated Number of Annual Responses: 180.

Total Estimated Number of Annual Burden Hours: 1,584 hours.

Estimated Completion Time per Response: 9 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Monthly, annually, and on occasion.

Estimated Annual Non-hour Cost Burden: ONRR has identified no “non-hour” cost burden associated with the collection of information.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501, *et seq.*).

Howard Cantor,

Director, Office of Natural Resources Revenue.

[FR Doc. 2023–20931 Filed 9–25–23; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081G3, RX.05940913.FY19310]

Glen Canyon Dam Adaptive Management Work Group Charter Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of charter renewal.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to provide advice and recommendations to the Secretary concerning the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

FOR FURTHER INFORMATION CONTACT: William Stewart, Adaptive Management Group Chief, (385) 622–2179, wstewart@usbr.gov.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463, as amended). The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Authority: 5 U.S.C. ch. 10.

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2023–20900 Filed 9–25–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1372]

Certain Vaporizer Devices, Cartridges Used Therewith, and Components Thereof; Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 22, 2023, under section 337 of

the Tariff Act of 1930, as amended, on behalf of NJOY, LLC of Scottsdale, Arizona. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof by reason of the infringement of certain claims of U.S. Patent No. 11,497,864 (“the ‘864 patent”) and U.S. Patent No. 10,334,881 (“the ‘881 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 21, 2023, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of

infringement of one or more of claims 1–48 of the ‘864 patent and claims 1, 3, 4, 6–9, 11, 12, 14–17, 19, 20, 22, 23, and 25–27 of the ‘881 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “electronic nicotine delivery systems (“ENDS”), cartridges or pods used therewith, and components thereof (cartridge housings, atomizers, subassemblies, devices subassemblies, chargers)”;

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: NJOY, LLC, 9977 N. 90th Street, Suite 160, Scottsdale, Arizona 85258.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: JUUL Labs, Inc., 1000 F Street NW, Washington, DC 20004.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of

investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 21, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–20936 Filed 9–25–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–046]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 2, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–382 and 731–TA–800, 801 and 803 (Fourth Review) (Stainless Steel Sheet and Strip from Japan, South Korea, and Taiwan). The Commission currently is scheduled to complete and file its determinations and views of the Commission on October 16, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 21, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–20983 Filed 9–22–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Final)]

Tin- and Chromium-Coated Steel Sheet From Japan; Denial of Request To Institute a Section 751(b) Review Concerning the Commission's Affirmative Determination

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has declined to institute a review pursuant to section 751(b) of the Tariff Act of 1930.

DATES: September 19, 2023.

FOR FURTHER INFORMATION CONTACT:

Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this matter may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—In August 2000, the Commission determined that a U.S. industry was materially injured by reason of imports of tin- and chromium-coated steel sheet (“TCCSS”) from Japan found by the U.S. Department of Commerce (Commerce) to be sold in the United States at less than fair value. *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Final), USITC Pub. 3337 (August 2000). The Commission's affirmative determination was the subject of several appeals and three remand proceedings. Ultimately, in accordance with the Federal Circuit's mandate, the U.S. Court of International Trade (CIT) affirmed the Commission's second remand determination and thus reinstated the Commission's affirmative

material injury determination. *See Nippon Steel Corporation, et al. v. United States*, 31 CIT 1588, 433 F. Supp. 2d 1336 (Ct. Int'l Trade 2007).

In the first, second, and third full five-year reviews, the Commission found that revocation of the antidumping duty order on TCCSS from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006); *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Second Review), USITC Pub. 4325 (May 2012); *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Third Review), USITC Pub. 4795 (June 2018).

On August 5, 2022, a request for a changed circumstances review of the Commission's affirmative determination regarding TCCSS from Japan was filed by the Can Manufacturers Institute (“CMI”), Silgan Containers, LLC (“Silgan”), Sonoco Product Company (“Sonoco”), Trivium Packaging USA Inc. (“Trivium”), Crown Holdings, Inc. (“Crown”), and Nippon Steel Corporation (“NSC”) (collectively, “CMI”). CMI's request alleges that there have been significant changed circumstances since the Commission's affirmative determination in the third five-year review. Specifically, CMI claims that there has been a dramatic reduction in the domestic industry's production capacity for TCCSS since 2018. CMI further contends that subject producers in Japan have reduced their TCCSS capacity since the last reviews and no longer possess excess capacity.

On October 28, 2022, the Commission published a **Federal Register** notice inviting comments from the public on whether changed circumstances exist sufficient to warrant the institution of a changed circumstances review (87 FR 65248, Oct. 28, 2022). Comments in response to this notice were filed on December 15, 2022. The Commission received separate submissions opposing the institution of a changed circumstances review filed on behalf of Cleveland-Cliffs Inc. and U.S. Steel Corporation. The Commission also received separate submissions in favor of instituting a changed circumstances review on behalf of The Consumer Brands Association (“CBA”), the Steel Tinplate Against Tariffs Coalition (“STAT”), and U.S. Representative Claudia Tenney. U.S. Representatives Salud Carbajal, Jim Costa, Mark DeSaulnier, and John Garamendi filed

joint comments in support of initiating a changed circumstances review.

On January 15, 2023, the Commission voted unanimously to waive its 45-day rule for determining whether to institute a changed circumstances review.

On June 1, 2023, Commerce initiated, and the Commission instituted, the fourth five-year sunset review of the antidumping duty order on TCCSS from Japan. 88 FR 35832; 88 FR 35920. On September 5, 2023, the Commission voted unanimously to conduct a full review of the antidumping duty order on TCCSS from Japan. 88 FR 64464 (Sept. 19, 2023).

On September 19, 2023, the Commission determined not to institute a changed circumstances review of the antidumping duty order on TCCSS from Japan. The Commission found that conducting a changed circumstances review was unwarranted because it would be duplicative of the pending full five-year review. *See Eveready Battery Co. Inc., v. United States*, 77 F. Supp. 2d 1327, 1334 (Ct. Int'l Trade, Nov. 23, 1999) (finding that a request for a changed circumstances review was rendered moot by the Commission's institution of a full five-year review); *see also Diamond Sawblades and Parts Thereof from China*, 79 FR 35568–69 (June 23, 2014) (denying request for changed circumstances review because it would be duplicative of the ongoing full five-year review).

Authority: This notice is published pursuant to section 207.45 of the Commission's Rules of Practice and Procedure.

By order of the Commission.

Issued: September 20, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–20817 Filed 9–25–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1374–1376 (Review)]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand; Notice of Commission Determinations to Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of

the antidumping duty orders on citric acid and certain citrate salts from Belgium, Colombia, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202) 708-1448, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On September 5, 2023, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party group response and the respondent interested party group response from Belgium to its notice of institution (88 FR 35923, June 1, 2023) were adequate, and determined to conduct a full review of the order on imports from Belgium. The Commission also found that the respondent interested party group responses from Colombia and Thailand were inadequate but determined to conduct full reviews of the orders on imports from those countries in order to promote administrative efficiency in light of its determination to conduct a full review of the order with respect to Belgium. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is

published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023-20886 Filed 9-25-23; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1294]

Certain High-Performance Gravity-Fed Water Filters and Products Containing the Same; Notice of the Commission's Final Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined that there is no violation of section 337 in the above-captioned investigation, reversing the administrative law judge's ("ALJ") final initial determination ("ID") in this investigation on review. The Commission has determined to grant in part complainant's motion to strike waived arguments and new evidence.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On January 31, 2022, the Commission instituted this investigation based on a complaint filed by Brita LP ("Brita") of Neuchatel NE, Switzerland. 87 FR 4913 (Jan. 31, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale

within the United States after importation of certain high-performance gravity-fed water filters and products containing the same by reason of infringement of claims 1-6, 20, 21, 23, and 24 of U.S. Patent No. 8,167,141 ("the '141 patent"). *Id.* The Commission's notice of investigation named nine respondents: Mavea LLC of West Linn, Oregon and Brita GmbH of Taunusstein, Switzerland (collectively, "the Mavea Respondents"); Ecolife Technologies, Inc. of City of Industry, California and Qingdao Ecopure Filter Co., Ltd. of Shandong Province, China (collectively, "the Aqua Crest Respondents"); Kaz USA, Inc. and Helen of Troy Limited, both of El Paso, Texas (collectively, "PUR Respondents"); Zero Technologies, LLC of Trevoise, Pennsylvania; Culligan International Co. of Rosemont, Illinois (collectively, "ZeroWater Respondents"); and Vestergaard Frandsen Inc. of Baltimore, Maryland ("LifeStraw"). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On May 3, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to the Mavea Respondents based upon settlement. Order No. 13 (May 3, 2022), *unreviewed by Comm'n Notice* (May 24, 2022).

On June 1, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to claims 20, 21, and 24 of the '141 patent based upon withdrawal of the allegations in the complaint as to these claims. Order No. 19 (June 1, 2022), *unreviewed by Comm'n Notice* (June 21, 2022).

On June 2, 2022, the ALJ held a *Markman* hearing. The ALJ issued a *Markman* Order construing the claim terms in dispute on July 20, 2022. Order No. 30 (July 20, 2022).

On September 22, 2022, the ALJ issued an ID granting a motion to terminate the investigation as to the Aqua Crest Respondents based upon withdrawal of the allegations in the complaint as to these respondents. Order No. 43 (Sept. 22, 2022), *unreviewed by Comm'n Notice* (Oct. 11, 2022).

The ALJ held an evidentiary hearing from August 17-19, August 22-23, and October 13, 2022, and received post-hearing briefs thereafter.

On February 28, 2023, the ALJ issued the final ID finding a violation of section 337. The ID found that "because of importation stipulations of all Accused Products," the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. ID at 12-13. The ID also found that Brita successfully proved that all of the Accused Products infringe the

asserted claims of the '141 patent (claims 1–6 and 23). *Id.* at 69–105. The ID further found that Respondents failed to show by clear and convincing evidence that the asserted claims are invalid for lack of written description (*Id.* at 169–204), enablement (*Id.* at 205–250), anticipation (*Id.* at 153–169), or for reciting ineligible subject matter under 35 U.S.C. 101 (*Id.* at 250–269). Finally, the ID found that Brita proved the existence of a domestic industry that practices the '141 patent as required by 19 U.S.C. 1337(a)(2). *Id.* at 105–117, 269–285.

The ID included the ALJ's recommended determination on remedy and bonding ("RD"). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order against all respondents and cease and desist orders against the PUR Respondents and LifeStraw. ID/RD at 258–291. The RD also recommended imposing a bond in the amount of one hundred percent (100%) of entered value for PUR's and ZeroWater's infringing products imported during the period of Presidential review and \$6 per unit for infringing LifeStraw products imported during the period of Presidential review. *Id.* at 291–295.

On March 13, 2023, Respondents and Brita filed respective petitions for review of the ID. On March 21, 2023, the parties filed responses to the petitions.

On May 24, 2023, Respondents moved for leave to file a notice of supplemental authority regarding their petition for review. Specifically, Respondents sought to submit the recent U.S. Supreme Court decision in *Amgen Inc. v. Sanofi*, No. 21–757 (May 18, 2023), as being directly relevant to the lack of enablement of the asserted. On June 28, 2023, the Commission issued a Notice granting the motion. 88 FR 42951 (July 5, 2023).

In its Notice on June 28, 2023, the Commission also determined to review the final ID in part. *Id.* at 42950–53. Specifically, the Commission determined to review the following findings: (1) construction of the claim term "filter usage lifetime claimed by a manufacturer or seller of the filter," (2) written description, (3) enablement, (4) section 101, (5) anticipation, and (6) the economic prong of the domestic industry requirement. The Commission requested the parties to brief certain issues under review and to brief the issues of remedy, the public interest, and bonding. *Id.*

On July 14, 2023, the parties filed initial submissions in response to the Commission's request for briefing. On July 21, 2023, the parties filed reply submissions. The parties also filed a

number of motions and oppositions, which we address below.

On July 24, 2023, Complainant Brita filed a motion to strike waived arguments and new evidence in Respondents' Reply in Response to the Commission Notice of Review. On August 3, 2023, Respondents filed an opposition to the motion. On August 8, 2023, Brita moved for leave under Commission Rule 210.15(c) to file a reply to Respondents' opposition. On August 18, 2023, Respondents filed an opposition to Brita's motion. The Commission has determined to grant in part Brita's motion as it pertains to introducing new dictionary definitions for "validate" and "claim" for being waived. The Commission has determined to otherwise deny the motion. The Commission has further determined to deny Brita's motion for leave to file a reply to Respondents' opposition as unnecessary.

Upon review of the parties' submissions, the ID, and evidence of record, the Commission has determined that Brita has failed to show that Respondents violated section 337 by reason of the importation and sale of articles that infringe asserted claims 1–6 and 23 of the '141 patent. Specifically, on review, the Commission has determined to (1) vacate the ID's construction of the claim term "filter usage lifetime claimed by a manufacturer or seller of the filter" and finds the claim limitation indefinite, (2) reverse the ID's finding that the asserted claims are not invalid for lack of written description, (3) reverse the ID's findings that the asserted claims are enabled, (4) take no position on the ID's section 101 analysis and findings, (5) take no position on the ID's anticipation analysis and findings, and (6) take no position on the ID's findings on the economic prong of the domestic industry requirement. The Commission's reasoning is set forth in its opinion issued herewith.

The investigation is hereby terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on September 19, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 19, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–20815 Filed 9–25–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Smart Ceiling Fans, Components Thereof, and Associated Systems and Software, DN 3694*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Wangs Alliance Corporation d/b/a WAC Lighting on September 20, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart ceiling fans, components thereof, and associated systems and software. The

complaint names as respondents: Minka Lighting, LLC of Newport News, VA; Tech Lighting LLC of Skokie, IL; and VC Brands, LLC of Skokie, IL. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions

were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3694") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 21, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023-20911 Filed 9-25-23; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Training & Readiness Accelerator II

Notice is hereby given that, on July 11, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Training & Readiness Accelerator II ("TReX II") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objective. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4C North America, Inc., McLean, VA; Action Engineering LLC, Golden, CO; Ad hoc Research Associates LLC, Havre de Grace, MD; Adjacent Link LLC, Bridgewater, NJ; Advanced Simulation Technology, Inc., Herndon, VA; Applied Information Sciences, Inc., Reston, VA; Applied Intuition, Inc., Mountain View, CA; Applied Visual Technology, Inc., Orlando, FL; Assured Information Security, Inc., Rome, NY; BAE Systems Technology Solutions & Services, Inc., Rockville, MD; Barbaricum LLC, Washington, DC; Beacon Industries, Inc., Newington, CT; BUNDLAR LLC, Chicago, IL; CACI, Inc.—Federal, Chantilly, VA; Calspan, Inc., Buffalo, NY; Carahsoft Technology Corporation, Reston, VA; CDW Government LLC, Vernon Hills, IL; Chimaera Science LLC dba Adaptive Immersion Technologies, Tampa, FL; Compendium Federal Technology (CFT), Lexington Park, MD; Continuum Dynamics, Inc., Ewing, NJ; Creative Microsystems Corporation, Waitsfield, VT; Dark Wolf Solutions LLC, Herndon, VA; Decisive Edge LLC, Bradenton, FL; Design Interactive, Inc., Orlando, FL; Discovery Machine, Inc.,

Williamsport, PA; DMAero LLC, Byron, GA; Doron Precision Systems, Inc., Binghamton, NY; Eduworks Corp., Dayton, OH; ElbitAmerica, Inc., Fort Worth, TX; Electro Standards Laboratory, Inc. dba Electro Standards Laboratories, Cranston, RI; EWA Warrior Services LLC, Herndon, VA; Exyn Technologies, Inc., Philadelphia, PA; Frontier Technology, Inc., Beavercreek, OH; General Dynamics Information Technology, Inc., Falls Church, VA; Georgia Tech Applied Research Corporation, Atlanta, GA; Gray Analytics, Inc., Huntsville, AL; Hodges Transportation, Inc. dba Nevada Automotive Test Center, Silver Springs, NV; iC-1 Solutions LLC, Reston, VA; Infinitas Engineering, Inc., Orlando, FL; Information Systems Laboratories, Inc., Poway, CA; Innovative Defense Technologies LLC, Arlington, VA; IntelliGenesis LLC, Columbia, MD; Invariant Corporation, Huntsville, AL; John H. Northrop & Associates, Inc., Clifton, VA; Kitware, Inc., Clifton Park, NY; KRI at Northeastern University LLC, Burlington, MA; Lukos LLC, Tampa, FL; ManTech Advanced Systems International, Inc., Herndon, VA; MicroHealth LLC, Vienna, VA; Millennium Corporation, Arlington, VA; NAG LLC dba NAG Marine, Norfolk, VA; NAL Research Corporation, Manassas, VA; National Strategic Research Institute, Lincoln, NE; NetImpact Strategies, Inc., Falls Church, VA; Noblis, Inc., Reston, VA; Northrop Grumman Amherst Systems Corporation, Buffalo, NY; nou Systems, Inc., Huntsville, AL; NTA, Inc., Huntsville, AL; Omni Fed LLC dba Omni Federal, Gainesville, VA; Pamunkey Indian Enterprises—Professional Services (PIE-PS), King William, VA; PeopleTec, Inc., Huntsville, AL; ProActive Technologies, Inc., Oviedo, FL; Radiation Monitoring Devices, Inc., Watertown, MA; Ravenswood Solutions, Inc., Fremont, CA; Rise8, Inc., Tampa, FL; S2 Corporation, Bozeman, MT; Saab, Inc., East Syracuse, NY; Sciumo, Inc., Odenton, MD; Senspex, Inc., Rio Rancho, NM; SimIS, Inc., Portsmouth, VA; SRC, Inc., North Syracuse, NY; Subsystem Technologies, Inc., Arlington, VA; Tangram Flex, Inc., Dayton, OH; Technical Systems Integrators, Longwood, FL; Technology, Modeling & Simulation & Training Consultants LLC, Geneva, FL; Teledyne FLIR Commercial Systems, Inc., Goleta, CA; Thales Defense & Security, Inc., Clarksburg, MD; ThayerMahan, Inc., Groton, CT; The Domenix Corporation, Chantilly, VA; Trideum Corporation, Huntsville, AL; Valkyrie Enterprises

LLC, Virginia Beach, VA; Verity Integrated Systems, Inc., Huntsville, AL; Virginia Polytechnic Institute and State University, Blacksburg, VA; Vision Products LLC, Campbell, CA; VMware, Inc., Palo Alto, CA; WaveLink, Inc., Huntsville, AL; Wegmann USA, Inc., Lynchburg, VA; and World Wide Technology LLC, St. Louis, MO, have been added as parties to this venture. The changes in its nature and objectives are: The general area of TRex II's planned activities are to respond to requirements from the Army's Program Executive Officer for Simulation, Training, and Instrumentation (PEO STRI) to increase Warfighter readiness via modeling, simulation, education/training, experimental validation, and military readiness focused projects. TRex II's planned activity is to conduct research, development, and prototyping of projects and projects in the following technology areas: Modeling; Simulation; Education and Training; Experimental Validation; Readiness; and Information Operations.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TRex II intends to file additional written notifications disclosing all changes in membership.

On February 17, 2023, TRex II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38536).

The last notification was filed with the Department on February 17, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38536).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20781 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Senior Healthcare Innovation Consortium

Notice is hereby given that, on July 11, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Senior Healthcare Innovation Consortium (“Senior

Healthcare Innovation Consortium”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CarePredict, Inc., Plantation, FL; International Consulting Associates, Inc., Arlington, VA; Louisiana State University Health Sciences Center-Shreveport, Shreveport, LA; Novare Products LLC, Bryant, AR; and The Diabetes Resistance LLC, Clawson, MI, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Senior Healthcare Innovation Consortium intends to file additional written notifications disclosing all changes in membership.

On November 02, 2022, Senior Healthcare Innovation Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 23, 2022 (87 FR 71677).

The last notification was filed with the Department on April 12, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38533).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20782 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Open Rf Association, Inc.

Notice is hereby given that, on July 12, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, Zeku Technology (Shanghai) Corp., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 11, 2020 (85 FR 14247).

The last notification was filed with the Department on April 27, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38533).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20778 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Resilient Infrastructure + Secure Energy Consortium

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Resilient Infrastructure + Secure Energy Consortium (“RISE”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenius, Inc., Boca Raton, FL; AVATAR Computing, Inc., Worcester, MA; Barrow Green LLC, Bethesda, MD; Butterfly Power, Agoura Hills, CA; Callentis Consulting Group LLC, Austin, TX; Imagine Believe Realize LLC, Rockledge, FL; NgenX Energy, Alexandria, VA; Our Next Energy, Novi, MI; Setra Systems, Inc., Boxborough, MA; Stratascor LLC, Chesapeake, VA; Tampa Electric, Tampa, FL; Trashology, Concord, MA; Uplift Solar Corp., Las Vegas, NV; and

Xairgen LLC, Las Cruises, NM, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RISE intends to file additional written notifications disclosing all changes in membership.

On July 2, 2021, RISE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47155).

The last notification was filed with the Department on April 3, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 12, 2023 (88 FR 38098).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20767 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Information Warfare Research Project Consortium (“IWRP”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Engineering LLC, Golden, CO; Analog Devices, Inc., Wilmington, MA; Apothym Technologies Group LLC, Peachtree Corners, GA; AstroSec LLC, Annandale, VA; AVATAR Computing, Inc., Worcester, MA; Azure Summit Technology, Inc., Fairfax, VA; Caesar Creek Software, Miamisburg, OH; Commdex, Inc., Smyrna, GA; Corellium, Inc., Delray Beach, FL; Cromulence LLC, Melbourne, FL; Cryptic Vector, Liberty Township, OH; Dobbs Defense Solutions, College Park, MD; Grace Innovations LLC, Arlington, VA; IQM Research Institute, Ann Arbor, MI; JEM Engineering LLC, Laurel, MD; KRI at Northeastern University LLC,

Burlington, MA; L3Harris Technologies, Inc., Harris Defense Communications, Rochester, NY; McKinsey & Company, Inc. Washington DC, Washington, DC; Near Earth Autonomy, Inc., Pittsburgh, PA; Obsidian Solutions Group LLC, Fredericksburg, VA; Outside Analytics, Inc., Broomfield, CO; Pacific Defense Strategies, Inc., El Segundo, CA; Permuta Technologies, Inc., Vienna, VA; Physical Sciences, Inc., Andover, MA; QUASAR Federal Systems, Inc., San Diego, CA; Roke USA, Inc., Sterling, VA; Sparton De Leon Springs LLC, De Leon Springs, FL; Steerbridge Strategies LLC, Vienna, VA; Titan Systems LLC, Lexington Park, MD; and True North Logistics LLC, Downers Grove, IL have been added as parties to this venture.

Also, Anthem Engineering LLC., Elkridge, MD; Boonton Electronics, Parsippany, NJ; Dignitas Technologies, Orlando, FL; Intrinsic Corp., Marlborough, MA; KYRUS Tech, Inc., Sterling, VA; Merlin International, Inc., Tysons, VA; Metamorphosis Group, Inc., Vienna, VA; P&J Robinson Corp, Boerne, TX; Sage Analysis Group, Inc., Boston, MA; Silver Palm Technologies LLC, Ijamsville, MD; Spectranetix, Inc., Sunnyvale, CA; Submergence Group LLC, Cedar Park, TX; TeleCommunication Systems, Inc., Annapolis, MD; and Trusted Science & Technology, Inc., Bethesda, MD have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on April 12, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38535).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20771 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on July 10, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Countering Weapons of Mass Destruction (“CWMD”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beacon Industries, Inc., Newington, CT; Charles River Analytics, Inc., Cambridge, MA; Culmen International LLC, Alexandria, VA; Flambeau Diagnostics LLC, Madison, WI; M2DCON, Inc., Lakewood, OH; Polaris Sensor Technologies, Inc., Huntsville, AL; Powerhouse Consulting Group LLC, Ellicott City, MD; Stratom, Inc., Louisville, CO; Systematic, Inc., Centreville, VA; and University of Nebraska Medical Center, Omaha, NE, have been added as parties to this venture.

Also, Expedition Technology, Inc., Herndon, VA; Kuprion, Inc., San Jose, CA; PAE National Security Solutions, Fredericksburg, VA; and Science and Technology Corp., Hampton, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on April 3, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 12, 2023 (88 FR 38098).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20774 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BioLizard, Gent, BELGIUM; and TopQuadrant, Raleigh, NC have been added as parties to this venture.

Also, DNAnexus, Mountain View, CA; Digital Lab Consulting, London, UNITED KINGDOM; Healx, Cambridge, UNITED KINGDOM; Whitespace Sarl, Geneva, SWITZERLAND; Emerald Cloud Lab, Inc., San Francisco, CA; Optibrium, Cambridge, UNITED KINGDOM; Springer Nature, Berlin, GERMANY; Keralia, Neuilly-sur-Seine, FRANCE; Valo Health, Boston, MA; OntoText, Sofia, BULGARIA; and Algorithmiq, Helsinki, FINLAND have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on April 16, 2023. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38539).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20775 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AI Infrastructure Alliance, Inc.

Notice is hereby given that, on July 3, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), AI Infrastructure Alliance, Inc. (“AIIA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Artefact, Paris, FRANCE; Comet ML, Inc., New York, NY; and Aporia, Tel Aviv, ISRAEL, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIIA intends to file additional written notifications disclosing all changes in membership.

On January 5, 2022, AIIA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 10, 2022 (87 FR 13759).

The last notification was filed with the Department on April 18, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 14, 2023 (88 FR 55069).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20766 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Armaments Consortium (“NAC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Action Engineering, LLC, Golden, CO; Adolf Meller Co dba Meller Optics Inc, Providence, RI; Applied Energetics, Inc., Tuscon, AZ; Arnouse Digital Devices, Corp., Lake Success, NY; Autonomous Defense Technologies Corp. (Swarm Aero), Oxnard, CA; Beacon Industries, Inc., Newington, CT; Beehive Industries, LLC, Englewood, CO; Bering Global Solutions, LLC, Anchorage, AK; Black River Systems Company, Inc., Utica, NY; Brown Technologies, Inc., Huntsville, AL; Compotech, Inc., Brewer, ME; Desert Tech LLC, West Valley City, UT; Disablement Technologies and Consulting LLC, Fredericksburg, VA; ECS Federal, LLC, Fairfax, VA; Falcon Dancer Incorporated, Huntsville, AL; Hunting Titan, Inc., Pampa, TX; InDyne, INC., Sterling, VA; Marvell Government Solutions, LLC, Burlington, VT; Michigan Technological University, Houghton, MI; R. Stresau Laboratory, Inc., Spooner, WI; Signature Solutions, Inc., Huntsville, AL; Task Aerospace, Inc., Mesa, AZ; TMC Design, Corp., Las Cruces, NM; Trusted Semiconductor Solutions, Inc., Brooklyn Park, MN; and Wave Motion Launch Corp., Everett, WA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on April 10, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 12, 2023 (88 FR 38098).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-20772 Filed 9-25-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum (TM Forum)

Notice is hereby given that, on July 13, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TM Forum, a New Jersey Non-Profit Corporation ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intersec, Paris La Défense—Cedex, FRANCE; Swisscom (Schweiz) AG, Bern, SWITZERLAND; T-Mobile Netherlands BV, Den Haag, NETHERLANDS; Deutsche Glasfaser Management GmbH, Borken, GERMANY; Digia Plc, Basware, FINLAND; Inmarsat Global Limited, London, UNITED KINGDOM; Lifecycle Software, Newbury, UNITED KINGDOM; Ni2, Montreal, CANADA; Concertia Technologies Inc, Halifax, CANADA; Wavelo, Toronto, CANADA; TPG Telecom Limited, North Sydney, AUSTRALIA; Hong Kong Telecommunications (HKT) Limited, Causeway Bay, HONG KONG—CHINA; Entel PCS Telecomunicaciones S.A., Santiago, CHILE; Bouygues Telecom, Meudon-la-Forêt, FRANCE; Kratos RT Logic, Inc., Colorado Springs, CO; ITgma, Skopje, MACEDONIA; PT LINK NET TBK, Jakarta, INDONESIA; Primforce Technologies Ltd., Hangzhou, PEOPLE'S REPUBLIC OF CHINA; CMPak Limited, Islamabad, PAKISTAN; Zhejiang University, Hangzhou, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Greater Bay Area Financial Institute, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; X3T Broadband Ltd, Dublin, IRELAND; Exos Systems Limited, Castel, UNITED KINGDOM; Connectbase, Westborough, MA; Cubastion Consulting Private Limited, Gurgaon, INDIA; Telcovas Solutions and Services, Sharjah, UNITED ARAB EMIRATES; IO-Transform Ltd, London, UNITED KINGDOM; Blueoceandigital India Pvt Ltd, Bangalore, INDIA; Paus TV (barndoor Technology Limited), Liverpool, UNITED KINGDOM; Infraon Corp, Lewes, DE; Kumoco Ltd, London, UNITED KINGDOM; Orange County Public Works, Santa Ana, CA; Beesion

Technologies, Fort Lauderdale, FL; Ab Initio Software Limited, Weybridge, UNITED KINGDOM; Brillio, Edison, NJ; TerreStar Solutions Inc. DBA Strigo, Montreal, CANADA; OMANTEL, Ruwi, OMAN; Dawiyat, Riyadh, SAUDI ARABIA; and Knot Solutions Pvt. Ltd, Hyderabad, INDIA, have been added as parties to this venture.

Also, Anodot, Raanana, ISRAEL; Axiata Intelligence Unit, KL Sentral, MALAYSIA; Blue Prism, London, UNITED KINGDOM; CYPRUS TELECOMMUNICATIONS AUTHORITY, Nicosia, CYPRUS; Etisalat Egypt, New Cairo, EGYPT; EverestIMS Technologies, Bangalore, INDIA; GuoChuang Cloud Technology Co. Ltd., Hefei, PEOPLE'S REPUBLIC OF CHINA; helloFiber GmbH, Koln, GERMANY; ITEA Technologies, LLC, Richardson, TX; James Madison University, Harrisonburg, VA; L3Harris Technologies, Inc., Melbourne, FL; MTUCI, Moscow, RUSSIA; Nanjing Howso Technology Co., LTD, Nanjing, PEOPLE'S REPUBLIC OF CHINA; ONEiO, Helsinki, FINLAND; Oxio, Quebec, CANADA; PrologMobile, Louisville, CO; Selector AI, Santa Clara, CA; SENAC, Vila Buarque, BRAZIL; SKY BRASIL, São Paulo, BRAZIL; Smart City College of Beijing Union University, Beijing, PEOPLE'S REPUBLIC OF CHINA; The College Board, New York, NY; T-Mobile Netherlands BV, Den Haag, NETHERLANDS; Universitè de Paris, Paris, FRANCE; University "POLITEHNICA" of Bucharest—Automatic Control and Computers Faculty, Bucharest, ROMANIA; and Zhongguancun Sifang Model Service Industry Technology Strategic Alliance, Beijing, PEOPLE'S REPUBLIC OF CHINA have withdrawn as parties to this venture.

Additionally, the following members have changed their names: A1 Group to Telekom Austria AG, Vienna, AUSTRIA; Cortex to CORTEX, Brierley Hill, UNITED KINGDOM; OryxGateway to OryxGateway FZ LLC, Dubai, UNITED ARAB EMIRATES; Vodafone New Zealand Limited to One NZ Group Ltd., Auckland, NEW ZEALAND; and Telecom Italia Group to Telecom Italia SpA, Milano, ITALY.

No other changes have been made to either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department

of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 13, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38538).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20780 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Naval Surface Technology & Innovation Consortium

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Naval Surface Technology & Innovation Consortium (“NSTIC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Engineering LLC, Golden, CO; Arcturus UAV, Inc., Petaluma, CA; Beacon, Inc., Newington, CT; Colossal Contracting, LLC, Annapolis, MD; Colvin Run Networks, Inc., Great Falls, VA; CrowdAI, Inc., San Francisco, CA; Cybel, LLC, Bethlehem, PA; Hawk Technologies, LLC, Hancock, MI; Hexagon US Federal, Inc., Huntsville, AL; Metronome, LLC, Fairfax, VA; MPR Associates, Inc., Alexandria, VA; Premier Mechanical Products, LLC, Kansas City, KS; SMA, Inc., Irvine, CA; ThayerMahan, Inc., Groton, CT; and Watershed Security, LLC, Chesapeake, VA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSTIC intends to file additional written notifications disclosing all changes in membership.

On October 8, 2019, NSTIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to section 6(b) of the Act on November 12, 2019 (84 FR 61071).

The last notification was filed with the Department on April 7, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38534).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20770 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—America’s DataHub Consortium

Notice is hereby given that, on July 13, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), America’s DataHub Consortium (“ADC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beacon Industries, Inc., Newington, CT; International Consulting Associates, Inc., Arlington, VA; JIL NZ LLC, Chevy Chase, MD; Leidos, Reston, VA; Scientific Research Corp. (SRC), Atlanta, GA; SimIS, Inc., Portsmouth, VA; Social Science Research Council, Brooklyn, NY; and The University of North Carolina at Chapel Hill, Chapel Hill, NC, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADC intends to file additional written notifications disclosing all changes in membership.

On November 11, 2021, ADC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 22, 2021 (86 FR 72628).

The last notification was filed with the Department on April 13, 2023. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38540).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20779 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Maritime Sustainment Technology and Innovation Consortium

Notice is hereby given that, on July 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Maritime Sustainment Technology and Innovation Consortium (“MSTIC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Engineering LLC, Golden, CO; Baker Manufacturing, Inc., Tacoma, WA; Beacon Industries, Inc., Newington, CT; Bogue Systems, Inc., Paterson, NJ; Carver Pump Company, Muscatine, IA; HERMTAC, Dallas, TX; Jered LLC, Brunswick, GA; Johnson Controls Navy Systems LLC, York, PA; L3Harris Technologies, Inc. Maritime Power and Energy Solutions, Anaheim, CA; Marotta Controls, Montville, NJ; NetImpact Strategies, Falls Church, VA; Quality Aero, Inc., Columbus, OH; Solvus Global LLC, Worcester, MA; Systems Innovation Engineering LLC, Mullica Hills, NJ; Thunderbolt Software LLC, Tuckerton, NJ; TRABUS dba Trabus Technologies, San Diego, CA; and United States Technologies, Inc., Fair Lawn, NJ, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSTIC intends to file additional written notifications disclosing all changes in membership.

On October 21, 2020, MSTIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the

Act on November 19, 2020 (85 FR 73750).

The last notification was filed with the Department on April 6, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 12, 2023 (88 FR 38097).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–20768 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Notice of Federal Advisory Committee Charter Renewal

AGENCY: National Institute of Corrections (NIC), Department of Justice.

ACTION: Notice of Federal advisory committee charter renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that the National Institute of Corrections has renewed the charter for the NIC Advisory Board for a two-year period through September 14, 2025.

DATES: Renewed through September 14, 2025.

ADDRESSES: National Institute of Corrections, 901 D Street SW, 3rd Floor, Washington, DC 20024.

To Obtain a Copy of the Charter: A complete copy of the Charter is available from the NIC in electronic format. An electronic copy can be downloaded in PDF format on the NIC website, <https://nicic.gov>. To obtain a paper copy of the Charter, please mail your request to the National Institute of Corrections, 901 D Street SW, 3rd Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Leslie S. LeMaster, Telephone: (202) 305–5773, Email: llemaster@bop.gov.

SUPPLEMENTARY INFORMATION: The NIC Advisory Board is a Federal advisory committee enacted pursuant to the authority provided at 5 U.S.C. 1001–1014, the Federal Advisory Committee Act (FACA), and 41 CFR 102–3.50(a).

In general, the NIC provides training, technical assistance, information services, and policy/program development assistance to Federal, State, and local corrections agencies; through cooperative agreements, awards funds to support program initiatives; and provides leadership to influence correctional policies, practices, and operations nationwide in areas of

emerging interest and concern to correctional executives and practitioners as well as public policymakers. The NIC Advisory Board is a Federal advisory committee created by statute whose mandate is to advise the NIC on long-range plans, advise on program development, and recommend guidance to assist the NIC's efforts in these areas. The Advisory Board will also advise the Attorney General about the appointment of the Director of the NIC. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the renewal of this charter.

Leslie S. LeMaster,

Designated Federal Official to the NIC Advisory Board, The National Institute of Corrections.

[FR Doc. 2023–20924 Filed 9–25–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0012]

Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of FACOSH meeting.

SUMMARY: The Federal Advisory Committee on Occupational Safety and Health (FACOSH) will meet October 19, 2023.

DATES: FACOSH will meet from 1 p.m.–4 p.m. ET, October 19, 2023, virtually via WebEx.

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the FACOSH meeting by September 29, 2023, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2023–0012), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at www.regulations.gov, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Submit requests for special accommodations for this FACOSH meeting by September 29, 2023, to Ms. Mikki Holmes, Directorate of Enforcement Programs, OSHA, U.S.

Department of Labor; telephone: (202) 693–2491; email: holmes.mikki@dol.gov.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2023–0012). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this FACOSH meeting, go to www.regulations.gov. All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through www.regulations.gov. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Participation in the FACOSH meeting: Members of the public may attend the FACOSH meeting by going to the website: <https://usdoee.webex.com/usdolee/j.php?MTID=m25c3ee95bbf132dacfd3723e80967bb0>.

VoIP or dial: 877–465–7975.

Access code: 2760 654 2774.

Meeting password: Welcome!24 (93526631 from phones).

However, any participation by the public will be in listen-only mode.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General information: Ms. Mikki Holmes, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2122; email: ofap@dol.gov.

Copies of this Federal Register document: Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information are also available on the OSHA web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 13511).

This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency.

II. Meeting Information

FACOSH Meeting

FACOSH will meet from 1:00 p.m. to 4:00 p.m., ET, Thursday, October 19, 2023. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- Update from FACOSH's Subcommittee on identification of best practices and lessons learned.
- Better utilizing/sharing federal agency reports/Annual report to the President.
- OSHA's regulatory updates.
- Presentation on new construction safety helmets.

Member and public attendance at the FACOSH meeting will be virtual only. The public can listen in to the FACOSH meeting at: <https://usdolee.webex.com/usdolee/j.php?MTID=m25c3ee95bbf132dacfd3723e80967bb0>.

VoIP or dial: 877-465-7975.

Access code: 2760 654 2774.

Meeting password: Welcome!24 (93526631 from phones).

In addition, meeting information will be posted to Office of Federal Agency's website at: <https://www.osha.gov/advisorycommittee/facosh>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 13511, Secretary of Labor's Order 8-2020 (85 FR 58393, 9/18/2020), 29 CFR part 1960 (Basic Program Elements of Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102-3.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-20777 Filed 9-25-23; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0025]

UL LLC: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for UL LLC as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of UL LLC (UL) as a NRTL. UL's expansion covers the addition of 42 test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

UL submitted an application, dated January 20, 2021 (OSHA-2009-0025-0050), requesting the conversion of 42 existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled "Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination."

OSHA published the preliminary notice announcing UL's expansion application in the **Federal Register** on August 16, 2023 (88 FR 55734). The agency requested comments by August 31, 2023, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion of UL's NRTL recognition.

To obtain or review copies of all public documents pertaining to the UL application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA-2009-0025 contains all materials in the record concerning UL's recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined UL's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on

its review of this evidence, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitations and condition. OSHA limits

the expansion of UL's recognition to include the 42 sites listed in Table 1, below. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

TABLE 1—LIST OF TEST SITES FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

UL site name	Address	Country
Auckland	54 Tarndale Grove 106 Bush Road Unit 1, Block 1, Albany, Auckland, New Zealand 0632.	New Zealand
Bangalore	3rd Floor, Block 1, No. 24 Kalyani Platina EPIP Zone, Phase II, Bangalore, Karnataka 560066, India.	India
Barcelona	C/Caravel-la la Nina 12 3 Planta 08017, Barcelona, Spain 08017	Spain
Milan	Via Europa 5/7/9 & 28, Cabiato-CO, Milan, Italy 22060	Italy
Changzhou	No. 21 Longmen Road National High-Tech, Industrial Development District, Wujin, Changzhou, Jiangsu China 213614.	China
Plano	801 Klein Road, Suite 200, Plano, Texas 75074	United States
Dubai	Premises 222–224, 2nd Floor, DSP Laboratory Complex Dubai Science Park, Al Barsha, Dubai, 345831 United Arab Emirates.	United Arab Emirates
Edmonton	1040 Parsons Road SW Edmonton, Alberta Canada T6X 0J4	Canada
Fremont	47173 Benicia Street, Fremont, California 94538	United States
Holland	3480 Windquest Drive, Holland, Michigan 49424	United States
Gurugram	A–12 Section 34, Infocity-1, Gurugram, Haryana India 122001	India
Istanbul	Gursel Mah. Yesiltepe Sok No. 34, ERG Is Merkezi, 80260 Kat 3&6, Istanbul, Turkey 34400.	Turkey
Singapore	20 Kian Teck Lane, Singapore 627 854	Singapore
Basingstoke	Units 1–4, Horizons, Wade Road, Kingsland Business Park, Basingstoke, Hampshire, United Kingdom RG24 8AH.	United Kingdom
Brea	1075 West Lambert Road, Suite B, Brea, California 92821	United States
Subang Jaya	Suite 9.01, Level 9, Menara Summit, Persiaran Kewajipan, USJ 1, UEP Subang Jaya, Selangor, Malaysia.	Malaysia
Mexico City	Blas Pascal 205 Piso 3, Polanco I Seccion, Mexico City, Mexico 11510	Mexico
Mounds View	2222 Woodale Drive, Mounds View, Minnesota 55112	United States
Montreal	6505 Trans-Canada Highway, Suite 330, St. Laurent, Quebec, Canada H4T1S3.	Canada
Mumbai	Patina Block no 102, 1st Floor, C–59, G-Block, Mumbai, India 400 051	India
Munich	Hopfenstrasse 6, Munich, Germany 80335	Germany
Guangzhou	1–3F, Building 2 (R&D Building A1), No. 25, South Huanshi Avenue, Nansha District Guangzhou, Guangdong Sheng, China 511458.	China
Guangzhou	Block B, Electronic Building, No. 8, Nanyun Er Road, Hangpu District, Guangzhou, China 510670.	China
Warsaw	Rownolegla 4, Warsaw, Poland 02–235	Poland
Queretaro	Module K1 Unit 6 & 7 Kaizen Industrial Park, State Road 100, KM, 8+820, Colonia Galeras, Colon Municipality, Queretaro 76295 Mexico.	Mexico
Rosenheim	Am Oberfeld 19, Rosenheim, Germany 83026	Germany
Saint Aubin	Espace Technologique, De Saint-Aubins Baitmont Explorer, Route de L'Orme des Mersies, Saint Aubin, France 91190.	France
Sao Paulo	Av. Engenheiro Luis, Carlos Berrini, 105, 23th Floor, Brooklin, Sao Paulo, Brazil 0451–010.	Brazil
Shanghai	29 F, Wheelock Square, No. 1717 West Nanjing Road, Shanghai, China 200040.	China
Suzhou	No. 2, Chengwan Road, Suzhou Industrial Park, Suzhou, Jiangsu, China 215122.	China
Taoyuan	No. 2 Wenming 1st Street Guishan District, Taoyuan, Taiwan 333	Taiwan
Samutprakarn	888 Moo 5, Srinakarin Road, Tambol Samrong Nua Amphur Muang Samutprakarn, 10270.	Thailand
Tokyo	6F, Marunouchi Trust Tower, 1–8–3 Marunouchi Chiyoda-ku, Tokyo, Japan 100–0005.	Japan
Krefeld-Uerdingen	Rheinufestr. 7–9 Building R33, Krefeld-Uerdingen, Germany, 47829	Germany
Bayrakli—Izmir	Adlet Mah. Sehit Polis, Fethi Sekin Cad. Ventus Tower No:6 Ic Kapi No: 241, Bayrakli-Izmir Turkey 35530.	Turkey
Beijing	11/F, Tower W3, Oriental Plaza, No. 1, East Chang'an Avenue, Dongcheng District, Beijing, China 100738.	China
Richmond	#130–137775, Commerce Parkway, Richmond, British Columbia, V6V2V4 Canada.	Canada
Vancouver	14301 SE 1st Street, Suite 140, Vancouver, Washington 98684	United States
Warrington	220 Cygnet Court, Centre Park, Warrington, Chesire, WA1 1PP, United Kingdom.	United Kingdom
Kwai Chung N.T.	19F, Watson Centre, 16–22 Kung Yip Street, Kwai Chung N.T. Hong Kong	Hong Kong
Xiamen	17/F, The Bank Centre, No. 189 Xiahe Road, Xiamen, China 361004	China
Zhongshan	Block C, C101–102 &, C202 –202, No.8, Jinsan Avenue East, Sanjiao Town, Zhongshan China 528445.	China

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of the recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of UL as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–20776 Filed 9–25–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 20–098]

Name of Information Collection: NASA STEM Gateway (Universal Registration and Data Management System)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by November 27, 2023.

ADDRESSES: All comments should be addressed to Bill Edwards-Bodmer,

National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Based on user feedback provided during the initial release of the NASA STEM Gateway (Universal Registration and Data Management System), NASA plans to develop updates/enhancements to improve information collected and the overall user experience in the NASA STEM Gateway. The NASA STEM Gateway (Universal Registration and Data Management System) is a comprehensive tool designed to allow learners (*i.e.*, students, educators, and awardee principal investigators) to apply to NASA STEM engagement opportunities (*e.g.*, internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the NASA STEM Gateway. Additionally, NASA can also deploy evaluation surveys through the NASA STEM Gateway (Universal Registration and Data Management System) to collect short- and intermediate-outcome data by surveying learners (*i.e.*, students and educators) and awardees in NASA STEM engagement activities. Results from evaluation surveys information collected will be used by the NASA Office of STEM Engagement (OSTEM) to establish better defined goals, outcomes, and standards for measuring progress and to evaluate the outcomes of NASA's STEM Engagement programs and activities. This process of improvement will enhance NASA's strategic planning, performance planning, and performance reporting efforts as required by the GPRA Modernization Act of 2010 and Evidence-Based Policymaking Act of 2018.

II. Methods of Collection:

Online/Web-based.

III. Data

Title: Evaluation Surveys for NASA STEM Gateway.

OMB Number: 2700–0182.

Type of review: Renewal of a previously approved information collection.

Affected Public: Individuals. Eligible students or educators, and/or awardee principal investigators who may voluntarily complete an evaluation survey as a result of applying to or participating in a STEM engagement opportunity (*e.g.*, challenges, educator professional development, experiential learning activities, etc.).

Estimated Annual Number of Activities: 10.

Estimated Number of Respondents per Activity: 2,000.

Annual Responses: 20,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 6,667.

Estimated Total Annual Cost: \$214,744.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–20841 Filed 9–25–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of

1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 26, 2023. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703-292-4479; or ACApermits@nsf.gov.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2021-004) to Grant Ballard on September 23, 2020. The issued permit allows the applicant to engage in take, harmful interference, enter Antarctic Specially Protected Areas (ASPAs), and import samples into the USA in association with research on the role of environmental factors on foraging, diet, growth, and survival of Adelle penguins (*Pygoscelis adeliae*). Research activities include installing weighbridges, resighting banded birds, and following birds through incubation and chick-rearing until late January. The applicant and agents attach logging and tracking devices on breeding adults and chicks and collect fecal, blood, and feather samples from adults and chicks during the brooding and guarding stage, then attach long-term GPS-Argos tags and geolocating dive recorders on adult penguins. To survey the large colonies at Cape Royds and Cape Crozier in a timely manner, the applicant and agents employ multiple, self- and collectively-aware remotely piloted aircraft (RPAS) simultaneously. Now the applicant proposes a modification to the permit to attach biologging devices to penguins during the egg incubation period, with the number of penguins being tagged

remaining the same. The applicant also proposes to collect opportunistic fecal samples from a wider range of species, including Emperor Penguins, South Polar Skua, and Weddell Seals. Some incidental disturbance of the animals may occur during the collection of the fecal samples. A Marine Mammal Protection Act permit is additionally being sought to permit any incidental disturbance of Weddell Seals.

Location: ASPA 121, Cape Royds, Ross Island; ASPA 124, Cape Crozier, Ross Island; ASPA 105, Beaufort Island; Cape Bird (outside ASPA boundary).

Dates: September 15, 2023 to February 15, 2025.

Kimiko S Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023-20821 Filed 9-25-23; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Engineering (#1170) (Hybrid).

Date and Time: November 1, 2023; 10 a.m.-5:30 p.m. (eastern); November 2, 2023; 8 a.m.-12:45 p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314/Hybrid (In person and Virtual).

Additional meeting information, an updated agenda, and registration information will be posted at <https://www.nsf.gov/eng/advisory.jsp>.

Type of Meeting: Open.

Contact Persons: Don Millard, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292-8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Wednesday, November 1, 2023; 10 a.m.-5:30 p.m. (eastern)

- Directorate for Engineering Report
- NSF Budget Update
- Partnerships for a Resilient Planet: Opportunities in Clean Energy and Climate Change Adaptation and Mitigation
- Engineering PLUS Alliance
- Engineering Research Infrastructure
- Strategic Recommendations for ENG

- Preparation for Discussion with the Director's Office

Thursday, November 2, 2023; 8 a.m.-12:45 p.m. (eastern)

- Reports from Advisory Committee Liaisons
- Revolutionizing Engineering Departments
- Preparation for Discussion with the Director's Office
- Perspective from the Director's Office
- Strategic Recommendations for ENG

Dated: August 21, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023-20828 Filed 9-25-23; 8:45 am]

BILLING CODE 7555-01-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 59 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-274, CP2023-277.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023-20915 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 55 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-270, CP2023-273.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023-20910 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 56 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-271, CP2023-274.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023-20912 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 61 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-276, CP2023-279.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023-20917 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 62 to Competitive Product List*. Documents are available at

www.prc.gov, Docket Nos. MC2023-277, CP2023-280.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023-20918 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 58 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-273, CP2023-276.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023-20914 Filed 9-25-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on September 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 60 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–275, CP2023–278.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–20916 Filed 9–25–23; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule’s Competitive Products List.

DATES: *Date of required notice:* September 26, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 57 to Competitive Product List*. Documents are available at

www.prc.gov, Docket Nos. MC2023–272, CP2023–275.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2023–20913 Filed 9–25–23; 8:45 am]
BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections. *Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB’s estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Application and Claim for Unemployment Benefits and Employment Service; OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 231), provides unemployment benefits for qualified railroad employees. These benefits are

generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325. 20 CFR 321 provides for applying and filing claims for unemployment benefits electronically.

The RRB utilizes the following forms to collect the information necessary to pay unemployment benefits. Form UI–1 (or its internet equivalent, Form UI–1 (internet)), *Application for Unemployment Benefits and Employment Service*, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 or UI–1 (internet) also registers an unemployment claimant for the RRB’s employment service.

The RRB also utilizes Form UI–3 (or its internet equivalent Form UI–3 (internet)), *Claim for Unemployment Benefits*, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days.

Completion of Forms UI–1, UI–1 (internet), UI–3, and UI–3 (internet) is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB proposes no changes to the forms in this information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–1	2,118	10	353
UI–1 (Internet)	7,549	10	1,258
UI–3	23,724	6	2,372
UI–3 (Internet)	82,027	6	8,203
Total	115,418	.....	12,186

2. *Title and purpose of information collection:* Placement Service; OMB 3220–0057.

Section 12(i) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362), authorizes the RRB to establish, maintain, and operate free employment offices to provide claimants for unemployment benefits with job placement opportunities.

Section 704(d) of the Regional Railroad Reorganization Act of 1973, as amended, and as extended by the Consolidated Omnibus Budget Reconciliation Act of 1985, required the RRB to maintain and distribute a list of railroad job vacancies, by class and craft, based on information furnished by rail carriers to the RRB. Although the requirement under the law expired

effective August 13, 1987, the RRB has continued to obtain this information in keeping with its employment service responsibilities under section 12(k) of the RUIA. Application procedures for the job placement program are prescribed in 20 CFR 325. The procedures pertaining to the RRB’s obtaining and distributing job vacancy

reports furnished by rail carriers are described in 20 CFR 346.1.

The RRB currently utilizes four forms to obtain information needed to carry out its job placement responsibilities. Forms ES-21, *Referral to State Employment Service*, and ES-21c, *Report of State Employment Service Office*, are used by the RRB to provide

placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI-35, Field Office Record of Claimant Interview, is used primarily by the RRB to conduct in-person interviews of claimants for unemployment benefits.

Completion of these forms is required to obtain or maintain a benefit. In addition, the RRB also collects Railroad Job Vacancies information received voluntarily from railroad employers. The RRB proposes no changes to the forms in this information collection.

ESTIMATE OF CURRENT ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
ES-21	80	1	1
ES-21c	25	2	1
UI-35 in person	6,300	7	735
UI-35 by mail	700	11	128
Job Vacancies	470	10	78
Total	7,575	.....	943

3. *Title and purpose of information collection:* Report of Medicaid State Office on Beneficiary’s Buy-In Status; OMB 3220-0185.

Under section 7(d) of the Railroad Retirement Act (45 U.S.C. 231), the RRB administers the Medicare program for persons covered by the railroad retirement system. Under section 1843 of the Social Security Act, states may enter into “buy-in agreements” with the Secretary of Health and Human Services for the purpose of enrolling certain groups of low-income individuals under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally,

these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB utilizes Form RL-380-F, *Report of Medicaid State Office on Beneficiary’s Buy-In Status*, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a State buy-in agreement in the States in which they reside. Completion of Form RL-380-F is voluntary. One response is received from each respondent. The RRB

proposes the following changes to Form RL-380-F:

- Change ‘Medicare Number’ box on righthand side of form to ‘Medicare Beneficiary Identifier’.
- Remove box 6 on righthand side of form ‘Social Security Number’ as it is a duplicate of box 4 ‘Beneficiary’s Own Social Security Number’.
- In Question 4, change ‘Medicare number under which state paid premium (if different from RRB Medicare claim number’ to ‘Medicare Beneficiary Identifier Number (MBI) in which state paid premium’.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL-380-F	600	10	100

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Money at (312) 469-2591 or Kennisha.Money@rrb.gov. Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-1275 or emailed to Brian.Foster@rrb.gov. Written comments should be received within 60 days of this notice.

Brian Foster,
Clearance Officer.

[FR Doc. 2023-20792 Filed 9-25-23; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98448; File No. SR-NYSE-NAT-2023-18]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

September 20, 2023.

On August 17, 2023, NYSE National, Inc., filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the connectivity fee schedule to include an alternative procedure to allocate power in the Mahwah Data Center. The proposed rule change was published for comment in the **Federal Register** on August 25, 2023.³ The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98171 (August 21, 2023), 88 FR 58364.

⁴ 15 U.S.C. 78s(b)(2).

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 9, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,⁵ designates November 23, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSENAT-2023-18).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20806 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35001; File No. 812-15415]

Brookfield Infrastructure Income Fund Inc., et al.

September 20, 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: Brookfield Infrastructure Income Fund Inc., Brookfield Private Real Assets Master Fund L.P., Brookfield PSG ICAV—Brookfield Private Real Assets QIAIF Fund, Brookfield Real Assets Hybrid Access Trust (Canada), Brookfield Super-Core Infrastructure Partners L.P., Brookfield Super-Core Infrastructure Partners (TE) L.P., Brookfield Super-Core Infrastructure Partners (NUS) L.P., Brookfield Super-Core Infrastructure Partners (CAN) L.P., Brookfield Super-Core Infrastructure Partners (CAN) TE L.P., Brookfield Super-Core Infrastructure Partners (ER) SCSp, Brookfield Infrastructure Debt Fund II LP, Brookfield Infrastructure Debt Fund II-A LP, Brookfield Infrastructure Debt Fund II-B LP, Brookfield Infrastructure Debt Fund Europe II SCSp, Brookfield Infrastructure Debt Fund Europe II-A SCSp RAIF, Brookfield Infrastructure Debt Fund III LP, Brookfield Infrastructure Debt Fund III-A LP, Brookfield Infrastructure Debt Fund III-B LP, Brookfield Infrastructure Debt Fund III-D, L.P., Brookfield Infrastructure Fund III-A (CR), L.P., Brookfield Infrastructure Fund III-D (CR), L.P., Brookfield Infrastructure Fund IV-A, L.P., Brookfield Infrastructure Fund IV-B, L.P., Brookfield Infrastructure Fund IV-C, L.P., Brookfield Infrastructure Fund IV-ER SCSp, Brookfield Infrastructure Fund V (ER) SCSp, Brookfield Infrastructure Fund V-A, L.P., Brookfield Infrastructure Fund V-B, L.P., Brookfield Infrastructure Fund V-C, L.P., Brookfield Infrastructure Partners L.P., Brookfield Renewable Partners LP, Brookfield Global Transition Fund-A, L.P., Brookfield Global Transition Fund-B, L.P., Brookfield Global Transition Fund-C, L.P., Brookfield Global Transition Fund (ER) SCSp, Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P., Brookfield Public Securities Group LLC, and Brookfield Renewable Energy Group LLC.

FILING DATES: The application was filed on December 9, 2022, and amended on June 27, 2023, August 16, 2023, and September 12, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretarys-Office@sec.gov and serving

the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission:

Secretarys-Office@sec.gov. Applicants: Brian F. Hurley, Esq., Brookfield Infrastructure Income Fund, Inc., Brookfield Place, 250 Vesey Street, 15th Floor, New York, NY 10281-1023, Michael R. Rosella, Esq. and Thomas D. Peeney, Esq., Paul Hastings LLP, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT:

Laura L. Solomon, Senior Counsel, or Kyle R. Ahlgren, 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’ third amended and restated application, dated September 12, 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. 2023-20765 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98449; File No. SR-CboeEDGX-2023-059]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

September 20, 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 September 11, 2023, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (“EDGX Equities”) by adopting a new Cross Asset Tier. The Exchange proposes to implement these changes effective September 1, 2023.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁵ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁶ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members

opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers that provide enhanced rebates for orders yielding fee codes B,⁷ V,⁸ Y,⁹ 3,¹⁰ and 4.¹¹ The Exchange now proposes to introduce a new tier under footnote 1 titled Cross Asset Tier, which is designed to incentivize Members to achieve certain levels of participation on both the Exchange’s equities and options platform (“EDGX Options”). The proposed criteria is as follows:

- The Cross Asset Tier provides a rebate of \$0.0029 per share for securities priced above \$1.00 for qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) Member has a Step-Up Tape B & C ADAV¹² from July 2023 $\geq 4,000,000$; and (2) Member has a Market Maker Add¹³ on EDGX Options $\geq 2,000,000$ in SPY.

The proposed Cross Asset Tier is intended to provide an additional manner to incentive Members to add displayed liquidity in Tape B and Tape C securities on the Exchange while also increasing participation in SPY on EDGX Options. The Exchange believes the addition of the Cross Asset Tier will incentivize Members to grow their volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Additionally, the Exchange notes that the proposed Cross Asset Tier will expire no later than January 31, 2024,

⁷ Fee code B is appended to orders that add liquidity to EDGX in Tape B securities.

⁸ Fee code V is appended to orders that add liquidity to EDGX in Tape A securities.

⁹ Fee code Y is appended to orders that add liquidity to EDGX in Tape C securities.

¹⁰ Fee code 3 is appended to orders that add liquidity to EDGX in Tape A or Tape C securities during the pre and post market.

¹¹ Fee code 4 is appended to orders that add liquidity to EDGX in Tape B securities during the pre and post market.

¹² Step-Up Tape B & C ADAV means ADAV in Tape B and Tape C securities in the relevant baseline month subtracted from current ADAV. ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹³ Market Maker Add means any order for the account of a registered Market Maker on EDGX Options appended with fee code NM or PM. See EDGX Options Fee Schedule, Footnote 2.

³ The Exchange initially filed the proposed fee change on August 31, 2023 (SR-CboeEDGX-2023-055). On September 11, 2023, the Exchange withdrew that proposal and submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 24, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

⁵ See EDGX Equities Fee Schedule, Standard Rates.

⁶ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

which the Exchange will indicate on the Exchange's fee schedule. Growth Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Like other Growth Tiers on the Exchange,¹⁴ the proposed Cross Asset Tier is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria. Increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4)¹⁸ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to

introduce a Cross Asset Tier reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁹ including the Exchange,²⁰ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.²¹

In particular, the Exchange believes its proposal to introduce a Cross Asset Tier is reasonable because the revised tier will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed Cross Asset Tier will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed Cross Asset Tier represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed tier and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. To the extent a Member participates on EDGX

Equities but not on EDGX Options, the Exchange continues to believe that its proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of its options platform. Particularly, the Exchange believes that additional such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, regardless of whether they participate on EDGX Options or not. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy the proposed criteria for the proposed Cross Asset Tier. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates or reduced fees offered under other tiers. Should a Member not meet the proposed new criteria for the proposed Cross Asset Tier, the Member will merely not receive that corresponding enhanced rebate.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed Cross Asset Tier will apply to all Members equally in that all

¹⁴ See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78f(b)(4)

¹⁹ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²⁰ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²¹ See e.g., MIAX Pearl Options Fee Schedule, Transaction Rebates/Fees; The Nasdaq Options Market LLC ("NOM") Pricing Schedule, Options 7, Section 2.

Members are eligible for the tier, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Additionally, the Exchange believes that the proposed criteria based on SPY options volume applicable to EDGX Options Market Makers will provide an additional incentive to those Market Makers that concentrate their trading activity in SPY options to send additional SPY orders, which in turn provides additional liquidity in the market. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange, as well as its affiliate options exchange, by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.²² Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in

determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²³ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."²⁴ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act²⁵ and paragraph (f) of Rule 19b-4²⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2023-059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2023-059. 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-CboeEDGX-2023-059 and should be submitted on or before October 17, 2023.

²² *Supra* note 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20807 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-813, OMB Control No. 3235-0765]

Proposed Collection; Comment Request; Extension: Rule 498A

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act") (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 498A under the Securities Act permits a person to satisfy its prospectus delivery obligations under Section 5(b)(2) of the Securities Act for a contract by: (1) sending or giving to new investors key information contained in a variable contract statutory prospectus in the form of an initial summary prospectus; (2) sending or giving to existing investors each year a brief description of certain changes to the contract, and a subset of the information in the initial summary prospectus, in the form of an updating summary prospectus; and (3) providing the statutory prospectus and other materials online. Rule 498A considers a person to have met its prospectus delivery obligations for any portfolio companies associated with a variable contract if the portfolio company prospectuses are posted online. Under the rule, a registrant (or the financial intermediary distributing the variable contract) relying on the rule must send the variable contract statutory prospectus (that statutory prospectus must be filed as part of registration statement on Form N-3, N-4, or N-6, as applicable) and other materials to an investor in paper or electronic format upon request.

Based on current EDGAR data, 82% of variable contracts that filed annual updates to their registration statements filed at least one summary prospectus under rule 498A. In the aggregate, the Commission staff estimates the total annual hour burden to comply with Rule 498A to be 7,634 hours, at an internal time cost equivalent of \$2,337,471, and a total annual external cost burden of \$9,094,866.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is based on communications with industry representatives, and is not derived from a comprehensive or even a representative survey or study. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by November 27, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting 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: September 21, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20906 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98455; File No. SR-CBOE-2023-019]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Make Permanent the Operation of Its Pilot Program That Allows the Exchange To List P.M.-Settled Third Friday-of-the-Month Mini-SPX Index ("XSP") Options and Mini-Russell 2000 Index ("MRUT") Options Series

September 20, 2023.

I. Introduction

On April 19, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the operation of its pilot program ("Program") that permits the Exchange to list p.m.-settled third Friday-of-the-month XSP and MRUT options ("p.m.-settled XSP" and "p.m.-settled MRUT," respectively, and collectively, the "Pilot Products"). The proposed rule change was published for comment in the **Federal Register** on April 28, 2023.³ On June 9, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On July 27, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁶ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Background

When cash-settled⁷ index options were first introduced in the 1980s, they

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97366 (April 24, 2023), 88 FR 26359 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97678, 88 FR 39285 (June 15, 2023). The Commission designated July 27, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ See Securities Exchange Act Release No. 98005, 88 FR 50943 (August 2, 2023).

⁷ The seller of a "cash-settled" index option pays out the cash value of the applicable index on expiration or exercise. A "physical delivery" option, like equity and ETF options, involves the

generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).⁸ The Commission became concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.⁹ These concerns were heightened during the “triple-witching” hour on the third Friday of March, June, September, and December when index options, index futures, and options on index futures expired concurrently.¹⁰ Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.¹¹

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission approved a proposed rule change by the Chicago Mercantile Exchange (“CME”) to provide for a.m. settlement¹² for index futures, including futures on the S&P 500 Index (“S&P 500”).¹³ The

transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Document>.

⁸ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade p.m.-settled third Friday-of-the-month S&P 500 stock index (“SPX”) options (“SPXPM”) on the C2 Options Exchange, Incorporated (“C2”) (“C2 SPXPM Approval”). SPXPM was traded on a pilot basis on C2 until the introduction of SPXPM trading on Cboe Options. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668, at 10668 (February 14, 2013) (SR-CBOE-2012-120) (“SPXPM Approval Order”).

⁹ See C2 SPXPM Approval, 76 FR at 55972.

¹⁰ See *id.*

¹¹ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) (“Pilot Memo”) at 5, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Setted_Index_Option_Pilots.pdf (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, “Expiration day effects of index options and futures,” Monograph Series in Finance and Economics, no. 3 (1986)).

¹² The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

¹³ See Proposed Amendments Relating to the Standard and Poor’s 500, the Standard and Poor’s 100 and the Standard Poor’s OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the CME). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (noting that the CME moved the S&P

Commission subsequently approved a proposed rule change by Cboe Options to list and trade a.m.-settled options on the S&P 500.¹⁴ In 1992, the Commission approved Cboe Options’ proposal to transition all of its European-style cash-settled options on the S&P 500 to a.m. settlement.¹⁵ However, in 1993, the Commission approved a proposed rule change allowing Cboe Options to list p.m.-settled options on certain broad-based indexes, including the S&P 500, expiring at the end of each calendar quarter (since approved as permanent).¹⁶ Starting in 2006, the Commission approved a number of proposals, on a pilot basis, permitting Cboe Options to introduce other index options, including SPX options, with p.m.-settlement. These include p.m.-settled index options expiring weekly (other than the third Friday) and at the end of each month,¹⁷ SPXPM, as well as p.m.-settled XSP and MRUT options expiring on the third Friday of the month.¹⁸

In the course of approving the various pilots, the Commission reiterated its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option.¹⁹ However, the Commission also

500 futures contract’s settlement value to opening prices on the delivery date).

¹⁴ See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11).

¹⁵ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). The Commission also approved proposals by other options markets to transfer most of their cash-settled index products to a.m. settlement. See, e.g., Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23475 (June 22, 1988) (SR-NYSE-87-11 and 88-04).

¹⁶ See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13). See also Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65); and 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029).

¹⁷ See Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR-CBOE-2015-106); and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

¹⁸ See Securities Exchange Act Release Nos. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) (“XSP Approval Order”); and 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-116) (“MRUT Approval Order”).

¹⁹ See, e.g., SPXPM Approval Order, 78 FR at 10669. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options on the C2 Options Exchange, Incorporated); and C2 SPXPM Approval, 76 FR at 55972-76.

recognized the potential impact was unclear.²⁰ The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.²¹ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program²² and to make such data publicly available.²³ In addition to the Exchange’s data and analysis, Cornerstone Research also conducted an analysis at the direction of Staff from the Commission’s Division of Economic and Risk Analysis. The analysis utilizes the level of expiring p.m.-settled index options open interest and the measures of volatility and price reversals for the corresponding index futures, the underlying cash index, and index component securities in the minutes leading up to and immediately following the market close to study the effects of pilot programs allowing p.m.-settled index options. The Pilot Memo is discussed in more detail below.

III. Description of the Proposal

The Pilot Products are cash-settled options with third Friday-of-the-month expiration dates (“Expiration Friday”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration.

The Exchange has filed to extend the operation of the pilot on multiple occasions²⁴ and it is currently set to expire on the earlier of November 6, 2023, or the date on which the Program is approved on a permanent basis.²⁵ Now, the Exchange proposes to make the Program permanent.

Since the Program’s inception in 2013 for p.m.-settled XSP and 2021 for p.m.-settled MRUT, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange’s experience with the Program, pursuant to the XSP and

²⁰ See, e.g., SPXPM Approval Order, 78 FR at 10669.

²¹ See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109.

²² *Id.*

²³ See, e.g., Securities Exchange Act Release No. 97446 (May 5, 2023), 88 FR 30365, at 30366 (May 11, 2023) (SR-CBOE-2023-024) (stating the Exchange is making public on its website data and analyses previously submitted to the Commission under the Program and committing to make public any data or analyses submitted in the future).

²⁴ See, e.g., Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004) and 96222 (November 3, 2022), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054).

²⁵ See Securities Exchange Act Release No. 97446 (May 5, 2023), 88 FR 30365 (May 11, 2023).

MRUT Approval Orders.²⁶ The Exchange states that, during the course of the Program, it also provided the Commission with any additional data or analyses the Commission requested if the Commission deemed such data or analyses necessary to determine whether the Program was consistent with the Act.²⁷

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,²⁹ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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. In its proposal to make the Program permanent, the Exchange addressed whether the Program negatively impacts markets or impacted the quality of the XSP and MRUT options market. Each of these elements is discussed in greater detail below. As stated above, no comments were received on the proposed rule change.

Market Impact Considerations

The Exchange states it has not identified any evidence from the pilot data indicating that the trading of the Pilot Products has any adverse impact on fair and orderly markets on Expiration Fridays for the Mini-SPX Index, the Mini-RUT Index or the underlying securities comprising the underlying indexes, nor have there been any observations of abnormal market movements attributable to the Pilot Products from any market participants that have come to the attention of the Exchange.³⁰ In order to support its overall assessment of the Program, the Exchange included a review and

analysis of pilot data.³¹ Among other things, the Exchange's analysis includes end of day volatility as well as a comparison of the impact of quarterly index rebalancing versus p.m.-settled expirations.³²

In addition to reviewing the data and analysis provided by the Exchange, the Commission reviewed the analysis in the Pilot Memo, which evaluates whether higher levels of expiring open interest in p.m.-settled index options results in increased volatility and price reversals around the close. The Pilot Memo shows that the market share for p.m.-settled options on the S&P 500 has grown substantially since 2007.³³ The Exchange's review of pilot data also showed this trend continuing from 2019 through 2021.³⁴

The Pilot Memo examines whether and to what extent expiring open interest in p.m.-settled index options is empirically related with the tendency of the corresponding index futures, the underlying index, or index components to experience increased transitory volatility and price reversals around the time of market close on expiration dates. The Pilot Memo concludes that, although expiring p.m.-settled index option open interest may have a statistically significant relationship with volatility and price reversals of the underlying index, index futures, and index component securities around the market close, the magnitude of the effect is economically very small.³⁵ For example, the largest settlement event that occurred during the time period studied in the Pilot Memo (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).³⁶

³¹ See *id.* at 26361–65. The Exchange states that although its analysis specifically evaluated SPX options, the Exchange believes it is appropriate to extrapolate the data to apply the Pilot Products. See Notice, 88 FR at 26365. The Commission agrees it is appropriate to extrapolate the data to the Pilot Products, as the Exchange's analysis examines liquidity and volatility dynamics around the market close, which may be associated with typical hedging activities tied to expiring p.m.-settled index options.

³² See *id.* at 26364.

³³ See Pilot Memo at 2.

³⁴ See Notice, 88 FR at 26362. Specifically, since 2007, p.m.-settled SPX options grew from 0.1% of open interest to 30% of open interest in 2021. *Id.*

³⁵ See Pilot Memo at 3. The Pilot Memo also examined options on the Russell 2000 Index and the Nasdaq-100 Index. However, during the time period covered by the study (2007–2018), the markets for both a.m.- and p.m.-settled options on these indexes were very small compared to the size of that for S&P 500 Index options. See *id.* at 4.

³⁶ See *id.* at 3.

The Exchange further reviewed a sample of pilot data from 2019 through 2021, and measured the volatility of the S&P 500 over the final fifteen minutes of each trading day and compared expiration days to non-expiration days.³⁷ Generally volatility was slightly higher on expiration days, but in cases where overall market volatility increased, the normalized impact on expiration days versus non-expiration days remained consistent.³⁸ The Exchange further analyzed volatility on days when the S&P 500 was rebalanced, and states its results suggest more closing volatility on rebalance dates compared to non-rebalance expiration dates, indicating that rebalancing of the S&P 500 may have a greater impact on S&P 500 volatility than p.m.-settled option expirations.³⁹

The Exchange also reviewed a sample of post-2018 pilot data for potential correlation between excess market volatility and price reversals and the hedging activity of liquidity providers.⁴⁰ To determine whether there is a correlation, the Exchange calculated an estimate of the amount of market-on-close (“MOC”) volume in the S&P 500 component markets attributable to expected hedging activity as a result of expiring in-the-money options.⁴¹ The Exchange states its results indicate that other sources of MOC share volume generally exceed the volume resulting from hedging activity for p.m.-settled SPX options.⁴² Further, the Exchange also compared hedging futures positions that would correspond to expiring in-the-money p.m.-settled SPX options and concludes the data indicate negligible capacity for hedging activity to increase volatility in the underlying markets.⁴³

Finally, the Exchange states that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, have significantly minimized risks of any potential impact of p.m.-, cash-settled XSP or MRUT options on the underlying cash markets.⁴⁴

Market Quality Considerations

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the a.m.-settled options market. Specifically, the Exchange compared

³⁷ See Notice, 88 FR at 26363.

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.* at 26364.

⁴³ See *id.*

⁴⁴ See *id.*

²⁶ See *supra* note 18. The Exchange has made public on its website data and analyses previously submitted to the Commission under the Program. See <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

²⁷ See Notice, 88 FR at 26361–26362.

²⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ See Notice, 88 FR at 26362.

values of key market quality indicators (specifically, the bid-ask spread⁴⁵ and effective spread⁴⁶) in p.m.-settled SPX weekly (“SPXW”) options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.⁴⁷ The Exchange concludes from this analysis that the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations.⁴⁸ For a majority of the series analyzed, the Exchange observed no statistically significant difference in bid-ask spread or effective spread.⁴⁹ The Exchange states that analyzing whether the introduction of new SPXW p.m.-settled expirations (*i.e.*, SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW p.m.-settled expirations (*i.e.*, SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of p.m.-settled index options impacted market quality when the Program began.⁵⁰ Therefore, the Exchange believes the results of its analysis permit the Exchange to extrapolate that it is unlikely the introduction of p.m.-settled XSP or p.m.-settled MRUT options significantly impacted the market quality of a.m.-settled options, such as a.m.-settled SPX or Russell 2000 options, respectively, when the Program began.⁵¹

The Commission believes that the evidence contained in the Exchange’s filing, the Exchange’s pilot data and reports, and the Pilot Memo analysis demonstrate that the Program has benefitted investors and other market

participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for p.m.-settled options has grown in size over the course of the Program, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality (as measured by bid-ask and effective spreads) for an existing product when a new p.m.-settled expiration was introduced. Further, significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act⁵² and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵³ that the proposed rule change (SR-CBOE-2023-019) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20811 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98457; File No. SR-CboeBZX-2023-069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the VanEck Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 20, 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 September 6, 2023, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange

Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the VanEck Ethereum ETF (the “Trust”),³ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the VanEck Ethereum Trust⁴ under BZX Rule 14.11(e)(4),⁵ which governs the listing

³ The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

⁴ On May 7, 2021 the Trust filed with the Commission an initial registration statement (the “Registration Statement”) on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

⁵ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78s(b)(2).

⁵⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁵ The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

⁴⁶ The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

⁴⁷ For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

⁴⁸ See Notice, 88 FR at 26364.

⁴⁹ See *id.*

⁵⁰ See Notice, 88 FR at 26364.

⁵¹ See *id.* at 26365.

and trading of Commodity-Based Trust Shares on the Exchange.⁶

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,⁷ nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

VanEck Ethereum Trust

VanEck Digital Assets, LLC is the sponsor of the Trust (the “Sponsor”). A third-party regulated custodian (the “Custodian”) will be responsible for custody of the Trust’s Ether (“ETH”). Delaware Trust Company is the trustee (“Trustee”). The State Street Bank and Trust Company will be the administrator (“Administrator”) and transfer agent (“Transfer Agent”). Van Eck Securities Corporation will be the marketing agent (“Marketing Agent”) in connection with the creation and redemption of “Baskets” of Shares. The Custodian will be responsible for custody of the Trust’s ETH.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust’s net assets. The Trust’s assets will consist of ETH held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

When the Trust sells or redeems its Shares, it will do so in blocks of 50,000 Shares (a “Creation Basket”) at the Trust’s NAV. Authorized participants will deliver, or facilitate the delivery of, ETH to the Trust’s account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver ETH to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do

⁶ All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

⁷ 15 U.S.C. 80a-1.

so at a premium or discount relative to the NAV of the Shares of the Trust.

Background

Ethereum is free software that is hosted on computers distributed throughout the globe. It employs an array of logic, called a protocol, to create a unified understanding of ownership, commercial activity, and business logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. It is widely understood that no single intermediary or entity operates or controls the Ethereum network (referred to as “decentralization”), the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ETH, which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the “Ethereum Blockchain”), and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual peer-to-peer transactions. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a limited-purpose, peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs.

Heretofore, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain exposure to ETH. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing

spot ether or (ii) over-the-counter ether funds (“OTC ETH Funds”) with high management fees and potentially volatile premiums and discounts;⁸ Meanwhile, investors in other countries, including Germany, Switzerland and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ETH. Investors across Europe have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.⁹

To this point, the lack of an ETP that holds spot ETH (a “Spot ETH ETP”) exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot ETH ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC ETH Funds are not afforded the benefits and protections of regulated Spot ETH ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC ETH Funds. An investor who purchased the largest OTC ETH Fund in January 2021 and held the position at the end of 2022 would have suffered a 69% loss due to the premium/discount, even if the price of ETH did not change. Many retail investors likely suffered losses due to this premium/discount in OTC ETH Fund trading; all such losses could have

⁸ The premium and discount for OTC ETH Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC ETH Fund went from 238.63% to 5.1%. While the price of ether appreciated significantly during this period and NAV per share increased by 101.40%, the price per share decreased by 37.49%. This means that investors are holding shares of a fund with roughly \$4.8 billion in assets under management that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it’s possible for an investor to buy shares of an OTC ETH Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of ether. That is to say—the price of ether could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to ether, the easiest option for a buy and hold strategy for such vehicles is often an OTC ETH Fund, meaning that even investors that do not directly buy OTC ETH Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

⁹ The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot ETH ETPs.

been avoided if a Spot ETH ETP had been available. Additionally, many U.S. investors that held their digital assets in accounts at FTX,¹⁰ Celsius Network LLC,¹¹ BlockFi Inc.¹² and Voyager Digital Holdings, Inc.¹³ have become unsecured creditors in the insolvencies of those entities. If a Spot ETH ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot ETH ETP. To this point, approval of a Spot ETH ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ETH, on centralized platforms.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.¹⁴ With this in mind, the CME

Ether Futures (“CME ETH Futures”) market, which launched in February 2021, is the proper market to consider in determining whether there is a related regulated market of significant size.

The Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933 (“Bitcoin Futures ETPs”),¹⁵ finding that the CME Bitcoin Futures market represents a regulated market of significant size. Meanwhile, the Commission has continued to disapprove proposals to list and trade funds that would hold spot bitcoin on the seemingly conflicting basis that the CME Bitcoin Futures market is not a regulated market of significant size.¹⁶ In the recently decided *Grayscale Investments, LLC v. Securities and Exchange Commission*,¹⁷ however, the court resolved this conflict by finding that the SEC had failed to provide a coherent explanation as to why it had approved the Bitcoin Futures ETPs while disapproving the proposal to list and trade shares of the Grayscale Bitcoin Trust and vacating the disapproval order.¹⁸

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME ETH Futures market represents a regulated market of significant size as it relates both to the CME ETH Futures market and to the spot ETH market and that this proposal should be approved.

Investment Objective

According to the Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of the MarketVector™ Ethereum Benchmark Rate less the

expenses of the Trust’s operations. In seeking to achieve its investment objective, the Trust will hold Ether (“ETH”) and will value its Shares daily based on the reported MarketVector™ Ethereum Benchmark Rate (the “Benchmark”), which is calculated based on prices contributed by exchanges that the Sponsor’s affiliate, MarketVector Indexes™ (“MarketVector”), believes represent the top five Ethereum exchanges based on the industry leading CryptoCompare Exchange Benchmark review report. The Trust is not actively managed.

The Benchmark

As described in the Registration Statement, the Fund will use the Benchmark to calculate the Trust’s NAV. The Benchmark is designed to be a robust price for ETH in USD and there is no component other than ETH in the index. The underlying exchanges are sourced from the industry leading CryptoCompare Exchange Benchmark review report. CryptoCompare Exchange Benchmark was established in 2019 as a tool designed to bring clarity to the digital asset exchange sector by providing a framework for assessing risk and in turn bringing transparency and accountability to a complex and rapidly evolving market.¹⁹ The current exchange composition of the Benchmark is Bitstamp, Coinbase, Gemini, itBit, and Kraken.

In calculating the MarketVector™ Ethereum Benchmark Rate, the methodology captures trade prices and sizes from exchanges and examines twenty consecutive three-minute periods leading up to 4:00 p.m. EST. It then calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods, removing the highest and lowest contributed prices. Using twenty

¹⁰ See FTX Trading Ltd., et al., Case No. 22–11068.

¹¹ See Celsius Network LLC, et al., Case No. 22–10964.

¹² See BlockFi Inc., Case No. 22–19361.

¹³ See Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

¹⁴ See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot ether market

be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

¹⁵ See Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the “Teucrium Approval”) and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the “Bitcoin Futures Approvals”).

¹⁶ The proposed spot bitcoin funds are nearly identical to the Trust but proposed to hold bitcoin instead of ETH (“Spot Bitcoin ETPs”).

¹⁷ *Grayscale Investments, LLC v. Securities and Exchange Commission*, et al., Case No. 22–1142 (the “Grayscale Order”).

¹⁸ *Id.*

¹⁹ The CryptoCompare Exchange Benchmark methodology utilizes a combination of qualitative and quantitative metrics to analyze a comprehensive data set across eight categories of evaluation: legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The CryptoCompare Exchange Benchmark review report assigns a grade to each exchange which helps identify what it believes to be the lowest risk exchanges in the industry. Based on the CryptoCompare Exchange Benchmark, MarketVector Indexes initially selects the top five exchanges by rank for inclusion in the MarketVector™ Ethereum Benchmark Rate. If an eligible exchange is downgraded by two or more notches in a semi-annual review and is no longer in the top five by rank, it is replaced by the highest ranked non-component exchange. Adjustments to exchange coverage are announced four business days prior to the first business day of each of June and December 23:00 CET. The MarketVector™ Ethereum Benchmark Rate is rebalanced at 16:00:00 GMT/BST on the last business day of each of May and November.

consecutive three-minute segments over a sixty-minute period means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across exchanges, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot ETH volume in a three-minute window to have any influence on the NAV. As discussed in the Registration Statement, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple exchanges at once to have any ability to influence the price.

Availability of Information

In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value ("IIV") per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ETH holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the

reported closing price; (b) the BZX Official Closing Price²⁰ in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ETH will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

Information about the Benchmark, including key elements of how the Benchmark is calculated, will be publicly available at <https://www.marketvector.com/>.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Benchmark. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the exchanges on which ETH are traded. Depth of book information is also available from ETH exchanges. The normal trading hours for ETH exchanges are 24 hours per day, 365 days per year.

The ETH Custodian

The Custodian's services (i) allow ETH to be deposited from a public blockchain address to the Trust's ETH account and (ii) allow ETH to be withdrawn from the ETH account to a public blockchain address as instructed by the Trust. The Custody Agreement requires the Custodian to hold the Trust's ETH in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage ETH addresses for the Trust which are separate from the ETH addresses that the Custodian uses for its other

customers and which are directly verifiable via the ETH blockchain. The Custodian will safeguard the private keys to the ETH associated with the Trust's ETH account. The Custodian will at all times record and identify in its books and records that such ETH constitutes the property of the Trust. The Custodian will not withdraw the Trust's ETH from the Trust's account with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's ETH, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian and the Trust may enter into a custodian agreement with such custodian.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all ETH and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the ETH held by the Trust based on the price set by the MarketVector™ Ethereum Benchmark Rate as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of ETH required is an amount of ETH that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of ETH that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of ETH held by the Trust as of the opening of business on

²⁰ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

that business day, adjusted for the amount of ETH constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 50,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Commodity-Based Trust Shares—Rule 14.11(e)(4)

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity²¹ deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying

commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the

extent to which trading is not occurring in the ETH underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and ETH Futures via the Intermarket Surveillance Group ("ISG"), from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.²²

²¹ For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. The CFTC has stated that: "Certain digital assets, including BTC, ETH, LTC, and at least two fiat-backed stablecoins, tether ("USDT") and the Binance USD ("BUSD"), as well as other virtual currencies as alleged herein, are "commodities," as defined under section 1a(9) of the [Commodities Exchange] Act, 7 U.S.C. 1a(9)." See *Commodity Futures Trading Commission v. Changpeng Zhao, Binance Holdings Limited, Binance Holdings (IE) Limited, Binance (Services) Holdings Limited, and Samuel Lim*, March 27, 2023 at 9.

²² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours²³ when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members

deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

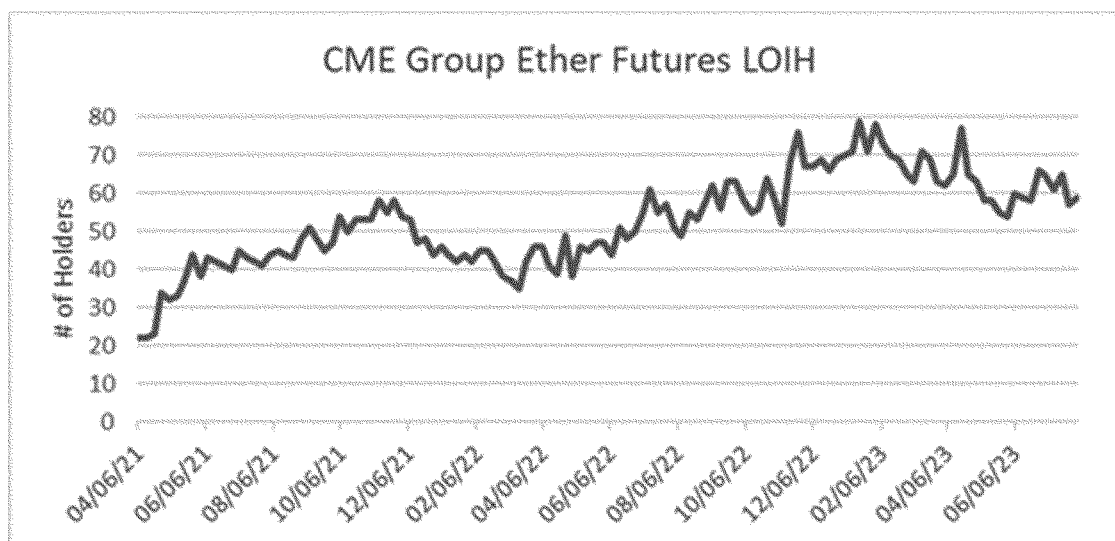
CME ETH Futures²⁴

CME began offering trading in Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.²⁵

The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME ETH Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 76,293 CME ETH Futures contracts traded in July 2023 (approximately \$7.3 billion) compared to 70,305 (\$11.1 billion) and 158,409 (\$7.5 billion) contracts traded in July 2021, and July 2022 respectively.²⁶ The Sponsor's research indicates daily correlation between the spot ETH and the CME ETH Futures is 0.998 from the period of 9/1/22 through 9/1/23.

The number of large open interest holders²⁷ and unique accounts trading CME ETH Futures have both increased, even in the face of heightened Ether price volatility.

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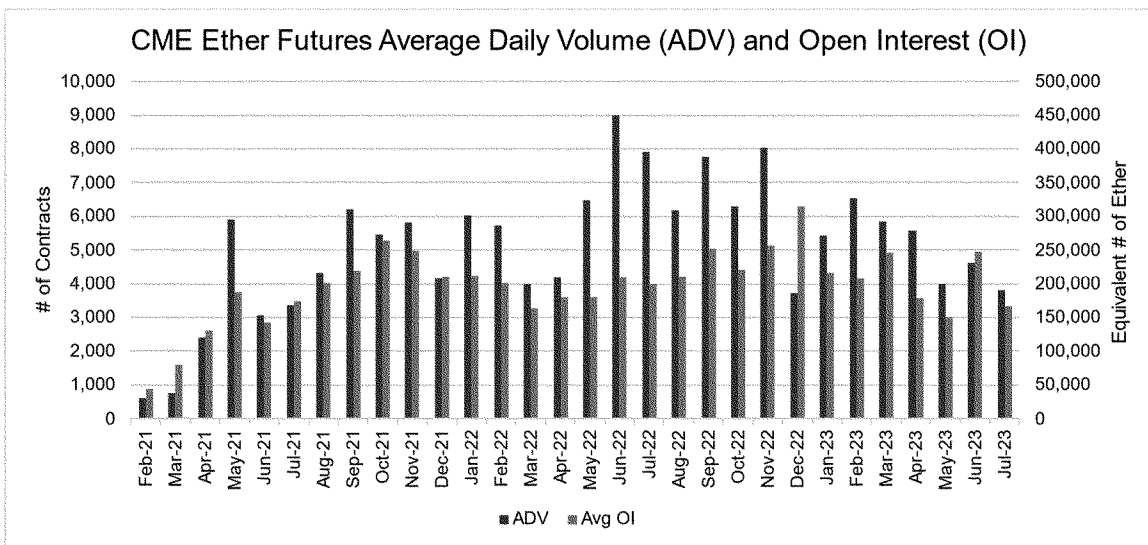
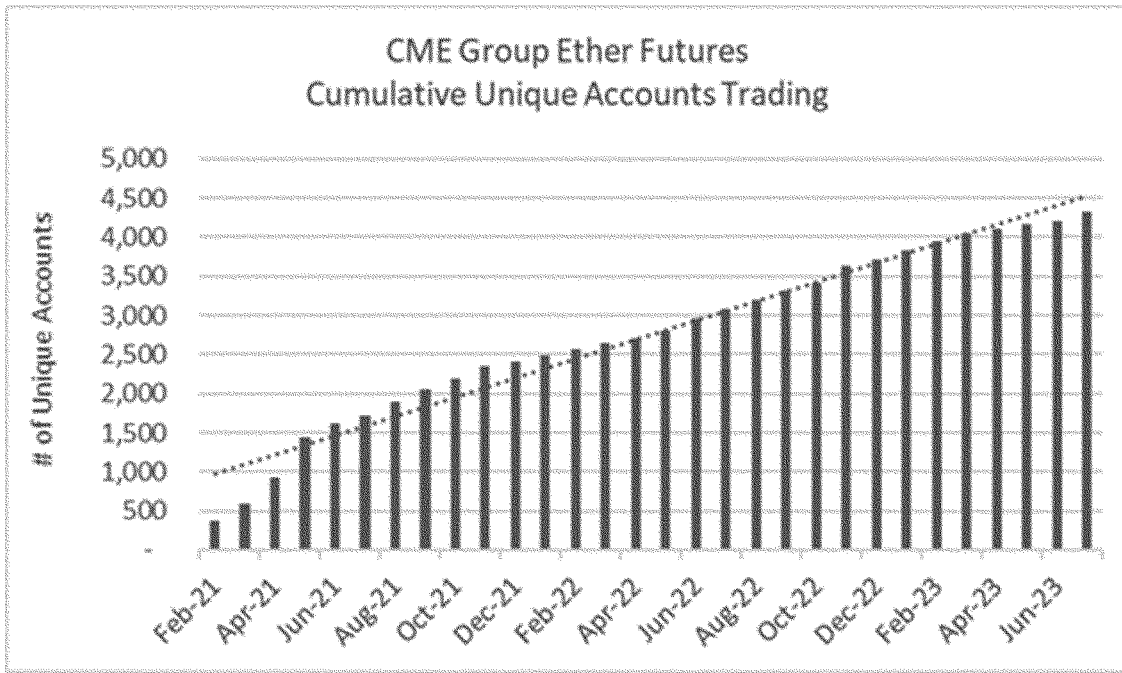
²³ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

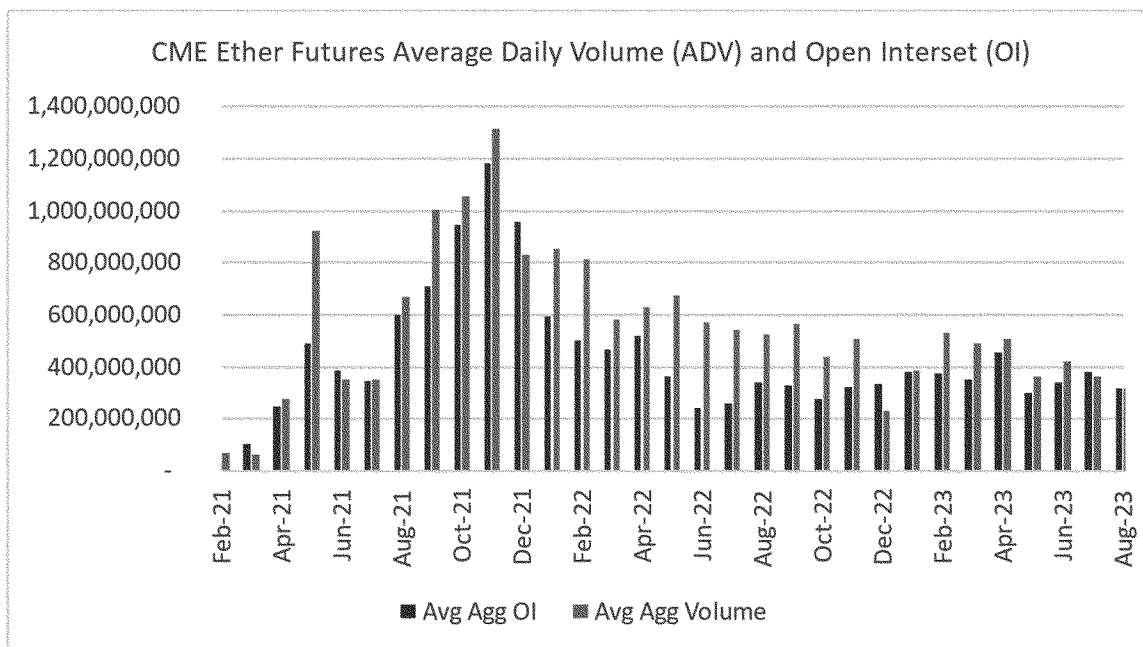
²⁴ Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

²⁵ The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

²⁶ Source: CME, 7/31/23.

²⁷ A large open interest holder in CME ETH Futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. At a price of approximately \$1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than \$2.3 million in CME ETH Futures.



**BILLING CODE 8011-01-C****Section 6(b)(5) and the Applicable Standards**

The Commission has approved numerous series of Trust Issued Receipts,²⁸ including Commodity-Based Trust Shares,²⁹ to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;³⁰ and

²⁸ See Exchange Rule 14.11(f).

²⁹ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

³⁰ The Exchange believes that ETH is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the

(ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place³¹ with a regulated

global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

³¹ As previously articulated by the Commission, "The standard requires such surveillance-sharing agreements since "they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur." The Commission has emphasized that it is essential for an exchange listing a derivative securities product

market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms "significant market" and "market of significant size" include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.³²

The Commission has also recognized that the "regulated market of significant

to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party." The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the "Wilshire Phoenix Disapproval").

³² See Wilshire Phoenix Disapproval.

size” standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.^{33 34}

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively), applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

The CME “comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.” Thus, the CME’s surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.³⁵

The assumptions from this statement are also true for CME ETH Futures. CME

ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the price of CME BTC futures contracts. . . indirectly by trading outside of the CME BTC futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME’s surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated “. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one. . . .” The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures. This view is also consistent with the Sponsor’s research.

As such, the part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for both Bitcoin Futures ETPs and Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.³⁶ The Sponsor notes that ETH total 24-hour spot trading volume has

averaged \$9.4B over the year ending September 1, 2023,³⁷ with approximately \$950M occurring on venues whose trades are included in the sponsor’s benchmark.³⁸ The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust’s assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order “Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.” The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (“Coinbase”), an operator of a United States-based spot trading platform for ETH that represents a substantial portion of US-based and USD denominated ETH trading,³⁹ to enter into a surveillance-sharing agreement (“Spot Crypto SSA”) and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot Crypto SSA is expected to be a bilateral surveillance-sharing

³³ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” *Id.* at 37582.

³⁴ According to reports, the Commission is poised to allow the launch of ETFs registered under the Investment Company Act of 1940, as amended (the “1940 Act”), that provide exposure to ETH primarily through CME ETH Futures (“ETH Futures ETFs”) as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. <https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg>.

³⁵ See Teucrium Approval at 21679.

³⁶ This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that “Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market. . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.”

³⁷ Source: TokenTerminal.

³⁸ Source: VanEck research, CryptoCompare.

³⁹ According to a report from The Block, Coinbase represented 45% of USD denominated exchange trading volume in August 2023. <https://www.theblock.co/data/crypto-markets/spot/usd-support-exchange-volume-market-share>.

agreement between the Exchange and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot Crypto SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ETH trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.⁴⁰ This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ETH trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.⁴¹

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than \$5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing

in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act⁴² in general and section 6(b)(5) of the Act⁴³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;⁴⁴ and (ii) the requirement that an exchange proposal be designed, in general, to

⁴² 15 U.S.C. 78f.

⁴³ 15 U.S.C. 78f(b)(5).

⁴⁴ The Exchange believes that ETH is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms "significant market" and "market of significant size" include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.⁴⁵

The Commission has also recognized that the "regulated market of significant size" standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement.^{46 47}

⁴⁵ See Wilshire Phoenix Disapproval.

⁴⁶ See Winklevoss Order at 37580. The Commission has also specifically noted that it "is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met." *Id.* at 37582.

⁴⁷ According to reports, the Commission is poised to allow the launch of ETFs registered under the

⁴⁰ For additional information regarding ISG and the hallmarks of surveillance-sharing between ISG members, see <https://isgportal.org/overview>.

⁴¹ The Exchange also notes that it already has in place ISG-like surveillance sharing agreement with Cboe Digital Exchange, LLC and Cboe Clear Digital, LLC.

(a) Manipulation of the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively), applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

The CME “comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.” Thus, the CME’s surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.⁴⁸

The assumptions from this statement are also true for CME ETH Futures. CME ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME BTC futures contracts. . .indirectly by trading outside of the CME BTC futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME’s

surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated “. . .the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one. . . .” The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures. This view is also consistent with the Sponsor’s research.

As such, the part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for both Bitcoin Futures ETPs and Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.⁴⁹ The Sponsor notes that ETH total 24-hour spot trading volume has averaged \$9.4B over the year ending September 1, 2023,⁵⁰ with approximately \$950M occurring on venues whose trades are included in the sponsor’s benchmark.⁵¹ The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust’s assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has

progressed and matured significantly. As the court found in the Grayscale Order, “Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.” The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (“Coinbase”), an operator of a United States-based spot trading platform for ETH that represents a substantial portion of US-based and USD denominated ETH trading, to enter into a Spot Crypto SSA and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot Crypto SSA is expected to be a bilateral surveillance-sharing agreement between the Exchange and Coinbase that is intended to supplement the Exchange’s market surveillance program. The Spot Crypto SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ETH trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ETH trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to

Investment Company Act of 1940, as amended (the “1940 Act”), that provide exposure to ETH primarily through CME ETH Futures (“ETH Futures ETFs”) as early as October 2023. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ETH. <https://www.bloomberg.com/news/articles/2023-08-17/sec-said-to-be-poised-to-allow-us-debut-of-ether-futures-etfs-eth#xj4y7vzkg>.

⁴⁸ See Teucrium Approval at 21679.

⁴⁹ This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that “Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market. . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.”

⁵⁰ Source: TokenTerminal.

⁵¹ Source: VanEck research, CryptoCompare.

detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than \$5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

Commodity-Based Trust Shares—Rule 14.11(e)(4)

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section

19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed ETH derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about ETH and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's ETH holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will

also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ETH will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for ETH is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the exchanges on which ETH are traded. Depth of book information is also available from ETH exchanges. The normal trading hours for ETH exchanges are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2023-069. 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-CboeBZX-2023-069 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20813 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Thursday, September 28, 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.

⁵² 17 CFR 200.30-3(a)(12).

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: September 21, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023-20974 Filed 9-22-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98451; File No. SR-Phlx-2023-07]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

September 20, 2023.

I. Introduction

On February 23, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the pilot program to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index ("Nasdaq-100") and the Exchange's nonstandard expirations pilot program (collectively, the "Programs"). The proposed rule change was published for comment in the **Federal Register** on March 2, 2023.³ On April 7, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96980 (February 24, 2023), 88 FR 13161 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On May 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁶ On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.⁷ On August 28, 2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The Commission did not receive any comment letters and is approving the proposed rule change, as modified by Amendment No. 1.

II. Background

When cash-settled⁹ index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).¹⁰ The Commission became concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.¹¹ These concerns were heightened during the “triple-witching” hour on the third Friday of March, June, September, and December when index options, index

futures, and options on index futures expired concurrently.¹² Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.¹³

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission approved a proposed rule change by the Chicago Mercantile Exchange (“CME”) to provide for a.m. settlement¹⁴ for index futures, including futures on the S&P 500 Index.¹⁵ The Commission subsequently approved a proposed rule change by Cboe Options Exchange (“Cboe Options”) to list and trade a.m.-settled options on the S&P 500 Index.¹⁶ In 1992, the Commission approved Cboe Options’ proposal to transition all of its European-style cash-settled options on the S&P 500 Index to a.m. settlement.¹⁷ However, in 1993, the Commission approved a proposed rule change allowing Cboe Options to list p.m.-settled options on certain broad-based indexes, including the S&P 500, expiring at the end of each calendar quarter (since approved as permanent).¹⁸ Starting in 2006, the

Commission approved a number of proposals, on a pilot basis, permitting Cboe Options to introduce other index options with p.m.-settlement. These include p.m.-settled index options expiring weekly (other than the third Friday) and at the end of each month,¹⁹ as well as p.m.-settled S&P 500 Index options and Mini-S&P 500 Index options expiring on the third Friday of the month.²⁰

Subsequently, other exchanges, including Phlx, sought to permit the listing and trading of p.m.-settled options on certain broad-based indices. In December 2017, the Commission approved Phlx’s nonstandard expirations pilot program on a pilot basis (“Nonstandard Pilot”).²¹ In April 2021, the Commission approved Phlx’s pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 (“XND” or “XND options”) on a pilot basis (“XND Pilot”).²² In the course of approving both Programs, the Commission reiterated its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option.²³ However, the Commission also recognized the potential impact was unclear.²⁴ The

Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65); and 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029).

¹⁹ See Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR-CBOE-2015-106); and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

²⁰ See Securities Exchange Act Release Nos. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120); and 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055).

²¹ See Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79) (“Nonstandard Approval Order”). The Commission subsequently approved proposed rule changes to amend the Nonstandard Pilot to allow the Exchange to also list p.m.-settled options with Tuesday and Thursday expirations on the Nasdaq-100 and the Nasdaq-100 Micro Index. See Securities Exchange Act Release Nos. 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR-Phlx-2022-22); and 96411 (November 30, 2022), 87 FR 74688 (December 6, 2022) (SR-Phlx-2022-38).

²² See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (“XND Approval Order”).

²³ See Nonstandard Approval Order, 82 FR at 60653 and XND Approval Order 86 FR at 19911. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); C2 SPXPM Approval, 76 FR at 55972-76; and 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on Cboe Options).

²⁴ See XND Approval Order, 86 FR at 19909.

⁵ See Securities Exchange Act Release No. 97260, 88 FR 22498 (April 13, 2023). The Commission designated May 31, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange inserts two footnotes and amends a sentence in order to further clarify parts of the empirical analysis performed by the Exchange. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-phlx-2023-07/srphlx202307.htm>.

⁷ See Securities Exchange Act Release No. 97624, 88 FR 37107 (June 6, 2023).

⁸ See Securities Exchange Act Release No. 98232, 88 FR 60525 (September 1, 2023). The Commission designated October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change.

⁹ The seller of a “cash-settled” index option pays out the cash value of the applicable index on expiration or exercise. A “physical delivery” option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Documents>.

¹⁰ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated) (“C2 SPXPM Approval”).

¹¹ See *id.*

¹² See *id.*

¹³ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) (“Pilot Memo”) at 5, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Setled_Index_Option_Pilots.pdf (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, “Expiration day effects of index options and futures,” Monograph Series in Finance and Economics, no. 3 (1986)).

¹⁴ The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

¹⁵ See Proposed Amendments Relating to the Standard and Poor’s 500, the Standard and Poor’s 100 and the Standard Poor’s OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the CME). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (noting that the CME moved the S&P 500 futures contract’s settlement value to opening prices on the delivery date).

¹⁶ See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11).

¹⁷ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). The Commission also approved proposals by other options markets to transfer most of their cash-settled index products to a.m. settlement. See, e.g., Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23475 (June 22, 1988) (SR-NYSE-87-11 and 88-04).

¹⁸ See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13). See also Securities Exchange

Commission approved the Programs on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.²⁵ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis for each pilot²⁶ and to make such data publicly available.²⁷ In addition to the Exchange's data and analysis, Cornerstone Research also conducted an analysis at the direction of Staff from the Commission's Division of Economic and Risk Analysis. The analysis utilizes the level of expiring p.m.-settled index options open interest and the measures of volatility and price reversals for the corresponding index futures, the underlying cash index, and index component securities in the minutes leading up to and immediately following the market close to study the effects of pilot programs allowing p.m.-settled index options. The Pilot Memo is discussed in more detail below.

III. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to make permanent the Nonstandard Pilot and the XND pilot. The Nonstandard Pilot permits the Exchange to open p.m.-settled options on broad-based indexes that expire (1) on the last day of the trading month ("EOM expirations") and (2) on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration) and, with respect to options on the Nasdaq-100 ("NDX" or "NDX options") and XND options, any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). The XND Pilot permits the listing of XND options, which are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror those of the NDX options contract listed on the Exchange, except that XND options are based on 1/100 of the value of the Nasdaq-100, and are p.m.-settled

pursuant to Options 4A, Section 12(a)(5) of the Phlx Rules.

The Nonstandard Pilot was extended on multiple occasions, including recently, and is set to expire on November 6, 2023.²⁸ Similarly, the XND Pilot was extended on multiple occasions and is set to expire on November 6, 2023.²⁹

The Exchange states it has provided pilot data to the Commission with respect to the Programs, pursuant to the Nonstandard Approval Order and the XND Approval order.³⁰ The Exchange also states it provides ongoing monthly data in addition to the data provided in the Notice.³¹ Now, the Exchange proposes to make the Programs permanent.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act,³³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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. In its proposal to make the Programs permanent, the Exchange addressed market capacity around the market close and provided an empirical assessment of the impact of its p.m.-settled index options on options market quality. Each of these elements is discussed in greater detail below. As stated above, no comments were received on the proposed rule change.

Market Impact Considerations

The Exchange's analysis presents data that the introduction of p.m.-settlement is correlated with an increase in options trading tied to the Nasdaq-100.³⁴ The data shows an increase in trading volume and notional open interest for NDX and XND options during the sample period.³⁵

In addition to reviewing the data and analysis provided by the Exchange, the Commission reviewed the analysis in the Pilot Memo, which evaluates whether higher levels of expiring open interest in p.m.-settled index options results in increased volatility and price reversals around the close. The Pilot Memo shows that the market share for p.m.-settled options, in particular options on S&P 500 Index, has grown substantially since 2007.³⁶ The Pilot Memo examines whether and to what extent expiring open interest in p.m.-settled index options is empirically related with the tendency of the corresponding index futures, the underlying index, or index components to experience increased transitory volatility and price reversals around the time of market close on expiration dates. The Pilot Memo concludes that, although expiring p.m.-settled index option open interest may have a statistically significant relationship with volatility and price reversals of the underlying index, index futures, and index component securities around the market close, the magnitude of the effect is economically very small.³⁷ For example, the largest settlement event that occurred during the time period studied in the Pilot Memo (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).³⁸

In order to analyze the effect of a very large increase in settlement volume for Nasdaq-100 p.m.-settled options contracts, the Exchange uses the estimated regression coefficients in the Pilot Memo to estimate the change in the volatility of index futures prices when settlement volume increased from

²⁵ See XND Approval Order, 86 FR at 19911 and Nonstandard Approval Order, 82 FR at 60653.

²⁶ See XND Approval Order, 86 FR at 19910-19911 and Nonstandard Approval Order, 82 FR at 60652-60653.

²⁷ See, e.g., Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773, at 65773-74 (December 21, 2018) (SR-Phlx-2018-80) (stating the Exchange will make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot); and 93447 (October 28, 2021) 86 FR 60719, at 60720 (November 3, 2021) (SR-Phlx-2021-66) (stating the Exchange makes public on its website data and analysis previously submitted to the Commission under the XND Pilot and committing to make public any data or analyses submitted in the future).

²⁸ See Securities Exchange Act Release No. 97385 (April 26, 2023), 88 FR 27549, at 27549-27550 (May 2, 2023) (SR-Phlx-2023-13) ("Programs Extension").

²⁹ See *id.*

³⁰ See Notice, 88 FR at 13175. The Exchange has made public on its website data and analyses previously submitted to the Commission under the Programs. See <http://www.nasdaqtrader.com/Trader.aspx?id=currentregulatory>.

³¹ See Programs Extension, 88 FR at 27549-27550.

³² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³³ 15 U.S.C. 78f(b)(5).

³⁴ See Notice, 88 FR at 13167.

³⁵ See *id.* at 13163.

³⁶ See Pilot Memo at 2. The Pilot Memo also examined options on the Russell 2000 Index and the Nasdaq-100. However, during the time period covered by the study (2007-2018), the markets for both a.m.- and p.m.-settled options on these indexes were very small compared to the size of that for S&P 500 Index options. In addition, because p.m.-settled NDX options were only introduced in 2018, the number of observations for NDX options was much smaller than for other indexes. See *id.* at 4.

³⁷ See *id.* at 3.

³⁸ See *id.*

the 25th percentile to the 75th percentile.³⁹ For both the S&P 500 Index and the Nasdaq-100, the Exchange estimates the relative impact would be small for both indexes.⁴⁰

The Exchange also provides additional analysis on market capacity around the market close.⁴¹ Specifically, the Exchange presents data that the closing auction volume on the equity market have become much larger than the opening auction, which may indicate that there is sufficient liquidity in closing auctions to absorb liquidity demand associated with p.m.-settlement of NDX and XND options.⁴² In addition, the Exchange states that the liquidity available at or around the close would be able to mitigate any excess volatility created by the options settlement at the market close.⁴³

Further, the Exchange represents that it has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them.⁴⁴

Market Quality Considerations

The Exchange also completed an analysis intended to evaluate whether the Programs impacted the quality of the NDX options market. Specifically, the Exchange presents findings on three market characteristics: trading volume, open interest, and spreads. The Exchange concludes that there is no evidence that NDX and XND options contracts, which are p.m.-settled, would result in reduced trading activity or degradation in market quality of the a.m.-settled index options.⁴⁵ The Exchange notes within its analysis that it seems unlikely that the introduction of XND option contracts had a significant impact on the market quality of the full-sized NDX option contracts.⁴⁶

Further, the Exchange observed a consistent decrease in relative quoted spread from 2017 to 2022 for NDX options.⁴⁷ When the Exchange compared the spread trend of NDX monthly contracts to that of QQQ

monthly contracts, the Exchange states that the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.⁴⁸ The Exchange uses duration weighted relative quoted spread as a measure of the cost of trading and examines whether the introduction of p.m.-settled index options results in any deterioration of spreads for am-settled NDX options.⁴⁹ The Exchange finds a consistent decrease in the relative quoted spread is prevalent from 2017 to 2022 and no obvious change in the trend following the introduction of p.m.-settled index options.⁵⁰ The analysis also considered whether the move from a.m. settlement to p.m. settlement for Friday weekly expirations (other than third-Friday-of-the-month) led to changes in spreads for those contracts.⁵¹ The sample timeframe was from July 2017 through August 2018.⁵² The relative quoted spread decreased during first part of 2018 and increase in May and June 2018; however, it remained comparable to the 2017 average.⁵³ Overall, the Exchange observes no evidence of deterioration of spreads associated with the introduction of p.m.-settled NDX options.⁵⁴

The Commission believes that the evidence contained in the Exchange's filing, the Exchange's pilot data and reports, and the Pilot Memo analysis demonstrate that the Programs have benefited investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for p.m.-settled options has grown in size over the course of the Programs, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality (as measured by relative quoted spreads) for an existing product when a new p.m.-settled expiration was introduced. Further, significant changes in closing procedures in the decades

since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act⁵⁵ and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵⁶ that the proposed rule change (SR-Phlx-2023-07), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20809 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98456; File No. SR-CBOE-2023-020]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Make the Nonstandard Expirations Pilot Program Permanent

September 20, 2023.

I. Introduction

On April 11, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the operation of its pilot program ("Program") that permits the Exchange to list broad-based index options with nonstandard expirations. The proposed rule change was published for comment in the **Federal Register** on May 1, 2023.³ On June 9, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine

³⁹ See Notice, 88 FR at 13173-13174.

⁴⁰ See *id.* at 13174.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See Notice, 88 FR at 13176.

⁴⁵ See *id.*

⁴⁶ The Exchange states that given that the size of the market (measured in volume) for XND options volume is small compared to that of other p.m.-settled NDX options, the Exchange believes the introduction of XND option contracts is unlikely to adversely impact the market quality of a.m.-settled NDX options. See Amendment No. 1, *supra* note 6.

⁴⁷ See Notice, 88 FR at 13171.

⁴⁸ See *id.* at 13171-13172, 13175-13176.

⁴⁹ See *id.* at 13169-13170.

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See *id.* at 13170-13173. The Exchange used a regression analysis to test whether the spread of NDX contracts changed after the introduction of p.m.-settled index options. See Notice, 88 FR at 13171. The regression model is meant to study the effect of the introduction of Friday p.m.-settled NDX options expirations (on all but the third Friday of the month) that occurred in January 2018. See Amendment No. 1, *supra* note 6.

⁵³ See Notice, 88 FR at 13173.

⁵⁴ See *id.*

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97371 (April 25, 2023), 88 FR 26621 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

whether to disapprove the proposed rule change.⁵ On July 27, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁶ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Background

When cash-settled⁷ index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).⁸ The Commission became concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.⁹ These concerns were heightened during the “triple-witching” hour on the third Friday of March, June, September, and December when index options, index futures, and options on index futures expired concurrently.¹⁰ Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.¹¹

⁵ See Securities Exchange Act Release No. 97679, 88 FR 3931 (June 15, 2023). The Commission designated July 30, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ See Securities Exchange Act Release No. 98008, 88 FR 50921 (August 2, 2023).

⁷ The seller of a “cash-settled” index option pays out the cash value of the applicable index on expiration or exercise. A “physical delivery” option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Document>.

⁸ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade p.m.-settled third Friday-of-the-month S&P 500 stock index (“SPX”) options (“SPXPM”) on the C2 Options Exchange, Incorporated (“C2”)) (“C2 SPXPM Approval”). SPXPM was traded on a pilot basis on C2 until the introduction of SPXPM trading on Cboe Options. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668, at 10668 (February 14, 2013) (SR-CBOE-2012-120) (“SPXPM Approval Order”).

⁹ See C2 SPXPM Approval, 76 FR at 55972.

¹⁰ See *id.*

¹¹ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) (“Pilot Memo”) at 5, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Setted_Index_Option_Pilots.pdf (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, “Expiration day effects of index options and futures,” Monograph Series in Finance and Economics, no. 3 (1986)).

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission approved a proposed rule change by the Chicago Mercantile Exchange (“CME”) to provide for a.m. settlement¹² for index futures, including futures on the S&P 500 Index (“S&P 500”).¹³ The Commission subsequently approved a proposed rule change by Cboe Options to list and trade a.m.-settled options on the S&P 500.¹⁴ In 1992, the Commission approved Cboe Options’ proposal to transition all of its European-style cash-settled options on the S&P 500 to a.m. settlement.¹⁵ However, in 1993, the Commission approved a proposed rule change allowing Cboe Options to list p.m.-settled options on certain broad-based indexes, including the S&P 500, expiring at the end of each calendar quarter (since approved as permanent).¹⁶ Starting in 2006, the Commission approved a number of proposals, on a pilot basis, permitting Cboe Options to introduce other index options, including SPX options, with p.m.-settlement. These include p.m.-settled index options expiring weekly (other than the third Friday) and at the end of each month,¹⁷ SPXPM, as well as p.m.-settled Mini-S&P 500 Index

¹² The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

¹³ See Proposed Amendments Relating to the Standard and Poor’s 500, the Standard and Poor’s 100 and the Standard Poor’s OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the CME). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (noting that the CME moved the S&P 500 futures contract’s settlement value to opening prices on the delivery date).

¹⁴ See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11).

¹⁵ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). The Commission also approved proposals by other options markets to transfer most of their cash-settled index products to a.m. settlement. See, *e.g.*, Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23475 (June 22, 1988) (SR-NYSE-87-11 and 88-04).

¹⁶ See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13). See also Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65); and 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029).

¹⁷ See Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR-CBOE-2015-106); and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

(“XSP”) and Mini-Russell 2000 Index (“MRUT”) options expiring on the third Friday of the month.¹⁸

In the course of approving the various pilots, the Commission reiterated its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option.¹⁹ However, the Commission also recognized the potential impact was unclear.²⁰ The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.²¹ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program²² and to make such data publicly available.²³ In addition to the Exchange’s data and analysis, Cornerstone Research also conducted an analysis at the direction of Staff from the Commission’s Division of Economic and Risk Analysis. The analysis utilizes the level of expiring p.m.-settled index options open interest and the measures of volatility and price reversals for the corresponding index futures, the underlying cash index, and index component securities in the minutes leading up to and immediately following the market close to study the effects of pilot programs allowing p.m.-settled index options. The Pilot Memo is discussed in more detail below.

III. Description of the Proposal

The Program permits the listing of p.m.-settled options on broad-based indexes that expire (1) on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that

¹⁸ See Securities Exchange Act Release Nos. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) (approving options on XSP); and 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-116) (approving options on MRUT).

¹⁹ See, *e.g.*, SPXPM Approval Order, 78 FR at 10669. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options on the C2 Options Exchange, Incorporated); and C2 SPXPM Approval, 76 FR at 55972-76.

²⁰ See, *e.g.*, SPXPM Approval Order, 78 FR at 10669.

²¹ See *e.g.*, Nonstandards Approval Order, 75 FR at 57549; and Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 at 22995 (SR-CBOE-2022-005).

²² *Id.*

²³ See, *e.g.*, Securities Exchange Act Release No. 97446 (May 5, 2023), 88 FR 30365, at 30366 (May 11, 2023) (SR-CBOE-2023-024) (stating the Exchange is making public on its website data and analyses previously submitted to the Commission under the Program and committing to make public any data or analyses submitted in the future).

coincide with an end-of-month (“EOM”) expiration) and, with respect to SPX and XSP options, on any Tuesday or Thursday (other than days that coincide with an EOM expiration) (“Weekly Expirations”) and (2) on the last day of the trading month. In September 2010, the Commission approved a rule change that established the Program under which the Exchange was permitted to list P.M.-settled options on broad-based indexes to expire on any Friday of the month, other than the third Friday-of-the-month, and the last trading day of the month.²⁴ The Commission subsequently approved proposed rule changes to amend the Program to allow the Exchange to also list: (1) p.m.-settled Monday²⁵ and Wednesday²⁶ expirations on broad-based indexes, and (2) p.m.-settled Tuesday and Thursday expirations on SPX²⁷ and XSP.²⁸

The Exchange has filed to extend the operation of the pilot on multiple occasions²⁹ and it is currently set to expire on the earlier of November 6, 2023, or the date on which the Program is approved on a permanent basis.³⁰ Now, the Exchange proposes to make the Program permanent.

Since the Program’s inception in 2010, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange’s experience with the Program, pursuant to the various approval orders.³¹ The Exchange states that, during the course of the Program, it also provided the Commission with any additional data or analyses the Commission requested if the Commission deemed such data or analyses necessary to determine whether the Program was consistent with the Act.³²

²⁴ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075) (“Nonstandards Approval Order”).

²⁵ See Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

²⁶ See Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR-CBOE-2015-106).

²⁷ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (SR-CBOE-2022-005).

²⁸ See Securities Exchange Act Release No. 95795 (September 21, 2022) (order approving SR-CBOE-2022-039).

²⁹ See, e.g., Securities Exchange Act Release Nos. 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011); and 96223 (November 3, 2022), 87 FR 67728 (November 9, 2022).

³⁰ See Securities Exchange Act Release No. 97445 (May 5, 2023), 88 FR 30368 (May 11, 2023).

³¹ See *supra* notes 24–28. The Exchange has made public on its website data and analyses previously submitted to the Commission under the Program. See <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

³² See Notice, 88 FR at 26624.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³³ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,³⁴ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, 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. In its proposal to make the Program permanent, the Exchange addressed whether the Program negatively impacts markets or impacted options market quality. Each of these elements is discussed in greater detail below. As stated above, no comments were received on the proposed rule change.

Market Impact Considerations

The Exchange states it has not identified any evidence from the pilot data indicating that the trading of Weekly and EOM options has any adverse impact on fair and orderly markets on expiration Fridays for the underlying indexes or the underlying securities comprising the underlying indexes, nor have there been any observations of abnormal market movements attributable to Weekly and EOM options from any market participants that have come to the attention of the Exchange.³⁵ In order to support its overall assessment of the Program, the Exchange included a review and analysis of pilot data.³⁶ Among other things, the Exchange’s analysis includes end of day volatility as well as a comparison of the impact of quarterly index rebalancing versus p.m.-settled expirations.³⁷

³³ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ See Notice, 88 FR at 26624.

³⁶ See *id.* at 26623–27.

³⁷ See *id.* at 26626. The Exchange states that although this analysis specifically evaluated SPX options, the Exchange believes it is appropriate to extrapolate the data to apply to the Weekly and EOM options (which include SPX options). See Notice, 88 FR at 26627. The Commission agrees it is appropriate to extrapolate the data to Weekly and EOM options, as the Exchange’s analysis examines liquidity and volatility dynamics around the market close, which may be associated with typical hedging activities tied to expiring p.m.-settled index options.

In addition to reviewing the data and analysis provided by the Exchange, the Commission reviewed the analysis in the Pilot Memo, which evaluates whether higher levels of expiring open interest in p.m.-settled index options results in increased volatility and price reversals around the close. The Pilot Memo shows that the market share for p.m.-settled options on the S&P 500 (including quarterly, Weekly, EOM and third Friday expirations) has grown substantially since 2007.³⁸ The Exchange’s review of pilot data also showed this trend continuing from 2019 through 2021.³⁹

The Pilot Memo examines whether and to what extent expiring open interest in p.m.-settled index options is empirically related with the tendency of the corresponding index futures, the underlying index, or index components to experience increased transitory volatility and price reversals around the time of market close on expiration dates. The Pilot Memo concludes that, although expiring p.m.-settled index option open interest may have a statistically significant relationship with volatility and price reversals of the underlying index, index futures, and index component securities around the market close, the magnitude of the effect is economically very small.⁴⁰ For example, the largest settlement event that occurred during the time period studied in the Pilot Memo (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).⁴¹

The Exchange further reviewed a sample of pilot data from 2019 through 2021, and measured the volatility of the S&P 500 over the final fifteen minutes of each trading day and compared expiration days to non-expiration days.⁴² Generally volatility was slightly higher on expiration days, but in cases where overall market volatility increased, the normalized impact on expiration days versus non-expiration days remained consistent.⁴³ The

³⁸ See Pilot Memo at 2.

³⁹ See Notice, 88 FR at 26624. Specifically, since 2007, p.m.-settled SPX options grew from 0.1% of open interest to 30% of open interest in 2021. *Id.*

⁴⁰ See Pilot Memo at 3. The Pilot Memo also examined options on the Russell 2000 Index and the Nasdaq-100 Index. However, during the time period covered by the study (2007–2018), the markets for both a.m.- and p.m.-settled options on these indexes were very small compared to the size of that for S&P 500 Index options. See *id.* at 4.

⁴¹ See *id.* at 3.

⁴² See Notice, 88 FR at 26625.

⁴³ See *id.*

Exchange further analyzed volatility on days when the S&P 500 was rebalanced, and states its results suggest more closing volatility on rebalance dates compared to non-rebalance expiration dates, indicating that rebalancing of the S&P 500 may have a greater impact on S&P 500 volatility than p.m.-settled options expirations.⁴⁴

The Exchange also reviewed a sample of post-2018 pilot data for potential correlation between excess market volatility and price reversals and the hedging activity of liquidity providers.⁴⁵ To determine whether there is a correlation, the Exchange calculated an estimate of the amount of market-on-close (“MOC”) volume in the S&P 500 component markets attributable to expected hedging activity as a result of expiring in-the-money options.⁴⁶ The Exchange states its results indicate that other sources of MOC share volume generally exceed the volume resulting from hedging activity for p.m.-settled SPX options.⁴⁷ Further, the Exchange also compared hedging futures positions that would correspond to expiring in-the-money p.m.-settled SPX options and concludes the data indicate negligible capacity for hedging activity to increase volatility in the underlying markets.⁴⁸

Finally, the Exchange states that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, have significantly minimized risks of any potential impact of Weekly and EOM options on the underlying cash markets.⁴⁹

Market Quality Considerations

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the a.m.-settled options market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread⁵⁰ and effective spread⁵¹) in p.m.-settled SPX

weekly (“SPXW”) options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.⁵² The Exchange concludes from this analysis that the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations.⁵³ For a majority of the series analyzed, the Exchange observed no statistically significant difference in bid-ask spread or effective spread.⁵⁴ The Exchange states that analyzing whether the introduction of new SPXW p.m.-settled expirations (*i.e.*, SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW p.m.-settled expirations (*i.e.*, SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of Weekly and EOM options impacted the market quality of any corresponding a.m.-settled options when the Program began.⁵⁵ Therefore, the Exchange believes the results of its analysis permit the Exchange to extrapolate that it is unlikely the introduction of any other Weekly or EOM options significantly impacted the market quality of corresponding a.m.-settled options when the Program began.⁵⁶

The Commission believes that the evidence contained in the Exchange’s filing, the Exchange’s pilot data and reports, and the Pilot Memo analysis demonstrate that the Program has benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for the options in the Program has grown significantly in size over the course of the Program, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options, nor did it indicate a deterioration in market quality (as measured by bid-ask and effective spreads) for an existing product when a new p.m.-settled

as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

⁵² For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

⁵³ See Notice, 88 FR at 26626–27.

⁵⁴ See *id.* at 26627.

⁵⁵ See *id.* at 26626.

⁵⁶ See *id.* at 26628.

expiration was introduced. Further, significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act⁵⁷ and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵⁸ that the proposed rule change (SR-CBOE-2023-020) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–20812 Filed 9–25–23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98445; File No. SR-MRX–2023–16]

Self-Regulatory Organizations; Nasdaq MRX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 13 Related to PIM

September 20, 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 September 8, 2023, Nasdaq MRX, LLC (“MRX” or “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 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 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ 15 U.S.C. 78s(b)(2).

⁵⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁴⁴ See *id.*

⁴⁵ See *id.* at 26625–26.

⁴⁶ See *id.* at 26626.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See *id.* at 26627.

⁵⁰ The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

⁵¹ The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations)

Improvement Mechanism for Crossing Transactions.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions. Each change is described below.

Options 3, Section 7

Opening Only

The Exchange proposes to amend Options 3, Section 7(u), Opening Sweep³ and Supplementary Material .02(e) to Options 3, Section 7 related to Opening Only⁴ or "OPG" orders. Options 3, Section 7(t) currently provides that an Opening Sweep would not be subject to any protections listed in Options 3, Section 15, except Automated Quotation Adjustments in

³ An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8(b)(1) and will be cancelled upon the open if not executed. See Options 3, Section 7(u).

⁴ An Opening Only ("OPG") order is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route. See Supplementary Material .02(e) to Options 3, Section 7.

Options 3, Section 15. Supplementary Material .02(e) to Options 3, Section 7 currently provides that an OPG Order would not be subject to any protections listed in Options 3, Section 15, except Size Limitation. At this time, the Exchange proposes to amend the rule text to specify that an Opening Sweep and an OPG Order would be subject to the Market Wide Risk Protection in Options 3, Section 15.

The Market Wide Risk Protection in Options 3, Section 15(a)(1)(C) automatically removes Member orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Members to provide parameters for the order entry and execution rate protections. The Market Wide Risk Protection would apply to an Opening Sweep and an OPG Order because it captures the order entry and execution rate for both Opening Sweeps and OPG Orders that are entered in the Opening Process as described in Options 3, Section 8. The Exchange believes the availability of the Market Wide Risk Protection during the Opening Process would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to wither an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which available after the Opening Process, or the risk protection is optional. Finally, the Exchange also proposes a technical amendment to capitalize the word "orders" in Supplementary Material .02(e) to Options 3, Section 7.

Options 3, Sections 11 and 13

The Exchange proposes to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism. Currently, the last sentence in Options 3, Section 11(b)(4)(A) provides that a facilitation order will be cancelled at the end of an exposure period if an execution would take place at a price that is inferior to the best bid (offer) on MRX. The Exchange proposes to amend this sentence to state, the "Exchange best bid (offer)" and remove the phrase "on Nasdaq MRX." Additionally, the Exchange proposes to add the following rule text to the end of the sentence, "or if there is a Priority Customer order on the same side Exchange best bid (offer) at the same price as the facilitation price unless the Facilitation Order can execute at a price that is better than the same side Priority Customer Order." Today, a facilitation order must execute at a price that is better than the same

side BBO if there is a Priority Customer order on the same side. The proposed rule text is being amended to align to current System functionality which prevents a Facilitation Order from trading ahead of a Priority Customer Order. As such, a Priority Customer order on the same side of the offer must be considered when executing a Facilitation Order. The Exchange proposes to add similar language to the last sentence of Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism. The Exchange notes that these amendments do not amend the current System functionality.

The Exchange proposes to add a new Options 3, Section 11(b)(4)(iv) to describe the allocation percentage that an Electronic Access Member is able to obtain in the Facilitation Mechanism. Today, under the current System functionality, the facilitating Electronic Access Member may not receive an allocation percentage, at the final price point, of more than 40% of the original size of the Facilitation Order with one or multiple competing quote(s), order(s), or Response(s), except for rounding,⁵ when competing quotes, orders, or Responses have contracts available for execution. Options 3, Section 11(b)(4)(ii) makes clear that the facilitating Electronic Access Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. The proposed rule text expressly notes that the allocation percentage will not be exceeded except for rounding purposes. This language represents current System functionality. The Exchange proposes to add similar language to Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism to note the limitations with respect to allocations.

The Exchange proposes to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description. Orders and responses in the market that receive the benefit of the facilitation price may receive

⁵ MRX's System will round up to the nearest whole number during the allocation in the Facilitation Mechanism.

executions at Split Prices. This change to the rule text is intended to utilize the defined term “Response” pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and will only be considered up to the size of the order to be facilitated.

The Exchange proposes to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 11 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated. The Exchange does not allocate fractional contracts. This language represents the current System functionality. The Exchange proposes to add the same sentence within new Supplementary Material .10 to Options 3, Section 13 regarding a PIM. Phlx has similar language.⁶

The Exchange proposes to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within Nasdaq GEMX, LLC’s (“GEMX”) PIM, Nasdaq ISE, LLC’s (“ISE”) PIM, Nasdaq Phlx LLC’s (“Phlx”) PIXL and BX’s PRISM, without changing the substantive operations of these price improvement auctions. The Exchange believes that by utilizing similar language, Members will be able to compare MRX’s PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

MRX proposes to add “a price that is” to the end of Options 3, Section 13(b)(1) and add new subparagraphs (A) and (B) to distinguish opposite and same side checks. The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is \$0.01, the Crossing Transaction must be entered at a price that is, on the same side of the Agency Order equal or better than the NBBO and better than any Limit Order or quote on MRX’s order book. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “MRX” and remove other extraneous words as the sentence has been rearranged.

Next, the Exchange proposes to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer similar to other Nasdaq affiliated markets to provide consistent formatting. While the entry checks for new Options 3, Section 13(b)(2) and (b)(3) will not differ, the Exchange believes that retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison. To that end, the Exchange proposes to amend Options 3, Section 13(b)(2) to format it similar to Options 3, Section 13(b)(1). The Exchange proposes to add “for the account of a Priority Customer” to (b)(2) to distinguish it from (b)(3) which addresses the account of a broker dealer or any other person or entity that is not a Priority Customer. Options 3, Section 13(b)(2)(A) will also add rule text to address the opposite side of the market, which is not explicitly noted. Proposed Options 3, Section 13(b)(2)(A) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the internal BBO and NBBO on the opposite side of the market from the Agency Order. Further, Options 3, Section 13(b)(2)(B) will explicitly note the entry check on the same side of the market and similar to Options 3, Section 13(b)(1) will include the NBBO check. Proposed Options 3, Section 13(b)(2)(B) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only on the same side of the market as the Agency Order, at a price that is at least \$0.01 better than any Limit Order or quote on the MRX order book and equal to or better than the NBBO.⁷ The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange

⁷ For example, if the market is 0.98 bid and 0.99 offer, a Priority Customer PIM Order to buy for less than 50 contracts must be stopped at 0.98 cents in this scenario to be accepted into a PIM Auction, provided there is no resting order or quote on the Exchange order book at 0.98 in which case the PIM Order would be rejected.

also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “MRX” and remove other extraneous words as the sentence has been rearranged.

As noted herein, proposed Options 3, Section 13(b)(3) will mirror Options 3, Section 13(b)(2) except that it will refer to the account of a broker dealer or any other person or entity that is not a Priority Customer. The Exchange also proposes to renumber the remainder of the paragraphs within Options 3, Section 13(b).

Finally, the Exchange proposes to add a new Options 3, Section 13(e)(5)(vii), similar to rule text in Phlx at Options 3, Section 13(b)(8) for Complex Orders. The current MRX Complex Price Improvement Mechanism rule text is silent as to same side execution price validations. The Exchange proposes to state,

[i]f the Complex PIM execution price would be the same or better than a Complex Order on the Complex Order Book on the same side of the market as the Agency Complex Order, for options classes assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may be executed at a price that is equal to the resting Complex Order’s limit price.

Today, if the Complex PIM execution is the same or better than the Complex Order resting on the Complex Order Book on the same side of the market as the Agency Complex Order, for options assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may execute at a price that is equal to the resting Complex Order’s limit price. This proposed rule text would make clear the manner in which the System validates prices for Complex PIMs on the same side of the market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 7

Opening Only

The Exchange’s proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders is consistent with the Act and the protection of investors and the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

⁶ See Phlx Options 3, Section 13(b)(1)(D).

general public because the Market Wide Risk Protection would capture the order entry and execution rate for those Opening Sweeps and OPG Orders entered in the Opening Process, which is described in Options 3, Section 8, and would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange is providing both order and quote risk protections in the Opening Process to allow Members to manage their risk. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to either an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process or the risk protection is optional.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism is consistent with the Act and the protection of investors and the general public because the System ensures that the facilitation order is at a price that is not inferior to the Exchange best bid (offer) or if there is a Priority Customer on the same side Exchange best bid (offer) at the same price as the facilitation price, otherwise the order would be cancelled. This price check ensures that the auction order may not trade at or through the Priority Customer order on the same side. This language represents the current System functionality. Similar changes are proposed to Options 3, Section 11(d)(3)(i) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism with respect to the contra-side. These amendments represent current System functionality and similarly ensure that the auction order may not trade at or through the Priority Customer order on the contra side. This is consistent with the treatment of Priority Customer in MRX's order book allocation, described in Options 3, Section 10, wherein Priority Customer interest is executed within PIM ahead of any other interest of Members.¹⁰

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to

the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism is consistent with the Act and the protection of investors and the general public by permitting rounding to occur as specified in the Exchange's rules. The proposal states how rounding interacts with the allocation percentages. The Exchange proposed to state that it will not permit an allocation percentage greater than the stated amounts in the auction rules, unless rounding is necessary. This proposed language represents the current System functionality.

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description is consistent with the Act and the protection of investors and the general public because orders and Responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term Response which pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and will only be considered up to the size of the order to be facilitated.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that if an allocation would result in less than one contract, then one contract would be allocated is consistent with the Act and the protection of investors and the general public because one contract is the minimum unit in which an option may trade on MRX. This language represents the current System functionality. Phlx has similar language.¹¹

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within GEMX's PIM, ISE's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language, Members will be able to compare MRX's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(b)(1) to add new subparagraphs (A) and (B) to distinguish opposite and same side checks and add within the same side check a reference to the NBBO check, is

consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

The Exchange's proposal to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer into two new paragraphs, a (b)(2) and a (b)(3), is consistent with the Act and the protection of investors and the general public because retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison.

The Exchange's proposal to add "for the account of a Priority Customer" to new subparagraph (b)(2) to explicitly address the opposite side of the market and also note the NBBO entry check on the same side of the market is consistent with the Act and the protection of investors and the general public because the new format will provide the parameters for each check. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive. Mirroring the same language within Options 3, Section 13(b)(2)(B), except to note that it is for the account of a broker dealer or any other person or entity that is not a Priority Customer will allow Members to compare MRX's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex PIM Orders is consistent with the Act and the protection of investors and the general public because it ensures the Complex PIM would not execute at a price that trades at or through the Complex Order's limit price. Today, the rule text does not specify the price at which an Agency Complex Order may execute. The Exchange notes that there are no Priority Customer overlays in Options 3, Section 14(d)(2) and therefore, the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. Phlx has substantially similar rule text at Options 3, Section 13(b)(8).

¹⁰ See also MRX Options 3, Section 13(d)(1), "At a given price, 'Priority Customer Interest' (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before 'non-Priority Customer Interest' (non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes)."

¹¹ See Phlx Options 3, Section 13(b)(1)(D).

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.

Options 3, Section 7

Opening Only

The Exchange's proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders does not impose an intra-market burden on competition because the Market Wide Risk Protection is available to all Members in the Opening Process. The Exchange's proposal to amend Opening Sweeps and OPG Orders does not impose an inter-market burden on competition because other options exchanges may similarly offer such risk protections on their opening order types.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(i) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism to state that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an intra-market burden on competition because all auction orders in these aforementioned auction mechanisms would be handled in a uniform manner by the System such that those orders would not be permitted to trade at or through the Priority Customer order on the same side. The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(i) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism to make clear that that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an inter-market burden on competition because other options markets similarly have customer overlay priorities.

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for

Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an intra-market burden on competition because the Exchange's rules regarding rounding are applied in a uniform manner to all Members submitting an order into an auction mechanism. The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an inter-market burden on competition because other options exchanges similarly round in excess of allocation percentages such as BX.¹²

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an intra-market burden on competition because orders and responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This clarification to the rule text is intended to correct the current language. The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an inter-market burden on competition because this rule text change is specific to MRX's rule language.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an intra-market burden on competition because the System would uniformly allocate contracts with a minimum unit of one contract. The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an inter-market burden on competition because other options markets similarly specify a minimum unit of rounding such as Phlx.¹³

¹² See BX Options 3, Section 13(ii)(A)(1).

¹³ See Phlx Options 3, Section 13(b)(1)(D).

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, ISE's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an intra-market undue burden on competition because harmonizing the language will enable Members to compare MRX's PIM entry checks with similar mechanisms on Nasdaq affiliated markets. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, ISE's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an inter-market undue burden on competition because other options markets have their own price improvement auctions and are free to denote their entry checks in a similar fashion and have both same and opposite side entry checks which may differ from MRX's rule.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an intra-market undue burden on competition because the Exchange would uniformly apply the price check for the Agency Complex Orders such that the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an inter-market undue burden on competition because the price check is similar to price checks on other options markets such as Phlx.¹⁴

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

¹⁴ See Phlx Options 3, Section 13(b)(5)(B)(vi).

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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2023-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MRX-2023-16. 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-MRX-2023-16 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20804 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-803, OMB Control No. 3235-0754]

Proposed Collection; Comment Request; Extension: Rule 30b1-10, Form N-RN

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 30b1-10 [17 CFR 270.30b1-10] and Form N-RN [17 CFR 274.223] require registered open-end management investment companies (not including entities regulated as money

market funds under 17 CFR 270.2a-7), registered closed-end funds, and business development companies (collectively, "funds"), to file a current report on Form N-RN on a non-public basis when certain events related to their liquidity and events regarding funds' compliance with the VaR-based limit on fund leverage risk in 17 CFR 270.18f-4 ("rule 18f-4") occur. The first category of information reported on Form N-RN concerns events under which more than 15% of an open-end fund's net assets are, or become, illiquid investments that are assets as defined in 17 CFR 270.22e-4 ("rule 22e-4") and when holdings in illiquid investments are assets that previously exceeded 15% of a fund's net assets have changed to be less than or equal to 15% of the fund's net assets. The second category of information reported on Form N-RN regards events for certain open-end funds under which a fund's holdings in assets that are highly liquid investments fall below the fund's highly liquid investment minimum defined in rule 22e-4 for more than 7 consecutive calendar days. The third category of information reported on Form N-RN regards information about a fund's breaches of the VaR test under rule 18f-4. A report on Form N-RN is required to be filed, as applicable, within one business day of the occurrence of one or more of these events. In addition, a fund is in certain cases required to file a second Form N-RN when it is no longer in breach of the applicable limit.

Based on historical filing data and projected estimates of the annual number of VaR-based filings, the staff estimates that the Commission will receive roughly 66 reports per year on Form N-RN on average.¹ When filing a report on Form N-RN, staff estimates that a fund will spend on average approximately 3 hours of an in-house compliance attorney's time and 1 hour of a senior programmer time to prepare, review, and submit Form N-RN, at a total time cost of \$1,661.² Accordingly,

¹ Because the compliance date for the VaR-based reporting requirements was August 1, 2022, we have made adjustments to estimate an annual number of VaR-based filings.

² This estimate is based on the following calculations: (3 hours × \$425/hour for an in-house compliance attorney = \$1,275), plus (1 hour × \$386/hour for a senior programmer = \$386), for a combined total of 4 hours at total time costs of \$1,661. The estimates concerning the wage rates for attorney and senior accountant time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house compliance attorneys and senior programmers, modified to account for a 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm

Continued

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 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.

¹⁷ 17 CFR 200.30-3(a)(12).

in the aggregate, staff estimates that compliance with rule 30b1–10 and Form N–RN will result in a total annual burden of approximately 264 burden hours and total annual time costs of approximately \$109,626.³

Compliance with rule 30b1–10 is mandatory for all funds. Responses to the disclosure requirements will be kept confidential. The estimate of average burden hours is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to enable the Commission to receive information on fund liquidity events more uniformly and efficiently, and to enhance the Commission's oversight of funds when significant liquidity events occur and its ability to respond to market events. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by November 27, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting 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.

size, employee benefits, and overhead. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

³ This estimate is based on the following calculations: 66 reports filed per year × 4 hours per report = approximately 264 total annual burden hours. 66 reports filed per year × \$1,661 in costs per report = \$109,626 total annual costs.

Dated: September 21, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20907 Filed 9–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98458; File Nos. SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEArca–2023–53, SR–NYSECHX–2023–16]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

September 20, 2023.

On August 3, 2023, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. each filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the connectivity fee schedule to include an alternative procedure to allocate power in the Mahwah Data Center. The proposed rule changes were published for comment in the *Federal Register* on August 22, 2023.³ The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notices for these proposed rule changes is October 6,

2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,⁵ designates November 20, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes (File Nos. SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEArca–2023–53, SR–NYSECHX–2023–16).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20814 Filed 9–25–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98446; File No. SR–BOX–2023–24]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend the Language and Process Related to the Options Regulatory Fee

September 20, 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 September 13, 2023, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 98148 (August 16, 2023), 88 FR 57150 (SR–NYSE–2023–29); 98149 (August 16, 2023), 88 FR 57154 (SR–NYSEAMER–2023–39); 98150 (August 16, 2023), 88 FR 57142 (SR–NYSEArca–2023–53); 98151 (August 16, 2023), 88 FR 57159 (SR–NYSECHX–2023–16).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(6).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the language and processes relating to the Options Regulatory Fee ("ORF") on the BOX Options Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <https://rules.boxexchange.com/rulefilings>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee ("ORF") with the language and processes used by other options exchanges.⁵ By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Participant customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities.

The revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, covers a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the "Commission"). The Exchange notifies Participants of adjustments to the ORF via an Informational Circular. Currently, the Exchange provides Participants with such notice at least 30 calendar days prior to the effective date of the change. The Options Regulatory Fee section of the Fee Schedule sets forth the details and description of how and when the ORF is assessed. For example, the Fee Schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Fee Schedule further states that the Exchange will notify Participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The Exchange proposes to update the Fee Schedule language relating to the timing of ORF changes. Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior to the effective date. The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Participants may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Participants may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the Exchange's total regulatory costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the proposed rule change allows the Exchange to adjust the ORF by

submitting a fee change filing to the Commission in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the Fee Schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed. The Exchange also proposes to eliminate the explicit language in the Fee Schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the Fee Schedule, it notes that it will endeavor to notify Participants of any planned change to the ORF by Exchange Informational Circular at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provides added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Participants are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes result in ORF processes and Fee Schedule language that aligns with other options exchanges.⁶ Particularly, although typically the practice, other options exchanges are not limited to only adjusting ORF to only the first business day of August or February.⁷ Moreover, another options exchange recently amended their fees to allow for flexibility to adjust ORF during months other than February or August.⁸ The Exchange notes that other options exchanges do not explicitly provide in

⁵ See Securities and Exchange Act Release No. 34-98108 (August 10, 2023), 88 FR 55809 (August 16, 2023) (SR-ChoeEDGX-2023-054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee).

⁶ See Choe Exchange, Inc. Fees Schedule and Choe C2 Exchange, Inc. Options Fees Schedule.

⁷ *Id.*

⁸ See e.g., Securities Exchange Act Release No. 96373 (October 13, 2022), 87 FR 73376 (November 29, 2022) (SR-NYSEAMER-2022-52).

their fees schedules that it will provide notice at least 30 calendar days in advance of any ORF change.⁹ Other exchanges have represented in various ORF fee filings that they endeavor to notify members of any planned change to the ORF by Exchange notice at least 30 calendar days prior to the effective date of such change, just as the Exchange represents here.¹⁰ The Exchange believes the proposed change provides uniformity across options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹¹ in general, and section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes the proposed changes to the Fee Schedule with respect to how ORF is assessed and collected are appropriate as it provides the Exchange more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it, and other options exchanges do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs. The Exchange also represents that it will

endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Participants with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the Fee Schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn’t meet the strict 30-day deadline in event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes the proposed rule changes are reasonable, equitable and not unfairly discriminatory because they conform to the process and Fee Schedule language used by other options exchanges, thereby providing consistency across the options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Participants subject to ORF. As noted above, another options exchange is also not confined to making ORF changes on the first business day of February or August.¹³

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. In this regard and as indicated above, the Exchange notes that the rule change is substantially similar in all material respects to a proposal recently submitted by Cboe EDGX Exchange, Inc. (“EDGX”).¹⁴ This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the Fee Schedule to modify the timing and notice requirements relating to the modification of the ORF and conforms to the timing and notice requirements used by other options exchanges within

their fee schedules.¹⁵ Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ 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 proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange more flexibility with respect to the timing of changes to its ORF and allow the Exchange to mirror similar provisions already in place on other exchanges. Finally, the Exchange states that the proposed change would not introduce any novel regulatory issues. For these reasons, and because the proposed rule change does not raise any

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁹ See Cboe Exchange, Inc. Fees Schedule and Cboe C2 Exchange, Inc. Options Fees Schedule.

¹⁰ See e.g., Securities Exchange Act Release No. 92597 (August 6, 2021), 86 FR 44451 (August 12, 2021) (SR-CBOE-2021-044). See also Securities Exchange Act Release No. 92596 (August 6, 2021), 86 FR 44461 (August 12, 2021) (SR-C2-2021-012).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See *supra* note 8.

¹⁴ See *supra* note 5.

novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁰

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-BOX-2023-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BOX-2023-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-BOX-2023-24 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20805 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98454; File No. SR-CBOE-2023-005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent The Operation of the Program That Allows the Exchange To List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index Options ("SPX") Series

September 20, 2023.

I. Introduction

On January 6, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the operation of its pilot program ("Program") that permits the Exchange to list p.m.-settled third Friday-of-the-month SPX options ("SPXPM"). The proposed rule change was published for comment in the **Federal Register** on January 24, 2023.³ On March 7, 2023,

pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On March 17, 2023, the Exchange filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").⁶ On April 24, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.⁷ On July 20, 2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The Commission did not receive any comment letters and is approving the proposed rule change, as modified by Amendment No. 1.

II. Background

When cash-settled⁹ index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).¹⁰ The Commission became

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97063, 88 FR 15476 (March 13, 2023). The Commission designated April 24, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange filed Exhibit 3, which provides additional detail regarding the Exchange's analysis of the market quality impact of p.m.-settled index options. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-cboe-2023-005/srcboe2023005.htm>.

⁷ Amendment No. 1 was published for comment in the **Federal Register** on April 28, 2023. See Securities Exchange Act Release No. 97367 (April 24, 2023), 88 FR 26366 (April 28, 2023) (order instituting proceedings and noticing Amendment No. 1).

⁸ See Securities Exchange Act Release No. 97956, 88 FR 48278 (July 26, 2023). The Commission designated September 21, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change.

⁹ The seller of a "cash-settled" index option pays out the cash value of the applicable index on expiration or exercise. A "physical delivery" option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Documents>.

¹⁰ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated ("C2")) ("C2 SPXPM Approval"). SPXPM was traded on a pilot basis on C2 until the introduction of SPXPM trading on Cboe Options. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668,

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96703 (January 18, 2023), 88 FR 4265 ("Notice").

concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.¹¹ These concerns were heightened during the “triple-witching” hour on the third Friday of March, June, September, and December when index options, index futures, and options on index futures expired concurrently.¹² Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.¹³

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission approved a proposed rule change by the Chicago Mercantile Exchange (“CME”) to provide for a.m. settlement¹⁴ for index futures, including futures on the S&P 500 Index (“S&P 500”).¹⁵ The Commission subsequently approved a proposed rule change by Cboe Options to list and trade a.m.-settled options on the S&P 500.¹⁶ In 1992, the Commission approved Cboe Options’ proposal to transition all of its European-style cash-settled options on the S&P 500 to a.m. settlement.¹⁷ However, in 1993, the

Commission approved a proposed rule change allowing Cboe Options to list p.m.-settled options on certain broad-based indexes, including the S&P 500, expiring at the end of each calendar quarter (since approved as permanent).¹⁸ Starting in 2006, the Commission approved a number of proposals, on a pilot basis, permitting Cboe Options to introduce other index options, including SPX options, with p.m.-settlement. These include p.m.-settled index options expiring weekly (other than the third Friday) and at the end of each month,¹⁹ SPXPM, as well as p.m.-settled Mini-SPX Index (“XSP”) options and Mini-Russell 2000 Index (“MRUT”) options expiring on the third Friday of the month.²⁰

In the course of approving the various pilots, the Commission reiterated its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option.²¹ However, the Commission also recognized the potential impact was unclear.²² The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.²³ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program²⁴ and to make such data publicly available.²⁵ In addition to

the Exchange’s data and analysis, Cornerstone Research also conducted an analysis at the direction of Staff from the Commission’s Division of Economic and Risk Analysis. The analysis utilizes the level of expiring p.m.-settled index options open interest and the measures of volatility and price reversals for the corresponding index futures, the underlying cash index, and index component securities in the minutes leading up to and immediately following the market close to study the effects of pilot programs allowing p.m.-settled index options. The Pilot Memo is discussed in more detail below.

III. Description of the Proposal, as Modified by Amendment No. 1

SPXPM are cash-settled SPX options with third Friday-of-the-month expiration dates (“Expiration Friday”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration. In February 2013, the Commission approved the Program to list and trade these options on a pilot basis.²⁶

The Exchange has filed to extend the operation of the pilot on multiple occasions and it is currently set to expire on the earlier of November 6, 2023, or the date on which the Program is approved on a permanent basis.²⁷ Now, the Exchange proposes to make the Program permanent.

Since the Program’s inception in 2013, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange’s experience with the Program, pursuant

at 10668 (February 14, 2013) (SR-CBOE-2012-120) (“SPXPM Approval Order”).

¹¹ See C2 SPXPM Approval, 76 FR at 55972.

¹² See *id.*

¹³ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) (“Pilot Memo”) at 5, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, “Expiration day effects of index options and futures,” Monograph Series in Finance and Economics, no. 3 (1986)).

¹⁴ The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

¹⁵ See Proposed Amendments Relating to the Standard and Poor’s 500, the Standard and Poor’s 100 and the Standard Poor’s OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the CME). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (noting that the CME moved the S&P 500 futures contract’s settlement value to opening prices on the delivery date).

¹⁶ See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11).

¹⁷ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). The Commission also approved proposals by other options markets to transfer most of their cash-settled index products to a.m.

settlement. See, e.g., Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23475 (June 22, 1988) (SR-NYSE-87-11 and 88-04).

¹⁸ See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13). See also Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65); and 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029).

¹⁹ See Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR-CBOE-2015-106); and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

²⁰ See Securities Exchange Act Release Nos. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055); and 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-116).

²¹ See, e.g., SPXPM Approval Order, 78 FR at 10669. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options on the C2 Options Exchange, Incorporated); and C2 SPXPM Approval, 76 FR at 55972-76.

²² See, e.g., SPXPM Approval Order, 78 FR at 10669.

²³ See *id.*

²⁴ See *id.* at 10670.

²⁵ See, e.g., Securities Exchange Act Release No. 84535 (November 5, 2018), 83 FR 56129, at 56130

(November 9, 2018) (SR-CBOE-2018-069) (stating the Exchange is making public on its website data and analyses previously submitted to the Commission under the Program and committing to make public any data or analyses submitted in the future).

²⁶ See SPXPM Approval Order.

²⁷ See Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR-CBOE-2014-076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR-CBOE-2016-036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR-CBOE-2017-025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR-CBOE-2018-036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR-CBOE-2018-069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR-CBOE-2019-023); 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR-CBOE-2019-107); 88674 (April 16, 2020), 85 FR 22479 (April 22, 2020) (SR-CBOE-2020-036); 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (SR-CBOE-2020-100); 91698 (April 28, 2021) 86 FR 23761 (May 4, 2021) (SR-CBOE-2021-027); 93455 (October 28, 2021), 86 FR 60660 (November 3, 2021) (SR-CBOE-2021-062); 94799 (April 27, 2022), 87 FR 26244 (May 3, 2022) (SR-CBOE-2022-019); 96222 (November 3, 2022), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054); and 97446 (May 5, 2023), 88 FR 30365 (May 11, 2023).

to the SPXPM Approval Order.²⁸ The Exchange states that, during the course of the Program, it also provided the Commission with any additional data or analyses the Commission requested if the Commission deemed such data or analyses necessary to determine whether the Program was consistent with the Act.²⁹

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁰ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act,³¹ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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. In its proposal to make the Program permanent, the Exchange addressed whether the Program negatively impacts markets or impacted the quality of the SPX options market. Each of these elements is discussed in greater detail below. As stated above, no comments were received on the proposed rule change.

Market Impact Considerations

The Exchange states it has not identified any evidence from the pilot data indicating that the trading of p.m.-settled SPX options has any adverse impact on fair and orderly markets on Expiration Fridays for the S&P 500 or the underlying securities comprising the S&P 500, nor have there been any observations of abnormal market movements attributable to p.m.-settled SPX options from any market participants that have come to the attention of the Exchange.³² In order to support its overall assessment of the Program, the Exchange included a

review and analysis of pilot data.³³ Among other things, the Exchange's analysis includes end of day volatility as well as a comparison of the impact of quarterly index rebalancing versus p.m.-settled expirations.³⁴

In addition to reviewing the data and analysis provided by the Exchange, the Commission reviewed the analysis in the Pilot Memo, which evaluates whether higher levels of expiring open interest in p.m.-settled index options results in increased volatility and price reversals around the close. The Pilot Memo shows that the market share for p.m.-settled options on the S&P 500 has grown substantially since 2007.³⁵ The Exchange's review of pilot data also showed this trend continuing from 2019 through 2021.³⁶

The Pilot Memo examines whether and to what extent expiring open interest in p.m.-settled index options is empirically related with the tendency of the corresponding index futures, the underlying index, or index components to experience increased transitory volatility and price reversals around the time of market close on expiration dates. The Pilot Memo concludes that, although expiring p.m.-settled index option open interest may have a statistically significant relationship with volatility and price reversals of the underlying index, index futures, and index component securities around the market close, the magnitude of the effect is economically very small.³⁷ For example, the largest settlement event that occurred during the time period studied in the Pilot Memo (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).³⁸

The Exchange further reviewed a sample of pilot data from 2019 through 2021, and measured the volatility of the S&P 500 over the final fifteen minutes of each trading day and compared expiration days to non-expiration days.³⁹ Generally volatility was slightly higher on expiration days, but in cases where overall market volatility increased, the normalized impact on expiration days versus non-expiration days remained consistent.⁴⁰ The

Exchange further analyzed volatility on days when the S&P 500 was rebalanced, and states its results suggest more closing volatility on rebalance dates compared to non-rebalance expiration dates, indicating that rebalancing of the S&P 500 may have a greater impact on S&P 500 volatility than p.m.-settled option expirations.⁴¹

The Exchange also reviewed a sample of post-2018 pilot data for potential correlation between excess market volatility and price reversals and the hedging activity of liquidity providers.⁴² To determine whether there is a correlation, the Exchange calculated an estimate of the amount of market-on-close ("MOC") volume in the S&P 500 component markets attributable to expected hedging activity as a result of expiring in-the-money options.⁴³ The Exchange states its results indicate that other sources of MOC share volume generally exceed the volume resulting from hedging activity for p.m.-settled SPX options.⁴⁴ Further, the Exchange also compared hedging futures positions that would correspond to expiring in-the-money p.m.-settled SPX options and concludes the data indicate negligible capacity for hedging activity to increase volatility in the underlying markets.⁴⁵

Finally, the Exchange states that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, have significantly minimized risks of any potential impact of p.m.-, cash-settled SPX options on the underlying cash markets.⁴⁶

Market Quality Considerations

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the SPX options market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread⁴⁷ and effective spread⁴⁸) in p.m.-settled SPX weekly

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See *id.* at 4269.

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

⁴⁸ The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options

²⁸ See *supra* note 10. The Exchange has made public on its website data and analyses previously submitted to the Commission under the Program. See <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

²⁹ See Notice, 88 FR at 4267.

³⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78f(b)(5).

³² See Notice, 88 FR at 4267.

³³ See *id.* at 4266–70.

³⁴ See *id.* at 4268.

³⁵ See Pilot Memo at 2.

³⁶ See Notice, 88 FR at 4267. Specifically, since 2007, p.m.-settled SPX options grew from 0.1% of open interest to 30% of open interest in 2021. *Id.*

³⁷ See Pilot Memo at 3.

³⁸ See *id.*

³⁹ See Notice, 88 FR at 4268.

⁴⁰ See *id.*

(“SPXW”) options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.⁴⁹ The Exchange states that analyzing whether the introduction of new SPXW p.m.-settled expirations (*i.e.*, SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW p.m.-settled expirations (*i.e.*, SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of p.m.-settled index options impacted the market quality of the SPX market when the Program began.⁵⁰ Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate that it is unlikely the introduction of p.m.-settled SPXW options significantly impacted the market quality of a.m.-settled SPX options when the Program began.⁵¹ The Exchange concludes from this analysis that the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations. For a majority of the series analyzed, the Exchange observed no statistically significant difference in bid-ask spread or effective spread.⁵²

The Commission believes that the evidence contained in the Exchange’s filing, the Exchange’s pilot data and reports, and the Pilot Memo analysis demonstrate that the Program has benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for SPXPM options has grown significantly in size over the course of the Program, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities of the S&P 500 surrounding the close as a result of expiring p.m.-settled SPX options nor did it indicate a deterioration in market quality (as measured by bid-ask and effective spreads) for an existing product when a new p.m.-settled expiration was

(with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

⁴⁹ For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

⁵⁰ See Notice, 88 FR at 4269.

⁵¹ See *id.* at 4270.

⁵² See *id.*

introduced. Further, significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act⁵³ and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵⁴ that the proposed rule change (SR-CBOE-2023-005), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20810 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98443; File No. SR-ISE-2023-19]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 13 Related to PIM

September 20, 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 September 8, 2023, Nasdaq ISE, LLC (“ISE” or “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 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 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/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 Exchange proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions. Each change is described below.

Options 3, Section 7

Opening Only

The Exchange proposes to amend Options 3, Section 7(u), Opening Sweep³ and Supplementary Material .02(e) to Options 3, Section 7 related to Opening Only⁴ or “OPG” orders. The proposed rule text was adopted as part of a planned System migration.⁵

³ An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8(b)(1) and will be cancelled upon the open if not executed. See Options 3, Section 7(u).

⁴ An Opening Only (“OPG”) order is entered with a TIF of “OPG.” This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route. See Supplementary Material .02(e) to Options 3, Section 7.

⁵ See Securities Exchange Act Release No. 96821 (February 6, 2023), 88 FR 8950 (February 10, 2023)

Options 3, Section 7(t) currently provides that an Opening Sweep would not be subject to any protections listed in Options 3, Section 15, except Automated Quotation Adjustments in Options 3, Section 15. Supplementary Material .02(e) to Options 3, Section 7 currently provides that an OPG Order would not be subject to any protections listed in Options 3, Section 15, except Size Limitation. At this time, the Exchange proposes to amend the rule text to specify that an Opening Sweep and an OPG Order would be subject to the Market Wide Risk Protection in Options 3, Section 15.

The Market Wide Risk Protection in Options 3, Section 15(a)(1)(C) automatically removes Member orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Members to provide parameters for the order entry and execution rate protections. The Market Wide Risk Protection would apply to an Opening Sweep and an OPG Order because it captures the order entry and execution rate for both Opening Sweeps and OPG Orders that are entered in the Opening Process as described in Options 3, Section 8. The Exchange believes the availability of the Market Wide Risk Protection during the Opening Process would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to wither an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process, or the risk protection is optional. Finally, the Exchange also proposes a technical amendment to capitalize the word “orders” in Supplementary Material .02(e) to Options 3, Section 7.

Options 3, Sections 11 and 13

The Exchange proposes to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism. Currently, the last sentence in Options 3, Section 11(b)(4)(A) provides that a facilitation order will be cancelled at the end of an exposure period if an execution would take place at a price that is inferior to the best bid (offer) on ISE. The Exchange proposes to amend this sentence to state, the “Exchange best bid (offer)” and remove the phrase “on Nasdaq ISE.” Additionally, the Exchange

proposes to add the following rule text to the end of the sentence, “or if there is a Priority Customer order on the same side Exchange best bid (offer) at the same price as the facilitation price unless the Facilitation Order can execute at a price that is better than the same side Priority Customer Order.” Today, a facilitation order must execute at a price that is better than the same side BBO if there is a Priority Customer order on the same side. The proposed rule text is being amended to align to current System functionality which prevents a Facilitation Order from trading ahead of a Priority Customer Order. As such, a Priority Customer order on the same side of the offer must be considered when executing a Facilitation Order. The Exchange proposes to add similar language to the last sentence of Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism. The Exchange notes that these amendments do not amend the current System functionality.

The Exchange proposes to add a new Options 3, Section 11(b)(4)(iv) to describe the allocation percentage that an Electronic Access Member is able to obtain in the Facilitation Mechanism. Today, under the current System operation, the facilitating Electronic Access Member may not receive an allocation percentage, at the final price point, of more than 40% of the original size of the Facilitation Order with one or multiple competing quote(s), order(s), or Response(s), except for rounding,⁶ when competing quotes, orders, or Responses have contracts available for execution. Options 3, Section 11(b)(4)(ii) makes clear that the facilitating Electronic Access Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. The proposed rule text expressly notes that the allocation percentage will not be exceeded except for rounding purposes. This language represents current System functionality. The Exchange proposes to add similar language to Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the

Complex Price Improvement Mechanism to note the limitations with respect to allocations.

The Exchange proposes to amend Supplementary Material .04 to Options 3, Section 11 to replace the word “quotes” with “Responses” in the Split Price description. Orders and responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term “Response” pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and will only be considered up to the size of the order to be facilitated.

The Exchange proposes to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 11 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated. The Exchange does not allocate fractional contracts. This language represents the current System functionality. The Exchange proposes to add the same sentence within new Supplementary Material .10 to Options 3, Section 13 regarding a PIM. Phlx has similar language.⁷

The Exchange proposes to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within Nasdaq GEMX, LLC’s (“GEMX”) PIM, Nasdaq MRX, LLC’s (“MRX”) PIM, Nasdaq Phlx LLC’s (“Phlx”) PIXL and BX’s PRISM, without changing the substantive operations of these price improvement auctions. The Exchange believes that by utilizing similar language, Members will be able to compare ISE’s PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

ISE proposes to add “a price that is” to the end of Options 3, Section 13(b)(1) and add new subparagraphs (A) and (B) to distinguish opposite and same side checks. The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is \$0.01, the Crossing Transaction must be entered at a price that is, on the same side of the Agency Order equal or better than the NBBO and better than any Limit Order or quote on ISE’s order book. The Exchange believes that the addition of the NBBO

(SR-ISE-2023-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. (“Nasdaq”) Functionality) (“SR-ISE-2023-06”).

⁶ ISE’s System will round up to the nearest whole number during the allocation in the Facilitation Mechanism.

⁷ See Phlx Options 3, Section 13(b)(1)(D).

check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “ISE” and remove other extraneous words as the sentence has been rearranged.

Next, the Exchange proposes to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer similar to other Nasdaq affiliated markets to provide consistent formatting. While the entry checks for new Options 3, Section 13(b)(2) and (b)(3) will not differ, the Exchange believes that retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison. To that end, the Exchange proposes to amend Options 3, Section 13(b)(2) to format it similar to Options 3, Section 13(b)(1). The Exchange proposes to add “for the account of a Priority Customer” to (b)(2) to distinguish it from (b)(3) which addresses the account of a broker dealer or any other person or entity that is not a Priority Customer. Options 3, Section 13(b)(2)(A) will also add rule text to address the opposite side of the market, which is not explicitly noted. Proposed Options 3, Section 13(b)(2)(A) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the internal BBO and NBBO on the opposite side of the market from the Agency Order. Further, Options 3, Section 13(b)(2)(B) will explicitly note the entry check on the same side of the market and similar to Options 3, Section 13(b)(1) will include the NBBO check. Proposed Options 3, Section 13(b)(2)(B) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only on the same side of the market as the Agency Order, at a price that is at least \$0.01 better than any Limit Order or quote on the ISE order book and equal to or better than the NBBO.⁸ The

⁸ For example, if the market is 0.98 bid and 0.99 offer, a Priority Customer PIM Order to buy for less than 50 contracts must be stopped at 0.98 cents in

Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “ISE” and remove other extraneous words as the sentence has been rearranged.

As noted herein, proposed Options 3, Section 13(b)(3) will mirror Options 3, Section 13(b)(2) except that it will refer to the account of a broker dealer or any other person or entity that is not a Priority Customer. The Exchange also proposes to renumber the remainder of the paragraphs within Options 3, Section 13(b).

Finally, the Exchange proposes to add a new Options 3, Section 13(e)(5)(vii), similar to rule text in Phlx at Options 3, Section 13(b)(8) for Complex Orders. The current ISE Complex Price Improvement Mechanism rule text is silent as to same side execution price validations. The Exchange proposes to state,

[i]f the Complex PIM execution price would be the same or better than a Complex Order on the Complex Order Book on the same side of the market as the Agency Complex Order, for options classes assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price.

Today, if the Complex PIM execution is the same or better than the Complex Order resting on the Complex Order Book on the same side of the market as the Agency Complex Order, for options assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may execute at a price that is equal to the resting Complex Order's limit price. This proposed rule text would make clear the manner in which the System validates prices for Complex PIMs on the same side of the market.

Implementation

The Exchange proposes to amend the Opening Sweep and Opening Only rule text only, within Options 3, Section 7, with its planned migration to enhanced Nasdaq functionality. Similar to SR-ISE-2023-10,⁹ the Exchange intends to

this scenario to be accepted into a PIM Auction, provided there is no resting order or quote on the Exchange order book at 0.98 in which case the PIM Order would be rejected.

⁹ See Securities Exchange Act Release No. 97605 (May 26, 2023), 88 FR 36350 (June 2, 2023) (SR-ISE-2023-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality) (“SR-ISE-2023-10”).

begin implementation of the amendments to the Opening Sweep and Opening Only rule text within Options 3, Section 7 prior to December 20, 2024. The Exchange would commence its implementation with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates. The other rule amendments would be operative 30 days from the effective date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 7

Opening Only

The Exchange's proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders is consistent with the Act and the protection of investors and the general public because the Market Wide Risk Protection would capture the order entry and execution rate for those Opening Sweeps and OPG Orders entered in the Opening Process, which is described in Options 3, Section 8, and would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange is providing both order and quote risk protections in the Opening Process to allow Members to manage their risk. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to either an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process or the risk protection is optional.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism is consistent with the Act and the protection of investors and the general public because the System ensures that the facilitation order is at a price that is not inferior to the Exchange best bid (offer) or if there is a Priority Customer on the same side Exchange best bid (offer) at the same price as the facilitation price, otherwise

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

the order would be cancelled. This price check ensures that the auction order may not trade at or through the Priority Customer order on the same side. This language represents the current System functionality. Similar changes are proposed to Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism with respect to the contra-side. These amendments represent current System functionality and similarly ensure that the auction order may not trade at or through the Priority Customer order on the contra side. This is consistent with the treatment of Priority Customer in ISE's order book allocation, described in Options 3, Section 10, wherein Priority Customer interest is executed within PIM ahead of any other interest of Members.¹²

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism is consistent with the Act and the protection of investors and the general public by permitting rounding to occur as specified in the Exchange's rules. The proposal states how rounding interacts with the allocation percentages. The Exchange proposes to state that it will not permit an allocation percentage greater than the stated amounts in the auction rules, unless rounding is necessary. The proposed language represents the current System functionality.

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description is consistent with the Act and the protection of investors and the general public because orders and Responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term Response which pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and

will only be considered up to the size of the order to be facilitated.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that if an allocation would result in less than one contract, then one contract would be allocated is consistent with the Act and the protection of investors and the general public because one contract is the minimum unit in which an option may trade on ISE. This language represents the current System functionality. Phlx has similar language.¹³

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language, Members will be able to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(b)(1) to add new subparagraphs (A) and (B) to distinguish opposite and same side checks and add within the same side check a reference to the NBBO check, is consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

The Exchange's proposal to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer into two new paragraphs, a (b)(2) and a (b)(3), is consistent with the Act and the protection of investors and the general public because retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison.

The Exchange's proposal to add "for the account of a Priority Customer" to new subparagraph (b)(2) to explicitly address the opposite side of the market and also note the NBBO entry check on the same side of the market is consistent with the Act and the protection of

investors and the general public because the new format will provide the parameters for each check. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive. Mirroring the same language within Options 3, Section 13(b)(2)(B), except to note that it is for the account of a broker dealer or any other person or entity that is not a Priority Customer will allow Members to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex PIM Orders is consistent with the Act and the protection of investors and the general public because it ensures the Complex PIM would not execute at a price that trades at or through the Complex Order's limit price. Today, the rule text does not specify the price at which an Agency Complex Order may execute. The Exchange notes that there are no Priority Customer overlays in Options 3, Section 14(d)(2) and therefore, the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. Phlx has substantially similar rule text at Options 3, Section 13(b)(8).

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.

Options 3, Section 7

Opening Only

The Exchange's proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders does not impose an intra-market burden on competition because the Market Wide Risk Protection is available to all Members in the Opening Process. The Exchange's proposal to amend Opening Sweeps and OPG Orders does not impose an inter-market burden on competition because other options exchanges may similarly offer such risk protections on their opening order types.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order

¹² See also ISE Options 3, Section 13(d)(1), "At a given price, 'Priority Customer Interest' (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before 'non-Priority Customer Interest' (non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes)."

¹³ See Phlx Options 3, Section 13(b)(1)(D).

Mechanism to state that that the order must execute at a price that is better than the same side BBO if this is a Priority Customer on the same side does not impose an intra-market burden on competition because all auction orders in these aforementioned auction mechanisms would be handled in a uniform manner by the System such that those orders would not be permitted to trade at or through the Priority Customer order on the same side. The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism to make clear that that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an inter-market burden on competition because other options markets similarly have customer overlay priorities.

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an intra-market burden on competition because the Exchange's rules regarding rounding are applied in a uniform manner to all Members submitting an order into an auction mechanism. The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an inter-market burden on competition because other options exchanges similarly round in excess of allocation percentages such as BX.¹⁴

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an intra-market burden on competition because orders and responses in the market that receive the benefit of the facilitation price may receive executions

at Split Prices. This clarification to the rule text is intended to correct the current language. The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an inter-market burden on competition because this rule text change is specific to ISE's rule language.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an intra-market burden on competition because the System would uniformly allocate contracts with a minimum unit of one contract. The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an inter-market burden on competition because other options markets similarly specify a minimum unit of rounding such as Phlx.¹⁵

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an intra-market undue burden on competition because harmonizing the language will enable Members to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an inter-market undue burden on competition because other options markets have their own price improvement auctions and are free to

denote their entry checks in a similar fashion and have both same and opposite side entry checks which may differ from ISE's rule.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an intra-market undue burden on competition because the Exchange would uniformly apply the price check for the Agency Complex Orders such that the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an inter-market undue burden on competition because the price check is similar to price checks on other options markets such as Phlx.¹⁶

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 Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁶ See Phlx Options 3, Section 13(b)(5)(B)(vi).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 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.

¹⁴ See BX Options 3, Section 13(ii)(A)(1).

¹⁵ See Phlx Options 3, Section 13(b)(1)(D).

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-ISE-2023-19 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-ISE-2023-19. 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-ISE-2023-19 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20802 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98450; File No. SR-ISE-2023-08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

September 20, 2023.

I. Introduction

On February 23, 2023, Nasdaq ISE LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the pilot program to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index ("Nasdaq-100") and the Exchange's nonstandard expirations pilot program (collectively, the "Programs"). The proposed rule change was published for comment in the *Federal Register* on March 2, 2023.³ On April 7, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On May 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").⁶ On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96979 (February 24, 2023), 88 FR 13182 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97261, 88 FR 22509 (April 13, 2023). The Commission designated May 31, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange inserts two footnotes and amends a sentence in order to further clarify parts of the empirical analysis performed by the Exchange. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-ise-2023-08/srise202308.htm>.

Amendment No. 1 for notice and comment.⁷ On August 28, 2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The Commission did not receive any comment letters and is approving the proposed rule change, as modified by Amendment No. 1.

II. Background

When cash-settled⁹ index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).¹⁰ The Commission became concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.¹¹ These concerns were heightened during the "triple-witching" hour on the third Friday of March, June, September, and December when index options, index futures, and options on index futures expired concurrently.¹² Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.¹³

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations

⁷ See Securities Exchange Act Release No. 97626, 88 FR 37110 (June 6, 2023).

⁸ See Securities Exchange Act Release No. 98233, 88 FR 60516 (September 1, 2023). The Commission designated October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change.

⁹ The seller of a "cash-settled" index option pays out the cash value of the applicable index on expiration or exercise. A "physical delivery" option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Document>.

¹⁰ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated) ("C2 SPXPM Approval").

¹¹ See *id.*

¹² See *id.*

¹³ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) ("Pilot Memo") at 5, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Setled_Index_Option_Pilots.pdf (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, "Expiration day effects of index options and futures," Monograph Series in Finance and Economics, no. 3 (1986)).

of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission approved a proposed rule change by the Chicago Mercantile Exchange (“CME”) to provide for a.m. settlement¹⁴ for index futures, including futures on the S&P 500 Index.¹⁵ The Commission subsequently approved a proposed rule change by Cboe Options Exchange (“Cboe Options”) to list and trade a.m.-settled options on the S&P 500 Index.¹⁶ In 1992, the Commission approved Cboe Options’ proposal to transition all of its European-style cash-settled options on the S&P 500 Index to a.m. settlement.¹⁷ However, in 1993, the Commission approved a proposed rule change allowing Cboe Options to list p.m.-settled options on certain broad-based indexes, including the S&P 500, expiring at the end of each calendar quarter (since approved as permanent).¹⁸ Starting in 2006, the Commission approved a number of proposals, on a pilot basis, permitting Cboe Options to introduce other index options with p.m.-settlement. These include p.m.-settled index options expiring weekly (other than the third Friday) and at the end of each month,¹⁹ as well as p.m.-settled S&P 500 Index options and Mini-S&P 500 Index

options expiring on the third Friday of the month.²⁰

Subsequently, other exchanges, including ISE, sought to permit the listing and trading of p.m.-settled options on certain broad-based indices. In February 2018, the Commission approved ISE’s nonstandard expirations pilot program on a pilot basis (“Nonstandard Pilot”).²¹ In March 2018, the Commission approved ISE’s pilot to permit the listing and trading of options based on the Nasdaq 100 Reduced Value Index (“NQX” or “NQX options”) on a pilot basis (“NQX Pilot”).²² In the course of approving both Programs, the Commission reiterated its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option.²³ However, the Commission also recognized the potential impact was unclear.²⁴ The Commission approved the Programs on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.²⁵ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis for each pilot²⁶ and to make such data publicly available.²⁷ In

addition to the Exchange’s data and analysis, Cornerstone Research also conducted an analysis at the direction of Staff from the Commission’s Division of Economic and Risk Analysis. The analysis utilizes the level of expiring p.m.-settled index options open interest and the measures of volatility and price reversals for the corresponding index futures, the underlying cash index, and index component securities in the minutes leading up to and immediately following the market close to study the effects of pilot programs allowing p.m.-settled index options. The Pilot Memo is discussed in more detail below.

III. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to make permanent the Nonstandard Pilot and the NQX pilot. The Nonstandard Pilot permits the Exchange to open p.m.-settled options on broad-based indexes that expire (1) on the last day of the trading month (“EOM expirations”) and (2) on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration) and, with respect to options on the Nasdaq-100 (“NDX” or “NDX options”), any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). The NQX Pilot permits the listing of NQX options, which are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror those of the NDX options contract listed on the Exchange, except that NQX options are based on 1/5 of the value of the Nasdaq-100, and are p.m.-settled pursuant to Options 4A, section 12(a)(6) of the ISE Rules.

The Nonstandard Pilot was extended on multiple occasions, including recently, and is set to expire on November 6, 2023.²⁸ Similarly, the NQX Pilot was extended on multiple occasions and is set to expire on November 6, 2023.²⁹

The Exchange states it has provided pilot data to the Commission with respect to the Programs, pursuant to the Nonstandard Approval Order and the NQX Approval order.³⁰ The Exchange

its website data and analysis previously submitted to the Commission under the NQX Pilot and committing to make public any data or analyses submitted in the future).

²⁸ See Securities Exchange Act Release No. 97386 (April 26, 2023), 88 FR 27545, at 27546–27547 (May 2, 2023) (SR–ISE–2023–09) (“Programs Extension”).

²⁹ See *id.*

³⁰ See Notice, 88 FR at 13197. The Exchange has made public on its website data and analyses previously submitted to the Commission under the Programs. See <http://www.nasdaqtrader.com/Trader.aspx?id=currentregulatory>.

¹⁴ The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

¹⁵ See Proposed Amendments Relating to the Standard and Poor’s 500, the Standard and Poor’s 100 and the Standard Poor’s OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the CME). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (noting that the CME moved the S&P 500 futures contract’s settlement value to opening prices on the delivery date).

¹⁶ See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11).

¹⁷ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09). The Commission also approved proposals by other options markets to transfer most of their cash-settled index products to a.m. settlement. See, e.g., Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23475 (June 22, 1988) (SR–NYSE–87–11 and 88–04).

¹⁸ See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13). See also Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65); and 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR–CBOE–2009–029).

¹⁹ See Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR–CBOE–2015–106); and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR–CBOE–2016–046).

²⁰ See Securities Exchange Act Release Nos. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120); and 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055).

²¹ See Securities Exchange Act Release No. 92612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (SR–ISE–2017–111) (“Nonstandard Approval Order”). The Commission subsequently approved a proposed rule change to amend the Program to allow the Exchange to also list p.m.-settled Tuesday and Thursday expirations on the Nasdaq-100. See Securities Exchange Act Release No. 95393 (July 29, 2022), 87 FR 47807 (August 4, 2022) (SR–ISE–2022–13).

²² See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (“NQX Approval Order”).

²³ See Nonstandard Approval Order, 83 FR at 5472 and NQX Approval Order 83 FR at 12967. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801–02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); C2 SPXPM Approval, 76 FR at 55972–76; and 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on Cboe Options).

²⁴ See NQX Approval Order, 83 FR at 12967.

²⁵ See NQX Approval Order, 83 FR at 12967 and Nonstandard Approval Order, 83 FR at 5473.

²⁶ See NQX Approval Order, 83 FR at 12966–12967 and Nonstandard Approval Order, 83 FR at 5471–5472.

²⁷ See, e.g., Securities Exchange Act Release Nos. 85672 (April 17, 2019), 84 FR 16899, at 16899 (April 23, 2019) (SR–ISE–2019–11) (stating the Exchange will make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot); and 86071 (June 10, 2019) 84 FR 27822, at 27823 (June 14, 2019) (SR–ISE–2019–18) (stating the Exchange is making public on

also states it provides ongoing monthly data in addition to the data provided in the Notice.³¹ Now, the Exchange proposes to make the Programs permanent.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act,³³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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. In its proposal to make the Programs permanent, the Exchange addressed market capacity around the market close and provided an empirical assessment of the impact of its p.m.-settled index options on options market quality. Each of these elements is discussed in greater detail below. As stated above, no comments were received on the proposed rule change.

Market Impact Considerations

The Exchange's analysis presents data that the introduction of p.m.-settlement is correlated with an increase in options trading tied to the Nasdaq-100.³⁴ The data shows an increase in trading volume and notional open interest for NDX and NQX options during the sample period.³⁵

In addition to reviewing the data and analysis provided by the Exchange, the Commission reviewed the analysis in the Pilot Memo, which evaluates whether higher levels of expiring open interest in p.m.-settled index options results in increased volatility and price reversals around the close. The Pilot Memo shows that the market share for p.m.-settled options, in particular options on S&P 500 Index, has grown substantially since 2007.³⁶ The Pilot

Memo examines whether and to what extent expiring open interest in p.m.-settled index options is empirically related with the tendency of the corresponding index futures, the underlying index, or index components to experience increased transitory volatility and price reversals around the time of market close on expiration dates. The Pilot Memo concludes that, although expiring p.m.-settled index option open interest may have a statistically significant relationship with volatility and price reversals of the underlying index, index futures, and index component securities around the market close, the magnitude of the effect is economically very small.³⁷ For example, the largest settlement event that occurred during the time period studied in the Pilot Memo (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).³⁸

In order to analyze the effect of a very large increase in settlement volume for Nasdaq-100 p.m.-settled options contracts, the Exchange uses the estimated regression coefficients in the Pilot Memo to estimate the change in the volatility of index futures prices when settlement volume increased from the 25th percentile to the 75th percentile.³⁹ For both the S&P 500 Index and the Nasdaq-100, the Exchange estimates the relative impact would be small for both indexes.⁴⁰

The Exchange also provides additional analysis on market capacity around the market close.⁴¹ Specifically, the Exchange presents data that the closing auction volume on the equity market have become much larger than the opening auction, which may indicate that there is sufficient liquidity in closing auctions to absorb liquidity demand associated with p.m.-settlement of NDX and NQX options.⁴² In addition, the Exchange states that the liquidity available at or around the close would be able to mitigate any excess volatility

created by the options settlement at the market close.⁴³

Further, the Exchange represents that it has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them.⁴⁴

Market Quality Considerations

The Exchange also completed an analysis intended to evaluate whether the Programs impacted the quality of the NDX options market. Specifically, the Exchange presents findings on three market characteristics: trading volume, open interest, and spreads. The Exchange concludes that there is no evidence that NDX and NQX options contracts, which are p.m.-settled, would result in reduced trading activity or degradation in market quality of the a.m.-settled index options.⁴⁵ The Exchange notes within its analysis that it seems unlikely that the introduction of NQX option contracts had a significant impact on the market quality of the full-sized NDX option contracts.⁴⁶

Further, the Exchange observed a consistent decrease in relative quoted spread from 2017 to 2022 for NDX options.⁴⁷ When the Exchange compared the spread trend of NDX monthly contracts to that of QQQ monthly contracts, the Exchange states that the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.⁴⁸ The Exchange uses duration weighted relative quoted spread as a measure of the cost of trading and examines whether the introduction of p.m.-settled index options results in any deterioration of spreads for am-settled NDX options.⁴⁹ The Exchange finds a consistent decrease in the relative quoted spread is prevalent from 2017 to 2022 and no obvious change in the trend following the introduction of p.m.-settled index options.⁵⁰ The analysis also considered whether the move from a.m. settlement to p.m. settlement for Friday weekly expirations

³¹ See Programs Extension, 88 FR at 27546–27547.

³² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³³ 15 U.S.C. 78f(b)(5).

³⁴ See Notice, 88 FR at 13184.

³⁵ See *id.*

³⁶ See Pilot Memo at 2. The Pilot Memo also examined options on the Russell 2000 Index and

the Nasdaq-100. However, during the time period covered by the study (2007–2018), the markets for both a.m.- and p.m.-settled options on these indexes were very small compared to the size of that for S&P 500 Index options. In addition, because p.m.-settled NDX options were only introduced in 2018, the number of observations for NDX options was much smaller than for other indexes. See *id.* at 4.

³⁷ See *id.* at 3.

³⁸ See *id.*

³⁹ See Notice, 88 FR at 13195.

⁴⁰ See *id.*

⁴¹ See *id.* at 13195–13196.

⁴² See *id.* at 13196.

⁴³ See *id.*

⁴⁴ See Notice, 88 FR at 13197.

⁴⁵ See *id.* at 13184.

⁴⁶ The Exchange states that given that the size of the market (measured in volume) for NQX options volume is small compared to that of other p.m.-settled NDX options, the Exchange believes the introduction of NQX option contracts is unlikely to adversely impact the market quality of a.m.-settled NDX options. See Amendment No. 1, *supra* note 6.

⁴⁷ See Notice, 88 FR at 13191.

⁴⁸ See *id.* at 13192, 13197.

⁴⁹ See *id.* at 13190–13191.

⁵⁰ See *id.*

(other than third-Friday-of-the-month) led to changes in spreads for those contracts.⁵¹ The sample timeframe was from July 2017 through August 2018.⁵² The relative quoted spread decreased during first part of 2018 and increase in May and June 2018; however, it remained comparable to the 2017 average.⁵³ Overall, the Exchange observes no evidence of deterioration of spreads associated with the introduction of p.m.-settled NDX options.⁵⁴

The Commission believes that the evidence contained in the Exchange's filing, the Exchange's pilot data and reports, and the Pilot Memo analysis demonstrate that the Programs have benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for p.m.-settled options has grown in size over the course of the Programs, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality (as measured by relative quoted spreads) for an existing product when a new p.m.-settled expiration was introduced. Further, significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act⁵⁵ and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵⁶ that the proposed rule change (SR-ISE-2023-08), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-20808 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98444; File No. SR-GEMX-2023-11]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 13 Related to PIM

September 20, 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 September 8, 2023, Nasdaq GEMX, LLC ("GEMX" or "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 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 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions.

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 Exchange proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions. Each change is described below.

Options 3, Section 7

Opening Only

The Exchange proposes to amend Options 3, Section 7(t), Opening Sweep³ and Supplementary Material .02(e) to Options 3, Section 7 related to Opening Only⁴ or "OPG" orders. The proposed rule text was adopted as part of a planned System migration.⁵ Options 3, Section 7(t) currently provides that an Opening Sweep would not be subject to any protections listed in Options 3, Section 15, except Automated Quotation Adjustments in Options 3, Section 15. Supplementary Material .02(e) to Options 3, Section 7 currently provides that an OPG Order would not be subject to any protections listed in Options 3, Section 15, except Size Limitation. At this time, the Exchange proposes to amend the rule text to specify that an Opening Sweep and an OPG Order would be subject to the Market Wide Risk Protection in Options 3, Section 15.

The Market Wide Risk Protection in Options 3, Section 15(a)(1)(C)

³ An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8(b)(1) and will be cancelled upon the open if not executed. See Options 3, Section 7(t).

⁴ An Opening Only ("OPG") order is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route. See Supplementary Material .02(e) to Options 3, Section 7.

⁵ See Securities Exchange Act Release No. 96817 (February 6, 2023), 88 FR 8922 (February 10, 2023) (SR-GEMX-2023-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) ("SR-GEMX-2023-02").

⁵¹ See *id.* at 13194.

⁵² See *id.* The Exchange used a regression analysis to test whether the spread of NDX contracts changed after the introduction of p.m.-settled index options. See *id.* The regression model is meant to study the effect of the introduction of Friday p.m.-settled NDX options expirations (on all but the third Friday of the month) that occurred in January 2018. See Amendment No. 1, *supra* note 6.

⁵³ See Notice, 88 FR at 13194.

⁵⁴ See *id.*

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

automatically removes Member orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Members to provide parameters for the order entry and execution rate protections. The Market Wide Risk Protection would apply to an Opening Sweep and an OPG Order because it captures the order entry and execution rate for both Opening Sweeps and OPG Orders that are entered in the Opening Process as described in Options 3, Section 8. The Exchange believes the availability of the Market Wide Risk Protection during the Opening Process would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to either an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process, or the risk protection is optional. Finally, the Exchange also proposes a technical amendment to capitalize the word “orders” in Supplementary Material .02(e) to Options 3, Section 7.

Options 3, Sections 11 and 13

The Exchange proposes to amend Options 3, Section 11(b)(4)(i) related to the Facilitation Mechanism. Currently, the last sentence in Options 3, Section 11(b)(4)(i) provides that a facilitation order will be cancelled at the end of an exposure period if an execution would take place at a price that is inferior to the best bid (offer) on GEMX. The Exchange proposes to amend this sentence to state, the “Exchange best bid (offer)” and remove the phrase “on Nasdaq GEMX.” Additionally, the Exchange proposes to add the following rule text to the end of the sentence, “or if there is a Priority Customer order on the same side Exchange best bid (offer) at the same price as the facilitation price unless the Facilitation Order can execute at a price that is better than the same side Priority Customer Order.” Today, a facilitation order must execute at a price that is better than the same side BBO if there is a Priority Customer order on the same side. The proposed rule text is being amended to align to current System functionality which prevents a Facilitation Order from trading ahead of a Priority Customer Order. As such, a Priority Customer order on the same side of the offer must be considered when executing a Facilitation Order. The Exchange proposes to add similar language to the last sentence of Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism. The Exchange notes

that these amendments do not amend the current System functionality.

The Exchange proposes to add a new Options 3, Section 11(b)(4)(iv) to describe the allocation percentage that an Electronic Access Member is able to obtain in the Facilitation Mechanism. Today, under the current System operation, the facilitating Electronic Access Member may not receive an allocation percentage, at the final price point, of more than 40% of the original size of the Facilitation Order with one or multiple competing quote(s), order(s), or Response(s), except for rounding,⁶ when competing quotes, orders, or Responses have contracts available for execution. Options 3, Section 11(b)(4)(ii) makes clear that the facilitating Electronic Access Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. The proposed rule text expressly notes that the allocation percentage will not be exceeded except for rounding purposes. This language represents current System functionality. The Exchange proposes to add similar language to Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions to note the limitations with respect to allocations.

The Exchange proposes to amend Supplementary Material .04 to Options 3, Section 11 to replace the word “quotes” with “Responses” in the Split Price description. Orders and responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term “Response” which pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and will only be considered up to the size of the order to be facilitated.

The Exchange proposes to add a new Supplementary Material .08 to Options 3, Section 11 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated. The Exchange does not allocate fractional contracts. This language represents the current System functionality. The Exchange proposes to add the same sentence within new Supplementary Material .09 to Options

⁶ GEMX’s System will round up to the nearest whole number during allocation in the Facilitation Mechanism.

3, Section 13 regarding a PIM. Phlx has similar language.⁷

The Exchange proposes to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within Nasdaq ISE, LLC’s (“ISE”) PIM, Nasdaq MRX, LLC’s (“MRX”) PIM, Nasdaq Phlx LLC’s (“Phlx”) PIXL and BX’s PRISM, without changing the substantive operations of these price improvement auctions. The Exchange believes that by utilizing similar language, Members will be able to compare GEMX’s PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

GEMX proposes to add “a price that is” to the end of Options 3, Section 13(b)(1) and add new subparagraphs (A) and (B) to distinguish opposite and same side checks. The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is \$0.01, the Crossing Transaction must be entered at a price that is, on the same side of the Agency Order equal or better than the NBBO and better than any Limit Order or quote on GEMX’s order book. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “GEMX” and remove other extraneous words as the sentence has been rearranged.

Next, the Exchange proposes to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer similar to other Nasdaq affiliated markets to provide consistent formatting. While the entry checks for new Options 3, Section 13(b)(2) and (b)(3) will not differ, the Exchange believes that retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison. To that end, the Exchange proposes to amend Options 3, Section 13(b)(2) to format it similar to Options 3, Section 13(b)(1). The Exchange proposes to add “for the account of a Priority Customer” to (b)(2) to distinguish it from (b)(3) which addresses the account of a broker dealer

⁷ See Phlx Options 3, Section 13(b)(1)(D).

or any other person or entity that is not a Priority Customer. Options 3, Section 13(b)(2)(A) will also add rule text to address the opposite side of the market, which is not explicitly noted. Proposed Options 3, Section 13(b)(2)(A) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the internal BBO and NBBO on the opposite side of the market from the Agency Order. Further, Options 3, Section 13(b)(2)(B) will explicitly note the entry check on the same side of the market and similar to Options 3, Section 13(b)(1) will include the NBBO check. Proposed Options 3, Section 13(b)(2)(B) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only on the same side of the market as the Agency Order, at a price that is at least \$0.01 better than any Limit Order or quote on the GEMX order book and equal to or better than the NBBO.⁸ The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “GEMX” and remove other extraneous words as the sentence has been rearranged.

As noted herein, proposed Options 3, Section 13(b)(3) will mirror Options 3, Section 13(b)(2) except that it will refer to the account of a broker dealer or any other person or entity that is not a Priority Customer. The Exchange also proposes to renumber the remainder of the paragraphs within Options 3, Section 13(b).

Implementation

The Exchange proposes to amend the Opening Sweep and Opening Only rule text only, within Options 3, Section 7, with its planned migration to enhanced Nasdaq functionality. Similar to SR–

GEMX–2023–04,⁹ the Exchange intends to begin implementation of the amendments to the Opening Sweep and Opening Only rule text within Options 3, Section 7 prior to December 29, 2023. The Exchange would commence its implementation with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates. The other rule amendments would be operative 30 days from the effective date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹⁰ in general, and furthers the objectives of section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 3, Section 7

Opening Only

The Exchange’s proposal to amend Options 3, Section 7(t), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders is consistent with the Act and the protection of investors and the general public because the Market Wide Risk Protection would capture the order entry and execution rate for those Opening Sweeps and OPG Orders entered in the Opening Process, which is described in Options 3, Section 8, and would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange is providing both order and quote risk protections in the Opening Process to allow Members to manage their risk. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to either an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process or the risk protection is optional.

Options 3, Sections 11 and 13

The Exchange’s proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism is consistent with the Act and the protection of investors and the general public because

the System ensures that the facilitation order is at a price that is not inferior to the Exchange best bid (offer) or if there is a Priority Customer on the same side Exchange best bid (offer) at the same price as the facilitation price, otherwise the order would be cancelled. This price check ensures that the auction order may not trade at or through the Priority Customer order on the same side. This language represents the current System functionality. Similar changes are proposed to Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism with respect to the contra-side. These amendments represent current System functionality and similarly ensure that the auction order may not trade at or through the Priority Customer order on the contra side. This is consistent with the treatment of Priority Customer in GEMX’s order book allocation, described in Options 3, Section 10, wherein Priority Customer interest is executed within PIM ahead of any other interest of Members.¹²

The Exchange’s proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism and Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions is consistent with the Act and the protection of investors and the general public by permitting rounding to occur as specified in the Exchange’s rules. The proposal states how rounding interacts with the allocation percentages. The Exchange proposes to state that it will not permit an allocation percentage greater than the stated amounts in the auction rules, unless rounding is necessary. This proposed rule text represents the current System functionality.

The Exchange’s proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word “quotes” with “Responses” in the Split Price description is consistent with the Act and the protection of investors and the general public because orders and Responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term Response which pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and

⁸ For example, if the market is 0.98 bid and 0.99 offer, a Priority Customer PIM Order to buy for less than 50 contracts must be stopped at 0.98 cents in this scenario to be accepted into a PIM Auction, provided there is no resting order or quote on the Exchange order book at 0.98 in which case the PIM Order would be rejected.

⁹ See Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR–GEMX–2023–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality) (“SR–GEMX–2023–04”).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See also GEMX Options 3, Section 13(d)(1), “At a given price, ‘Priority Customer Interest’ (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before ‘non-Priority Customer Interest’ (non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes).”

will only be considered up to the size of the order to be facilitated.

The Exchange's proposal to add a new Supplementary Material .08 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 13 to provide that if an allocation would result in less than one contract, then one contract would be allocated is consistent with the Act and the protection of investors and the general public because one contract is the minimum unit in which an option may trade on GEMX. This language represents the current System functionality. Phlx has similar language.¹³

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within ISE's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language, Members will be able to compare GEMX PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(b)(1) to add new subparagraphs (A) and (B) to distinguish opposite and same side checks and add within the same side check a reference to the NBBO check, is consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

The Exchange's proposal to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer into two new paragraphs, a (b)(2) and a (b)(3), is consistent with the Act and the protection of investors and the general public because retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison.

The Exchange's proposal to add "for the account of a Priority Customer" to new subparagraph (b)(2) to explicitly address the opposite side of the market and also note the NBBO entry check on the same side of the market is consistent

with the Act and the protection of investors and the general public because the new format will provide the parameters for each check. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive. Mirroring the same language within Options 3, Section 13(b)(2)(B), except to note that it is for the account of a broker dealer or any other person or entity that is not a Priority Customer will allow Members to compare GEMX's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

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.

Options 3, Section 7

Opening Only

The Exchange's proposal to amend Options 3, Section 7(t), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders does not impose an intra-market burden on competition because the Market Wide Risk Protection is available to all Members in the Opening Process. The Exchange's proposal to amend Opening Sweeps and OPG Orders does not impose an inter-market burden on competition because other options exchanges may similarly offer such risk protections on their opening order types.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism and Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism to state that that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an intra-market burden on competition because all auction orders in these aforementioned auction mechanisms would be handled in a uniform manner by the System such that those orders would not be permitted to trade at or through the Priority Customer order on the same side. The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism and Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism to state that that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an inter-market

burden on competition because other options markets similarly have customer order priorities.

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism and Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions does not impose an intra-market burden on competition because the Exchange's rules regarding rounding are applied in a uniform manner to all Members submitting an order into an auction mechanism. The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism and Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions does not impose an inter-market burden on competition because other options exchanges similarly round in excess of allocation percentages such as BX.¹⁴

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an intra-market burden on competition because orders and responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This clarification to the rule text is intended to correct the current language. The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an inter-market burden on competition because this rule text change is specific to GEMX's rule language.

The Exchange's proposal to add a new Supplementary Material .08 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an intra-market burden on competition because the System would uniformly allocate contracts with a minimum unit of one contract. The Exchange's proposal to add a new Supplementary Material .08 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an inter-market burden on competition because other options

¹³ See Phlx Options 3, Section 13(b)(1)(D).

¹⁴ See BX Options 3, Section 13(ii)(A)(1).

markets similarly specify a minimum unit of rounding such as Phlx.¹⁵

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within ISE's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an intra-market undue burden on competition because harmonizing the language will enable Members to compare GEMX's PIM entry checks with similar mechanisms on Nasdaq affiliated markets. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within ISE's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an inter-market undue burden on competition because other options markets have their own price improvement auctions and are free to denote their entry checks in a similar fashion and have both same and opposite side entry checks which may differ from GEMX's rule.

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 Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2023-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-GEMX-2023-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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

change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2023-11 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-20803 Filed 9-25-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18187 and #18188; GEORGIA Disaster Number GA-00162]

Administrative Declaration of a Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 09/20/2023.

Incident: Severe Storms and Flooding.
Incident Period: 08/29/2023.

DATES: Issued on 09/20/2023.

Physical Loan Application Deadline Date: 11/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gordon.
Contiguous Counties:

¹⁸ 17 CFR 200.30-3(a)(12).

¹⁵ See Phlx Options 3, Section 13(b)(1)(D).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 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

Georgia: Bartow, Cherokee, Floyd, Gilmer, Murray, Pickens, Walker, Whitfield.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18187 6 and for economic injury is 18188 0.

The State which received an EIDL Declaration # is Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-20836 Filed 9-25-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18189 and #18190; MASSACHUSETTS Disaster Number MA-00090]

Administrative Declaration of a Disaster for the Commonwealth of Massachusetts

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 09/20/2023.

Incident: Severe Storms and Flooding.
Incident Period: 08/08/2023.

DATES: Issued on 09/20/2023.

Physical Loan Application Deadline Date: 11/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Essex.

Contiguous Counties:

Massachusetts: Middlesex, Suffolk.

New Hampshire: Hillsborough,

Rockingham.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18189 6 and for economic injury is 18190 0.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-20837 Filed 9-25-23; 8:45 am]

BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub-No. 3)]

Renewal of Rail Energy Transportation Advisory Committee

AGENCY: Surface Transportation Board.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that the Surface Transportation Board (Board) intends to renew the charter of the Rail Energy Transportation Advisory Committee (RETAC).

ADDRESSES: A copy of the charter is available on the Board's website at <https://www.stb.gov/resources/stakeholder-committees/retac/>.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally, Designated Federal Officer, at (202) 245-0312. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: RETAC was established by the Board on September 24, 2007, to provide advice and guidance to the Board, on a continuing basis, and to provide a forum for the discussion of emerging issues and concerns regarding the transportation by rail of energy resources, including, but not necessarily limited to, coal and biofuels (such as ethanol), and petroleum. RETAC functions solely as an advisory body and complies with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and its implementing regulations.

RETAC consists of approximately 27 voting members, excluding governmental representatives. The membership embraces a balanced representation of individuals experienced in issues affecting the transportation of energy resources, including no fewer than: 4 representatives from the Class I railroads; 3 representatives from Class II and III railroads; 3 representatives from coal producers; 5 representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); 4 representatives from biofuel feedstock growers or providers and biofuel refiners, processors, and distributors; 2 representatives from private car owners, car lessors, or car manufacturers; 1 representative from the petroleum shipping industry; 2 representatives from renewable energy sources; and 1 representative from a labor organization. The Committee may also include up to two members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. All voting members of the Committee serve in a representative capacity on behalf of their respective industry or stakeholder groups. The members of the Board are *ex officio* (non-voting) members of RETAC. Representatives from the U.S.

Departments of Agriculture, Energy, and Transportation, and the Federal Energy Regulatory Commission may be invited to serve on the Committee in an advisory capacity as *ex officio* (non-voting) members. Non-voting members of RETAC may consist of regular government employees and, in some circumstances, special government employees.

RETAC meets at least twice a year, and meetings are open to the public, consistent with the Government in the Sunshine Act, Public Law 94-409 (1976).

Further information about RETAC is available on the Board's website (<https://www.stb.gov/resources/stakeholder-committees/retac/>) and at the General Services Administration's FACA database (<https://facadatabase.gov/>).

Decided: September 20, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2023-20764 Filed 9-25-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 519 (Sub-No. 5)]

Renewal of National Grain Car Council

AGENCY: Surface Transportation Board.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that the Surface Transportation Board (Board) intends to renew the charter of the National Grain Car Council (NGCC).

ADDRESSES: A copy of the charter will be available on the Board's website at <https://www.stb.gov/resources/stakeholder-committees/grain-car-council/>.

FOR FURTHER INFORMATION CONTACT:

Alan Cassidy, Designated Federal Officer, at (202) 245-0308. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: The NGCC functions as a continuing working group to facilitate private-sector solutions and recommendations to the Board on matters affecting grain transportation. The NGCC functions solely as an advisory body and complies with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and its implementing regulations.

The NGCC consists of approximately 40 voting members, excluding governmental representatives. The membership comprises a balanced representation of individuals knowledgeable in the transportation of grain, including no fewer than 12 members from the Class I railroads (one marketing and one car management representative from each Class I), seven representatives from Class II and III carriers, 14 representatives from grain shippers and receivers, and seven representatives from private car owners and car manufacturers. All voting members of NGCC serve on the Council in a representative capacity on behalf of their respective industry or stakeholder group. The members of the Board are *ex officio* (non-voting) members of the NGCC, and the Vice Chair of the Board is designated as Co-Chair of the NGCC. Representatives from the U.S. Departments of Agriculture and Transportation may be invited to serve on the Council in an advisory capacity as *ex officio* (non-voting) members. Non-voting members of NGCC may consist of regular government employees, and, in some circumstances, special government employees.

The NGCC meets at least annually, and meetings are open to the public, consistent with the Government in the Sunshine Act, Public Law 94-409 (1976).

Further information about the NGCC is available on the Board's website (<https://www.stb.gov/resources/stakeholder-committees/grain-car-council/>) and at the General Services Administration's FACA database (<https://facadatabase.gov/>).

Decided: September 20, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2023-20785 Filed 9-25-23; 8:45 am]

BILLING CODE 4915-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 14, 2023 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 14, 2023, in Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: September 14, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238-0423, ext. 1312, fax: (717) 238-2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address. See also the Commission website at www.srbc.gov.

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also acted upon at the business meeting: (1) adoption of the budget for FY2025; (2) adoption of member allocations for FY2025; (3) approval of three grant agreements and one grant amendment; (4) adoption of a resolution on climate change; (5) adoption of a resolution regarding Artesian Water Maryland, Inc; and (6) acceptance a compliance settlement agreement.

Project Applications Approved

1. *Project Sponsor and Facility:* Bent Creek Country Club, Manheim Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawal of up to 0.464 mgd (30-day average) from Well 1 (600 Foot Well) and consumptive use of up to 0.464 mgd (peak day) (Docket No. 19920704).

2. *Project Sponsor and Facility:* B.K.V. Operating, L.L.C. (East Branch Wyalusing Creek), Jessup Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20180902).

3. *Project Sponsor and Facility:* Coterra Energy Inc. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20180903).

4. *Project Sponsor and Facility:* Dillsburg Area Authority, Carroll Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.460 mgd (30-day average) from Well 7 (Docket No. 20070907).

5. *Project Sponsor and Facility:* Eagle Lake Community Association, Covington Township, Lackawanna County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.233 mgd from Well 1, 0.315 mgd from Well 2, and 0.104 mgd from Well 3.

6. *Project Sponsor and Facility:* East Berlin Area Joint Authority, Hamilton Township, Adams County, Pa.

Application for renewal of groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 6 (Docket No. 20080950).

7. *Project Sponsor and Facility:* East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 14 (Docket No. 19981202).

8. *Project Sponsor and Facility:* EQT ARO LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20180901).

9. *Project Sponsor and Facility:* Indian Hills Golf and Tennis Club, Shamokin Township, Northumberland County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 19980504).

10. *Project Sponsor and Facility:* Inflection Energy (P.A.) L.L.C. (Loyalsock Creek), Upper Fairfield Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.700 mgd (peak day) (Docket No. 20221214).

11. *Project Sponsor and Facility:* Montgomery Water Authority, Clinton Township, Lycoming County, Pa. Modification to increase groundwater withdrawal (30-day average) from Well 3 by an additional 0.098 mgd for a total groundwater withdrawal of up to 0.318 mgd and increase the total system withdrawal limit (30-day average) from 0.492 mgd to 0.730 mgd from Wells 1, 3, and 4 (Docket No. 20210304).

12. *Project Sponsor and Facility:* Repsol Oil & Gas U.S.A., L.L.C. (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20180909).

13. *Project Sponsor and Facility:* Repsol Oil & Gas U.S.A., L.L.C. (Wappasening Creek), Windham Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20180910).

14. *Project Sponsor and Facility:* Seneca Resources Company, L.L.C. (Crooked Creek), Middlebury Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

15. *Project Sponsor:* South Slope Development Corporation. Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, N.Y. Applications for renewal of surface water withdrawal of up to 0.999 mgd (30-day average) from an unnamed tributary to Crooked Lake, consumptive

use of up to 0.249 mgd (30-day average), and groundwater withdrawal of up to 0.960 mgd (30-day average) from Well MW-3 (Docket No. 20070901).

16. *Project Sponsor and Facility:* S.T.L. Resources, L.L.C. (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

17. *Project Sponsor:* T & C Mobile Home & Construction Services, L.L.C. Project Facility: Glezen Mine, Town of Lisle, Broome County, N.Y. Application for consumptive use of up to 0.099 mgd (30-day average).

18. *Project Sponsor and Facility:* Village of Hamilton, Town of Hamilton, Madison County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 1.730 mgd from Payne Brook Well 1 and 1.500 mgd from Payne Brook Well 2 (Docket Nos. 19871101 and 19970706).

19. *Project Sponsor and Facility:* Village of Sidney, Town of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2-88.

Projects Tabled

1. *Project Sponsor:* Borough of Middletown. Project Facility: Middletown Water System, Middletown Borough, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 1.070 mgd (30-day average) from Well 6 (Docket No. 19970702)

2. *Project Sponsor:* Lucky Bear, L.L.C. Project Facility: Liberty Forge Golf Course (Yellow Breeches Creek), Lower and Upper Allen Townships, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.432 mgd (peak day) and consumptive use of up to 0.375 mgd (peak day) (Docket No. 19980906).

3. *Project Sponsor and Facility:* Nicholas Meat, L.L.C., Greene Township, Clinton County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.288 mgd from Well WS-1, 0.173 mgd from Well WS-3 and 0.144 mgd from Well WS-4.

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 21, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023-20839 Filed 9-25-23; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2019-0369]

Agency Information Collection

Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Human Space Flight Requirements for Crew/Space Flight Participants (Correction)

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 3, 2023. The collection involves information demonstrating that a launch or reentry operation involving human participants will meet the risk criteria and requirement to ensure public safety.

DATES: Written comments should be submitted by October 26, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: Charles.huet@faa.gov; phone: 202-267-7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-0720.

Title: Human Space Flight Requirements for Crew/Space Flight Participants.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 3, 2023 (88 FR 7509). There were no comments. In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA established requirements for human space flight and space flight participants required by the Commercial Launch Amendment of 2004. The information collected is used by the FAA to ensure human space flight requirements compliance by a licensee or permittee with crew or a space flight participant on board a licensed or permitted vehicle.

Respondents: All commercial space entities that propose to conduct a launch or reentry with flight crew or space flight participants on board must comply with this collection.

Frequency: On occasion.

Estimated Average Burden per

Response: 4 hours.

Estimated Total Annual Burden: 808 hours.

Issued in Washington, DC.

James A. Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2023-20834 Filed 9-25-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2023-0030]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 27, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0030 by any of the following methods:

Website: For access to the docket to read background documents or

comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Janelle Hinton, (202) 366-1604/janelle.hinton@dot.gov; Martha Kenley, (202) 604-6979/martha.kenley@dot.gov, Department of Transportation, Federal Highway Administration, Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Disadvantaged Business Enterprise Supportive Services (DBE/SS).

Background: The DBE/SS regulations (23 CFR 230.204(c)) require State DOT recipients to provide a detailed SOW outlining the proposed services and budget, approximated, based on the provided estimated funding allocation. State DOTs must submit a SOW that conforms to the purpose of the program, regulatory requirements, and federal cost principles to be eligible for funding. State DOTs send their proposed SOWs to the respective FHWA Division Office for review and approval, and the Division Offices sends the SOWs to HCR for concurrence and obtaining approvals necessary for allocating funds. While HCR has created guidance for State DOTs to follow in creating their SOWs, currently are submitted in paper form and the contents and size of the submissions vary. Providing State DOTs with a SOW template available through the Civil Rights Connect System will streamline the SOW creation, submission, review, and approval process.

The DBE/SS regulations (23 CFR 230.204(h)) require State DOT recipients to provide reports to FHWA as a condition of receiving federal funding. Although the regulations require reporting, there is no prescribed format for reporting this information to FHWA. Thus, FHWA receives varied reports that often lack the critical information necessary to evaluate whether the metrics identified in the State DOT's

Statements of Work have been met, and the number and demographic breakdown of DBEs that have participated in the program. Without this data provided in a manner that can easily be converted into national reports, FHWA is unable provide meaningful stewardship and oversight or to measure the effectiveness of DBE/SS Programs nationally. The national picture created by this report will enable HCR to indicate notable implementation efforts and improve its deployment of technical assistance to FHWA divisions offices. Also, standardized data will improve FHWA's ability to meaningfully respond to stakeholder inquiries, including Congress, regarding program accomplishments. Further, with standardized data of program results, FHWA can better support requests for additional funding.

The information required to populate the DBE/SS SOW template is based on existing requirements found in 23 CFR 230, Subpart C; therefore, State DOTs should have information to populate the SOW readily available. The information will merely be entered in an electronic fillable form as opposed to submitting a paper copy. The electronic system will also directly pre-populate the State's Annual Accomplishment Report with the metrics identified in the State's SOW. The information FHWA proposes to collect in its DBE/SS Accomplishment Report is based on existing reporting requirements found in 23 CFR 230, Subpart B and the State DOT's individual detailed statement of work; therefore, State DOTs should have this information readily available. In addition, the fillable format will streamline the State's reporting process by eliminating the States' need to duplicate language from the SOW into the Annual Report.

While the requirements will not change, use of the SOW template and Accomplishment Report form will benefit State DOTs and FHWA by making the submissions more uniform in size and content, streamlining the submission and review process, and pair the performance metrics more easily with their accomplishments. By providing the SOW template along with this reporting format, FHWA aims to improve its stewardship and oversight of the DBE/SS Program, while ensuring State DOTs are effectively administering these discretionary grants for the benefit of DBEs.

Respondents: State departments of transportation agencies responsible for submitting DBE Statement of Work for designing and maintaining highway bridges.

Frequency: Every year by July 31st.
Estimated Average Burden per Response: The estimated number of hours for each of the 52 recipients to compile and submit the requested data is estimated to be no more than four employee hours annually.

Estimated Total Annual Burden Hours: The estimated total annual burden for 53 recipients is 212 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA’s performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB’s clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 20, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–20769 Filed 9–25–23; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1065, 1066, 1120, 1120-C, 1120-F, 1120-H, 1120-ND, 1120-S, 1120-SF, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, 1120-RIC, 1120-POL, and Related Attachments

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 forms used by business entity taxpayers. (See Appendix-A of this notice for a list of forms, schedules, and related attachments).

DATES: Written comments should be received on or before November 27, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB Control No. 1545–0123 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at (202)-317–5744, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov*.

SUPPLEMENTARY INFORMATION: Today, over 90 percent of all business entity tax returns are prepared using software by the taxpayer or with preparer assistance.

These are forms used by business taxpayers. These include Forms 1065, 1066, 1120, 1120-C, 1120-F, 1120-H, 1120-ND, 1120-S, 1120-SF, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, 1120-RIC, 1120-POL, and related forms and schedules that business entity taxpayers attach to their tax returns (see Appendix A to this notice). In addition, there are numerous OMB numbers that report burden already included in this OMB number. In order to eliminate this duplicative burden reporting, multiple OMB numbers are being obsoleted. See Appendix B in this notice for the list of the obsoleted OMB numbers.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. 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.

Proposed PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120-C, 1120-F, 1120-H, 1120-ND, 1120-S, 1120-SF, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, 1120-RIC, 1120-POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There have been additions and removals of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release of the 30-day comment notice from Treasury. This approval package is being submitted for renewal purposes.

Type of Review: Revision of currently approved collections.

Affected Public: Corporations, Partnerships and Pass-Through Entities.

Preliminary Estimated Number of Respondents: 12,736,700.

Preliminary Total Estimated Time (Hours): 970,000,000.

Preliminary Estimated Time per Respondent (Hours): 76.16.

Preliminary Total Monetized Time: \$57,735,000,000.

Preliminary Total Estimated Out-of-Pocket Costs: \$60,613,000,000.

Preliminary Total Monetized Burden: \$114,348,000.

Note: Total Monetized Burden = Total Out-of-Pocket Costs + Total Annual Monetized Time.

Note: Amounts below are estimates for Fiscal Year (FY) 2024. 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.

FISCAL YEAR 2023 ICB ESTIMATES FOR FORM 1120, 1120S AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES

	FY 24		FY 23
Number of Taxpayers	12,736,700	236,700	12,500,000

FISCAL YEAR 2023 ICB ESTIMATES FOR FORM 1120, 1120S AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES—Continued

	FY 24		FY 23
Burden in Hours	970,000,000	18,000,000	952,000,000
Burden in Dollars	60,613,000,000	1,126,000,000	59,487,000,000
Monetized Total Burden	114,348,000,000	2,125,000,000	112,223,000,000

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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: September 20, 2023.

Molly J. Stasko,
Senior Tax Analyst.

Appendix A Business Forms 2023

Product	Title
* Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
* Form 1042 (SCH Q)	Schedule Q (Form 1042).
* Form 1042-S	Foreign Person’s U.S. Source Income Subject to Withholding.
* Form 1042-T	Annual Summary and Transmittal of Forms 1042-S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B-1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B-2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M-3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.
Form 1065 (SCH K-1)	Partner’s Share of Income, Deductions, Credits, etc.
Form 1065 (SCH K-2)	Partner’s Distributive Share Items-International.
Form 1065 (SCH K-3)	Partner’s Share of Income, Deductions, Credits, etc.—International.
Form 1065 (SCH M-3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit-Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1118 (SCH L)	Foreign Tax Redeterminations.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M-3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation’s Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M-3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More.
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120-C	U.S. Income Tax Return for Cooperative Associations.
Form 1120-F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120-F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861-8.
Form 1120-F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882-5.
Form 1120-F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120-F (SCH M-3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of \$10 Million or More.
Form 1120-F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120-F (SCH Q)	Tax Liability of Qualified Derivatives Dealer (QDD).
Form 1120-F (SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.
Form 1120-F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120-FSC	U.S. Income Tax Return of a Foreign Sales Corporation.
Form 1120-FSC (SCH P)	Transfer Price or Commission.

Product	Title
Form 1120-H	U.S. Income Tax Return for Homeowners Associations.
Form 1120-IC-DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120-IC-DISC (SCH K).	Shareholder's Statement of IC-DISC Distributions.
Form 1120-IC-DISC (SCH P).	Intercompany Transfer Price or Commission.
Form 1120-IC-DISC (SCH Q).	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120-L	U.S. Life Insurance Company Income Tax Return.
Form 1120-L (SCH M-3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of \$10 Million or More.
* Form 1120-ND	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120-PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120-PC (SCH M-3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of \$10 Million or More.
Form 1120-POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120-REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120-RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120-S	U.S. Income Tax Return for an S Corporation.
Form 1120-S (SCH B-1)	Information on Certain Shareholders of an S Corporation.
Form 1120-S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120-S (SCH K-1)	Shareholder's Share of Income, Deductions, Credits, etc.
Form 1120-S (SCH K-2)	Shareholder's Pro Rata Share Items-International.
Form 1120-S (SCH K-3)	Shareholder's Share of Income, deductions, Credits, etc.—International.
Form 1120-S (SCH M-3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More.
Form 1120-SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120-W	Estimated Tax for Corporations.
Form 1120-X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.
Form 1125-A	Cost of Goods Sold.
Form 1125-E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
* Form 2848	Power of Attorney and Declaration of Representative.
* Form 3115	Application for Change in Accounting Method.
* Form 3468	Investment Credit.
* Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
* Form 3520-A	Annual Return of Foreign Trust With a U.S. Owner.
* Form 3800	General Business Credit.
* Form 4136	Credit for Federal Tax Paid on Fuels.
* Form 4255	Recapture of Investment Credit.
* Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
* Form 4562	Depreciation and Amortization (Including Information on Listed Property).
* Form 4684	Casualties and Thefts.
* Form 4797	Sales of Business Property.
* Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
* Form 4876-A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH G-1)	Schedule G-1 (Form 5471), Cost Sharing Arrangement.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I-1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
Form 5471 (SCH Q)	CFC Income by CFC Income Groups.
Form 5471 (SCH R)	Distributions From a Foreign Corporation.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
* Form 56	Notice Concerning Fiduciary Relationship.
* Form 56-F	Notice Concerning Fiduciary Relationship of Financial Institution.
* Form 5713	International Boycott Report.
* Form 5713 (SCH A)	International Boycott Factor (Section 999(c)(1)).
* Form 5713 (SCH B)	Specifically, Attributable Taxes and Income (Section 999(c)(2)).
* Form 5713 (SCH C)	Tax Effect of the International Boycott Provisions.
* Form 5735	American Samoa Economic Development Credit.
* Form 5735 Schedule P	Allocation of Income and Expenses Under Section 936(h)(5).

Product	Title
* Form 5884	Work Opportunity Credit.
* Form 5884-A	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
* Form 6198	At-Risk Limitations.
* Form 6478	Biofuel Producer Credit.
* Form 6627	Environmental Taxes.
* Form 6765	Credit for Increasing Research Activities.
* Form 6781	Gains and Losses From Section 1256 Contracts and Straddles.
* Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
* Form 7205	Energy Efficient Commercial Buildings Deduction.
* Form 7207	Advanced Manufacturing Production Credit.
* Form 7210	Clean Hydrogen Production Credit.
Form 7213	Nuclear Power Production Credit.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
* Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
* Form 8275	Disclosure Statement.
* Form 8275-R	Regulation Disclosure Statement.
* Form 8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
* Form 8288-A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
* Form 8288-B	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288-C	Statement of Withholding Under Section 1446(f)(4) on Dispositions by Foreign Persons of Partnership Interests.
* Form 8300	Report of Cash Payments Over \$10,000 Received In a Trade or Business.
* Form 8302	Electronic Deposit of Tax Refund of \$1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
* Form 8329	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453-C	U.S. Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453-CORP	E-file Declaration for Corporations.
Form 8453-PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
* Form 8586	Low-Income Housing Credit.
* Form 8594	Asset Acquisition Statement Under Section 1060.
* Form 8609	Low-Income Housing Credit Allocation and Certification.
* Form 8609-A	Annual Statement for Low-Income Housing Credit.
* Form 8611	Recapture of Low-Income Housing Credit.
* Form 8621	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
* Form 8621-A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
* Form 8655	Reporting Agent Authorization.
* Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
* Form 8703	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804-C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.
Form 8804-W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
Form 8813*	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8819	Dollar Election Under Section 985.
* Form 8820	Orphan Drug Credit.
* Form 8822-B	Change of Address—Business.
* Form 8824	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
* Form 8826	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax-Corporations.
* Form 8830	Enhanced Oil Recovery Credit.
* Form 8832	Entity Classification Election.
* Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
* Form 8834	Qualified Electric Vehicle Credit.
* Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
* Form 8838	Consent to Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement.
* Form 8838-P	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
* Form 8844	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c).
* Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).

Product	Title
* Form 8858 (SCH M)	Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.
* Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721€.
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721€.
Form 8865 (SCH K-1)	Partner's Share of Income, Deductions, Credits, etc.
Form 8865 (SCH K-2)	Partner's Distributive Share Items-International.
Form 8865 (SCH K-3)	Partner's Share of Income, Deductions, Credits, etc.—International.
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
* Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
* Form 8873	Extraterritorial Income Exclusion.
* Form 8874	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
* Form 8878-A	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879-C	IRS e-file Signature Authorization for Form 1120.
Form 8879-CORP	E-file Authorization for Corporations.
Form 8879-PE	IRS e-file Signature Authorization for Form 1065.
* Form 8881	Credit for Small Employer Pension Plan Startup Costs.
* Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
* Form 8883	Asset Allocation Statement Under Section 338.
* Form 8886	Reportable Transaction Disclosure Statement.
* Form 8896	Low Sulfur Diesel Fuel Production Credit.
* Form 8900	Qualified Railroad Track Maintenance Credit.
* Form 8902	Alternative Tax on Qualified Shipping Activities.
* Form 8903	Domestic Production Activities Deduction.
* Form 8906	Distilled Spirits Credit.
* Form 8908	Energy Efficient Home Credit.
* Form 8910	Alternative Motor Vehicle Credit.
* Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
* Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M-3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916-A	Supplemental Attachment to Schedule M-3.
* Form 8918	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
* Form 8925	Report of Employer-Owned Life Insurance Contracts.
* Form 8926	Disqualified Corporate Interest Expense disallowed under section 163(j) and Related Information.
* Form 8927	Determination Under Section 860€(4) by a Qualified Investment Entity.
* Form 8932	Credit for Employer Differential Wage Payments.
* Form 8933	Carbon Oxide Sequestration Credit.
* Form 8936	Clean Vehicle Credit.
Form 8936-A	Qualified Commercial Clean Vehicle Credit.
Form 8936-A Sch 1	Schedule for Qualified Commercial Clean Vehicle.
* Form 8937	Report of Organizational Actions Affecting Basis of Securities.
* Form 8938	Statement of Foreign Financial Assets.
* Form 8941	Credit for Small Employer Health Insurance Premiums.
* Form 8947	Report of Branded Prescription Drug Information.
* Form 8966	FATCA Report.
* Form 8966-C	Cover Sheet for Form 8966 Paper Submissions.
* Form 8975	Country-by-Country Report.
* Form 8975 Sch A	Tax Jurisdiction and Constituent Entity Information.
Form 8978	Partner's Additional Reporting Year Tax.
Form 8978-Sch-A	Partners Additional Reporting Year Tax.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
Form 8992 Sch-A	Schedule A, Global Intangible Low-Taxed Income (GILTI).
Form 8992-Sch-B	Calculation of Global Intangible Low-Taxed Income (GILTI) for Members of a U.S. Consolidated Group Who Are U.S. Shareholders of a CFC.
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII)and Global Intangible Low-Taxed Income (GILTI).
* Form 8994	Employer Credit for Paid Family and Medical Leave.
* Form 8995	Qualified Business Income Deduction Simplified Computation.
* Form 8995-A	Qualified Business Income Deduction.
* Form 8995-A (SCH A)	Specified Service Trades or Businesses.
* Form 8995-A (SCH B)	Aggregation of Business Operations.
* Form 8995-A (SCH C)	Loss Netting And Carryforward.
* Form 8995-A (SCH D)	Special Rules for Patrons Of Agricultural Or Horticultural Cooperatives.
Form 8996	Qualified Opportunity Fund.
Form 8997	Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.

Product	Title
Form 965-B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts.
Form 965-C	Transfer Agreement Under Section 965(h)(3).
Form 965-D	Transfer Agreement Under 965(i)(2).
Form 965-E	Consent Agreement Under 965(i)(4)(D).
Form 966	Corporate Dissolution or Liquidation.
* Form 970	Application to Use LIFO Inventory Method.
* Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 973	Corporation Claim for Deduction for Consent Dividends.
Form 976	Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
* Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
* Form SS-4	Application for Employer Identification Number.
* Form SS-4(PR)	Solicitud de Número de Identificación Patronal (EIN).
* Form T (TIMBER)	Forest Activities Schedule.
* Form W-8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals).
* Form W-8BEN(E)	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities).
* Form W-8ECI	Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
* Form W-8IMY	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

Forms marked with an asterisk (*) are also filed by other taxpayers (e.g., individuals, tax-exempt organizations).

Appendix B

OMB numbers that will no longer be separately reported in order to eliminate

duplicate burden reporting. For business filers, the following OMB numbers are or will be retired.

OMB No.	Title
1545-0731	Definition of an S Corporation.
1545-0746	LR-100-78 (Final) Creditability of Foreign Taxes.
1545-0755	Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
1545-0771	TD 8864 (Final); EE-63-88 (Final and temp regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA-140-86 (Temporary) Fringe Benefits Treas reg 1.274.
1545-0807	(TD 7533) Final, DISC Rules on Procedure and Administration; Rules on Export Trade Corporations, and (TD 7896) Final, Income from Trade Shows.
1545-0879	TD 8426—Certain Returned Magazines, Paperbacks or Records (IA-195-78).
1545-1018	FI-27-89 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; FI-61-91 (Final) Allocation of Allocable Investment.
1545-1041 *	TD 8316 Cooperative Housing Corporations.
1545-1051	TD 8556 (Final)—Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).
1545-1068	T.D. 8618—Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (INTL-362-88).
1545-1070	Effectively connected income and the branch profits tax.
1545-1072	INTL-952-86 (Final-TD 8410) and TD 8228 Allocation and Apportionment of Interest Expense and Certain Other Expenses.
1545-1083	Treatment of Dual Consolidated Losses.
1545-1093	Final Minimum Tax-Tax Benefit Rule (TD 8416).
1545-1102	PS-19-92 (TD 9420—Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.
1545-1130	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
1545-1138	TD-8350 (Final) Requirements For Investments to Qualify under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.
1545-1146	Applicable Conventions Under the Accelerated Cost.
1545-1191	Information with Respect to Certain Foreign-Owned Corporations—IRC Section 6038A.
1545-1218	CO-25-96 (TD 8824—Final) Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.
1545-1224	T. D. 8337 (Final) Allocation and Apportionment of Deduction for State Income Taxes (INTL-112-88).
1545-1233	Adjusted Current Earnings (IA-14-91) (Final).
1545-1237	REG-209831-96 (TD 8823) Consolidated Returns—Limitation on the Use of Certain Losses and Deductions.
1545-1251	TD 8437—Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
1545-1254 *	TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI-34-91).
1545-1260	CO-62-89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.
1545-1271	Treatment of transfers of stock or securities to foreign corporations.
1545-1275	Limitations on net operating loss carryforwards and certain built-in losses following ownership change.
1545-1287	FI-3-91 (TD 8456—Final) Capitalization of Certain Policy Acquisition Expenses.
1545-1290	TD 8513—Bad Debt Reserves of Banks.
1545-1299	TD 8459—Settlement Funds.

OMB No.	Title
1545-1300	Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.
1545-1308	TD 8449 (Final) Election, Revocation, Termination, and Tax Effect of Subchapter S Status.
1545-1324	CO-88-90 (TD 8530) Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction . . .
1545-1338*	Election Out of Subchapter K for Producers of Natural Gas—TD 8578.
1545-1344	TD 8560 (CO-30-92) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless (Final).
1545-1352	TD 8586 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.
1545-1357	PS-78-91 (TD 8521)(TD 8859) Procedures for Monitoring Compliance with Low-Income Housing Credit Requirements; PS-50-92 Rules to Carry Out the Purposes of Section 42 and for Correcting.
1545-1364	Methods to Determine Taxable Income in connection with a Cost Sharing Arrangement—IRC Section 482.
1545-1412	FI-54-93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.
1545-1417	Form 8845—Indian Employment Credit.
1545-1433	Consolidated and Controlled Groups—Intercompany Transactions and Related Rules.
1545-1434*	CO-26-96 (Final) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.
1545-1438	TD 8643 (Final) Distributions of Stock and Stock Rights.
1545-1440	TD 8611, Conduit Arrangements Regulations—Final (INTL-64-93).
1545-1447	CO-46-94 (TD 8594—Final) Losses on Small Business Stock.
1545-1462	PS-268-82 (TD 8696) Definitions Under Subchapter S of the Internal Revenue Code.
1545-1476	Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.
1545-1480	TD 8985—Hedging Transactions.
1545-1484	TD 8881 (Final) REG-242282-97 (formerly IntI-62-90, IntI-32-93, IntI-52-86, and IntI-52-94) General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign.
1545-1491	TD 8746—Amortizable Bond Premium.
1545-1493	TD 8684—Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.
1545-1507	(TD 8701)—Treatment of Shareholders of Certain Passive Investment Companies; (TD 8178)—Passive Foreign Investment Companies.
1545-1522	Revenue Procedure 2017-52, 2017-1, 2017-3 Rulings and determination letters.
1545-1530	Rev. Proc. 2007-32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.
1545-1539	REG-208172-91 (TD 8787—final) Basis Reduction Due to Discharge of Indebtedness.
1545-1541	Revenue Procedure 97-27, Changes in Methods of Accounting.
1545-1546	Revenue Procedure 97-33, EFTPS (Electronic Federal Tax Payment System).
1545-1548	Rev. Proc. 2013-30, Uniform Late S Corporation Election Revenue Procedure.
1545-1549	Tip Reporting Alternative Commitment (TRAC) Agreement and Tip Rate Determination (TRDA) for Use in the Food and Beverage Industry.
1545-1551	Changes in Methods of Accounting (RP 2016-29).
1545-1555	REG-115795-97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.
1545-1556	TD 8786—Source of Income From Sales of Inventory Partly From Sources Within a Possession of the U.S.; Also, Source of Income Derived From Certain Purchases From a Corp. Electing Sec. 936.
1545-1558*	Rev. Proc. 98-46 (modifies Rev. Proc. 97-43)—Procedures for Electing Out of Exemptions Under Section 1.475(c)-1; and Rev. Rul. 97-39, Mark-to-Market Accounting Method for Dealers in Securities.
1545-1559*	Revenue Procedures 98-46 and 97-44, LIFO Conformity Requirement.
1545-1566	Notice 2010-46, Prevention of Over-Withholding of U.S. Tax Avoidance With Respect to Certain Substitute Dividend Payments.
1545-1588	Adjustments Following Sales of Partnership Interests.
1545-1590	REG-251698-96 (T.D. 8869—Final) Subchapter S Subsidiaries.
1545-1617	REG-124069-02 (Final) Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; REG-118966-97 (Final) Information Reporting with Respect to Certain Foreign Partnership.
1545-1634	TD 9595 (REG-141399-07) Consolidated Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses.
1545-1641	Rev. Proc. 99-17—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.
1545-1642	TD 8853 (Final), Recharacterizing Financing Arrangements Involving Fast-Pay Stock.
1545-1646	TD 8851—Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.
1545-1647	Revenue Procedure 2001-21 Debt Roll-Ups.
1545-1657	Revenue Procedure 99-32—Conforming Adjustments Subsequent to Section 482 Allocations.
1545-1658	Purchase Price Allocations in Deemed Actual Asset Acquisitions.
1545-1661	Qualified lessee construction allowances for short-term leases.
1545-1672	T.D. 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).
1545-1675	Treatment of taxable income of a residual interest holder in excess of daily accruals.
1545-1677	Exclusions From Gross Income of Foreign Corporations.
1545-1684	Pre-Filing Agreements Program.
1545-1690	Notice 2000-28, Coal Exports.
1545-1699*	TD 9715; Rev. Proc. 2015-26 (Formerly TD 9002; Rev Proc 2002-43), Agent for Consolidated Group.
1545-1701	Revenue Procedure 2000-37—Reverse Like-kind Exchanges (as modified by Rev Proc. 2004-51).
1545-1706	TD 9315—Section 1503(d) Closing Agreement Requests.
1545-1711	TD 9273—Stock Transfer Rules: Carryover of Earnings and Taxes (REG-116050-99).

OMB No.	Title
1545-1714	Tip Reporting Alternative Commitment (TRAC) for most industries.
1545-1716	Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC)—Notice 2001-1.
1545-1717	Tip Rate Determination Agreement (TRDA) for Most Industries.
1545-1718	Source of Income from Certain Space and Ocean Activities; Source of Communications Income (TD 9305—final).
1545-1730*	Manner of making election to terminate tax-exempt bond financing.
1545-1731	Extraterritorial Income Exclusion Elections.
1545-1736	Advanced Insurance Commissions—Revenue Procedure 2001-24.
1545-1748	Changes in Accounting Periods—REG-106917-99 (TD 8669/Final).
1545-1752	Revenue Procedure 2008-38, Revenue Procedure 2008-39, Revenue Procedure 2008-40, Revenue Procedure 2008-41, Revenue Procedure 2008-42.
1545-1756	Revenue Procedure 2001-56, Demonstration Automobile Use.
1545-1765	T.D. 9171, New Markets Tax Credit.
1545-1768	Revenue Procedure 2003-84, Optional Election to Make Monthly Sec. 706 Allocations.
1545-1774	Extensions of Time to Elect Method for Determining Allowable Loss.
1545-1784	Rev. Proc. 2002-32 as Modified by Rev. Proc. 2006-21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.
1545-1786	Changes in Periods of Accounting.
1545-1799	Notice 2002-69, Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(f).
1545-1801	Revenue Procedure 2002-67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.
1545-1806	Form 8883—Asset Allocation Statement Under Section 338.
1545-1820	Revenue Procedure 2003-33, Section 9100 Relief for 338 Elections.
1545-1828	TD 9048; 9254—Guidance under Section 1502; Suspension of Losses on Certain Stock Disposition (REG-131478-02).
1545-1831	TD 9157 (Final) Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments w/one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.
1545-1833	Revenue Procedure 2003-37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.
1545-1834	Revenue Procedure 2003-39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.
1545-1837	Revenue Procedure 2003-36, Industry Issue Resolution Program.
1545-1847	Revenue Procedure 2004-29—Statistical Sampling in Sec. 274 Context.
1545-1855	TD 9285—Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).
1545-1861	Revenue Procedure 2004-19—Probable or Prospective Reserves Safe Harbor.
1545-1870*	TD 9107—Guidance Regarding Deduction and Capitalization of Expenditures.
1545-1893	Rollover of Gain from Qualified Small Business Stock to Another Qualified Small Business Stock.
1545-1900	(TD 9212) Final, Source of Compensation for Labor or Personal Services.
1545-1903	TD 9168—Optional 10-Year Write-off of Certain Tax Preferences (REG-124405-03).
1545-1905	TD 9289 (Final) Treatment of Disregarded Entities Under Section 752.
1545-1906	TD 9210—LIFO Recapture Under Section 1363(d).
1545-1915	Notice 2005-4, Fuel Tax Guidance, as modified.
1545-1927	Form 8878—A IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
1545-1939	Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).
1545-1945	26 U.S. Code § 475—Mark to market accounting method for dealers in securities.
1545-1946	T.D. 9315 (Final) Dual Consolidated Loss Regulations.
1545-1965	TD 9360 (REG-133446-03) (Final) Guidance on Passive Foreign Company (PFIC) Purging Elections.
1545-1983	Qualified Railroad Track Maintenance Credit.
1545-1986	Notice 2006-47, Elections Created or Effected by the American Jobs Creation Act of 2004.
1545-1990	Application of Section 338 to Insurance Companies.
1545-2001	Rev. Proc. 2006-16, Renewal Community Depreciation Provisions.
1545-2002	Notice 2006-25 (superseded by Notice 2007-53), Qualifying Gasification Project Program.
1545-2003	Notice 2006-24, Qualifying Advanced Coal Project Program.
1545-2004	Deduction for Energy Efficient Commercial Buildings.
1545-2008	Nonconventional Source Fuel Credit.
1545-2014	TD 9452—Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations.
1545-2017	Notice 2006-46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.
1545-2019	TD 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).
1545-2028	Fuel Cell Motor Vehicle Credit.
1545-2030	REG-120509-06 (TD 9465—Final), Determination of Interest Expense Deduction of Foreign Corporations.
1545-2036*	Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006-97).
1545-2070	Rev. Proc. 2007-48 Rotable Spare Parts Safe Harbor Method.
1545-2072	Revenue Procedure 2007-35—Statistical Sampling for Purposes of Section 199.
1545-2091	TD 9512 (Final)—Nuclear Decommissioning Funds.
1545-2096	Loss on Subsidiary Stock—REG-157711-02 (TD 9424—Final).
1545-2103	Election to Expense Certain Refineries.
1545-2110	REG-127770-07 (Final), Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit.
1545-2114	S Corporation Guidance under AJCA of 2004 (TD 9422 Final—REG-143326-05).
1545-2122	Form 8931—Agricultural Chemicals Security Credit.
1545-2125*	REG-143544-04 Regulations Enabling Elections for Certain Transaction Under Section 336(e).

OMB No.	Title
1545-2133	Rev. Proc. 2009-16, Section 168(k)(4) Election Procedures and Rev. Proc. 2009-33, Section 168(k)(4) Extension Property Elections.
1545-2134	Notice 2009-41—Credit for Residential Energy Efficient Property.
1545-2145	Notice 2009-52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.
1545-2147	Internal Revenue Code Section 108(i) Election.
1545-2149	Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense (TD 9456).
1545-2150	Notice 2009-58, Manufacturers' Certification of Specified Plug-in Electric Vehicles.
1545-2151	Qualifying Advanced Energy Project Credit—Notice 2013-12.
1545-2153	Notice 2009-83—Credit for Carbon Dioxide Sequestration Under Section 45Q.
1545-2155	TD 9469 (REG-102822-08) Section 108 Reduction of Tax Attributes for S Corporations.
1545-2156	Revenue Procedure 2010-13, Disclosure of Activities Grouped under Section 469.
1545-2158	Notice 2010-54: Production Tax Credit for Refined Coal.
1545-2171	TD 9490—Extended Carryback of Losses to or from a Consolidated Group.
1545-2183	Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).
1545-2186	TD 9504, Basis Reporting by Securities Brokers and Basis Determination for Stock; TD 9616, TD9713, and TD 9750.
1545-2194	Rules for Certain Rental Real Estate Activities.
1545-2209	REG-112805-10—Branded Prescription Drugs.
1545-2242	REG-135491-10—Updating of Employer Identification Numbers.
1545-2245	REG-160873-04—American Jobs Creation Act Modifications to Section 6708, Failure to Maintain List of Advisees With Respect to Reportable Transactions.
1545-2247	TD 9633—Limitations on Duplication of Net Built-in Losses.
1545-2259	Performance & Quality for Small Wind Energy Property.
1545-2276	Safe Harbor for Inadvertent Normalization Violations.

* Discontinued in FY22.

[FR Doc. 2023-20890 Filed 9-25-23; 8:45 am]
 BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Tax-Exempt Organization Forms

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. The IRS is soliciting comments concerning forms used by tax-exempt organizations. See Appendix A for a list of forms, schedules, and related attachments.

DATES: Written comments should be received on or before November 27, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov.

Include OMB Control No. 1545-0047 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800-7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at jon.r.callahan@irs.gov.

SUPPLEMENTARY INFORMATION: These are forms used by tax-exempt organizations. These include Forms 990, 990-EZ, 990-N, 990-PF, 990-T, and related forms and schedules tax-exempt organizations attach to their returns (see Appendix-A to this notice). In addition, there are numerous Treasury Decisions and guidance documents that are covered by the burden estimate provided in this notice. See Appendix B for a list.

Taxpayer Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. 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.

Proposed PRA Submission to OMB

Title: U.S. Tax-Exempt Organization Return.

OMB Number: 1545-0047.

Form Numbers: Forms 990, 990-EZ, 990-N, 990-PF, 990-T, 1023, 1023-EZ, 1024, 1024-A, 1028, 1120-POL, 4720, 5578, 5884-C, 5884-D, 6069, 6497, 7203, 8038, 8038-B, 8038-CP, 8038-G, 8038-GC, 8038-R, 8038-T, 8038-TC, 8282, 8328, 8330, 8453-TE., 8453-X, 8718, 8868, 8870, 8871, 8872, 8879-TE, 8886-T, 8899 and all other related forms, schedules, and attachments. (see Appendix-A to this notice).

Abstract: These forms and schedules are used to determine that tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. The data is also used for general statistical purposes.

Current Actions: There have been changes in IRS guidance documents and regulations related to various forms approved under this approval package during the past year. There have been additions of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release

of the 30-day comment notice from OMB. This approval package is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Tax-Exempt Organizations.

Preliminary Estimated Number of Responses: 1,775,500.

Preliminary Estimated Time Per Respondent (Hours): 43.37

Preliminary Estimated Total Time (Hours): 77,000,000.

Preliminary Estimated Total Monetized Time (\$): \$3,598,000,000.

Preliminary Estimated Total Out-of-Pocket Costs (\$): \$1,844,000,000.

Preliminary Estimated Total Monetized Burden (\$): \$5,442,000,000.

Note: Total Monetized Burden = Total Out-of-Pocket Costs + Total Monetized Time.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:
(a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2023.

Jon R. Callahan,
Senior Tax Analyst.

Appendix-A

Form number	Title
1023	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1023-EZ	Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1024	Application for Recognition of Exemption Under Section 501(a).
1024-A	Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.
1028	Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.
1116 Sch B	Foreign Tax Carryover Reconciliation Schedule.
1116 Sch C	Foreign Tax Redeterminations.
1116	Foreign Tax Credit.
1120-POL	U.S. Income Tax Return for Certain Political Organizations.
1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
1128	Application to Adopt, Change, or Retain a Tax Year.
2220	Underpayment of Estimated Tax by Corporations.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3800	General Business Credit.
4136	Credit for Federal Tax Paid on Fuels.
4255	Recapture of Investment Credit.
4562	Depreciation and Amortization.
461	Limitation on Business Loss.
4720	Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.
4797	Sale of Business Property.
5227	Split Interest Trust Information Return.
5471 Sch E	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
5471 Sch G-1	Cost Sharing Arrangement.
5471 Sch H	Current Earnings and Profits.
5471 Sch I-1	Information for Global Intangible Low-Taxed Income.
5471 Sch J	Accumulated Earnings & Profits (E&P) of Controlled Foreign Corporation.
5471 Sch M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 Sch O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
5471 Sch P	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
5471 Sch Q	CFC Income by CFC Income Groups.
5471 Sch R	Distributions From a Foreign Corporation.
5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
5578	Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
5884-C	Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.
5884-D	Employee Retention Credit for Certain Tax-Exempt Organizations Affected by Qualified Disasters.
6069	Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953.
6198	At-Risk Limitations.
6497	Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.
7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
7203	S Corporation Shareholder Stock and Debt Basis Limitations.
7204	Consent to Extend the Time to Assess Tax Related to Contested Foreign Income Taxes—Provisional Foreign Tax Credit Agreement.
7205	Energy Efficient Commercial Buildings Deduction.
7207	Advanced Manufacturing Production Credit.
8038	Information Return for Tax-Exempt Private Activity Bond Issues.

Form number	Title
8038-B	Information Return for Build America Bonds and Recovery Zone.
8038-CP	Return for Credit Payments to Issuers of Qualified Bonds.
8038-CP Schedule A	Specified Tax Credit Bonds Interest Limit Computation.
8038-G	Information Return for Tax-Exempt Governmental Bonds.
8038-GC	Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.
8038-R	Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.
8038-T	Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.
8038-TC	Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.
8282	Donee Information Return.
8283	Noncash Charitable Contributions.
8283-V	Payment Voucher for Filing Fee Under Section 170(f)(13).
8328	Carryforward Election of Unused Private Activity Bond Volume Cap.
8330	Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).
8453-TE	Tax Exempt Entity Declaration and Signature for Electronic Filing.
8453-X	Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.
8621	Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8718	User Fee for Exempt Organization Determination Letter Request.
8838	Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.
8865 Sch G	Statement of Application of the Gain Deferral Method under Section 721(c).
8865 Sch H	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
8865 Sch O	Transfer of Property to a Foreign Partnership.
8865 Sch P	Acquisitions, Dispositions, and Changes of Interest in a Foreign Partnership.
8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.
8868	Application for Automatic Extension of Time To File an Exempt Organization Return.
8870	Information Return for Transfers Associated With Certain Personal Benefit Contracts.
8871	Political Organization Notice of Section 527 Status.
8872	Political Organization Report of Contributions and Expenditures.
8879-TE	IRS e-file Signature Authorization for a Tax Exempt Entity.
8886	Reportable Transaction Disclosure Statement.
8886-T	Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.
8899	Notice of Income From Donated Intellectual Property.
8940	Request for Miscellaneous Determination.
8941	Credit for Small Employer Health Insurance Premiums.
8949	Sales and Other Dispositions of Capital Assets.
8976	Notice of Intent to Operate Under Section 501(c)(4).
8995	Qualified Business Income Deduction Simplified Calculation.
8995-A	Qualified Business Income Deduction.
8995-A Schedule A	Specified Service Trades or Businesses.
8995-A Schedule B	Aggregation of Business Operations.
8995-A Schedule C	Loss Netting and Carryforward.
8995-A Schedule D	Special Rules for Patrons of Agricultural or Horticultural Cooperatives.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	Application to Use LIFO Inventory Method.
990	Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990 Schedule A	Public Charity Status and Public Support.
990 Schedule B	Schedule of Contributors.
990 Schedule C	Political Campaign and Lobbying Activities.
990 Schedule D	Supplemental Financial Statements.
990 Schedule E	Schools.
990 Schedule F	Statement of Activities Outside the United States.
990 Schedule G	Supplemental Information Regarding Fundraising or Gaming Activities.
990 Schedule H	Hospitals.
990 Schedule I	Grants and Other Assistance to Organizations, Governments, and Individuals in the United States.
990 Schedule J	Compensation Information.
990 Schedule K	Supplemental Information on Tax-Exempt Bonds.
990 Schedule L	Transactions With Interested Persons.
990 Schedule M	Noncash Contributions.
990 Schedule N	Liquidation, Termination, Dissolution, or Significant Disposition of Assets.
990 Schedule O	Supplemental Information to Form 990 or 990-EZ.
990 Schedule R	Related Organizations and Unrelated Partnerships.
990-EZ	Short Form Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990-N	Form 990-N Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ.
990-PF	Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.
990-T	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)).
990-T Schedule A	Unrelated Business Taxable Income From an Unrelated Trade or Business.

Appendix-B

Title/document	Description
Announcement 2004–38	Election of Alternative Deficit Reduction Contribution.
Announcement 2004–43	Election of Alternative Deficit Reduction Contribution.
Notice 2002–27	IRA Required Minimum Distribution Reporting.
Notice 2004–59	Plan Amendments Following Election of Alternative Deficit Reduction Contribution.
Notice 2005–41	Guidance Regarding Qualified Intellectual Property Contributions.
Notice 2006–105	Extension of Election of Alternative Deficit Reduction Contribution.
Notice 2006–107	Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.
Notice 2006–109	Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.
Notice 2007–70	Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).
Notice 2008–113	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a) in Operation.
Notice 2009–26	Build America Bonds and Direct Payment Subsidy Implementation.
Notice 2009–31	Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.
Notice 2010–6	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2010–80	Modification to the Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2011–43	Transitional Relief under Internal Revenue Code § 6033(j) for Small Organizations.
Notice 2012–48	Tribal Economic Development Bonds.
Notice 2014–4	Interim Guidance Regarding Supporting Organizations.
Notice 2015–83	Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans.
Notice 2017–9	De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties.
Notice 2021–56	Standards that an LLC must Satisfy to be Exempt.
Notice 97–45	Highly Compensated Employee Definition.
Publication 1075	Tax Information Security Guidelines for Federal, State and Local Agencies.
Publication 4839	Annual Form 990 Filing Requirements for Tax-Exempt Organizations (Forms 990, 990-EZ, 990-PF, 990-BL and 990-N (e-Postcard)).
Revenue Procedure 2004–15	Waivers of Minimum Funding Standards.
Revenue Procedure 2008–62 and 2017–55	Substitute Mortality Tables for Single Employer Defined Benefit Plans.
Revenue Procedure 2009–43	Revocation of Elections by Multiemployer Defined Benefit Pension Plans to Freeze Funded Status under section 204 of WRERA.
Revenue Procedure 2010–52	Extension of the Amortization Period for Plan Sponsor of a Multiemployer Pension Plan.
Revenue Procedure 2014–11	Procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under section 6033(j)(1) of the Internal Revenue Code (“Code”) for failure to file required Annual Returns or notices for three consecutive years.
Revenue Procedure 2014–40	Procedures for applying for and for issuing determination letters on the exempt status under § 501(c)(3) of the Internal Revenue Code (Code) using Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
Revenue Procedure 2014–55	Election Procedures and Information Reporting with Respect to Interests in Certain Canadian Retirement Plans.
Revenue Procedure 2015–21	Rulings and determination letters.
Revenue Procedure 2016–27	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–43	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–57	Procedures for Requesting Approval for a Change in Funding Method.
Revenue Procedure 2018–38	Returns by exempt organizations and returns by certain non-exempt organizations.
Revenue Procedure 2018–4	Updating Procedures for Guidance on Matters Under IRS TE/GE Division.
Revenue Procedure 2021–37	Pre-Approved Pension Plans.
Revenue Procedure 2021–48	Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
Revenue Procedure 2022–14	List of Automatic Changes.
Revenue Procedure 2023–1	Rulings and Determination Letters.
Revenue Procedure 2023–24	Changes in Accounting Periods and in Methods of Accounting.
Revenue Procedure 2023–38	Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.
Revenue Procedure 2023–4	Types of Advice Available to Taxpayers.
Revenue Procedure 2023–5	Procedures for Issuing Determination Letters.
Revenue Procedure 80–27	Group exemption letters.
Revenue Procedure 98–19	Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).
Revenue Ruling 2000–35	Automatic Enrollment in Section 403(b) Plans.
TD 7845	Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.
TD 7852	Registration Requirements with Respect to Debt Obligations.
TD 7898	Employers Qualified Educational Assistance Programs.
TD 7952	Indian Tribal Governments Treated As States For Certain Purposes.
TD 8002	Substantiation of Charitable Contributions.

Title/document	Description
TD 8019	Public Inspection of Exempt Organization Return.
TD 8033	Tax Exempt Entity Leasing.
TD 8069	Qualified Conservation Contributions.
TD 8073	Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.
TD 8086	Election for \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR-185-84 Final).
TD 8124	Time and Manner of Making Certain Elections Under the Tax Reform Act of 1986.
TD 8357	Certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.
TD 8376	Qualified Separate Lines of Business.
TD 8396	Regulations relating to a bank's determination of worthlessness of a debt.
TD 8400	Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).
TD 8476	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8540	Final regulations relating to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests.
TD 8619	Final regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities.
TD 8635	Nonbank Trustee Net Worth Requirements.
TD 8690	Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.
TD 8712	Definition of Private Activity Bonds.
TD 8718	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8769	Permitted Elimination of Pre-retirement Optional Forms of Benefit.
TD 8791	Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts.
TD 8801	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8802	Certain Asset Transfers to a Tax-Exempt Entity.
TD 8814	Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.
TD 8816	Roth IRAs.
TD 8861	Private Foundation Disclosure Rules.
TD 8933	Qualified Transportation Fringe Benefits.
TD 8978	Excise Taxes on Excess Benefit Transactions (REG-246256-96).
TD 8987	Required Distributions from Retirement Plans.
TD 9075	Compensation Deferred Under Eligible Deferred Compensation Plans.
TD 9076	Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates.
TD 9079	Ten or More Employer Plan Compliance Information.
TD 9083	Golden Parachute Payments.
TD 9088	Compensatory Stock Options Under Section 482.
TD 9092	Split-Dollar Life Insurance Arrangements.
TD 9097	Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments.
TD 9099	Disclosure of Relative Values of Optional Forms of Benefit.
TD 9142	Deemed IRAs in Qualified Retirement Plans.
TD 9169	Retirement plans; Cash or deferred arrangements under section 401(k) and matching contributions or employee contributions under section 401(m) Regulations.
TD 9237	Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).
TD 9324	Designated Roth Contributions Under Section 402A.
TD 9334	Requirement of Return and Time for Filing.
TD 9340	Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.
TD 9447	Automatic Contribution Arrangements.
TD 9472	Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.
TD 9492	Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements with Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing.
TD 9495	Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions.
TD 9641	Reduction or Suspension of Safe Harbor Contributions.
TD 9708	Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return.
TD 9724	Summary of Benefits and Coverage, Uniform Glossary for ACA Group Health Plans.
TD 9741	General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds.
TD 9765	Suspension of Benefits under the Multiemployer Pension Reform Act of 2014.
TD 9777	Arbitrage Guidance for Tax-Exempt Bonds.
TD 9801	Issue Price Definition for Tax-Exempt Bonds.
TD 9845	Public Approval of Tax-Exempt Private Activity Bonds.
TD 9846	Regulations Regarding the Transition Tax Under Section 965 and Related Provisions.
TD 9855	Regulations To Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and To Update the Abatement Rules for Section 4966 and 4967 Taxes.

Title/document	Description
TD 9866	Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits.
TD 9873	Regulations on the Requirement To Notify the IRS of Intent To Operate as a Section 501(c)(4) Organization.
TD 9898	Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.
TD 9902	Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax.
TD 9917	Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Colleges and Universities.
TD 9933	Unrelated Business Taxable Income Separately Computed for Each Trade or Business.
TD 9938	Tax on Excess Tax-Exempt Organization Executive Compensation.
TD 9972	Electronic-Filing Requirements for Specified Returns and Other Documents.
TD 9975	Pre-Filing Registration Requirements for Certain Tax Credit Elections.
TD 9979	Additional Guidance on Low-Income Communities Bonus Credit Program.

[FR Doc. 2023-20897 Filed 9-25-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to U.S. Income Tax Return Forms for Individual Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with the U.S. Income Tax Return Forms for Individual Taxpayers.

DATES: Written comments should be received on or before November 27, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545-0074 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317-5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Individual Taxpayers.

OMB Number: 1545-0074.

Regulation Project Number: Form 1040 and affiliated return forms.

Abstract: IRC sections 6011 & 6012 of the Internal Revenue Code require individuals to prepare and file income tax returns annually. These forms and related schedules are used by individuals to report their income subject to tax and compute their correct tax liability. This information collection request (ICR) covers the actual reporting burden associated with preparing and submitting the prescribed return forms, by individuals required to file Form 1040 and any of its' affiliated forms as explained in the attached table.

Current Actions: There have also been changes in regulatory guidance related to various forms approved under this approval package during the past year. There have been additions and removals of forms included in this approval package. In filing season 2024, the Internal Revenue Service (IRS) will launch a pilot program for a free direct e-file tax return system (Direct File). This limited-scale pilot will allow the IRS to evaluate the costs, benefits, and operational challenges associated with providing such an optional service to taxpayers.

It is anticipated that all these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. Updated estimates are expected to be available by the release of the 30-comment notice from OMB. This approval package is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households, Farms.

Preliminary Estimated Number of Respondents: 173,074,500.

Preliminary Estimated Time per Respondent (Hours): 12 hours, 49 minutes.

Preliminary Estimated Total Annual Time (Hours): 2,217,000,000.

Preliminary Estimated Total Annual Monetized Time (\$): 42,577,000,000.

Preliminary Estimated Total Out-of-Pockets Costs (\$): 43,090,000,000.

Preliminary Estimated Total Burden Costs (\$): 85,667,000,000.

Note: Total Monetized Burden = Total Out-of-Pocket Costs + Total Annual Monetized Time.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval

of the extension of the information collection; they will also become a matter of public record.

Approved: September 20, 2023.
Molly J. Stasko,
Senior Tax Analyst.

INDIVIDUAL TAX FORMS

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 1040	U.S. Individual Income Tax Return.	https://www.irs.gov/pub/irs-dft/f1040--dft.pdf	Form	Form 8275-R	Regulation Disclosure Statement.	https://www.irs.gov/pub/irs-pdf/f8275r.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040gi--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8275r.pdf
Form	Form 1040(SP).	U.S Individual Income Tax Return (Spanish version).	https://www.irs.gov/pub/irs-dft/f1040sp--dft.pdf	Form	Form 8283	Noncash Charitable Contributions.	https://www.irs.gov/pub/irs-dft/f8283--dft.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040sp--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8283.pdf
Form	Form 1040 Schedule 1.	Form 1040 Schedule 1 Additional Income and Adjustments to Income.	https://www.irs.gov/pub/irs-dft/f1040s1--dft.pdf	Form and Instructions.	Form 8332	Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent.	https://www.irs.gov/pub/irs-pdf/f8332.pdf
Form	Form 1040 Schedule 1 (SP).	Additional Income and Adjustments to Income in Spanish.	https://www.irs.gov/pub/irs-pdf/f1040s1s.pdf	Form and Instructions.	Form 8379	Injured Spouse Allocation.	https://www.irs.gov/pub/irs-dft/f8379--dft.pdf
Form	Form 1040 Schedule 2.	Additional Taxes	https://www.irs.gov/pub/irs-dft/f1040s2--dft.pdf	Instructions			https://www.irs.gov/pub/irs-dft/i8379--dft.pdf
Form	Form 1040 Schedule 2 (SP).	Additional Taxes (Spanish version).	https://www.irs.gov/pub/irs-dft/f1040s2s--dft.pdf	Form and Instructions.	Form 8396	Mortgage Interest Credit.	https://www.irs.gov/pub/irs-dft/f8396--dft.pdf
Form	Form 1040 Schedule 3.	Additional Credits and Payments.	https://www.irs.gov/pub/irs-dft/f1040s3--dft.pdf	Form	Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.	https://www.irs.gov/pub/irs-dft/f8404--dft.pdf
Form	Form 1040 Schedule 3 (SP).	Additional Credits and Payments (Spanish version).	https://www.irs.gov/pub/irs-dft/f1040s3s--dft.pdf	Form and Instructions.	Form 8453	U.S. Individual Income Tax Transmittal for an IRS e-file Return.	https://www.irs.gov/pub/irs-dft/f8453--dft.pdf
Form	Form 1040-C.	U.S. Departing Alien Income Tax Return.	https://www.irs.gov/pub/irs-dft/f1040c--dft.pdf	Form and Instructions.	Form 8453(SP)	U.S. Individual Income Tax Transmittal for an IRS e-file Return (Spanish version).	https://www.irs.gov/pub/irs-dft/f8453sp--dft.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040c--dft.pdf	Form	Form 8582	Passive Activity Loss Limitation.	https://www.irs.gov/pub/irs-dft/f8582--dft.pdf
Form	Form 1040 X	Amended U.S. Individual Income Tax Return.	https://www.irs.gov/pub/irs-dft/f1040x--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8582.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040x--dft.pdf	Form	Form 8582-CR	Passive Activity Credit Limitations.	https://www.irs.gov/pub/irs-pdf/f8582cr.pdf
Form	Form 1040 NR.	U.S. Non-resident Alien Income Tax Return.	https://www.irs.gov/pub/irs-dft/f1040nr--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8582cr.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040nr--dft.pdf	Form	Form 8586	Low-Income Housing Credit.	https://www.irs.gov/pub/irs-dft/f8586--dft.pdf
Form	Form 1040 NR(SP).	U.S. Non-resident Alien Income Tax Return (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040nrs--dft.pdf	Form	Form 8594	Asset Acquisition Statement Under Section 1060.	https://www.irs.gov/pub/irs-pdf/f8594.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i1040nrs--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8594.pdf

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	1040 NR (Schedule NEC).	Tax on Income Not Effectively Connected with a U.S. Trade or Business.	https://www.irs.gov/pub/irs-dft/f1040nrm--dft.pdf	Form	Form 8606	Nondeductible IRAs.	https://www.irs.gov/pub/irs-pdf/f8606.pdf
Form	1040 NR (Schedule NEC) (SP).	Tax on Income Not Effectively Connected with a U.S. Trade or Business (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040nec--dft.pdf	Instructions .....	.....	.....	https://www.irs.gov/pub/irs-pdf/i8606.pdf
Form	1040 NR (Schedule A).	Itemized Deductions.	https://www.irs.gov/pub/irs-dft/f1040nra--dft.pdf	Form	Form 8609-A	Annual Statement for Low-Income Housing Credit.	https://www.irs.gov/pub/irs-pdf/f8609a.pdf
Form	1040 NR (Schedule A) (SP).	Itemized Deductions (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040nas--dft.pdf	Instructions .....	.....	.....	https://www.irs.gov/pub/irs-pdf/i8609a.pdf
Form	1040 NR (Schedule OI).	Other Information.	https://www.irs.gov/pub/irs-dft/f1040nro--dft.pdf	Form and Instructions.	Form 8611	Recapture of Low-Income Housing Credit.	https://www.irs.gov/pub/irs-pdf/f8611.pdf
Form	1040 NR (Schedule OI) (SP).	Other Information (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040ois--dft.pdf	Form	Form 8615	Tax for Certain Children Who Have Unearned Income.	https://www.irs.gov/pub/irs-dft/f8615--dft.pdf
Form	1040 NR (Schedule P).	Gain or Loss of Foreign Persons from Sale or Exchange of Certain Partnership Interests.	Still under development at the time of release of this notice.	Instructions .....	.....	.....	https://www.irs.gov/pub/irs-pdf/i8615.pdf
Form	Form 1040-PR.	U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico) (Puerto Rico Version).	https://www.irs.gov/pub/irs-pdf/f1040pr.pdf	Form	Form 8621	Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.	https://www.irs.gov/pub/irs-pdf/f8621.pdf
Instructions .....	.....	.....	https://www.irs.gov/pub/irs-dft/i1040pr--dft.pdf	Instructions .....	.....	.....	https://www.irs.gov/pub/irs-pdf/i8621.pdf
Form	Form 1040-SR.	U.S. Tax Return for Seniors.	https://www.irs.gov/pub/irs-dft/f1040s--dft.pdf	Form	Form 8621-A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.	https://www.irs.gov/pub/irs-pdf/f8621a.pdf
Form	Form 1040-SR (SP).	Tax Return for Seniors (Spanish version).	https://www.irs.gov/pub/irs-dft/f1040srs--dft.pdf	Instructions .....	.....	.....	https://www.irs.gov/pub/irs-pdf/i8621a.pdf
Form	Form 1040-SS.	U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).	https://www.irs.gov/pub/irs-dft/f1040ss--dft.pdf	Form and Instructions.	Form 8689	Allocation of Individual Income Tax to the U.S. Virgin Islands.	https://www.irs.gov/pub/irs-dft/f8689--dft.pdf

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Instructions			https://www.irs.gov/pub/irs-dft/i1040ss--dft.pdf .	Form	Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.	https://www.irs.gov/pub/irs-pdf/i8697.pdf .
Form	Form 1040-SS (SP).	U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico) (Spanish Version).	https://www.irs.gov/pub/irs-dft/i1040ss--dft.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8697.pdf .
Instructions			Still under development at the time of release of this notice.	Form	Form 8801	Credit for Prior Year Minimum Tax-Individuals, Estates, and Trusts.	https://www.irs.gov/pub/irs-dft/i8801--dft.pdf .
Form	Schedule A (1040).	Itemized Deductions.	https://www.irs.gov/pub/irs-dft/i1040sa--dft.pdf .	Instructions			https://www.irs.gov/pub/irs-dft/i8801--dft.pdf .
Instructions			https://www.irs.gov/pub/irs-dft/i1040sca--dft.pdf .	Form and Instructions.	Form 8814	Parents' Election to Report Child's Interest and Dividends.	https://www.irs.gov/pub/irs-dft/i8814--dft.pdf .
Form and Instructions.	Schedule B (Form 1040).	Interest and Ordinary Dividends.	https://www.irs.gov/pub/irs-dft/i1040sb--dft.pdf .	Form and Instructions.	Form 8815	Exclusion of Interest from Series EE and I U.S. Savings Bonds Issued After 1989.	https://www.irs.gov/pub/irs-dft/i8815--dft.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i1040sb.pdf .	Form and Instructions.	Form 8818	Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.	https://www.irs.gov/pub/irs-pdf/i8818.pdf .
Form	Schedule C (Form 1040).	Profit or Loss from Business.	https://www.irs.gov/pub/irs-dft/i1040sc--dft.pdf .	Form and Instructions.	Form 8820	Orphan Drug Credit.	https://www.irs.gov/pub/irs-pdf/i8820.pdf .
Instructions			https://www.irs.gov/pub/irs-dft/i1040sc--dft.pdf .	Form	Form 8824	Like-Kind Exchanges.	https://www.irs.gov/pub/irs-dft/i8824--dft.pdf .
Form	Schedule C (SP) (Form 1040).	Profit or Loss from Business (Spanish Version).	https://www.irs.gov/pub/irs-dft/i1040scs--dft.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8824.pdf .
Instructions			Still under development at the time of release of this notice.	Form and Instructions.	Form 8826	Disabled Access Credit.	https://www.irs.gov/pub/irs-pdf/i8826.pdf .
Form	Schedule D (Form 1040).	Capital Gains and Losses.	https://www.irs.gov/pub/irs-dft/i1040sd--dft.pdf .	Form	Form 8828	Recapture of Federal Mortgage Subsidy.	https://www.irs.gov/pub/irs-pdf/i8828.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i1040sd.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8828.pdf .
Form	Schedule E (Form 1040).	Supplemental Income and Loss.	https://www.irs.gov/pub/irs-dft/i1040se--dft.pdf .	Form	Form 8829	Expenses for Business Use of Your Home.	https://www.irs.gov/pub/irs-dft/i8829--dft.pdf .
Instructions			https://www.irs.gov/pub/irs-dft/i1040se--dft.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8829.pdf .
Form and Instructions.	Schedule EIC (Form 1040).	Earned Income Credit.	https://www.irs.gov/pub/irs-dft/i1040sei--dft.pdf .	Form and Instructions.	Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).	https://www.irs.gov/pub/irs-pdf/i8833.pdf .
Form	Schedule EIC (SP) (F. 1040).	Earned Income Credit (Spanish version).	https://www.irs.gov/pub/irs-dft/i1040sep--dft.pdf .	Form	Form 8834	Qualified Electric Vehicle Credit.	https://www.irs.gov/pub/irs-dft/i8834--dft.pdf .
Form	Schedule F (Form 1040).	Profit or Loss from Farming.	https://www.irs.gov/pub/irs-dft/i1040sf--dft.pdf .	Form and Instructions.	Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.	https://www.irs.gov/pub/irs-dft/i8835--dft.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040sf.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8835.pdf
Form	Schedule F (SP) (Form 1040).	Profit or Loss from Farming (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040sfs--dft.pdf	Form and Instructions.	Form 8838	Consent to Extend the Time to Assess Tax Under Section 367-Gain Recognition Agreement.	https://www.irs.gov/pub/irs-pdf/i8838.pdf
Instructions	.....	.....	Still under development at the time of release of this notice.	Form	Form 8839	Qualified Adoption Expenses.	https://www.irs.gov/pub/irs-dft/f8839--dft.pdf
Form	Schedule H (Form 1040).	Household Employment Taxes.	https://www.irs.gov/pub/irs-dft/f1040sh--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8839.pdf
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/f1040sh--dft.pdf	Form and Instructions.	Form 8840	Closer Connection Exception Statement for Aliens.	https://www.irs.gov/pub/irs-dft/f8840--dft.pdf
Form	Schedule H (SP) (Form 1040).	Household Employment Taxes (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040shs--dft.pdf	Form and Instructions.	Form 8843	Statement for Exempt Individuals and Individuals with a Medical Condition.	https://www.irs.gov/pub/irs-dft/f8843--dft.pdf
Instructions	.....	.....	Still under development at the time of release of this notice.	Form and Instructions.	Form 8844	Empowerment Zone Employment Credit.	https://www.irs.gov/pub/irs-pdf/i8844.pdf
Form	Schedule J (Form 1040).	Income Averaging for Farmers and Fishermen.	https://www.irs.gov/pub/irs-dft/f1040sj--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8844.pdf
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040sj.pdf	Form	Form 8845	Indian Employment Credit.	https://www.irs.gov/pub/irs-pdf/i8845.pdf
Form	Schedule LEP (Form 1040).	Request for Change in Language Preference.	https://www.irs.gov/pub/irs-dft/f1040lep--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8845.pdf
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/f1040lep--dft.pdf	Form and Instructions.	Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.	https://www.irs.gov/pub/irs-dft/f8846--dft.pdf
Form	Schedule LEP (SP) (Form 1040(SP)).	Request for Change in Language Preference (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040les--dft.pdf	Form	Form 8853	Archer MSAa and Long-Term Care Insurance Contracts.	https://www.irs.gov/pub/irs-dft/f8853--dft.pdf
Form	Schedule R (Form 1040).	Credit for the Elderly or the Disabled.	https://www.irs.gov/pub/irs-dft/f1040sr--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i8853--dft.pdf
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040sr.pdf	Form	Form 8854	Initial and Annual Expatriation Statement.	https://www.irs.gov/pub/irs-dft/f8854--dft.pdf
Form	Schedule SE (Form 1040).	Self-Employment Tax.	https://www.irs.gov/pub/irs-dft/f1040sse--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i8854--dft.pdf
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040sse.pdf	Form	Form 8858	Information Return of U.S. Persons with Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).	https://www.irs.gov/pub/irs-pdf/i8858.pdf
Form	Schedule SE (SP) (Form 1040).	Self-Employment Tax (Spanish Version).	https://www.irs.gov/pub/irs-dft/f1040ssp--dft.pdf	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8858.pdf

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Instructions	.....	.....	Still under development at the time of release of this notice.	Form	Schedule M (Form 8858).	Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.	https://www.irs.gov/pub/irs-pdf/f8858sm.pdf .
Form and Instructions.	Form 1040 V	Payment Voucher.	https://www.irs.gov/pub/irs-dft/f1040v--dft.pdf .	Form	Form 8859	Carryforward of the District of Columbia First-Time Homebuyer Credit.	https://www.irs.gov/pub/irs-dft/f8859--dft.pdf .
Form and Instructions.	Form 1040 ES/OCR.	Estimated Tax for Individuals (Optical Character Recognition with Form 1040V).	Form 1040-ES(OCR) contains four estimated tax payment vouchers. Form 1040-ES (OCR) is included in the Tax Package 1040ES/V mail out.	Form	Form 8862	Information to Claim Earned Income Credit After Disallowance.	https://www.irs.gov/pub/irs-dft/f8862--dft.pdf .
Form and Instructions.	Form 1040 ES.	Estimate Tax for Individuals.	https://www.irs.gov/pub/irs-pdf/f1040es.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8862.pdf .
Form and Instructions.	Form 1040 ES (NR).	U.S. Estimated Tax for Non-resident Alien Individuals.	https://www.irs.gov/pub/irs-pdf/f1040esn.pdf .	Form	Form 8862(SP)	Information to Claim Earned Income Credit After Disallowance (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f8862sp.pdf .
Form and Instructions.	Form 1040 ES (PR).	Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico).	https://www.irs.gov/pub/irs-pdf/f1040esp.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8862sp.pdf .
Form	Schedule 8812 (Form 1040).	Credits for Qualifying Children and Other Dependents.	https://www.irs.gov/pub/irs-dft/f1040s8--dft.pdf .	Form	Form 8863	Education Credits (American Opportunity and Lifetime Learning Credits).	https://www.irs.gov/pub/irs-dft/f8863--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040s8.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i8863--dft.pdf .
Form	Schedule 8812(SP) (Form 1040).	Credits for Qualifying Children and Other Dependents (Spanish version).	https://www.irs.gov/pub/irs-dft/f1040s8s--dft.pdf .	Form	Form 8864	Biodiesel and Renewable Diesel Fuels Credit.	https://www.irs.gov/pub/irs-dft/f8864--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1040s8s.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8864.pdf .
Form	Form 461	Limitation on Business Losses.	https://www.irs.gov/pub/irs-dft/f461--dft.pdf .	Form	Form 8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.	https://www.irs.gov/pub/irs-dft/f8865--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i461.pdf .	Form	Schedule K-1 (Form 8865).	Partner's Share of Income, Deductions, Credits, etc.	https://www.irs.gov/pub/irs-dft/f8865sk1--dft.pdf .
Form and Instructions.	Form 673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusion(s) Provided by Section 911.	https://www.irs.gov/pub/irs-pdf/f673.pdf .	Form	Schedule K-2 (Form 8865).	Partners' Distributive Share Items--International.	https://www.irs.gov/pub/irs-dft/f8865sk2--dft.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.	https://www.irs.gov/pub/irs-pdf/f926.pdf .	Form	Schedule K-3 (Form 8865).	Partner's Share of Income, Deductions, Credits, etc. International.	https://www.irs.gov/pub/irs-dft/f8865sk3--dft.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i926.pdf .	Form	Schedule O (Form 8865).	Transfer of Property to a Foreign Partnership (Under section 6038B).	https://www.irs.gov/pub/irs-pdf/f8865so.pdf .
Form	Form 965-A	Individual Report of Net 965 Tax Liability.	https://www.irs.gov/pub/irs-pdf/f965a.pdf .	Form	Schedule P (Form 8865).	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.	https://www.irs.gov/pub/irs-pdf/f8865sp.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i965a.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8865.pdf .
Form	Form 965-C	Transfer Agreement Under 965(h)(3).	https://www.irs.gov/pub/irs-pdf/f965c.pdf .	Form	Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.	https://www.irs.gov/pub/irs-pdf/f8866.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i965c.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8866.pdf .
Form and Instructions.	Form 970	Application to Use LIFO Inventory Method.	https://www.irs.gov/pub/irs-pdf/f970.pdf .		Form 8867	Paid Preparer's Due Diligence Checklist.	https://www.irs.gov/pub/irs-dft/f8867--dft.pdf .
Form and Instructions.	Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.	https://www.irs.gov/pub/irs-pdf/f972.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8867.pdf .
Form	Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).	https://www.irs.gov/pub/irs-pdf/f982.pdf .	Form	Form 8873	Extraterritorial Income Exclusion.	https://www.irs.gov/pub/irs-pdf/f8873.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i982.pdf .	Instructions			https://www.irs.gov/pub/irs-pdf/i8873.pdf .
Form	Form 1045	Application for Tentative Refund.	https://www.irs.gov/pub/irs-dft/f1045--dft.pdf .	Form and Instructions.	Form 8874	New Markets Credit.	https://www.irs.gov/pub/irs-pdf/f8874.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i1045.pdf .	Form and Instructions.	Form 8878	IRS e-file Signature Authorization for Form 4868 or Form 2350.	https://www.irs.gov/pub/irs-dft/f8878--dft.pdf .
Form	Form 1098-F	Fines, Penalties and Other Amounts.	https://www.irs.gov/pub/irs-pdf/f1098f.pdf .	Form and Instructions.	Form 8878 SP	IRS e-file Signature Authorization for Form 4868 or Form 2350 (Spanish Version).	https://www.irs.gov/pub/irs-dft/f8878sp--dft.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i1098f.pdf .	Form and Instructions.	Form 8879	IRS e-file Signature Authorization.	https://www.irs.gov/pub/irs-pdf/f8879.pdf .
Form	Form 1116	Foreign Tax Credit (Individual, Estate, or Trust).	https://www.irs.gov/pub/irs-dft/f1116--dft.pdf .	Form and Instructions.	Form 8879 SP	IRS e-file Signature Authorization (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f8879sp.pdf .
Instructions			https://www.irs.gov/pub/irs-pdf/i1116.pdf .	Form and Instructions.	Form 8880	Credit for Qualified Retirement Savings Contributions.	https://www.irs.gov/pub/irs-dft/f8880--dft.pdf .
Form and Instructions.	Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.	https://www.irs.gov/pub/irs-pdf/f1127.pdf .	Form	Form 8881	Credit for Small Employer Pension Plan Startup Costs.	https://www.irs.gov/pub/irs-dft/f8881--dft.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 1128 ...	Application to Adopt, Change or Retain a Tax Year.	https://www.irs.gov/pub/irs-pdf/f1128.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8881.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i1128.pdf .	Form and Instructions.	Form 8882	Credit for Employer-Provided Child Care Facilities and Services.	https://www.irs.gov/pub/irs-pdf/f8882.pdf .
Form and Instructions.	Form 1310 ...	Statement of Person Claiming Refund Due a Deceased Taxpayer.	https://www.irs.gov/pub/irs-pdf/f1310.pdf .	Form	Form 8886	Reportable Transaction Disclosure Statement.	https://www.irs.gov/pub/irs-pdf/f8886.pdf .
Form	Form 2106 ...	Employee Business Expenses.	https://www.irs.gov/pub/irs-dft/f2106--dft.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8886.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i2106.pdf .	Form and Instructions.	Form 8888	Allocation of Refund (Including Savings Bond Purchases).	https://www.irs.gov/pub/irs-pdf/f8888.pdf .
Form and Instructions.	Form 2120 ...	Multiple Support Declaration.	https://www.irs.gov/pub/irs-pdf/f2120.pdf .	Form	Form 8889	Health Savings Accounts (HSAs).	https://www.irs.gov/pub/irs-dft/f8889--dft.pdf .
Form	Form 2210 ...	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.	https://www.irs.gov/pub/irs-pdf/f2210.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i8889--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i2210.pdf .	Form and Instructions.	Form 8896	Low Sulfur Diesel Fuel Production Credit.	https://www.irs.gov/pub/irs-pdf/f8896.pdf .
Form	Form 2210-F	Underpayment of Estimated Tax by Farmers and Fishermen.	https://www.irs.gov/pub/irs-dft/f2210f--dft.pdf .	Form	Form 8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.	https://www.irs.gov/pub/irs-pdf/f8898.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i2210f.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8898.pdf .
Form and Instructions.	Form 2350 ...	Application for Extension of Time to File U.S. Income Tax Return.	https://www.irs.gov/pub/irs-dft/f2350--dft.pdf .	Form	Form 8900	Qualified Railroad Track Maintenance Credit.	https://www.irs.gov/pub/irs-dft/f8900--dft.pdf .
Form and Instructions.	Form 2350 SP.	Application for Extension of Time to File U.S. Income Tax Return (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f2350sp.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8900.pdf .
Form	Form 2441 ...	Child and Dependent Care Expenses.	https://www.irs.gov/pub/irs-dft/f2441--dft.pdf .	Form	Form 8903	Domestic Production Activities Deduction.	https://www.irs.gov/pub/irs-pdf/f8903.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i2441.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8903.pdf .
Form	Form 2555 ...	Foreign Earned Income.	https://www.irs.gov/pub/irs-dft/f2555--dft.pdf .	Form and Instructions.	Form 8906	Distilled Spirits Credit.	https://www.irs.gov/pub/irs-dft/f8906--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i2555--dft.pdf .	Form	Form 8908	Energy Efficient Home Credit.	https://www.irs.gov/pub/irs-dft/f8908--dft.pdf .
Form	Form 3115 ...	Application for Change in Accounting Method.	https://www.irs.gov/pub/irs-pdf/f3115.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i8908--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i3115.pdf .	Form	Form 8910	Alternative Motor Vehicle Credit.	https://www.irs.gov/pub/irs-pdf/f8910.pdf .
Form	Form 3468 ...	Investment Credit.	https://www.irs.gov/pub/irs-dft/f3468--dft.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8910.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i3468.pdf .	Form	Form 8911	Alternative Fuel Vehicle Refueling Property Credit.	https://www.irs.gov/pub/irs-dft/f8911--dft.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 3520	Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.	https://www.irs.gov/pub/irs-dft/f3520--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8911.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i3520.pdf	Form	Form 8912	Credit to Holders of Tax Credit Bonds.	https://www.irs.gov/pub/irs-dft/f8912--dft.pdf
Form	Form 3800	General Business Credit.	https://www.irs.gov/pub/irs-dft/f3800--dft.pdf	Instructions			https://www.irs.gov/pub/irs-dft/f8912--dft.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i3800.pdf	Form	Form 8915-C	Qualified 2018 Disaster Retirement Plan Distributions and Repayments.	https://www.irs.gov/pub/irs-dft/f8915c--dft.pdf
Form	Form 3903	Moving Expenses.	https://www.irs.gov/pub/irs-dft/f3903--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8915c.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i3903.pdf	Form	Form 8915-D	Qualified 2019 Disaster Retirement Plan Distributions and Repayments.	https://www.irs.gov/pub/irs-dft/f8915d--dft.pdf
Form	Form 4070	Employee's Report of Tips to Employer.	https://www.irs.gov/pub/irs-pdf/p1244.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8915d.pdf
Form	Form 4070A	Employee's Daily Record of Tips.	https://www.irs.gov/pub/irs-pdf/p1244.pdf	Form	Form 8915-F	Qualified Disaster Retirement Plan Distributions and Repayments.	https://www.irs.gov/pub/irs-dft/f8915f--dft.pdf
Form	Form 4136	Credit for Federal Tax Paid on Fuels.	https://www.irs.gov/pub/irs-dft/f4136--dft.pdf	Instructions			https://www.irs.gov/pub/irs-dft/i8915f--dft.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i4136.pdf	Form and Instructions	Form 8919	Uncollected Social Security and Medicare Tax on Wages.	https://www.irs.gov/pub/irs-dft/f8919--dft.pdf
Form and Instructions	Form 4137	Social Security and Medicare Tax on Unreported Tip Income.	https://www.irs.gov/pub/irs-dft/f4137--dft.pdf	Form	Form 8925	Report of Employer-Owned Life Insurance Contracts.	https://www.irs.gov/pub/irs-pdf/f8925.pdf
Form	Form 4255	Recapture of Investment Credit.	https://www.irs.gov/pub/irs-dft/f4255--dft.pdf	Form and Instructions	Form 8932	Credit for Employer Differential Wage Payments.	https://www.irs.gov/pub/irs-pdf/f8932.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i4255.pdf	Form	Form 8933	Carbon Oxide Sequestration Credit.	https://www.irs.gov/pub/irs-dft/f8933--dft.pdf
Form and Instructions	Form 4361	Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.	https://www.irs.gov/pub/irs-pdf/f4361.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8933.pdf
Form	Form 4562	Depreciation and Amortization (Including Information on Listed Property).	https://www.irs.gov/pub/irs-dft/f4562--dft.pdf	Form and Instructions	Form 8936	Clean Vehicle Credits.	https://www.irs.gov/pub/irs-pdf/f8936.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i4562.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/i8936.pdf
Form and Instructions	Form 4563	Exclusion of Income for Bona Fide Residents of American Samoa.	https://www.irs.gov/pub/irs-pdf/f4563.pdf	Form	Schedule A (Form 8936)	Clean Vehicle Credit Amount.	https://www.irs.gov/pub/irs-dft/f8936sa--dft.pdf

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Form 4684 ...	Causalities and Thefts.	https://www.irs.gov/pub/irs-dft/f4684--dft.pdf .	Form	Form 8936-A ...	Qualified Commercial Clean Vehicle Credit.	https://www.irs.gov/pub/irs-dft/f8936a--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i4684.pdf .	Form	Schedule 1 (Form 8936-A).	Schedule for Qualified Commercial Clean Vehicle.	https://www.irs.gov/pub/irs-dft/f8936a1--dft.pdf .
Form	Form 4797 ...	Sale of Business Property.	https://www.irs.gov/pub/irs-dft/f4797--dft.pdf .	Form	Form 8941	Credit for Small Employer Health Insurance Premiums.	https://www.irs.gov/pub/irs-dft/f8941--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i4797.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8941.pdf .
Form and Instructions.	Form 4835 ...	Farm Rental Income and Expenses.	https://www.irs.gov/pub/irs-dft/f4835--dft.pdf .	Form	Form 8949	Sales and other Dispositions of Capital Assets.	https://www.irs.gov/pub/irs-dft/f8949--dft.pdf .
Form and Instructions.	Form 4852 ...	Substitute for Form W-2, Wage and Tax Statement or Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc..	https://www.irs.gov/pub/irs-pdf/i4852.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8949.pdf .
Form and Instructions.	Form 4852(SP).	Substitute for Form W-2, Wage and Tax Statement or Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (Spanish Version).	Still under development at the time of release of this notice..	Form	Form 8958	Allocation of Tax Amounts Between Certain Individuals in Community Property States.	https://www.irs.gov/pub/irs-dft/f8958--dft.pdf .
Form and Instructions.	Form 4868 ...	Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.	https://www.irs.gov/pub/irs-pdf/f4868.pdf .	Form	Form 8962	Premium Tax Credit (PTC).	https://www.irs.gov/pub/irs-dft/f8962--dft.pdf .
Form and Instructions.	Form 4868 SP.	Application for Automatic Extension of Time to File U.S. Individual Income Tax Return (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f4868sp.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8962.pdf .
Form and Instructions.	Form 4952 ...	Investment Interest Expense Deduction.	https://www.irs.gov/pub/irs-pdf/f4952.pdf .	Form	Form 8993	Section 250 Deduction for Foreign Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).	https://www.irs.gov/pub/irs-pdf/f8993.pdf .
Form and Instructions.	Form 4970 ...	Tax on Accumulation Distribution of Trusts.	https://www.irs.gov/pub/irs-pdf/f4970.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8993.pdf .
Form and Instructions.	Form 4972 ...	Tax on Lump-Sum Distributions.	https://www.irs.gov/pub/irs-dft/f4972--dft.pdf .	Form	Form 8994	Employer Credit for Paid Family and Medical Leave.	https://www.irs.gov/pub/irs-pdf/f8994.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form and Instructions.	Form 5074 ...	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).	https://www.irs.gov/pub/irs-dft/f5074--dft.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8994.pdf .
Form and Instructions.	Form 5213 ...	Election to Postpone Determination as to Whether the Presumption Applies that an Activity is Engaged in for Profit.	https://www.irs.gov/pub/irs-pdf/f5213.pdf .	Form	Form 8995	Qualified Business Income Deduction Simplified Computation.	https://www.irs.gov/pub/irs-pdf/f8995.pdf .
Form	Form 5329 ...	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.	https://www.irs.gov/pub/irs-pdf/f5329.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8995.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i5329.pdf .	Form	Form 8995-A	Qualified Business Income Deduction.	https://www.irs.gov/pub/irs-pdf/f8995a.pdf .
Form	Form 5405 ...	Repayment of the First-Time Homebuyer Credit.	https://www.irs.gov/pub/irs-dft/f5405--dft.pdf .	Form	Schedule A (Form 8995-A).	Specified Service Trades or Businesses.	https://www.irs.gov/pub/irs-dft/f8995aa--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i5405--dft.pdf .	Form	Schedule B (Form 8995-A).	Aggregation of Business Operations.	https://www.irs.gov/pub/irs-pdf/f8995ab.pdf .
Form	Form 5471 ...	Information Return of U.S. Persons with Respect to Certain Foreign Corporations.	https://www.irs.gov/pub/irs-dft/f5471--dft.pdf .	Form	Schedule C (Form 8995-A).	Loss Netting And Carryforward.	https://www.irs.gov/pub/irs-pdf/f8995ac.pdf .
Form	Schedule J (Form 5471).	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporations.	https://www.irs.gov/pub/irs-pdf/f5471sj.pdf .	Form	Schedule D (Form 8995-A).	Special Rules for Patrons of Agricultural or Horticultural Cooperatives.	https://www.irs.gov/pub/irs-pdf/f8995ad.pdf .
Form	Schedule M (Form 5471).	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.	https://www.irs.gov/pub/irs-pdf/f5471sm.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i8995a.pdf .
Form	Schedule O (Form 5471).	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.	https://www.irs.gov/pub/irs-pdf/f5471so.pdf .	Form	Form 9000	Alternative Media Preference.	https://www.irs.gov/pub/irs-pdf/f9000.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i5471--dft.pdf .	Form	Form 9000(SP)	Alternative Media Preference (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f9000sp.pdf .
Form	Form 5695 ...	Residential Energy Credits.	https://www.irs.gov/pub/irs-dft/f5695--dft.pdf .	Form and Instructions.	Form 9465	Installment Agreement Request.	https://www.irs.gov/pub/irs-pdf/f9465.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i5695.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i9465.pdf .
Form	Form 5713 ...	International Boycott Report.	https://www.irs.gov/pub/irs-pdf/f5713.pdf .	Form and Instructions.	Form 9465 SP ..	Installment Agreement Request (Spanish Version).	https://www.irs.gov/pub/irs-pdf/f9465sp.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Form	Schedule A (Form 5713).	International Boycott Factor (Section 999(c)(1)).	https://www.irs.gov/pub/irs-pdf/f5713sa.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i9465sp.pdf .
Form	Schedule B (Form 5713).	Specifically Attributable Taxes and Income (Section 999(c)(2)).	https://www.irs.gov/pub/irs-pdf/f5713sb.pdf .	Form	Form T (Timber)	Forest Activities Schedule.	https://www.irs.gov/pub/irs-pdf/ft.pdf .
Form	Schedule C (Form 5713).	Tax Effect of the International Boycott Provisions.	https://www.irs.gov/pub/irs-pdf/f5713sc.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/it.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i5713.pdf .	Form and Instructions.	Form W-4	Employee's Withholding Certificate.	https://www.irs.gov/pub/irs-dft/fw4--dft.pdf .
Form	Form 5884 ...	Work Opportunity Credit.	https://www.irs.gov/pub/irs-pdf/f5884.pdf .	Form and Instructions.	Form W-4 (SP)	Employee's Withholding Certificate (Spanish Version).	https://www.irs.gov/pub/irs-dft/fw4sp--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i5884.pdf .	Form and Instructions.	Form W-4 (KO)	Employee's Withholding Certificate (Korean Version).	https://www.irs.gov/pub/irs-pdf/fw4ko.pdf .
Form	Form 5884-A	Employee Retention Credit.	https://www.irs.gov/pub/irs-pdf/f5884a.pdf .	Form and Instructions.	Form W-4 (RU)	Employee's Withholding Certificate (Russian Version).	https://www.irs.gov/pub/irs-pdf/fw4ru.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i5884a.pdf .	Form and Instructions.	Form W-4 (VIE)	Employee's Withholding Certificate (Vietnamese Version).	https://www.irs.gov/pub/irs-pdf/fw4vie.pdf .
Form	Form 6198 ...	At-Risk Limitations.	https://www.irs.gov/pub/irs-pdf/f6198.pdf .	Form and Instructions.	Form W-4 (ZH-S).	Employee's Withholding Certificate (Chinese-Simple Version).	https://www.irs.gov/pub/irs-pdf/fw4zhs.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i6198.pdf .	Form and Instructions.	Form W-4 (ZH-T).	Employee's Withholding Certificate (Chinese-Traditional Version).	https://www.irs.gov/pub/irs-pdf/fw4zht.pdf .
Form	Form 6251 ...	Alternative Minimum Tax-Individuals.	https://www.irs.gov/pub/irs-dft/f6251--dft.pdf .	Form and Instructions.	Form W-4 P	Withholding Certificate for Pension or Annuity Payments.	https://www.irs.gov/pub/irs-dft/fw4p--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/i6251.pdf .	Form and Instructions.	Form W-4 S	Request for Federal Income Tax Withholding from Sick Pay.	https://www.irs.gov/pub/irs-dft/fw4s--dft.pdf .
Form and .. Instructions	Form 6252 ...	Installment Sale Income.	https://www.irs.gov/pub/irs-pdf/f6252.pdf .	Form and Instructions.	Form W-4 V	Voluntary Withholding Request.	https://www.irs.gov/pub/irs-pdf/fw4v.pdf .
Form	Form 6478 ...	Biofuel Producer Credit.	https://www.irs.gov/pub/irs-pdf/f6478.pdf .	Form and Instructions.	Form W-4 R	Withholding Certificate for Retirement Payments Other Than Pensions or Annuities.	https://www.irs.gov/pub/irs-dft/fw4r--dft.pdf .
Instructions	.....	.....	https://www.irs.gov/pub/irs-dft/i6478--dft.pdf .	Form and Instructions.	Form W-7	Application for IRS Individual Taxpayer Identification Number.	https://www.irs.gov/pub/irs-pdf/fw7.pdf .
Form	Form 6765 ...	Credit for Increasing Research Activities.	https://www.irs.gov/pub/irs-dft/f6765--dft.pdf .	Instructions	.....	.....	https://www.irs.gov/pub/irs-pdf/iw7.pdf .

INDIVIDUAL TAX FORMS—Continued

Type	Form No.	Form name	URL	Type	Form No.	Form name	URL
Instructions			https://www.irs.gov/pub/irs-dft/i6765--dft.pdf	Form	Form W-7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.	https://www.irs.gov/pub/irs-pdf/fw7a.pdf
Form and Instructions	Form 6781	Gains and Losses from Section 1256 Contracts and Straddles.	https://www.irs.gov/pub/irs-dft/i6781--dft.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/iw7a.pdf
Form	Form 7203	S Corporation Shareholder Stock and Debt Basis Limitations.	https://www.irs.gov/pub/irs-pdf/i7203.pdf	Form and Instructions	Form W-7 (SP)	Application for IRS Individual Taxpayer Identification Number (Spanish Version).	https://www.irs.gov/pub/irs-pdf/fw7sp.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i7203.pdf	Instructions			https://www.irs.gov/pub/irs-pdf/iw7sp.pdf
Form	Form 7204	Consent to Extend the Time to Assess Tax Related to Contested Foreign Income Taxes-Provisional Foreign Tax Credit Agreement.	https://www.irs.gov/pub/irs-dft/i7204--dft.pdf	Form	Form W-7 (COA)	Certificate of Accuracy for IRS Individual Taxpayer Identification Number.	https://www.irs.gov/pub/irs-pdf/fw7coa.pdf
Form	Form 7205	Energy Efficient Commercial Buildings Deduction.	https://www.irs.gov/pub/irs-dft/i7205--dft.pdf	Other: Notice			https://www.irs.gov/pub/irs-irbs/irb06-26.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i7205--dft.pdf	Other: Notice			https://www.irs.gov/pub/irs-irbs/irb08-14.pdf
Form	Form 7206	Self-Employed Health Insurance Deduction.	Still under development at the time of release of this notice..	Other: Publication			https://www.irs.gov/pub/irs-pdf/p972.pdf
Instructions			Still under development at the time of release of this notice..	Other: TD			https://www.irs.gov/pub/irs-irbs/irb08-33.pdf
Form	Form 7207	Advanced Manufacturing Production Credit.	https://www.irs.gov/pub/irs-dft/i7207--dft.pdf	Other: Rev. Proc.			https://www.irs.gov/pub/irs-irbs/irb04-09.pdf
Instructions			https://www.irs.gov/pub/irs-dft/i7204--dft.pdf	Other: TD			https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-15351.pdf?utm_medium=email&utm_campaign=subscription+mailing+list&A1utm_source=federalregister.gov
Form	Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).	https://www.irs.gov/pub/irs-dft/i8082--dft.pdf	Other: TD			https://www.govinfo.gov/content/pkg/FR-2020-10-01/pdf/2020-21777.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i8082.pdf	Other: TD			https://www.govinfo.gov/content/pkg/FR-2020-10-06/pdf/2020-22071.pdf
Form	Form 8275	Disclosure Statement.	https://www.irs.gov/pub/irs-pdf/i8275.pdf	Other: TD			https://www.govinfo.gov/content/pkg/FR-2022-01-04/pdf/2021-27887.pdf
Instructions			https://www.irs.gov/pub/irs-pdf/i8275.pdf				

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 1099-B**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1099-NEC, *Proceeds from Broker and Barter Exchange Transactions*.

DATES: Written comments should be received on or before November 27, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés García, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, “OMB Number: 1545-0715—Public Comment Request Notice” in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317-5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Proceeds from Broker and Barter Exchange Transactions.

OMB Number: 1545-0715.

Form Project Number: Form 1099-B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099-B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: Updates to the estimated number of annual responses for Form 1099-B will increase the overall burden estimate by 1,262,659,912 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business, or other for-profit organization.

Estimated Number of Responses: 4,364,843,800.

Estimated Time per Respondent: 30 Min.

Estimated Total Annual Burden Hours: 2,182,421,900.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 21, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023-20894 Filed 9-25-23; 8:45 am]

BILLING CODE 4830-01-P

UNIFIED CARRIER REGISTRATION PLAN**Sunshine Act Meetings**

TIME AND DATE: September 28, 2023, 12:00 p.m. to 3:00 p.m., Eastern Time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1-929-205-6099 (US Toll) or 1-669-900-6833 (US Toll), Meeting ID: 977 5563 5193, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is <https://kellen.zoom.us/join/97755635193>.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the “Board”) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda**I. Welcome and Call to Order—UCR Board Chair**

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair*For Discussion and Possible Board Action*

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➤ Board actions taken only in designated areas on agenda

IV. Approval of Minutes of the July 27 UCR Board Meeting—UCR Board Chair*For Discussion and Possible Board Action*

Draft Minutes from the July 27, 2023 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on relevant agency activity.

VI. UCR Penetration Test—Kellen Representative

Kellen's Chief Technology Officer will provide an update and report on relevant activity.

VII. Chief Legal Officer's Report—UCR Chief Legal Officer

The UCR Chief Legal Officer will provide the Board with a status report on his efforts to protect UCR's intellectual property.

VIII. Nominations for the Position of Vice-Chair of the UCR Board—UCR Board Chair

For Discussion and Possible Board Action

The UCR Board Chair will ask for nominations for the position of Vice-Chair of the UCR Board. The position will be voted on at the December 7, 2023, UCR Board meeting. Provided a Vice-Chair is selected at the December 7, Board meeting, that name will be submitted to FMCSA for its consideration and possible action.

IX. Annual Unregistered Broker Letter—UCR Executive Director and Seikosoft

For Discussion and Possible Board Action

The UCR Executive Director and a representative from Seikosoft will lead a discussion on a proposed initiative to send a letter to unregistered brokers each year to improve UCR compliance within the broker population. The Board may consider and approve the cost of sending a letter to all brokers who remain unregistered just prior to the enforcement date each year.

X. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. Discussion of Automatic Annual Renewal of UCR Registration—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, UCR Executive Director and Seikosoft Representatives

For Discussion and Possible Board Action

The UCR Audit Subcommittee Chair will lead a discussion on the issues involved in the voluntary annual

automatic renewal of UCR registrations and options for Seikosoft to design and implement a system that allows for the voluntary annual automatic renewal of UCR registrations using business rules defined by the UCR Audit Subcommittee. The Board may take action to approve such options as may be discussed. The UCR Audit Subcommittee recommends the UCR Board adopt this proposal.

B. Discuss Options To Review and Clean up the Unregistered Motor Carrier UCR Universe in Shadow MCMIS—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, Seikosoft Representative

For Discussion and Possible Board Action

The UCR Audit Subcommittee Chair will lead a discussion on steps necessary for the NRS and State Auditors to review and clean up the 2022/2023 unregistered motor carriers with no activity in the previous 365 days. The Board may take action to approve such options as may be discussed. The UCR Audit Subcommittee recommends the UCR Board adopt this proposal.

Finance Subcommittee—UCR Finance Subcommittee Chair

2025 Registration Fee Submission—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will provide an update on the 2025 registration fee recommendation approved at the last Board meeting.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives—UCR Education and Training Subcommittee Chair

The UCR Education and Training Subcommittee Chair will provide an update on current and planned future training initiatives.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

Update on Current Initiatives—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will provide an update on current and planned initiatives regarding motor carrier industry concerns.

Enforcement Subcommittee—UCR Enforcement Subcommittee Chair

Update on Current Initiatives—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will provide an update on current and planned initiatives.

Dispute Resolution Subcommittee—UCR Dispute Resolution Subcommittee Chair

Update on Current Initiatives—UCR Dispute Resolution Subcommittee Chair

The UCR Dispute Resolution Subcommittee Chair will provide an update on planned initiatives.

XI. Contractor Reports—UCR Board Chair

UCR Executive Director's Report

The UCR Executive Director will provide a report covering his recent activity for the UCR Plan.

DSL Transportation Services, Inc.

DSL Transportation Services, Inc. will report on the latest data from the Focused Anomaly Reviews (FARs) program, discuss motor carrier inspection results, pilot projects and other matters.

Seikosoft

Seikosoft will provide an update on recent/new activity related to the National Registration System (NRS).

UCR Administrator Report (Kellen)

The UCR Chief of Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

XII. Other Business—UCR Board Chair

The UCR Board Chair will call for any other business, old or new, from the floor.

XIII. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, September 21, 2023, at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, eleaman@board.ucr.gov.

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023-21064 Filed 9-22-23; 4:15 pm]

BILLING CODE 4910-YL-P



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 185

September 26, 2023

Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Commercial Refrigerators, Refrigerator-Freezers, and Freezers; Final Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 431****[EERE-2017-BT-TP-0008]****RIN 1904-AD83****Energy Conservation Program: Test Procedure for Commercial Refrigerators, Refrigerator-Freezers, and Freezers****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

SUMMARY: The U.S. Department of Energy (“DOE”) amends the test procedures for commercial refrigerators, refrigerator-freezers, and freezers (“CRE”) to reference the latest versions of the applicable industry standards. DOE also establishes definitions and test procedures for new equipment categories, adopts test procedures consistent with recently published waivers and interim waivers, establishes product-specific enforcement provisions, allows for volume determinations based on computer-aided designs, specifies a sampling plan for volume and total display area, and adopts additional clarifying amendments.

DATES: The effective date of this rule is October 26, 2023. The amendments will be mandatory for equipment testing starting September 20, 2024.

The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register on October 26, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at www.regulations.gov/docket/EERE-2017-BT-TP-0008. The docket web page contains instructions on how to access all documents, including public comments, in the docket. For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Domm, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW, Washington, DC, 20585-0121. Telephone: (202) 586-9870. Email:

ApplianceStandardsQuestions@ee.doe.gov.

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC, 20585-0121.

Telephone: (202) 586-9496. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into 10 CFR part 431:

AHRI Standard 1200-2023 (I-P), 2023 *Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, copyright 2023 (“AHRI 1200-2023”).

ANSI/AHRI Standard 1320-2011 (I-P), 2011 *Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets for Use With Secondary Refrigerants*, copyright 2011 (“ANSI/AHRI 1320-2011”).

ANSI/ASHRAE Standard 72-2022:

- *Method of Testing Open and Closed Commercial Refrigerators and Freezers*, approved June 30, 2022; and
- Errata Sheet, November 11, 2022 (“ANSI/ASHRAE 72-2022”).

ASTM F2143-16, *Standard Test Method for Performance of Refrigerated Buffet and Preparation Tables*, approved May 1, 2016 (“ASTM F2143-16”).

Copies of AHRI 1200-2023 and AHRI 1320-2011 can be obtained by going to www.ahrinet.org/standards/search-standards.

Copies of ASHRAE 72-2022 can be obtained by going to www.techstreet.com/standards/ashrae-72-2022?product_id=1710927 and the November 11, 2022 Errata can be obtained by going to www.ashrae.org/technical-resources/standards-and-guidelines/standards-errata.

Copies of ASTM F2143-16 can be purchased at www.astm.org/f2143-16.html.

For a further discussion of these standards, see section IV.N of this document.

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I. Authority and Background

Commercial refrigerators, refrigerator-freezers, and freezers (collectively, commercial refrigeration equipment, or “CRE”) are included in the list of “covered equipment” for which the U.S. Department of Energy (“DOE”) is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(E)) DOE’s energy conservation standards and test procedures for CRE are currently prescribed at subpart C of part 431 of title 10 of the Code of Federal Regulations (“CFR”). The following

sections discuss DOE's authority to establish test procedures for CRE and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C² of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRE, the subject of this document. (42 U.S.C. 6311 (1)(E))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance

with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle, and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

With respect to CRE, EPCA requires DOE to use the test procedures determined by the Secretary to be generally accepted industry standards, or industry standards developed or recognized by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) or American National Standards Institute (“ANSI”). (42 U.S.C. 6314(a)(6)(A)(i)) With regard to self-contained CRE to which statutory standards are applicable, the required initial test procedure is the ASHRAE 117 test procedure in effect on January 1, 2005. (42 U.S.C. 6314(a)(6)(A)(ii)) Additionally, EPCA requires that if ASHRAE 117 is amended, the Secretary shall, by rule, amend the test procedure for the product as necessary to ensure that the test procedure is consistent with the amended ASHRAE 117 test procedure, unless the Secretary makes a determination, by rule, and supported by clear and convincing evidence, that to do so would not meet the statutory requirements regarding representativeness and burden. (42 U.S.C. 6314(a)(6)(E)) Finally, EPCA states that if a test procedure other than the ASHRAE 117 test procedure is approved by ANSI, DOE must review the relative strengths and weaknesses of the new test procedure relative to the ASHRAE 117 test procedure and adopt one new test procedure for use in the standards program. (42 U.S.C. 6314(a)(6)(F)(i))³

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including CRE, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test

procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A))

B. Background

DOE's current test procedure for CRE appears at 10 CFR part 431, subpart C, appendix B (“Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers” or “appendix B”).

DOE last amended the test procedure for CRE in a final rule published on April 24, 2014 (“April 2014 Final Rule”). 79 FR 22277. Specifically, DOE clarified certain terms, procedures, and compliance dates to improve repeatability and provide additional detail compared to the prior version of the test procedure. DOE noted that the amendments in the April 2014 Final Rule would not affect the energy use of CRE as measured under the prior version of the test procedure. 79 FR 22277, 22280–22281.

The test procedure incorporates by reference the following industry standards: (1) AHRI Standard 1200 (I–P)–2010, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” (“AHRI 1200–2010”); (2) ASHRAE Standard 72–2005, “Method of Testing Commercial Refrigerators and Freezers,” which was approved by ANSI on July 29, 2005 (“ASHRAE 72–2005”); and (3) ANSI/Association of Home Appliance Manufacturers (“AHAM”) Standard HRF–1–2008, “Energy and Internal Volume of Refrigerating Appliances” (“AHAM HRF–1–2008”) for determining refrigerated volumes for CRE.

On June 11, 2021, DOE published in the **Federal Register** an early assessment

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

³ In 2005, ASHRAE combined Standard 72–1998, “Method of Testing Open Refrigerators,” and Standard 117–2002 and published the test method as ASHRAE Standard 72–2005, “Method of Testing Commercial Refrigerators and Freezers,” which was approved by ANSI on July 29, 2005.

request for information (“June 2021 RFI”) seeking comments on the existing DOE test procedure for CRE. 86 FR 31182. In the June 2021 RFI, DOE requested comments, information, and data regarding a number of issues, including (1) scope and definitions, (2) updates to industry standards, (3) test conditions for specific CRE categories, (4) harmonization with food safety standards, (5) remote condensing units, (6) test procedure clarifications, (7) alternative refrigerants, (8) compartment volume certification, and (9) test procedure waivers.

On June 30, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (“NOPR”) that proposed to update and establish test procedures for CRE (“June 2022 NOPR”). 87 FR 39164. In the June 2022

NOPR, DOE proposed to and requested feedback on the following:

- (1) Establish new definitions for high-temperature refrigerator, medium-temperature refrigerator, low-temperature freezer, and mobile refrigerated cabinet, and amend the definition for ice-cream freezer;
- (2) Incorporate by reference the most current versions of industry standards AHRI 1200, ASHRAE 72, and AHRI 1320;
- (3) Establish definitions and a new appendix C including test procedures for buffet tables and preparation tables;
- (4) Establish definitions and a new appendix D including test procedures for blast chillers and blast freezers;
- (5) Amend the definition for chef base or griddle stand;
- (6) Specify refrigerant conditions for CRE that use R-744;

- (7) Allow for certification of compartment volumes based on computer-aided design (“CAD”) models;
- (8) Incorporate provisions for defrosts and customer order storage cabinets currently specified in waivers and interim waivers;
- (9) Adopt product-specific enforcement provisions;
- (10) Clarify use of the lowest application product temperature (“LAPT”) provisions;
- (11) Remove the obsolete test procedure in appendix A; and
- (12) Specify a sampling plan for volume and total display area (“TDA”). 87 FR 39164.

DOE received comments in response to the June 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
AHT Cooling Systems GmbH	AHT	40	Manufacturer.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	38	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, and Natural Resources Defense Council.	Joint Commenters	31	Efficiency Organizations.
Continental Refrigerator	Continental	29	Manufacturer.
Hillphoenix, Inc	Hillphoenix	35	Manufacturer.
Hoshizaki America, Inc	Hoshizaki	30	Manufacturer.
Hussmann Corporation	Hussmann	32	Manufacturer.
National Automatic Merchandising Association	NAMA	33	Trade Association.
North American Association of Food Equipment Manufacturers.	NAFEM	34	Trade Association.
Northwest Energy Efficiency Alliance	NEEA	39	Efficiency Organization.
Pacific Gas and Electric Company, San Diego Gas & Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	36	Energy Utilities.
True Manufacturing Company, Inc	True	28	Manufacturer.
Zero Zone, Inc	Zero Zone	37	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁴ To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the August 1, 2022, public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the public meeting that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

⁴ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop test procedures for CRE. (Docket No. EERE-2017-BT-TP-0008, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

II. Synopsis of the Final Rule

In this final rule, DOE amends and establishes test procedures for CRE as follows:

- (1) Establish new definitions for high-temperature refrigerator, medium-temperature refrigerator, low-temperature freezer, and mobile refrigerated cabinet, and amend the definition for ice-cream freezer;
- (2) Incorporate by reference the most current versions of industry standards AHRI 1200, ASHRAE 72, and AHRI 1320;
- (3) Establish definitions and a new appendix C including test procedures for buffet tables and preparation tables;
- (4) Establish definitions and a new appendix D including test procedures for blast chillers and blast freezers;
- (5) Amend the definition and certain test conditions for chef bases or griddle stands;

- (6) Specify refrigerant conditions for CRE that use R-744;
 - (7) Allow for certification of compartment volumes based on computer-aided design (“CAD”) models;
 - (8) Incorporate provisions for defrosts and customer order storage cabinets currently specified in waivers and interim waivers;
 - (9) Adopt product-specific enforcement provisions;
 - (10) Clarify use of the lowest application product temperature (“LAPT”) provisions;
 - (11) Remove the obsolete test procedure in appendix A; and
 - (12) Specify a sampling plan for volume and total display area (“TDA”).
- The adopted amendments are summarized and compared to the test procedure provision prior to the amendment in Table II.1, along with the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE Test Procedure Prior to Amendment	Amended Test Procedure	Changes from the June 2022 NOPR proposed test procedure summary of changes	Attribution
Defines commercial refrigerator without delineating between units that operate at medium and high temperatures.	Defines high-temperature refrigerator and medium-temperature refrigerator to account for new high-temperature rating point.	None	Improves representativeness.
Defines ice-cream freezer as a type of commercial freezer.	Defines low-temperature freezer to delineate between ice-cream freezers and other commercial freezers.	None	Improves representativeness.
Ice-cream freezer definition refers only to “ice cream”.	Ice-cream definition refers more broadly to “ice cream and other frozen desserts”.	Expanded to “ice cream and other frozen desserts”.	Improves representativeness.
References AHRI 1200–2010 for rating requirements.	References AHRI 1200–2023 for rating requirements.	Updated to harmonize with most recent version of AHRI 1200.	Harmonizes with most recent industry standard.
References ASHRAE 72–2005 for test requirements.	References ASHRAE 72–2022 with Errata for test requirements.	Updated to harmonize with most recent version of ASHRAE 72.	Harmonizes with most recent industry standard.
References AHAM HRF–1–2008 for volume measurement.	References AHRI 1200–2023 for volume requirements.	Updated to harmonize with most recent version of AHRI 1200.	Harmonizes with most recent industry standard.
Includes a single 38 °F rating point for commercial refrigerators.	Specifies 38 °F rating point for medium-temperature refrigerators and 55 °F rating point for high-temperature refrigerators.	None	Improves representativeness; harmonizes with industry standard.
Does not specify a method for testing CRE with secondary coolants.	References AHRI 1320–2011 for CRE used with secondary coolants.	None	Improves representativeness; harmonizes with industry standard.
Does not specify definitions or test procedures for buffet tables and preparation tables.	Defines buffet table and preparation table and establishes test procedures based on ASTM F2143–16.	None	Improves representativeness; harmonizes with industry standard.
Does not specify definitions or test procedures for blast chillers and blast freezers.	Defines blast chiller and blast freezer and establishes test procedures based on expected industry test method.	None	Improves representativeness; harmonizes with industry standard.
Chef base or griddle stand definition does not refer to a maximum height.	Clarifies chef base or griddle stand definition by specifying a maximum height of 32 in. for this equipment.	None	Improves representativeness.
Chef bases or griddle stands have a dry-bulb temperature of 75.2 °F; wet-bulb temperature of 64.4 °F; and radiant heat temperature of greater than or equal to 70.0 °F.	Chef bases or griddle stands have a dry-bulb temperature of 86.0 °F; wet-bulb temperature of 73.7 °F; and radiant heat temperature of greater than or equal to 81.0 °F.	Updated test conditions	Improves representativeness.
Does not provide procedures for CRE with no automatic defrost or with long duration defrost cycles.	References ASHRAE 72–2022 with Errata for test instructions for units with no automatic defrost and adopts optional two-part test for CRE with defrost cycles longer than 24 hours.	Updated to harmonize with most recent version of ASHRAE 72.	Addresses existing waiver; harmonizes with industry standard.
Includes conflicting instructions regarding TDA calculation.	Corrects errors in current test procedure by reference to AHRI 1200–2023.	Updated to harmonize with most recent version of AHRI 1200.	Improves representativeness, repeatability, and reproducibility; harmonizes with industry standard.
Provides refrigerant conditions that are applicable only to common refrigerants.	Specifies refrigerant conditions to allow for testing with carbon dioxide refrigerant.	Includes tolerances and updates conditions to ensure appropriate operation within tolerances.	Improves representativeness; harmonizes with existing waiver.
Requires determining volume based on testing.	Allows the use of CAD models to certify volume.	None	Reduces test burden.
Specifies a single door opening sequence.	Defines customer order storage cabinet equipment category and specifies an alternate door opening sequence for this equipment.	None	Improves representativeness; harmonizes with existing waiver.
Does not specify product-enforcement provisions.	Includes product-enforcement provisions for determining volume and TDA.	None	Improves clarity.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

DOE Test Procedure Prior to Amendment	Amended Test Procedure	Changes from the June 2022 NOPR proposed test procedure summary of changes	Attribution
Specifies LAPT instructions for temperatures above target test temperature.	Clarifies use of LAPT provisions for operating temperatures below the target test temperature.	None	Improves clarity.
Includes obsolete appendix A and current appendix B test procedures.	Removes obsolete appendix A; adds new appendix C for testing buffet tables and preparation tables, and adds new appendix D for testing blast chillers and blast freezers.	None	Improves readability.
Does not specify a sampling plan for volume and TDA.	Specifies that volume and TDA be determined based on the mean of the test sample.	None	Improves representativeness, repeatability, and reproducibility.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of CRE currently subject to energy conservation standards, or require retesting or recertification solely as a result of DOE’s adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing for CRE currently tested to the existing test procedure. For chef bases or griddle stands, buffet tables and preparation tables, and blast chillers and blast freezers, testing according to the amended or established test procedure will not be required until the compliance date of any energy conservation standards for that equipment. However, any representations of energy use for chef bases or griddle stands, buffet tables and preparation tables and blast chillers and blast freezers must be made in accordance with the amended test procedure starting 360 days after this final rule publishes in the **Federal Register**. While DOE does not expect that manufacturers will incur additional cost as a result of the established test procedure, DOE provides a discussion of testing costs in section III.O.1 of this document. Discussion of DOE’s actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 360 days after the publication of this final rule.

III. Discussion

A. Scope and Definitions

“Commercial refrigerator, freezer, and refrigerator-freezer” means refrigeration equipment that is not a consumer product (as defined in 10 CFR 430.2); is not designed and marketed exclusively for medical, scientific, or research purposes; operates at a chilled, frozen, combination chilled and frozen, or variable temperature; displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically; has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors; is designed for pull-down temperature applications or holding temperature applications; and is connected to a self-contained condensing unit or to a remote condensing unit. 10 CFR 431.62.

For the purpose of determining applicability of certain test procedure provisions, DOE proposed in the June 2022 NOPR to amend certain existing definitions and to establish certain new definitions, as discussed in the following paragraphs. 87 FR 39164, 39168–39171. DOE discusses additional equipment definitions and test procedures for specific equipment categories in section III.C of this document.

1. Ice-Cream Freezers

DOE defines certain categories of CRE, including “ice-cream freezer.” DOE defines an “ice-cream freezer” as a commercial freezer that is designed to operate at or below $-5\text{ }^{\circ}\text{F} \pm 2\text{ }^{\circ}\text{F}$ ($-21\text{ }^{\circ}\text{C} \pm 1.1\text{ }^{\circ}\text{C}$) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream. 10 CFR 431.62.

In the June 2022 NOPR, DOE did not identify any technical features that would allow for distinguishing ice-

cream freezers from other commercial freezers capable of operating at low temperatures and therefore did not propose in the June 2022 NOPR to include any additional equipment characteristics in the ice-cream freezer definition. 87 FR 39164, 39168.

a. Frozen Desserts

DOE noted in the June 2022 NOPR that the equipment term and definition reference “ice cream,” but “ice cream” is not defined. 87 FR 39164, 39168. DOE acknowledged that other frozen products may be similarly stored and displayed. *Id.* For example, food products such as gelato, frozen yogurt, and sorbet are typically displayed, stored, and dispensed in the same manner as ice cream. *Id.* The CRE used for these products is likely similar, if not identical, to equipment used to store, display, or dispense ice cream. *Id.*

To clarify the equipment classification and to avoid potential misunderstanding that the term “ice-cream freezer” is limited to equipment associated with ice cream and not other similar products, DOE proposed in the June 2022 NOPR to amend this term’s definition to refer to equipment designed, marketed, or intended for the storing, displaying, or dispensing of “frozen desserts,” rather than ice cream specifically. 87 FR 39164, 39169. DOE stated in the NOPR that it does not expect this proposal to affect testing or certifications for existing CRE, because equipment designed for frozen desserts other than ice cream that otherwise meets the ice-cream freezer definition are likely already tested and certified as ice-cream freezers. *Id.*

As proposed in the June 2022 NOPR, *ice-cream freezer* means:

- (1) Prior to the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, a commercial freezer that is designed to

operate at or below -5.0°F ($\pm 2.0^{\circ}\text{F}$) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of frozen desserts; or

(2) Upon the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, a commercial freezer that is designed for an operating temperature at or below -15.0°F ($\pm 2.0^{\circ}\text{F}$) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of frozen desserts. *Id.*

In response to the June 2022 NOPR, Hussmann stated its support of the amended definition for “frozen desserts” rather than ice cream specifically. (Hussmann, No. 32, p. 2) Hussmann also asked DOE to include in this definition the temperature range needed to operate ice-cream freezers, stating it does not oppose the definition change, but cautioning that some models intended for “frozen desserts” may not be able to achieve the DOE ice-cream ratings. *Id.*

The CA IOUs stated their support to amend the definition for “ice-cream freezer” to include all “frozen desserts” and to test frozen dessert freezers at either 0°F or -15°F . (CA IOUs, No. 36, p. 10)

AHRI disagreed with DOE’s proposal to amend the ice-cream freezer definition to refer to equipment intended for “frozen desserts,” because while some commercial refrigeration equipment models are sold and marketed as “ice-cream freezers,” AHRI was not aware of any product specifically marketed for “frozen desserts.” (AHRI, No. 38, p. 2) AHRI noted that the term “frozen desserts” was not defined, and that DOE indicated its intention to clarify “ice cream” could include gelato, frozen yogurt, sorbet, and other ice-cream-like products. *Id.* AHRI commented that they disagree with DOE’s statement that these products are typically displayed, stored, and dispensed in the same manner as ice cream; in fact, these additional products have an array of temperature requirements depending on their characteristics (fat content, etc.) and the application holding, dispensing, etc.). *Id.* AHRI also noted that the term “frozen desserts” is problematic because it might encompass products with requirements different than ice-cream-like, such as frozen pastries, cakes, fruits, chocolates, and other confectionary items served frozen at the end of a meal, while excluding “frozen treats” or “frozen snacks.” *Id.*

Continental commented that it disagreed with DOE’s proposal to amend the ice-cream freezer definition to refer to equipment intended for

“frozen desserts;” while some commercial refrigeration equipment models are sold and marketed as “ice-cream freezers,” Continental knew of none marketed for “frozen desserts,” a term DOE has not defined. (Continental, No. 29, p. 1–2) Continental disagreed with DOE’s statement that gelato, frozen yogurt, sorbet, and other ice-cream-like products were typically displayed, stored, and dispensed in the same manner as ice cream, as described in the NOPR, since these products have an array of temperature requirements depending on their characteristics (fat content, etc.) and the application (holding, dispensing, etc.). *Id.* Continental also found the term “frozen desserts” problematic because it might include frozen pastries, cakes, fruits, chocolates, and other confectionary items served frozen at the end of a meal, but with temperature requirements different than ice-cream-like products. *Id.* Continental commented that ice-cream freezers have features, such as manual defrost systems and cold-wall evaporators, that differentiate them from standard freezers to minimize temperature excursions during normal defrost periods. *Id.*

Hillphoenix disagreed with the proposal to amend the ice-cream freezer definition to refer to frozen desserts, as this change will not clarify the intended equipment to which this category is applied and will continue to drive uncertainty in the industry. (Hillphoenix, No. 35, p. 1) Hillphoenix recommended removing the product type reference from the category name and referencing a general name based on manufacturers’ intent and internal air temperature (“IAT”). *Id.* Hillphoenix commented that the operating temperature combined with manufacture intent would be the main characteristic that distinguishes different types of freezers, and noted that the proposed high-temperature, the existing medium-temperature, and low-temperature categories do not reference a specific product type. *Id.* Hillphoenix stated the term “ice-cream freezer” could be named “sub-zero freezer.” *Id.*

In response to Hussmann’s comment, DOE states that the definition of “ice-cream freezer,” as proposed in the June 2022 NOPR, includes the operating temperature range required to meet the definition of an ice-cream freezer. 87 FR 39164, 39168. Any model that is unable to operate at the required integrated average temperature shall use the lowest application product temperature to certify.

In response to AHRI’s, Continental’s, and Hillphoenix’s comments, DOE provided examples in the June 2022

NOPR of ice-cream-like products that are typically displayed, stored, and dispensed in the same manner as ice cream (gelato, frozen yogurt, and sorbet). 87 FR 39164, 39168–39169. As stated in the June 2022 NOPR, the CRE used for these food products is likely similar, if not identical, to equipment used to store, display, or dispense ice cream. *Id.* In addition, DOE has determined that “frozen treats” or “frozen snacks” are understood to be synonymous with “frozen desserts.” To provide greater clarity, DOE is amending the definition to specify “of ice cream or other frozen desserts”. DOE also notes that the definition of “ice-cream freezer,” as proposed in the June 2022 NOPR, includes the operating temperature range required to meet the definition, and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of frozen desserts. 87 FR 39164, 39168–39170. If a commercial freezer does not meet the requirements of an ice-cream freezer, then it would be a low-temperature freezer, according to the definition as proposed in the June 2022 NOPR. *Id.*

In response to Continental’s comment regarding certain features of ice-cream freezers, DOE stated in the June 2022 NOPR that, while ice-cream freezers may implement manual defrosts or cold wall evaporators, DOE is aware of these equipment designs in other commercial freezers, such that they do not uniquely distinguish ice-cream freezers. 87 FR 39164, 39169.

b. Operating Temperature Range

Appendix B requires testing all ice-cream freezers to an IAT of -15°F . However, the term “ice-cream freezer” includes a variety of equipment with a range of typical operating temperatures during normal use. For example, certain ice-cream freezers are designed to operate considerably below -5°F (sometimes referred to as “hardening cabinets” and specifically designed for ice-cream storage), while other ice-cream freezers are designed to operate closer to 0°F during typical use (e.g., “dipping cabinets” and other equipment used to hold ice cream intended for immediate consumption). Ice-cream freezers intended for higher-temperature operation are often not capable of achieving an IAT of -15°F . In such an instance, appendix B requires testing the units to the LAPT.

AHRI 1200–2023 maintains the existing rating points for commercial freezers (*i.e.*, $-15.0^{\circ}\text{F} \pm 2.0^{\circ}\text{F}$ for ice-cream applications and $0.0^{\circ}\text{F} \pm 2.0^{\circ}\text{F}$ for low-temperature applications) in section 4.1.1, “Integrated Average

Temperature.” Consistent with AHRI 1200–2023, DOE is not amending the commercial freezer target IATs for testing.

Of the 346 ice-cream freezer models certified to DOE,⁵ 21 are rated based on LAPT’s higher than -15°F , including 12 models with a rating temperature of -5°F . Many of these models have a horizontal or service over counter configuration and are intended to hold ice cream for immediate consumption.

DOE recognizes that testing and rating certain commercial freezers to 0°F may be more appropriate than testing and rating to -15°F . DOE already requires a 0°F rating temperature for commercial freezers. In the June 2022 NOPR, DOE tentatively determined that ice-cream freezers that meet the current ice-cream freezer definition but cannot operate as low as an IAT of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$ can be tested at an IAT of $0^{\circ}\text{F} \pm 2^{\circ}\text{F}$. 87 FR 39164, 39170.

To better distinguish between ice-cream freezers and other commercial freezers (*i.e.*, ice-cream freezers not capable of reaching an IAT of $-15^{\circ}\text{F} \pm 2.0^{\circ}\text{F}$), DOE proposed in the June 2022 NOPR to amend the ice-cream freezer definition to specify that the designed operating temperature is required to be at or below $-15.0^{\circ}\text{F} (\pm 2.0^{\circ}\text{F})$, upon the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers. 87 FR 39164, 39170. DOE also proposed to clarify which commercial freezers are required to test at an IAT of 0°F according to appendix B by defining the term “low-temperature freezer” to mean a commercial freezer that is not an ice-cream freezer. *Id.* In the June 2022 NOPR, DOE requested comment on the proposed amended definition for “ice-cream freezer” and the proposed definition for “low-temperature freezer.” *Id.*

Zero Zone and AHRI commented that modifying the definition of “ice-cream freezer” through two separate requests is confusing and asked that in future correspondence, DOE provide the composite final draft of a definition. (Zero Zone, No. 37, p. 2; AHRI, No. 38, p. 2) Zero Zone and AHRI also commented that the rules for different product categories are based on temperature, but both groups could find no mention of temperature in this context and assumed it was the IAT. *Id.* Zero Zone and AHRI asked that DOE clarify and state that the temperatures listed are the integrated average product

temperature. *Id.* In addition, Zero Zone and AHRI commented that mixing product types and product temperatures in a definition was challenging and confusing. *Id.* Zero Zone and AHRI stated that manufacturers make generic commercial freezers that customers employ in a variety of uses. *Id.* Finally, Zero Zone and AHRI stated that in the 2007 proposed rule (RE: 10 CFR part 431.62 and FR/Vol 72 No. 143/ Thursday, July 26, 2007 page 41173)⁶ (“July 2007 ANOPR”), DOE clarified the application and definition of “generic commercial freezer” and requested that DOE codify its comments from 2007 into the formal definition, because it currently exists only in a proposed rule and should be clarified in a final rule to ease manufacturer concerns. *Id.*

In the August 2022 public meeting, ICF commented that rather than saying “operate at or below -5 plus-or-minus 2 Fahrenheit,” there should be a threshold and no tolerance because “at or below” contradicts “plus-or-minus 2,” and the same is the case with the refrigerators. (Public Meeting Transcript, No. 41, p. 21).

AHRI, Continental, and Hussmann commented that they agree with DOE’s intention to amend the definition of “ice-cream freezer” to products with operating temperatures at or below -15°F , but recommended refining the definition to specify “ice-cream hardening freezer” or “ice-cream holding freezer” to clarify the proper application and equipment marketing. (AHRI, No. 38, p. 3; Continental, No. 29, p. 2; Hussmann, No. 32, p. 2) AHRI, Continental, and Hussmann also commented they were unaware of any ice cream that was dispensed or served at or below -15°F . *Id.*

Continental agreed with DOE that a separate definition for “low-temperature freezer” as a commercial freezer that will maintain -15°F but is not an ice-cream freezer was appropriate. (Continental, No. 29, p. 2) Continental further commented that equipment in this category should be tested and rated at -15°F to reflect the intended application. *Id.* Continental stated commercial freezers that cannot operate as low as -15°F , and are not marketed for ice-cream applications, can be tested and rated at 0°F , and should be classified under the current definition of “commercial freezer.” *Id.* In addition, Continental commented that although the test procedures for “ice-cream hardening/holding” and “non-ice-cream” freezers at -15°F may be similar, DOE’s energy standards

expressed in 10 CFR part 431 have significant differences in how allowable energy consumption levels are calculated for self-contained ice-cream freezers versus other self-contained commercial freezers, therefore changes in this test procedure rulemaking will have substantial impact. *Id.*

Hillphoenix agreed with the proposal to amend the ice-cream freezer operating temperature to be $\leq -15^{\circ}\text{F}$ and to include this in the definition, but recommended that DOE specify if the rating temperature of -15°F IAT will change, as currently the ice-cream freezer category has an operating temperature of $\leq -5^{\circ}\text{F}$ and a rating temperature of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$ IAT. (Hillphoenix, No. 35, p. 1)

Hillphoenix disagreed with the proposal to modify the definition of “low-temperature freezer” to refer to a non-ice-cream freezer, as this change will not clarify the intended equipment in this category since ice cream can be displayed in freezers not intended to operate at $\leq -15^{\circ}\text{F}$, which will continue to drive uncertainty in the industry. (Hillphoenix, No. 35, p. 1) Hillphoenix recommended that DOE amend the operating temperature of the low-temperature category from $> -5^{\circ}\text{F}$ and $< 32^{\circ}\text{F}$ to $> -15^{\circ}\text{F}$ and $< 32^{\circ}\text{F}$ if such changes are applied to the ice-cream category. *Id.* Hillphoenix also proposed that each category of CRE reference the IAT only and not the operating temperature to drive consistency between categories. *Id.*

NEEA supported DOE’s proposed modifications to the definition of “ice-cream freezers” to include operating characteristics instead of how the equipment was marketed for use because technical characteristics provide clearer differentiation of equipment than marketing materials. (NEEA, No. 39, p. 2). NEEA restated its previous concern that some ice-cream freezers that meet the existing marketing-based definition cannot operate at an IAT of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$, which represents DOE’s proposed defining characteristic and DOE has proposed a new term, “low-temperature freezer” for those ice-cream freezers, with their testing point at 0°F . *Id.* NEEA recommended that DOE review the products that meet this new definition of “low-temperature freezer” but not the new definition for “ice-cream freezer” to ensure that the equipment is similar enough to be grouped together and that the test conditions are representative for all products. *Id.*

The Joint Commenters stated support for DOE’s proposed changes that remove ambiguity in the definition of “ice-cream freezers” and ensure all ice-cream

⁵ Based on review of DOE’s Compliance Certification Database, available at www.regulations.doe.gov/certification-data (last accessed February 23, 2023).

⁶ See www.govinfo.gov/content/pkg/FR-2007-07-26/pdf/07-3640.pdf.

and low-temperature freezers are tested at a uniform temperature, -15°F and 0°F , respectively. (Joint Commenters, No. 31, p. 1)

The CA IOUs commented that, in a survey of products available on the market, they determined ice-cream dipping cabinets listed in DOE's Compliance Certification Management System ("CCMS") that were tested at -5°F and -10°F can achieve 0°F . (CA IOUs, No. 36, p. 10)

True commented that the equipment category of "low-temperature freezer" is not included in NSF/ANSI 7–2021. (True, No. 28, p. 4) True also

commented that when a freezer is designed to hold -15.0°F ($\pm 2.0^{\circ}\text{F}$), the energy consumption will be much higher due to the use of larger displacement compressors, as well as the use of more anti-condensation and defrost heaters, such as heated glass. *Id.*

In response to Zero Zone's and AHRI's comments, DOE notes that the definition of "ice-cream freezer," as proposed in the June 2022 NOPR, refers to "operating temperature," defined in 10 CFR 431.62 as follows:

Operating temperature means the range of integrated average temperatures at which a self-contained commercial refrigeration unit or remote-condensing commercial refrigeration unit with a thermostat is capable of operating or, in the case of a remote-condensing commercial refrigeration unit without a thermostat, the range of integrated average temperatures at which the unit is marketed, designed, or intended to operate.

However, DOE understands the definition of "ice-cream freezer," as proposed in the June 2022 NOPR, states "operating temperature" in the second part of the definition and "to operate" in the first part of the definition. 87 FR 39164, 39168–39170. Therefore, DOE is amending the definition of "ice-cream freezer" to include "operating temperature" in both parts of the definition.

Zero Zone and AHRI also referenced the July 2007 ANOPR discussion of the "ice-cream freezer" definition. DOE expects that Zero Zone and AHRI are referring to the discussion which states that unless equipment is designed, marketed, or intended specifically for the storage, display or dispensing of ice cream, it would not be considered an "ice-cream freezer." 72 FR 41161, 41173. Multi-purpose commercial freezers, manufactured for storage and display, for example, of frozen foods as well as ice cream would not meet this definition. *Id.* DOE also expects that the update to "ice-cream applications" in section 4.1.1.2 of AHRI 1200–2023 is

consistent with Zero Zone's and AHRI's comments. Consistent with the discussion of the July 2007 ANOPR, DOE is amending the definition of "ice-cream freezer" to include the term "specifically".

In response to ICF's comment, DOE is amending the definition of "ice-cream freezer" to remove the temperature tolerances and adjusting the temperature in the second part of the definition to specify the upper bound of the ice-cream freezer IAT test condition tolerance, consistent with DOE's intention of the definition proposed in the June 2022 NOPR.

In response to AHRI's, Continental's, and Hussmann's comments, the definition of "ice-cream freezer," as proposed in the June 2022 NOPR, states that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of frozen desserts which encompasses terms or equipment such as "ice-cream hardening" or "ice-cream holding." 87 FR 39164, 39168–39169. DOE notes that if a commercial freezer does not meet the requirements of an ice-cream freezer, then the commercial freezer would be a low-temperature freezer, according to the definition as proposed in the June 2022 NOPR. 87 FR 39164, 39170. Commercial freezers that are not ice-cream freezers (*i.e.*, low-temperature freezers) are currently tested at 0°F ($\pm 2^{\circ}\text{F}$). As discussed in the June 2022 NOPR, the definition of "ice-cream freezer" will not require a more restrictive operating temperature range until the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers. 87 FR 39164, 39170.

In response to Hillphoenix's comment, as stated in the June 2022 NOPR, DOE is not amending the commercial freezer target IATs for testing, which is consistent with AHRI 1200–2023. 87 FR 39164, 39170. As stated in the June 2022 NOPR, DOE recognizes that the reference to "ice-cream" in the definition of "ice-cream freezer" does not itself distinguish this equipment from other commercial freezers, and that the additional descriptors specified in the definition (*i.e.*, designed to operate at or below -5°F) together classify a unit as an ice-cream freezer. 87 FR 39164, 39169. Therefore, a commercial freezer that is not designed for an operating temperature at or below -5.0°F , or -13.0°F upon the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or

other frozen desserts would meet the definition of a low-temperature freezer.

In response to NEEA's comment, DOE states the CRE that currently meet the definition of "ice-cream freezer" but that would only meet the definition of "low-temperature freezer" upon the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, are likely similar, if not identical, to certain equipment that currently meet the definition of "low-temperature freezer."

In response to True's comment, DOE recognizes that the definitions and categories do not necessarily match those included in the NSF 7 standard, but DOE is establishing definitions for the purposes of the DOE test procedure. To the extent that different equipment categories require different components due to different operating temperatures, DOE would consider the corresponding energy use impacts as part of the energy conservation standards rulemaking.

Therefore, as described, DOE is amending the definition of "ice-cream freezer" as follows:

Ice-cream freezer means:

- (1) Prior to the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below -5.0°F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or
- (2) Upon the compliance date(s) of any amended energy conservation standard(s) for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below -13.0°F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

DOE is establishing the definition of "low-temperature freezer" as proposed in the June 2022 NOPR in this final rule:

Low-temperature freezer means a commercial freezer that is not an ice-cream freezer.

2. High-Temperature CRE

DOE defines "commercial refrigerator" as a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating at or above 32°F ($\pm 2^{\circ}\text{F}$). 10 CFR 431.62.

Section 2.1 of appendix B requires testing commercial refrigerators to an IAT of $38^{\circ}\text{F} \pm 2^{\circ}\text{F}$. DOE is aware of equipment that meets the definition of a commercial refrigerator but is capable of operating only at temperatures above the $38^{\circ}\text{F} \pm 2^{\circ}\text{F}$ IAT required for testing. Examples of these types of equipment

include CRE designed for storing or displaying chocolate and/or wine, with typical recommended storage temperatures around 55 °F. Consistent with the current test procedure, manufacturers certify such equipment using the LAPT setting. LAPT can vary by model, so this approach, which does not rely on a uniform operating temperature, can result in measured energy consumptions that are not necessarily comparable between models. Currently, 145 models of single-compartment commercial refrigerators are certified to DOE with an LAPT above 40.0 °F.⁷ Categorizing these commercial refrigerators in a separate high-temperature refrigerator category would allow DOE to consider test procedures for this equipment that may better represent actual use.

To allow for differentiating typical commercial refrigerators from commercial refrigerators that operate only at higher temperatures, DOE proposed in the June 2022 NOPR to define “high-temperature refrigerator” as a commercial refrigerator that is not capable of operating with an integrated average temperature as low as 38.0 °F (±2.0 °F). 87 FR 39164, 39171.

DOE stated in the June 2022 NOPR that it recognized certain commercial refrigerators may be capable of operating with an IAT of 38.0 °F (±2.0 °F) but are intended for use at higher storage temperatures. *Id.* However, DOE proposed to define “high-temperature refrigerator” based on operating capability rather than intended use to ensure consistent application of DOE’s definitions and to ensure that CRE currently tested and rated with an IAT of 38.0 °F (±2.0 °F) would continue to be categorized, tested, and rated at that operating condition. *Id.*

To clarify the classification of commercial refrigerators overall, DOE also proposed in the June 2022 NOPR to define the term “medium-temperature refrigerator” to refer to commercial refrigerators capable of operating with an IAT of 38.0 °F (±2.0 °F) or lower. *Id.*

DOE also proposed to require testing high-temperature refrigerators according to AHRI 1200–2023, which requires an IAT of 55 °F ±2.0 °F. *Id.* Under the June 2022 NOPR approach, a commercial refrigerator would be tested and rated as either a medium-temperature refrigerator (if capable of operating with an IAT of 38.0 °F (±2.0 °F)) or as a high-temperature refrigerator (if not capable

of operating with an IAT as low as 38.0 °F (±2.0 °F)). *Id.*

In the June 2022 NOPR, DOE recognized that certain commercial refrigerators may be capable of operating at IATs of both 38 °F (±2.0 °F) and 55 °F (±2.0 °F). *Id.* In the April 2014 Final Rule, DOE stated that CRE capable of operating at IATs that span multiple equipment categories must be certified and comply with DOE’s regulations for each applicable equipment category. 79 FR 22277, 22291. The definition of “high-temperature refrigerator,” as proposed in the June 2022 NOPR, would exclude CRE capable of operating at medium temperatures (*i.e.*, an IAT of 38 °F), and therefore would exclude models capable of operating at both IATs. 87 FR 39164, 39171. Thus, as proposed in the June 2022 NOPR, a unit of CRE capable of operating at both IATs of 38 °F and 55 °F would only meet the definition of a medium-temperature refrigerator. *Id.*

As an alternative to the definition proposed in the June 2022 NOPR, DOE stated that it could instead define “high-temperature refrigerator” based only on the capability of a commercial refrigerator to operate at an IAT of 55 °F (±2.0 °F). 87 FR 39164, 39171. Under this alternate approach, a unit of CRE capable of operating at IATs of both 38 °F and 55 °F would meet the definitions of both a medium-temperature refrigerator and a high-temperature refrigerator. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed definitions for “high-temperature refrigerator” and “medium-temperature refrigerator,” including whether the terms should be mutually exclusive or constructed such that equipment could be considered to meet both definitions. 87 FR 39164, 39171.

The Joint Commenters supported DOE’s proposed changes regarding the establishment of a definition and uniform test procedure for high-temperature refrigerators. (Joint Commenters, No. 31, p. 1) The Joint Commenters expressed support for DOE’s proposed definition and test procedure for high-temperature CRE, particularly basing the distinction between medium and high temperature on operating ability rather than intended use, as this will ensure consistent application of DOE’s definitions and test procedures. (Joint Commenters, No. 31, p. 2)

NEEA commented that it supports the new definitions DOE proposed for high-temperature CRE, stating that these equipment types have unique applications compared to other CRE, and these definitions allowed

consideration (potential standards), categorization (equipment classes), and testing of this equipment separate from other CRE. (NEEA, No. 39, p. 2). NEEA also stated its support for DOE’s proposal to establish test procedures for new and/or newly defined categories of CRE, and restated its recommendation from the 2021 CRE Test Procedure RFI that DOE establish test methods for new CRE product types, including high-temperature CRE. (NEEA, No. 39, p. 2)

Hussmann commented that it favors the proposed mutually exclusive definitions of “high-temperature refrigerator” and “medium-temperature refrigerator.” (Hussmann, No. 32, p. 2). Hussmann commented in favor of rating only at medium temperature if the CRE are capable of operating at both high and medium temperatures. (Hussmann, No. 32, p. 3) In the August 2022 public meeting, Hussmann commented that there are specialty applications that run in between the low-temperature and medium-temperature rating points. (Public Meeting Transcript, No. 41, p. 18) Hussmann added that a unit may run between 8 °F and 10 °F as the current LAPT for that product. *Id.* Hussmann noted that these products won’t run at 0 °F, and they don’t run at 32 °F, and that is something for DOE to consider. *Id.*

Hillphoenix agreed with the proposed definitions of “high-temperature refrigerator” including the IAT of 55 °F ±2 °F, and “medium-temperature refrigerator” including the IAT of 38 °F ±2 °F. (Hillphoenix, No. 35, p. 1). Hillphoenix commented that the proposed separate designation for “medium-temperature refrigerator” is not needed and could introduce confusion, and it recommended DOE amend the definitions of “commercial freezer” and “commercial refrigerator” in which high- and medium-temperature refrigerators are already addressed. *Id.* Hillphoenix suggested, as an alternative, that “commercial freezer” and “commercial refrigerator” could be replaced by the terms “medium-temperature refrigerator” and “low-temperature freezer.” *Id.* Hillphoenix also agreed with DOE that a single CRE unit capable of operating in both high- and medium-temperature categories should only be required to meet the 38 °F ±2 °F IAT. *Id.*

AHRI commented that DOE should consider using existing product designations and existing labelling as found in ANSI/NSF 7–2019 for “high-temperature refrigerators.” (AHRI, No. 38, p. 3). AHRI stated that to meet applicable sanitation requirements, self-contained storage refrigerators must be capable of maintaining an air

⁷ Based on review of DOE’s Compliance Certification Database, available at www.regulations.doe.gov/certification-data (last accessed February 23, 2023).

temperature of 40 °F in 100 °F ambient temperature (AHRI stated a presumption that such products should be able to maintain IAT of 38 °F for the DOE energy test). *Id.* AHRI commented that two equipment types represent refrigerators that meet applicable sanitation requirements for high-temperature applications: (1) beverage coolers are exempt from temperature test requirements if they bear a permanently attached label reading, “This equipment is intended for the storage and display of non-potentially hazardous bottled or canned products only”; and (2) self-contained display refrigerators are exempt from temperature performance testing if they bear a label reading, “This display refrigerator is not for the display of potentially hazardous foods.” *Id.* AHRI commented that there is no need for the proposed separate designation for “medium-temperature refrigerator” since such products would already be covered under the current definition of “refrigerator” if they do not fall under the proposed sub-classification of “high-temperature refrigerator.” *Id.* AHRI stated that this approach would be consistent with the proposed new definition of “low-temperature freezer” because a category for “medium-temperature freezer” has not been suggested. *Id.*

Continental commented that the term “commercial refrigerator” should be retained to encompass all CRE capable of operating at or above 32 °F and that the proposed additional definition of “medium-temperature refrigerator” for CRE at or below 38 °F down to 32 °F is unnecessary and may introduce confusion. (Continental, No. 29, p. 2) Continental also commented that the ANSI/NSF 7–2019 sanitation standard for commercial refrigerators and freezers requires that self-contained storage refrigerators must be tested and proven to maintain an air temperature of 40 °F in 100 °F ambient, and capable of maintaining product simulator IAT of 38 °F in 75 °F ambient, as prescribed by ASHRAE 72–2022. *Id.* Continental stated no objection to DOE’s proposed definition of the term “high-temperature refrigerator” as a commercial refrigerator that is not capable of operating with an IAT as low as 38 °F in 75 °F ambient, but it added that DOE should reference existing labelling prescribed in ANSI/NSF 7–2019 to identify “high-temperature refrigerators” that meet required sanitation requirements but are not required to meet temperature testing requirements. *Id.* Continental stated its awareness that equipment identified

with the current NSF labels of beverage cooler and self-contained display refrigerator would be the only commercial refrigerators meeting applicable sanitation standards without being required to maintain specified temperatures that align with product simulator IAT of 38 °F. *Id.*

True commented that any unit unable to store food products at a temperature of 38.0 °F (± 2.0 °F) is not a commercial refrigerator and as a result, the term “high-temperature refrigerator” could be construed as misleading. (True, No. 28, p. 4) True noted that the proposed terms “high-temperature refrigerator” and “medium-temperature refrigerator” are seen in the new AHRI–1200 standard, which is not yet public. *Id.* True commented that commercial refrigerators must comply with NSF–7, and for a storage refrigerator, test per NSF–7 such that they cannot exceed 40 °F at any point. (True, Public Meeting Transcript, No. 41, p. 15). True commented that the NSF–7 temperature ranges should be considered for the applicable equipment, noting that high-temperature refrigerators are not covered under any health and safety standards. *Id.* True further commented that for chocolate, wine, and flower storage applications, refrigerated units unable to meet the 38.0 °F (± 2.0 °F) requirement should be labeled as “commercial display refrigerators for non-hazardous (food) applications,” and added that True units are all capable of operating from 32.0 °F to 55 °F, with control settings changed for higher-temperature applications. (True, No. 28, p. 4).

In response to Hussmann’s comment, AHRI 1200–2023 maintains the existing rating points for Medium Temperature Applications and Low Temperature Applications (*i.e.*, 38 °F ± 2.0 °F for medium-temperature applications and 0.0 °F ± 2.0 °F for low-temperature applications) in section 4.1.1, “Integrated Average Temperature.” Consistent with AHRI 1200–2023, DOE is not amending the medium-temperature refrigerator or low-temperature freezer target IATs for testing. To the extent that a model may not be able to maintain the target IATs for testing, the LAPT provisions would continue to apply, as discussed in section III.K of this document.

In response to Hillphoenix’s, AHRI’s, Continental’s, and True’s comments, the definitions for “medium-temperature refrigerator” and “low-temperature freezer,” as proposed in the June 2022 NOPR, indicate they are subsets of the definitions for “commercial refrigerator” and “commercial freezer,” respectively. DOE is establishing the

separate definitions to ensure clarity of when certain provisions apply specifically to either medium-temperature refrigerators or low-temperature freezers rather than the broader categories of commercial refrigerators or commercial freezers.

Consistent with the comments discussed in section III.A.1.b regarding “operating temperature” and temperature tolerances, DOE is amending the definitions of “high-temperature refrigerator” and “medium-temperature refrigerator” to specifically include the definition for “operating temperature” and to replace the temperature tolerances with the upper bound of the medium-temperature refrigerator IAT test condition tolerance which is consistent with DOE’s intentions of these definitions in the June 2022 NOPR.

Therefore, as described, DOE is amending the definitions of “high-temperature refrigerator” and “medium-temperature refrigerator” as follows:

High-temperature refrigerator means a commercial refrigerator that is not capable of an operating temperature at or below 40.0 °F.

Medium-temperature refrigerator means a commercial refrigerator that is capable of an operating temperature at or below 40.0 °F.

DOE discusses test requirements for this equipment in section III.B.1.b of this document.

3. Convertible Equipment

In the April 2014 Final Rule, DOE noted that some basic models of CRE may have operating characteristics that include an operating temperature range that spans multiple equipment classes, and subsequently required that self-contained equipment or remote condensing equipment with thermostats capable of operating at IATs that span multiple equipment categories be certified and comply with DOE’s regulations for each applicable equipment category. 79 FR 22277, 22291. Similarly, DOE adopted requirements for remote condensing equipment without thermostats that specify that if a given basic model of CRE is marketed, designed, or intended to operate at IATs spanning multiple equipment categories, the CRE basic model must be certified and comply with the relevant energy conservation standards for all applicable equipment categories. *Id.*

In the June 2022 NOPR, DOE proposed to specify in 10 CFR 429.42 the requirements from the April 2014 Final Rule that require basic models of CRE that operate in multiple equipment classes to certify and comply with the

energy conservation standards for each applicable equipment class. 87 FR 39164, 39171. This proposal is consistent with the notice of petition for a test procedure waiver that DOE published on May 26, 2017, for AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. (“AHT”) in which DOE declined to grant AHT an interim waiver that would allow for testing only in the ice-cream freezer equipment class for AHT’s specified multi-mode CRE basic models. 82 FR 24330.

In the June 2022 NOPR, DOE requested comment on the proposal to specify the requirements from the April 2014 Final Rule regarding basic models of CRE that operate in multiple equipment classes. 87 FR 39164, 39171.

AHRI recommended that because the phrase “capable of operating at” was included for marketing purposes and not technical capability, DOE should consider removing that phrase as unnecessary in the following 2014 Final Rule language: “CRE with thermostats capable of operating at integrated average temperatures (“IATs”) that span multiple equipment categories must be certified and comply with DOE’s regulations for each applicable equipment category.” (AHRI, No. 38, p. 4) AHRI used the same reasoning to further recommend that DOE remove the word “or” from the following language: “. . . remote condensing equipment without a thermostat that is marketed, designed, or intended to operate at IATs spanning multiple equipment categories must be certified and comply with the relevant energy conservation standards for all applicable equipment categories.”⁸ *Id.*

Hussmann recommended removing the phrase “capable of operating at” from the following 2014 Final Rule sentence: “CRE with thermostats capable of operating at integrated average temperatures (“IATs”) that span multiple equipment categories must be certified and comply with DOE’s regulations for each applicable equipment category.” (Hussmann, No. 32, p. 2).

AHT commented that it is overly burdensome to test and certify very efficient closed equipment in all three temperature classes when it is capable of operating in all three classes, and that only the most energy-consuming temperature class should be used for testing and certifying, as in Europe. (AHT, No. 40, p. 1)

True commented that when designing a unit for multiple temperature ratings, the systems will not be as energy

efficient at the higher operating temperature rating, compared to a system designed specifically for the higher temperature rating. (True, No. 28, p. 2) True stated that, in one example, a unit passes ENERGY STAR® 5.0 requirements as a storage freezer (0 °F ±2 °F) but, when tested as a storage refrigerator (38 °F ±2 °F), will consume about twice the energy of a unit specifically designed to operate only as a storage refrigerator, due mostly to the excess capacity of the compressor and refrigeration system required to operate the unit at the lower temperature application. *Id.*

Hillphoenix disagreed with the proposal to specify the requirements stated in the 2014 Final Rule and recommended that basic models of CRE that operate in multiple equipment classes should only be required to meet the coldest application for a CRE product, which would be less burdensome on manufacturers. (Hillphoenix, No. 35, p. 2)

In response to AHRI’s and Hussmann’s comments, DOE notes the phrase “capable of operating at” does refer to technical capability and is consistent with phrasing in current DOE definitions (e.g., commercial refrigerator and commercial freezer). Therefore, DOE is maintaining this phrase in this document.

In response to AHRI’s comment, DOE notes that the word “or” is necessary for the construction of the sentence that contains the requirements for remote condensing equipment without a thermostat and is therefore maintaining the word “or” in this document.

In response to AHT’s, True’s, and Hillphoenix’s comments, DOE notes that the definitions discussed in sections III.A.1 and III.A.2 would only require CRE including an operating temperature range that spans multiple equipment classes to certify in a maximum of two equipment classes (i.e., ice-cream freezer and medium-temperature refrigerator, ice-cream freezer and high-temperature refrigerator, low-temperature freezer and medium-temperature refrigerator, or low-temperature freezer and high-temperature refrigerator). Testing to the coldest applicable temperature would be expected to result in the highest energy consumption, but does not necessarily ensure that a model would meet the energy conservation standards for multiple applicable equipment classes at different operating temperatures.

As proposed in the June 2022 NOPR, DOE is specifying in 10 CFR 429.42 the requirements from the April 2014 Final Rule that basic models of CRE that

operate in multiple equipment classes must be certified and comply with the energy conservation standards for each applicable equipment class.

B. Updates to Industry Standards

DOE’s test procedure for CRE currently adopts through reference certain provisions of AHRI 1200–2010, ASHRAE 72–2005, and AHAM HRF–1–2008. 10 CFR 431.63. With regard to the provisions relevant to the DOE test procedure, AHRI 1200–2010 references certain provisions of ASHRAE 72–2005 and AHAM HRF–1–2008.

Since establishing the DOE test procedure in appendix B, AHRI, ASHRAE, and AHAM have published updated versions of the referenced test standards. On October 1, 2013, ANSI approved an updated version of AHRI 1200, ANSI/AHRI Standard 1200 (I–P), “2013 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” (“AHRI 1200–2013”). On April 12, 2023, AHRI issued an updated version of AHRI 1200 (“AHRI 1200–2023”). On August 1, 2018, ANSI approved an updated version of ASHRAE 72, ANSI/ASHRAE Standard 72–2018, “Method of Testing Open and Closed Commercial Refrigerators and Freezers” (“ASHRAE 72–2018”). On June 30, 2022, ANSI approved an updated version of ASHRAE 72, ANSI/ASHRAE Standard 72–2022, “Method of Testing Open and Closed Commercial Refrigerators and Freezers” (“ASHRAE 72–2022”). On November 11, 2022, Errata Sheet for ANSI/ASHRAE Standard 72–2022, “Method of Testing Open and Closed Commercial Refrigerators and Freezers” was published (“ASHRAE 72–2022 with Errata”). AHAM more recently approved and published an updated version of its industry test standard, AHAM HRF–1–2019, “Energy and Internal Volume of Refrigerating Appliances” (“AHAM HRF–1–2019”). DOE initially determined in the June 2022 NOPR that the changes within AHRI 1200–2013, ASHRAE 72–2018, and AHAM HRF–1–2019 are editorial, improve clarity, better harmonize with the DOE test procedure, or not relevant to CRE (e.g., relevant to products such as consumer refrigerators). 87 FR 39164, 39171. Based on DOE’s assessment, the changes in the latest versions of the industry test standards, AHRI 1200–2023 and ASHRAE 72–2022 with Errata, will not impact the measured energy consumption, volume, or TDA of CRE, as applicable.

DOE discusses AHRI 1200–2023 and ASHRAE 72–2022 with Errata in sections III.B.1 and III.B.2 of this document.

⁸ 79 FR 22277, 22291.

In response to the June 2022 NOPR, AHRI, Zero Zone, and NAFEM recommended that DOE use the referenced standards as intended. (AHRI, No. 38, p. 1; Zero Zone, No. 37, p. 1; NAFEM, No. 34, p. 1) AHRI cautioned DOE that combining test standards was unnecessary and inadvisable, and recommended that DOE regulate the issues in the test procedure under a singular standard. *Id.* AHRI stated concern that the data set used here did not provide clarity as to whether the testing is indicative of energy efficiency. *Id.* AHRI recommended that DOE wait to update certain regulations until clearer test standards had been determined through consensus by manufacturers and third parties. *Id.* AHRI also noted that ENERGY STAR was not ready to employ certain referenced standards, raising concerns that DOE was prematurely adopting these requirements. *Id.*

Zero Zone recommended that DOE wait for the updated standard whenever possible and that under current rules, DOE has been able to call out a standard that was nearly revised (ASHRAE 72 and AHRI 1200). (Zero Zone, No. 37, p. 1). Zero Zone commented that possibly DOE could follow this process for other standards as well, and that when this was not possible, Zero Zone asked DOE to request that standards development groups immediately focus on areas of DOE concern to allow for industry input and consensus building and allow DOE to have improve information in the standard. *Id.*

NAMA recommended that DOE use the referenced standards as intended and cautioned DOE that combining test standards was unnecessary and inadvisable and recommended that DOE regulate the issues in the test procedure under a singular standard. (NAFEM, No. 34, p. 2) NAMA stated concern that the test procedures mentioned in many of these items did not clarify which standard was to be used for which measurement. *Id.* NAMA commented that referencing multiple standards could be a problem when one standard was updated before the other, and, in general, NAMA recommended that referencing one standard would be preferred unless DOE specified which sections in the standards were being required. *Id.* NAMA commented that many sections in the ASTM, ASHRAE, and AHRI standards were written to measure the performance of the product, not just the energy measurement and DOE therefore needed to identify the standards sections carefully so as to not move DOE into writing performance test methods. *Id.* NAMA commented it would be willing to support such

activities in joint discussions on the sections to ensure that the measurement of energy for NAMA-covered products was accurate. *Id.*

Hussmann commented that combining test standards was not a typical practice and recommended that DOE regulate the issues in the CRE TP NOPR under a single, universally accepted established standard. (Hussmann, No. 32, p. 1). Hussmann expressed concern that the data acquired during a hybrid standard approach would not yield representative results of intended product use by already established means throughout the industry. *Id.* Hussmann recommended that DOE work with the appropriate standards committees to update regulations until the standards have been established, determined to yield consistent results, and are representative of typical manufactured products. *Id.*

True commented that it uses NSF/ANSI 7–2021 as the performance standard for commercial food service equipment, in addition to UL 471 (“Standard for Commercial Refrigerators and Freezers,” soon to be replaced by UL CSA 60335–2–89, by October 2024), and ASHRAE 72–2005 for energy consumption reporting to DOE, Natural Resources Canada (“NRCAN”), CEC, and ENERGY STAR. (True, No. 28, p. 1) True listed four current NSF 7 performance tests that must be complied with to certify that its equipment meets the NSF 7 food safety requirements for temperature testing (performance), construction, and materials used. *Id.* True commented that AHRI–1200 is not considered to be the standard used for all commercial refrigeration, and that AHRI standards and guidelines do not address food safety temperatures or food sanitation concerns and requirements, making AHRI standards and guidelines inappropriate for commercial food service refrigeration equipment. *Id.*

DOE has evaluated existing industry standards, and where applicable, is incorporating by reference the industry standard into the relevant appendix. DOE considers incorporating by reference an industry standard as a standalone reference whenever possible. DOE has identified certain areas in which provisions of industry standards require additional specifications or are inconsistent with the existing regulatory test method. To clarify the applicability of provisions from standards that are incorporated by reference, DOE occasionally may need to supplement an industry standard with additional clarifications. For CRE, instead of duplicating requirements necessary to improve clarify of the test procedure

into the regulatory text, DOE is referring to provisions in other industry standards that provide the necessary clarifications. This leads to DOE referencing specific provisions from multiple different industry standards. DOE specifically refers to individual sections of industry standards as appropriate to ensure only relevant provisions are incorporated in the regulatory test method such that the test method is not unduly burdensome to conduct and is reasonably designed to produce test results that reflect energy use during a representative average use cycle.

DOE recognizes the value of industry standards setting processes and regularly participates in committees that develop and review industry standards. DOE has statutory timelines for test procedure rulemakings that require DOE to determine whether amendments to test procedures are necessary to carry out the requirements of EPCA at least once every 7 years. (42 U.S.C. 6314(a)(1)) DOE has evaluated industry standards applicable to CRE that are both available now and under development as it conducts the rulemaking activity to consider whether the CRE test method requires amendment. DOE will continue to participate in industry committees and will consider future industry standards in future test procedure rulemakings.

DOE and EPA coordinate their product and equipment efficiency programs to harmonize test requirements when possible and appropriate. While EPA did not adopt test methods for additional categories of CRE during its last revision of the ENERGY STAR specification, DOE has evaluated test procedures for these categories and determined that the procedures adopted in this rule produce test results which reflect energy use during a representative average use cycle, and are not unduly burdensome to conduct. To the extent that EPA revises its specification to include these new categories of CRE into the ENERGY STAR program, DOE will coordinate with EPA to harmonize requirements when appropriate.

In response to True’s comment, DOE has evaluated existing industry test procedures for the use as the basis of the DOE test procedure for energy consumption. DOE recognizes that the industry test procedures serve different purposes, including for food safety. DOE discusses the individual industry test procedures considered and incorporated by reference in the following subsections, section III.C, and section III.D of this document.

1. AHRI 1200

The revisions included in AHRI 1200–2023 are largely to provide editorial, clarifying, or harmonizing updates that will not impact the measured energy consumption, volume, or TDA of CRE as compared to the current test procedure. Specifically, AHRI 1200–2023 includes the following updates: definitions intended to harmonize with ASHRAE 72–2022 and DOE’s existing regulations; updated definitions for consistency with the use of the rating standard; removal of test requirements that were duplicative with ASHRAE 72–2022; clarified measurement requirements and the use of calculations; inclusion of direct refrigerated volume measurement instructions (rather than referencing the AHAM test standard); and detailed total display area requirements and examples.

DOE proposed in the June 2022 NOPR to incorporate by reference AHRI 1200–202X for use in the DOE test procedure because DOE tentatively determined that the updates compared to AHRI 1200–2013 would improve the clarity of the test standard, ensure consistent testing, and as a result would improve reproducibility of the test procedure. 87 FR 39164, 39172. AHRI 1200–202X includes procedures for measuring refrigerated volume rather than referring to the AHAM standard (although the procedures are consistent between these standards). *Id.* Therefore, DOE proposed in the NOPR to remove the incorporation by reference of AHAM HRF–1–2008 and instead refer to AHRI 1200–202X directly for refrigerated volume measurement. *Id.* Based on DOE’s review of AHRI 1200–2023, the updates included in the standard are primarily editorial and are not expected to change test results as compared to the existing test procedure, except for the specific updates as discussed in the following paragraphs. Therefore, DOE has determined in this document that any existing test data for CRE currently available on the market is expected to be consistent with the amended test procedure.

In the June 2022 NOPR, DOE requested comment on the proposal to incorporate by reference AHRI 1200–202X and whether the use of the updated test method would impact CRE ratings based on the current DOE test procedure. 87 FR 39164, 39173.

AHRI commented that it supports DOE’s proposal to incorporate by reference AHRI 1200–202X, noting that select AHRI members consistently test and rate remote condensing CRE using high-glide refrigerants. (AHRI, No. 38, p.

4) AHRI commented that refrigerants 407, 448A, and 449A are considered “high glide” under the new definition in AHRI 1200–202X and that the updated test method is the most accurate way to determine the rated energy consumption, resulting in similar rated numbers to previous non-high-glide refrigerants like R–404A. *Id.* AHRI further noted that the current AHRI 1200–202X standard does not include testing requirements for CO₂ (*i.e.*, R–744), so this refrigerant would require DOE waivers for future use. *Id.*

Continental supported DOE’s proposal to incorporate by reference the most recent versions of applicable industry standards, including AHRI 1200–202X. (Continental, No. 29, p. 3) Continental added that use of the latest standards should not be required until the compliance date of any new energy conservation standards established, based on the proposed rating standards, to allow time for stakeholders to thoroughly evaluate any impact on energy consumption. *Id.*

Hillphoenix commented that it agreed with the proposal to incorporate AHRI 1200–202X by reference, as no significant impacts to CRE ratings could be foreseen. (Hillphoenix, No. 35, p. 2)

Hussmann commented that it favors the proposal to incorporate by reference AHRI 1200–202X. (Hussmann, No. 32, p. 2)

True commented that it opposes removing the AHAM HRF–1–2008 standard and referencing AHRI 1200–202X in future DOE test procedures, as revisions to AHRI 1200 are in draft form and have not been publicly reviewed. (True, No. 28, p. 5). True recommended that the NSF/ANSI–2021 standard be added to this list because AHRI 1200 only references self-contained commercial refrigeration sporadically and does not specifically address the issues of self-contained refrigeration. *Id.* In the August 2022 public meeting, True commented that AHRI–1200 does not apply to all commercial refrigeration but does apply to display refrigeration. (Public Meeting Transcript, No. 41, p. 16) True added that it believes DOE is bringing in two different standards used in two different applications, additionally stating that AHRI–1200 does not address any food health/safety issues. *Id.* Hussmann agreed with True’s comment, and added that it thinks DOE needs to make a distinction and understand that AHRI–1200 is typically a rating point and does not necessarily align with NSF 7. (Public Meeting Transcript, No. 41, p. 17)

AHRI 1200–2023 had two public review periods prior to publication. DOE has reviewed the updates to AHRI

1200–2023 and determined that the updates will not impact the measured volume of CRE as compared to the existing DOE test procedure (which currently references HRF–1–2008⁹).

DOE acknowledges that NSF 7 is a performance standard applicable to multiple CRE categories; however this standard addresses food safety and sanitation performance. DOE test procedures must produce test results which reflect energy use during a representative average use cycle, and not be unduly burdensome to conduct as required by EPCA. DOE has evaluated NSF 7, other available industry test standards, and industry standards under development when considering test procedures for these equipment categories as discussed in this document. DOE also notes that the current¹⁰ and amended¹¹ test procedures allow for optional testing at NSF test conditions for commercial refrigeration equipment that are also tested in accordance with NSF test procedures (Type I and Type II) (*i.e.*, integrated average temperatures and ambient conditions used for NSF testing may be used in place of the DOE-prescribed integrated average temperatures and ambient conditions provided they result in a more stringent test).

In the June 2022 NOPR, DOE proposed alternate refrigerant conditions to be used for testing remote CRE with CO₂ refrigerant. 87 FR 39164, 39210. See section III.G of this document for a discussion of remote CRE with CO₂ refrigerant (*i.e.*, R–744).

Based on the June 2022 NOPR and comments received in response, DOE is finalizing its proposal to incorporate by reference AHRI 1200–2023.

In addition to the clarifying revisions that would not substantively change testing as compared to the current approach using the DOE test procedure and AHRI 1200–2010, AHRI 1200–2023 also includes two substantive additions: addressing the use of high glide refrigerants and providing an additional temperature rating point for “high-temperature” applications. DOE proposed in the June 2022 NOPR to adopt these provisions in its test procedure, as discussed in the following sections. 87 FR 39164, 39172. Additionally, DOE identified updates in AHRI 1200–2023 as compared to AHRI 1200–202X discussed in the following

⁹ Section 3.1 of Appendix B to Subpart C of 10 CFR part 431.

¹⁰ Section 2.3 of Appendix B to Subpart C of 10 CFR part 431.

¹¹ Section 2.3 of Appendix B to Subpart C of 10 CFR part 431.

sections regarding chef bases, certain definitions, and night curtains.

a. High Glide Refrigerants

For remote condensing CRE, AHRI 1200 provides calculations to estimate the compressor energy consumption necessary to provide the cooling to the refrigerator or freezer. These calculations are based on the dew point of the refrigerant during testing, which is intended to be representative of the evaporator temperature. See Table 1 and section 5.2.1 of AHRI 1200–2013 and Table 1 and section 5.1.2 of AHRI 1200–2023.

For certain refrigerants, the saturated vapor temperature (*i.e.*, the dew point) can be different from the saturated liquid temperature at a given pressure, in which case the refrigerant is considered to have “glide.” AHRI 1200–2023 includes a definition for “high glide refrigerant” as a zeotropic refrigerant blend whose temperature glide is greater than 2 °F. ASHRAE defines “glide” as the absolute value of the difference between the starting and ending temperatures of a phase-change process by a refrigerant within a component of a refrigerating system, exclusive of any subcooling or superheating. This term usually describes condensation or evaporation of a zeotrope.¹²

For high glide refrigerants, the refrigerant dew point is not necessarily representative of the overall evaporator temperature. AHRI 1200–2023 specifies that for high glide refrigerants, the temperature used to calculate compressor energy consumption is based on an adjusted mid-point evaporator temperature rather than an adjusted dew point temperature.

Because the evaporator provides cooling to the CRE over the entire heat exchanger surface, using the evaporator mid-point temperature would ensure that the temperature used to calculate compressor energy consumption is more representative of the overall evaporator temperature. DOE determined in the June 2022 NOPR that the AHRI 1200–202X approach of using the evaporator mid-point temperature rather than refrigerant dew point is more representative of actual remote condensing CRE use for which the equipment uses high glide refrigerants and would improve consistency of remote testing using different refrigerants. 87 FR 39164, 29172. Additionally, this approach would improve consistency when testing a given remote condensing CRE model

with either high glide or low glide refrigerants by ensuring that the evaporator mid-point temperature for a high glide refrigerant is similar to the refrigerant dew point for a low glide refrigerant.

DOE proposed in the June 2022 NOPR to adopt through reference the high glide refrigerant provisions of AHRI 1200–202X. 87 FR 39164, 29173. Because the existing DOE test procedure, by reference to AHRI 1200–2013, only references adjusted dew point for calculating compressor energy consumption, this proposed amendment would yield different results for remote condensing CRE models tested with a high glide refrigerant. However, DOE expects that current remote condensing CRE models are typically tested and rated using low glide refrigerants (most commonly R–404A); therefore, DOE tentatively determined in the NOPR that this proposed test procedure amendment is not expected to result in changes to rated energy consumption for any currently available remote CRE models. 87 FR 39164, 29173.

In the June 2022 NOPR, DOE requested comment on the proposal to incorporate by reference AHRI 1200–202X, including the new provisions regarding high glide refrigerants. *Id.* DOE also requests information on whether any remote condensing CRE are currently tested and rated using high glide refrigerants and whether the proposed test procedure would impact the rated energy consumption for such models. *Id.*

Hussmann commented that it favors the proposal to incorporate by reference AHRI 1200–202X, including the new provisions regarding high glide refrigerants. (Hussmann, No. 32, p. 3)

Hillphoenix stated its agreement with the proposal to incorporate AHRI 1200–202X by reference, including the provisions for high glide refrigerants such as 407, 448A, and 449A, as no significant impacts to CRE ratings could be foreseen if incorporated. (Hillphoenix, No. 35, p. 2)

True commented that the proposed use of AHRI 1200–202X referencing high-glide refrigerants indicated a bias toward remote refrigeration manufacturers. (True, No. 28, p. 5) True commented that there are small numbers of self-contained refrigerators using high-glide (synthetic) refrigerants, and that in fact the self-contained industry is a high adopter of hydrocarbon refrigerants. *Id.*

In this rule, DOE is incorporating by reference AHRI 1200–2023. AHRI 1200 includes a definition for “high glide refrigerants” and specifies that for high glide refrigerants, the temperature used

to calculate compressor energy consumption is based on an adjusted mid-point evaporator temperature rather than an adjusted dew point temperature. DOE notes that this provision addresses the fact that AHRI 1200–2013 results in high-glide refrigerants having an energy penalty relative to no-glide refrigerants. The update to AHRI 1200–2023 provides a more representative test method of remote condensing CRE and improves consistency when testing a given remote condensing CRE model. AHRI 1200–2023 includes parallel provisions for remote and self-contained refrigerators to ensure there is no bias towards remote-condensing units. Self-contained CRE are tested based on the refrigerant and refrigeration system contained within the unit and no refrigerant measurements are necessary. Therefore, the test procedure directly accounts for the energy impacts of refrigerants used in self-contained CRE.

b. High-Temperature Applications

In the June 2022 NOPR, DOE proposed a definition for “high-temperature refrigerators”. 87 FR 39164, 39173. As discussed in section III.A.2 of this final rule, DOE is establishing an amended definition of “high-temperature refrigerator” from the June 2022 NOPR.

Section 4.1.1.1 of AHRI 1200–2023 specifies that CRE intended for high-temperature applications shall have an integrated average temperature of 55 °F ±2.0 °F. DOE requires testing high-temperature consumer refrigeration products (*i.e.*, “coolers”) at a standardized cabinet temperature of 55 °F. 10 CFR part 430, subpart B, appendix A.

In the June 2022 NOPR, DOE proposed to require testing high-temperature refrigerators according to AHRI 1200–202X, which requires an integrated average temperature of 55 °F ±2.0 °F. 87 FR 39164, 39173–39174.

High-temperature refrigerators are used in many distinct applications, each with specific intended storage conditions. However, DOE determined in the June 2022 NOPR that the IAT specified in AHRI 1200–202X is the most representative of high-temperature refrigerator operating conditions, because the high-temperature refrigerators that DOE identified have operating temperature ranges which include 55 °F, and allows for consistent measurements of energy use for equipment in this category. 87 FR 39164, 39174.

In referencing AHRI 1200–2023, the DOE test procedure would also require that high-temperature refrigerators be tested according to the same procedure

¹² See ASHRAE’s glossary of defined terms at xp20.ashrae.org/terminology/.

as other CRE, except for the IAT. DOE tentatively determined in the June 2022 NOPR that the door opening and loading procedures in ASHRAE 72–2018R are appropriate for high-temperature refrigerators. Following the proposed test approach would also ensure consistent test methods across CRE categories, albeit at different IATs. 87 FR 39164, 39174.

Because the proposed test procedure for high-temperature refrigerators would amend the current test approach for certain commercial refrigerators (*i.e.*, those currently rated using the LAPT), DOE proposed in the June 2022 NOPR that the high-temperature refrigerator provisions in AHRI 1200–202X would not be required for use until the compliance date of any energy conservation standards established for high-temperature refrigerators based on the proposed test procedure. *Id.* Under this approach, CRE that would be defined as high-temperature refrigerators would continue to be tested and rated at the LAPT and subject to the current DOE energy conservation standards for CRE. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposal to adopt a rating point of 55 °F ±2.0 °F for high-temperature refrigerators by adopting through reference certain provisions of AHRI 1200–202X. 87 FR 39164, 39172.

AHRI commented that the 55 °F (±2 °F) rating point aligns with AHRI standard 1200–202X and supported adopting the proposed rating point for high-temperature refrigerators. (AHRI, No. 38, p. 4)

Hussmann commented in favor of the proposal to adopt a rating point of 55 °F ±2.0 °F for high-temperature refrigerators. (Hussmann, No. 32, p. 3)

Hillphoenix commented that it agreed with the proposal to adopt the rating point temperature of 55 °F ±2 °F for the proposed new category of high-temperature refrigerators through reference of AHRI 1200–202X.

(Hillphoenix, No. 35, p. 2) Hillphoenix requested confirmation that the LAPT provisions will remain to cover rare occurrences driven by customer expectations, which could suggest a design that is outside the requirements of each category. *Id.*

Continental commented it had no objection to DOE’s proposed 55 °F ±2 °F rating temperature for “high-temperature” refrigerators that cannot maintain 38 °F. (Continental, No. 29, p. 3) Continental added that DOE should consider referencing existing NSF labeling requirements for equipment that is intended for “non-potentially hazardous bottled or canned products

only” and “not for the display of potentially hazardous foods,” as this would identify equipment that meets required sanitation requirements in the proposed “high-temperature” range. *Id.* In addition, Continental agreed with DOE that the high-temperature refrigerator provisions in AHRI 1200–202X should not be required until the compliance date of any energy conservation standards established for these product types, based on the proposed test procedure. *Id.*

For the reasons discussed in the June 2022 NOPR, DOE is adopting the high-temperature refrigerator test provisions in AHRI 1200–2023. Because these provisions would impact the measured energy use for certain CRE currently subject to the test procedure and energy conservation standard, DOE is specifying that the high-temperature refrigerator testing would not be required for use until the compliance date of any energy conservation standards established for high-temperature refrigerators based on the amended test procedure.

As discussed in section III.K of this document, DOE is retaining the LAPT definition with modifications.

As discussed in section III.A.2 of this document, DOE is establishing a definition for high-temperature refrigerator that is based on the operating temperature of the equipment. Identifying equipment that meets NSF 7 sanitation requirements is not within the scope of the DOE CRE test procedure. Therefore, DOE has not included reference to equipment labeling in the definition or test requirements for high-temperature refrigerators.

d. Chef Bases

Section 2 of AHRI 1200–202X and AHRI 1200–2023 covers the scope of the standard. AHRI 1200–202X listed certain exclusions from scope (*i.e.*, refrigerated vending machines, ice makers, soft serve extruders, and secondary coolant applications). AHRI 1200–2023 added certain additional exclusions that were not included in previous versions of the standard, including AHRI 1200–202X (*i.e.*, chef bases, buffet tables, preparation tables, walk-in coolers, and blast chillers and freezers). DOE notes that none of these excluded categories are defined in AHRI 1200–2023.

DOE has not observed any changes from AHRI 1200–202X to AHRI 1200–2023 that would affect the ability to test chef bases and griddle stands in accordance with the standard. Current representations of chef bases and griddle stands are required to be based

on the current DOE test procedure at Appendix B, which references AHRI Standard 1200–2010 and ASHRAE 72–2005, neither of which excludes chef bases or griddle stands. ASHRAE 72–2022 with Errata similarly does not exclude chef bases or griddle stands (section 2 “Scope” states that this standard does not apply to walk-in coolers, or refrigerators and freezers where the refrigerated air is in communication with walk-in coolers).

In the April 2014 Final Rule, DOE determined that, for chef bases and griddle stands, the refrigeration system and design of this equipment is not significantly different from other types of commercial refrigeration equipment, and DOE believes that the existing DOE test procedure is sufficiently representative of field use, and application of the existing energy conservation standard appropriate for this equipment. 79 FR 22277, 22282. Therefore, DOE is maintaining the reference to AHRI 1200 for chef bases and griddle stands and updating the reference to AHRI 1200–2023 consistent with other CRE that are in scope of appendix B. See section III.C.4 for further discussion of chef bases and griddle stands.

d. Definitions

AHRI 1200–2023 updated several of its definitions as compared to AHRI 1200–202X (*e.g.*, *High Temperature Applications* was updated from “Commercial Refrigerated Display Merchandisers and Storage Cabinets intended for High Temperature Applications, shall have an Integrated Average Temperature of 55 °F ±2.0 °F” to “An application where the Integrated Average Temperature is at, or above, 45 °F”). As proposed in the June 2022 NOPR, 10 CFR 431.62 would include some similar terms as the definitions in AHRI 1200–202X. Based on the updated definitions in AHRI 1200–2023 as compared to AHRI 1200–202X and to avoid potential confusion regarding multiple definitions of similar terms, DOE is clarifying in 10 CFR 431.62 that where definitions in AHRI 1200–2023 conflict with those in DOE’s regulations, the DOE definitions take precedence.

e. Night Curtains

AHRI 1200–202X contained a definition of “night curtain” (a device which is temporarily deployed to decrease air exchange and heat transfer between the refrigerated case and the surrounding environment) and certain test requirements for “night curtains”.¹³

¹³ For display cases sold with Night Curtains installed, the Night Curtain shall be employed for

Night curtains are currently required in section 1.3.10 of appendix B of the DOE test procedure.¹⁴ Therefore, DOE is maintaining the requirements for night curtains that were contained in AHRI 1200–202X as proposed in the June 2022 NOPR.

2. ASHRAE 72

As stated in the June 2022 NOPR, the 2014 and 2018 revisions to ASHRAE 72 provide editorial, clarifying, or harmonizing revisions that would not impact the measured energy consumption, volume, or TDA of CRE as compared to the existing DOE test procedure. 86 FR 31182, 31184.

The revisions in ASHRAE 72–2022 with Errata, as compared to the most recent 2018 version, include substantial reorganization largely to improve clarity of the test standard. Specifically, the foreword to ASHRAE 72–2022 with Errata states that the revision reorganizes the standard to make it easier to read and use; includes updates in the loading of test simulators and filler material; revises the sequence of operations during the test; provides instructions for certain measurements; and adds provisions for roll-in racks. The following paragraphs describe these revisions in more detail.

The reorganization of the test standard in ASHRAE 72–2022 with Errata is not expected to substantively change any test requirements as compared to the current test procedure. DOE acknowledges that the intent of the reorganization is to more closely align the test standard with the order of operations a test facility would follow when conducting testing.

The updates to the loading of test simulators (small packages with temperature-measuring devices) and filler material (material loaded between test simulators for additional product mass, intended to approximate food product loading) in ASHRAE 72–2022 with Errata revise certain requirements included in ASHRAE 72–2005. These updates change certain instructions regarding loading, but DOE tentatively determined in the June 2022 NOPR that these updates are either clarifying in nature or more closely align ASHRAE 72 with the capability of test facilities to conduct testing. 87 FR 39164, 39174. Specifically, ASHRAE 72–2022 with

Errata would improve the clarity of the simulator loading location instructions, more clearly define net usable volume (*i.e.*, interior volume intended for refrigerated storage or display within the outermost manufacturer-specified load limit boundaries) to determine the loaded volume, and adjust the fill volume from 70 to 90 percent of the net usable volume to 60 to 80 percent. *See* section 5.4.8 of ASHRAE 72–2022 with Errata.

DOE tentatively acknowledged in the NOPR that, in principle, the update to the fill volume requirement would be a substantive change to the current DOE test procedure. 87 FR 39164, 39174. However, DOE has determined that ASHRAE implemented this revision because test facilities currently may have difficulty loading to more than 80 percent of the net usable volume. Based on this difficulty, DOE expects that most tests are currently conducted with loads between 70 to 80 percent of the net usable volume. Additionally, the revision to allow loading as low as 60 percent of net usable volume would allow additional flexibility for test facilities when loading equipment for testing, and any impact on measured energy use is expected to be minimal. DOE also expects that if testing with a lower load percentage has any impact on measured energy use, it is likely to increase measured energy use, as CRE with doors would have more internal compartment volume occupied by air rather than the test load, allowing for more internal air to exchange with warm ambient air during the test procedure's door opening period. Therefore, DOE tentatively determined in the NOPR that this proposed amendment to the test procedure would not allow any CRE that does not currently comply with DOE's energy conservation standards to become compliant. 87 FR 39164, 39174.

Section 7.1 of ASHRAE 72–2022 with Errata specifies the sequence of operations for conducting a test. The overall sequence requires conducting two tests, Test A and Test B, to verify stability of the unit under test. Both Test A and Test B would be conducted in the same way—starting with a defrost and with door or drawer openings, night curtains, and lighting occupancy sensors and controls, as applicable—as specified in section 7.3 of ASHRAE 72–2022 with Errata. The test is determined to be stable if the average temperature of simulators during Test B is within 0.4 °F of the average measured temperature during Test A. *See* section 7.5 of ASHRAE 72–2022 with Errata. As compared to the current DOE test procedure and ASHRAE 72–2005,

ASHRAE 72–2022 with Errata specifies how to determine that a test is stable. ASHRAE 72–2005 currently requires steady-state conditions for the test (section 7.1.1) and a stabilization period during which the CRE operates with no adjustment to controls for at least 12 hours (section 7.4). Section 3 of ASHRAE 72–2005 defines “steady-state” as the condition in which the average temperature of all test simulators changes less than 0.4 °F from one 24-hour period or refrigeration cycle to the next. ASHRAE 72–2005 does not specify whether the 24-hour periods used to determine steady-state conditions include door openings, which are required to be performed during the 24-hour performance test. Additionally, the temperatures maintained over a 24-hour period with door openings may differ from a 24-hour period with no door openings. If steady-state is determined without door openings, then door openings during a test may increase simulator temperatures outside of the desired range, requiring a change to the temperature setting and restarting the steady-state determination prior to another test period.

The testing approach in ASHRAE 72–2022 with Errata specifies that Test A and Test B are conducted in the same way, and therefore the temperatures used to determine stability would also be at the target temperatures for the test. DOE determined in the June 2022 NOPR that this approach provides clarity to the existing test procedure while limiting burden by reducing the need for retests (*i.e.*, by maintaining target temperatures during the stability determination). 87 FR 39164, 39175. Because the sequence of operations in ASHRAE 72–2022 with Errata is generally consistent with ASHRAE 72–2005 but with added specificity, DOE does not expect that the updated sequence of operations would impact current CRE ratings based on the current DOE test procedure.

Moreover, ASHRAE 72–2022 with Errata explicitly specifies test conditions and data collection requirements in a new appendix A: “Measurement Locations, Tolerances, Accuracies, and Other Characteristics.” This appendix includes a table that presents the measurements required during testing, the measurement location (if applicable), the period of time the measurement is taken (*e.g.*, once per minute throughout Test A and Test B, once before Test B, and once after Test B), the required measurement accuracy, and the required value (*i.e.*, the test condition, if applicable). The measurement instructions and

6 hours; beginning 3 hours after the start of the test period. Upon the completion of the 6-hour period, the Night Curtain shall be raised until the completion of the 24-hour test period.

¹⁴ For display cases sold with night curtains installed, the night curtain shall be employed for 6 hours; beginning 3 hours after the start of the first defrost period. Upon the completion of the 6-hour period, the night curtain shall be raised until the completion of the 24-hour test period.

requirements in appendix A to ASHRAE 72–2022 with Errata are generally consistent with those required by the current DOE test procedure, by reference to ASHRAE 72–2005, but with added specificity to clarify the applicable requirements. Because the measurement instructions in ASHRAE 72–2022 with Errata are generally consistent with ASHRAE 72–2005 but with added specificity, DOE does not expect that the updated requirements in appendix A would impact current CRE ratings based on the current DOE test procedure.

ASHRAE 72–2022 with Errata also adds provisions for testing CRE used with roll-in racks. Sections 5.4.1 and 5.4.5 of ASHRAE 72–2022 with Errata provide loading instructions for CRE used with roll-in racks. These sections are generally consistent with the existing test requirements for CRE, but provide additional clarification specific to roll-in racks to describe the determination of net usable volume and loading of test simulators. ASHRAE 72–2005 includes roll-in racks within the scope of the test standard (section 9.1) but does not provide additional test instructions for these models. Because the instructions for testing CRE used with roll-in racks in ASHRAE 72–2022 with Errata are generally consistent with ASHRAE 72–2005 but with added specificity, DOE does not expect that the updated requirements in appendix A would impact current CRE ratings based on the current DOE test procedure.

As discussed, the test procedure in ASHRAE 72–2022 with Errata is generally consistent with the existing DOE test procedure, which references ASHRAE 72–2005. The updates included in ASHRAE 72–2022 with Errata are generally editorial, clarifying, or harmonizing revisions. Additionally, the substantive revisions in ASHRAE 72–2022 with Errata provide further specificity to the existing test procedure requirements and would improve repeatability, reproducibility, and representativeness of the test procedure while limiting test burden. For these reasons, in the June 2022 NOPR, DOE proposed to incorporate by reference ASHRAE 72–2018R into the DOE test procedure and tentatively determined that any test data for CRE currently available on the market are expected to be consistent with the proposed test procedure. 87 FR 39164, 39174.

In the June 2022 NOPR, DOE requested comment on its proposal to incorporate by reference ASHRAE 72–2018R, including whether the updates included in the industry test standard would impact the measured energy

consumption of any CRE currently available. *Id.*

AHRI commented that it supports DOE's proposal to incorporate by reference ASHRAE 72–2022 because the updates included in the industry test standard should not significantly impact the measured energy consumption of any CRE currently available. (AHRI, No. 38, p. 4)

AHT supported incorporating by reference ASHRAE 72–2018R. (AHT, No. 38, p. 1).

Hillphoenix agreed with the proposal to incorporate by reference the newer version of ASHRAE 72, but recommended version 202X, which is currently in public review. (Hillphoenix, No. 35, p. 2) Hillphoenix commented that this approach would align with the incorporation of other standards referenced that are not yet released and would maintain consistency within the industry. *Id.*

Continental supported DOE's proposal to incorporate the most recent edition of the ASHRAE 72 test procedure, pointing out that ASHRAE 72–2022, the most recent standard, prescribes separate 24-hour A and B test periods to provide more consistent verification of stability than the previous version of the procedure. (Continental, No. 29, p. 3) Continental commented that it is still evaluating impacts of this change on the energy consumption of equipment, particularly for freezers, and stated that provisions of ASHRAE 72–2022 should not be required until the compliance date of any new energy conservation standards are established, based on the proposed test procedure, to allow time for vetting any impact on energy consumption. *Id.* Continental also commented that the use of separate 24-hour test periods, including additional door opening requirements, is desirable for the reasons noted above, but the revised method will increase the test burden for some equipment types and substantially increase costs for laboratory and staff time, reducing the capacity to perform other testing to meet regulations. *Id.* Continental commented that these factors and their related costs will impact a small business like itself. *Id.*

Hoshizaki commented that it would like to state for the record that there is an ASHRAE 72–2018 standard and an ASHRAE 72–2022 standard, and that it agrees to proposing the incorporation of ASHRAE 72–2018. (Hoshizaki, No. 30, p. 1) Hoshizaki noted that the ASHRAE 72–2022 standard was just finalized in July of 2022 and, as of the filing date of this rulemaking, was not approved and published for all parties to see. *Id.* Hoshizaki noted that while most

changes to the standard were editorial, the change from stabilization to new test cycle may leave many manufacturers without the opportunity to review and comment. *Id.* Hoshizaki commented that enough time would be needed for manufacturers to fully digest these new changes to determine for themselves whether these changes affect their designs. *Id.*

Based on the June 2022 NOPR and comments received in response, DOE is incorporating by reference ASHRAE 72–2022 with Errata. Based on comments received in response to the June 2022 NOPR and DOE's review of ASHRAE 72–2022 with Errata, DOE does not expect any impact on ratings as a result of the updates to the standard. DOE notes that ASHRAE 72–2022 with Errata is available for purchase, as discussed in this **SUPPLEMENTARY INFORMATION** section.

In response to Continental's comment regarding test burden for some types of CRE, ASHRAE 72–2005, currently incorporated by reference, requires stabilization periods generally consistent with ASHRAE 72–2022 with Errata. The updates clarify procedures in the stabilization period and limit the need for iterative testing. DOE expects no significant change in test burden associated with testing to ASHRAE 72–2022 with Errata as compared to ASHRAE 72–2005.

a. Drawers

Section 1.3.16 of appendix B of the DOE test procedure specifies that drawers are to be treated as identical to doors when conducting the DOE test procedure, and that drawers should be configured with the drawer pans that allow for the maximum packing of test simulators and filler packages without the filler packages and test simulators exceeding 90 percent of the refrigerated volume. Packing of test simulators and filler packages must be in accordance with the requirements for commercial refrigerators without shelves, as specified in section 6.2.3 of ASHRAE 72–2005.

CRE with drawers are typically configured to hold standardized food pans for food storage. Pans loaded into the drawers are not typically filled with food above their top edges to prevent spilling or interfering with other drawers. Additionally, these CRE may require the space above the pans to be unloaded to allow for air circulation within the cabinet.

The current DOE test procedure instructions do not specify any test simulator or filler package load limits for pans, other than not exceeding 90 percent of the refrigerated volume. For

other CRE tests, ASHRAE 72–2005 and ASHRAE 72–2022 with Errata specify test simulator and filler package loading based on net usable volume rather than refrigerated volume. See section 6.2.5 of ASHRAE 72–2005 and section 5.4.1 of ASHRAE 72–2022 with Errata. Loading based on the net usable volume accounts for load limits within the CRE and would prevent overloading CRE to the extent of impacting airflow circulation within the cabinet.

To ensure consistent testing for CRE with drawers, and to allow for testing that is most representative of typical use, DOE proposed in the June 2022 NOPR to specify in appendix B that CRE with drawers be tested according to the existing requirements with the additional instruction that, for the purposes of loading pans in drawers, the net usable volume is the storage volume of the pans up to their top edge. 87 FR 39164, 39175.

The drawer loading instructions in appendix B reference section 6.2.3 of ASHRAE 72–2005, which specifies instructions for loading compartments without shelves. Specifically, section 6.2.3 requires situating test simulators at the left and right ends (*i.e.*, sides), the front and back, and the top and bottom locations of the compartment. To make explicit the application of this instruction to standardized food pans, DOE proposed in the June 2022 NOPR to require that test simulators be placed at the corner locations of each pan. 87 FR 39164, 39175. For any pans not wide or deep enough to allow for test simulators at each corner (*i.e.*, less than 7.5 inches (“in.”) wide or deep, based on the 3.75-in. test simulator width), DOE proposed that test simulators be centered along the width or depth accordingly. 87 FR 39164, 39175–39176. Similarly, for any pans not tall enough to allow for test simulators at the specified top and bottom locations (*i.e.*, pans less than 4 in. tall, based on the 2-in. test simulator height), DOE proposed that a test simulator only be loaded at the specified top location within the standardized food pan. 87 FR 39174, 39176.

In the June 2022 NOPR, DOE requested comment on the proposed additional instructions regarding loading drawers. *Id.* DOE additionally requested information on whether the proposed approach is consistent with any future industry standard revisions to address this issue. *Id.* DOE also requested comment on whether other instructions for CRE with drawers should be revised (*e.g.*, fully open definition for drawers) or if additional instructions are needed. *Id.*

AHRI commented that the additional loading drawer instructions proposed by DOE are incomplete and provide a suboptimal approach. (AHRI, No. 38, p. 4) AHRI pointed out that ASHRAE Standard 72–2022 may be available as early as May 2024 as an update to ASHRAE Standard 72–2018, with revisions including the addition of a specific test procedure for drawers as well as more complete instructions. *Id.* AHRI recommended that DOE pause the process of providing additional instructions regarding loading drawers and await ASHRAE 72–2022. *Id.*

Continental commented that DOE should delay adoption of additional instructions for testing drawers since the ASHRAE 72 standards committee is in the process of updating the current Standard 72–2022, and is working to resolve a number of significant challenges with loading and testing drawers to ensure a reliable and repeatable process that is not overly burdensome. (Continental, No. 29, p. 4) Continental stated that DOE should continue to work with ASHRAE to complete incorporation of an industry-accepted standard procedure. *Id.*

Hoshizaki commented that, currently, the ASHRAE 72 Standards Committee is working on specifying test setup and procedure for drawer units and that any changes should be made in this committee. (Hoshizaki, No. 30, p. 2) Hoshizaki noted that making suggestions in the DOE NOPR phase is not the proper process by which to change standards, and that using a published standard for some parts and requesting revisions in CFR could only confuse both manufacturers and third-party testing agencies. *Id.*

Hillphoenix stated its disagreement with the proposal to include additional instructions regarding drawers and recommended referencing the new version of ASHRAE 72–202X, which will maintain alignment in the industry without creating new or duplicate requirements that would otherwise be added to the final rule. (Hillphoenix, No. 35, p. 3)

DOE recognizes that a future update to the ASHRAE 72 standard may include additional instructions for CRE with drawers, but a revision to ASHRAE 72 including such instruction is not yet available.

Consistent with AHRI’s comment that the additional loading drawer instructions proposed by DOE are incomplete and provide a suboptimal approach, DOE reviewed the approach specified in the June 2022 NOPR. As stated in the June 2022 NOPR, DOE proposed additional instructions to ensure testing that is most

representative of typical use. 87 FR 39164, 39175. DOE re-ordered the instructions in this final rule to better clarify the proposed approach and better specify some requirements. Specifically, DOE has added a definition for fully open (for drawers) which means opened not less than 80 percent of their full travel which is consistent with the fully open (for sliding doors) definition in ASHRAE 72 with Errata which means opened at least 80 percent of its full normal travel. Currently, ASHRAE 72 with Errata includes a definition for fully open (for drawers) that requires drawers to be opened not less than 66 percent of their full travel. This definition allows a wider range of openings than for sliding doors despite the fact that, similar to sliding doors, drawers require users to almost fully open the drawer to expose the full contents to the user. DOE has determined that a definition of fully open (for drawers) that is consistent with the definition for fully open (for sliding doors) would result in more representative results by reducing the range of allowable percent open.

Additionally, DOE has revised the food service pan requirement from Gastronorm to stainless steel to ensure a repeatable and reproducible test with the same pan material while allowing test flexibility for different pan sizes as specified in manufacturer instructions.

DOE proposed in the June 2022 NOPR that the net usable volume of drawers is the storage volume of the pans up to the top edge of the pan. 87 FR 39164, 39175. DOE has determined that “up to the top edge of the pan” is better specified by providing a more detailed description of this instruction that is harmonized with the net usable volume determination for buffet tables or preparation tables established in this final rule. Specifically, DOE is specifying that the net usable volume of pans is determined by filling pans with water to within 0.5 in. of the top edge of the pan.

DOE proposed in the June 2022 NOPR additional test simulator loading instructions to clarify the application of ASHRAE 72 loading to pans. 87 FR 39164, 39175. DOE has revised the test simulator locations proposed for drawers to be less burdensome and to align more closely with the simulator loading requirements in ASHRAE 72 with Errata. Specifically, DOE has determined that loading test simulators into every individual pan (*i.e.*, at each corner of every pan), as proposed, is not appropriate and would be overly burdensome as compared to the simulator loading requirements for shelves in ASHRAE 72 with Errata. For example, under the proposed approach,

a large drawer loaded with small pans would require many more simulators (in every pan) than a similarly-sized CRE with a shelf in place of a drawer (at the shelf corners and at specified intervals). To ensure consistent application of the ASHRAE 72 with Errata instructions, DOE is specifying that drawers be loaded with simulators in locations similar to those required for shelves (*i.e.*, at the drawer ends and at specified length intervals, at the front and back of the drawers, and on the bottom of the pan(s)) which is representative of the integrated average temperature of the drawer(s) while reducing the test burden of requiring additional test simulators and to account for pans which may not accommodate two test simulators stacked in the vertical direction. Additionally, DOE is specifying that test simulators shall be secured during testing to ensure the specified locations are maintained throughout drawer openings. DOE has determined that this revised method is representative, repeatable, and reproducible for testing of CRE with drawers and maintains consistency with the loading instructions in ASHRAE 72 with Errata.

b. Liquid Refrigerant Pressure Accuracy

On April 14, 2023, ASHRAE published the first public review draft of Addendum a to ASHRAE 72–2022 with Errata.¹⁵ The purpose of Addendum a is to correct the required liquid refrigerant pressure measurement accuracy in Table A–1 in Normative Appendix A. The required accuracy for liquid refrigerant pressure in ASHRAE 72–2022 with Errata is ± 7.0 kPa (± 1.0 psi). However, this is an error because in previous versions of ASHRAE 72 (*e.g.*, the version currently incorporated by reference at 10 CFR 431.63, ASHRAE 72–2005), the required accuracy for liquid refrigerant pressure was ± 35 kPa (± 5.1 psi). Addendum a corrects the required accuracy for liquid refrigerant pressure to be ± 35 kPa (± 5.1 psi), consistent with previous versions of ASHRAE 72. Therefore, DOE is clarifying in this final rule that the required accuracy for liquid refrigerant pressure is ± 35 kPa (± 5.1 psi).

3. Secondary Coolants

Certain CRE are installed for use with a secondary coolant. In this configuration, a remotely cooled fluid (*e.g.*, a propylene glycol solution) is supplied to the cabinet and absorbs heat

from the cabinet without the secondary coolant undergoing a phase change.

AHRI publishes a rating standard applicable to CRE that use a secondary coolant or refrigerant, AHRI Standard 1320 (I–P), “2011 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets for Use With Secondary Refrigerants” (“AHRI 1320–2011”), approved by ANSI on April 17, 2012. AHRI 1320–2011 is applicable to CRE that are equipped and designed to work with electrically driven, medium-temperature, single-phase secondary coolant systems, but excludes equipment used for low-temperature applications, secondary coolants involving a phase change (*e.g.*, ice slurries or carbon dioxide), and self-contained CRE. AHRI 1320–2011 includes similar rating temperature conditions as those in AHRI 1200–2013 and references ASHRAE 72–2005 and AHAM HRF–1–2008 for the measurement of energy consumption and calculation of refrigerated volume, respectively. The only substantive differences between AHRI 1200–2013 and AHRI 1320–2011 are the inclusion of secondary refrigerant circulation pump energy consumption in the calculation of total daily energy consumption and revised coefficients of performance to determine compressor energy consumption.

While CRE cooled by secondary coolants are less common than self-contained or remote CRE, DOE proposed in the June 2022 NOPR to incorporate by reference AHRI 1320–2011 to reference only the specific sections within the standard that apply to CRE tested with secondary coolants (*i.e.*, those referring to pump energy and coolant flow) and to otherwise reference the applicable requirements in AHRI 1200–202X. 87 FR 39164, 39176. DOE acknowledges that AHRI 1320–2011 may be updated consistent with the updates in AHRI 1200–2023.

Because CRE cooled by secondary coolants are not currently subject to DOE’s test procedure, DOE proposed in the June 2022 NOPR that the test procedure referencing AHRI 1320–2011 would not be required for use until the compliance date of any amended energy conservation standards for CRE that consider such testing. 87 FR 39164, 39176. DOE is aware that direct-expansion remote CRE may also be capable of being installed with a secondary coolant. *Id.* Under the June 2022 NOPR proposal, such equipment would continue to be tested and rated using the approach currently required for remote condensing CRE. *Id.* The test procedure for secondary coolants

proposed in the June 2022 NOPR would be applicable to equipment only capable of being installed with secondary coolants, should any such models become available. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposal to incorporate by reference AHRI 1320–2011 for CRE used with secondary coolants, including the proposal to only reference the industry standard for provisions specific to secondary coolants and to otherwise reference AHRI 1200–202X, as proposed for other CRE. 87 FR 39164, 39176.

The CA IOUs commented that they support the addition of a test procedure for secondary coolant systems in reference to ANSI/AHRI Standard 1320 and recommended distinguishing between secondary coolant systems and cascade systems and including both system types in the scope of DOE’s test procedures. (CA IOUs, No. 36, p. 11) The CA IOUs also encouraged DOE to develop a test procedure to address CO₂-based (*i.e.*, R–744) secondary coolant systems and cascade systems. *Id.*

AHRI recommended that DOE avoid incorporating by reference AHRI 1320–2011 for CRE used with secondary coolants because AHRI will likely update AHRI 1320–2011 during 2023, and an updated standard could create confusion for compliance purposes. (AHRI, No. 38, p. 5) AHRI noted that AHRI 1320–2011 is not a widely used or needed standard and that waiting for the update would benefit the test procedure. *Id.*

Zero Zone stated agreement that AHRI 1320 was the appropriate standard for secondary coolants, as stated in previous comments. (Zero Zone, No. 37, p. 3) Zero Zone stated it had not used the standard, expressed concern it would not produce reliable results, and agreed with AHRI’s position that the standard was out of date and not used by manufacturers. *Id.* Zero Zone commented that generally speaking, a commercial refrigerator has the same amount of heat infiltration regardless of the refrigerant used to cool the equipment, plus the number of cases sold that use a secondary coolant is extremely low, and adding a requirement to test and certify this equipment would create an enormous test burden. *Id.*

Hussmann recommended against DOE’s proposal to incorporate by reference AHRI 1320–2011 for CRE used with secondary coolants, as AHRI is likely to update AHRI 1320–2011 during 2023. (Hussmann, No. 32, p. 3) Hussmann commented that an updated standard could create confusion for compliance purposes, adding that AHRI

¹⁵ See www.ashrae.org/File%20Library/Technical%20Resources/Standards%20and%20Guidelines/Standards%20Actions/SAApr142023.pdf.

1320–2011 is not a widely used or needed standard, and that waiting for a more updated standard to incorporate in the test procedure would be beneficial. *Id.*

Hillphoenix disagreed with the proposal to incorporate AHRI 1320–2011 and recommended that DOE allow the standard to be reviewed by the industry and aligned with current technology before being referenced. (Hillphoenix, No. 35, p. 3)

DOE recognizes that AHRI 1320–2011 is not a widely used standard and that AHRI may work on an update to the standard, but DOE also recognizes that AHRI 1320 parallels AHRI 1200. Therefore, DOE is adopting the provisions for CRE used with secondary coolants as proposed in the June 2022 NOPR, which is consistent with the updates in AHRI 1200–2023, so that CRE using secondary coolants can be tested and rated. DOE will evaluate any future updates to AHRI 1320–2011 as they become public. Consistent with the June 2022 NOPR, the test procedure for CRE using secondary coolants would not be required for use until the compliance date of any amended energy conservation standards for CRE that consider such testing.

As stated in the June 2022 NOPR, DOE is aware that direct-expansion remote CRE may also be capable of being installed with a secondary coolant. Such equipment will continue to be tested and rated using the approach currently required for remote condensing CRE. The test procedure for CRE with secondary coolants will be applicable to equipment only capable of being installed with secondary coolants, should any such models become available.

C. Test Conditions for Specific CRE Categories

DOE has identified specific categories of CRE that are not currently subject to the DOE test procedure or in which the current test procedure may not produce results that are representative of their use. Additionally, the EPA's ENERGY STAR program considered three of these equipment categories for scope expansion and test method development during the Version 5.0 Specification development process: refrigerated preparation and buffet tables; chef bases or griddle stands; and blast chillers and freezers.¹⁶ DOE has considered information gathered through the ENERGY STAR process when

developing the proposals included in this final rule. DOE discusses each of these categories in the following sections.

In response to the June 2022 NOPR, NEEA encouraged DOE to align test methods for this equipment with EPA ENERGY STAR 5.0 where applicable to reduce manufacturer burden and establish consistently used ratings. (NEEA, No. 39, p. 2). NEEA commented that DOE had reviewed the test procedures it recommended for these four products and considered any anticipated updates to industry TP or active product committees, such as ASHRAE 220. *Id.* NEEA stated support for DOE's proposed test procedures for this equipment, noting that establishing Federal test procedures was key to providing consistent ratings to consumers and enabling data collection that would inform establishing standards for this newly defined equipment. *Id.* NEEA recommended that DOE establish energy conservation standards for newly defined CRE equipment classes, including test procedures for refrigerated preparation and buffet tables; chef bases or griddle stands; blast chillers and blast freezers; and high-temperature CRE. *Id.*

As discussed in the following sections, DOE is establishing test procedures for new equipment categories as proposed in the June 2022 NOPR. DOE has considered the latest ENERGY STAR requirements in evaluating the requirements for these equipment categories. DOE may evaluate energy conservation standards for these new equipment categories as part of a separate energy conservation standards rulemaking.

1. Salad Bars, Buffet Tables, and Refrigerated Preparation Tables

Salad bars, buffet tables, and other refrigerated holding and serving equipment, including refrigerated preparation tables,¹⁷ are CRE that store and display perishable items temporarily during food preparation or service. These units typically have design attributes such as easily accessible or open bins that allow convenient and unimpeded access to the refrigerated products, which make them unique from CRE designed for storage or retailing. In the April 2014 Final Rule, DOE did not establish test procedures for this equipment but

¹⁷ While the April 2014 Final Rule did not specifically refer to refrigerated preparation tables, DOE is including them in this category because they have similar features to salad bars and buffet tables. Each of these equipment categories includes an open-top area for holding refrigerated pans and is used during food preparation and service.

maintained that it meets the definition of CRE and is covered equipment that could be subject to future test procedures and energy conservation standards. 79 FR 22277, 22281. In the June 2022 NOPR, DOE proposed definitions and test procedures applicable to salad bars, buffet tables, and refrigerated preparation tables.

a. Definitions

In the June 2022 NOPR, DOE noted that ASTM International F2143–16, “Standard Test Method for Performance of Refrigerated Buffet and Preparation Tables” (“ASTM F2143–16”) provides the following definitions for refrigerated buffet and preparation tables:

- *Refrigerated buffet and preparation table*—equipment designed with a refrigerated open top or open condiment rail.

- *Refrigerated buffet table or unit*—equipment designed with mechanical refrigeration that is intended to receive refrigerated food and maintain food product temperatures and is intended for customer service such as a salad bar. A unit may or may not be equipped with a lower refrigerated compartment.

- *Refrigerated food preparation unit*—equipment designed with a refrigerated open top or open condiment rail such as refrigerated sandwich units, pizza preparation tables, and similar equipment. The unit may or may not be equipped with a lower refrigerated compartment.

86 FR 31182, 31185–31186.

DOE discussed in the June 2022 NOPR that certain terms used within these definitions are undefined (*e.g.*, condiment rails, food product temperatures) and that it was not aware of any other industry standard definitions for these equipment categories. *Id.*

DOE also noted in the June 2022 NOPR that the California Code of Regulations (“CCR”)¹⁸ defines “buffet table” and “preparation table” as follows:

- “Buffet table” means a commercial refrigerator, such as a salad bar, that is designed with mechanical refrigeration and that is intended to receive refrigerated food, to maintain food product temperatures, and for customer service; and

- “Preparation table” means a commercial refrigerator with a countertop refrigerated compartment with or without cabinets below, and

¹⁸ California's regulations for buffet tables and preparation tables refer to the 2001 version of ASTM F2143. For this final rule, DOE has reviewed ASTM F2143–16, as it is the most current version of the standard.

¹⁶ Information and materials for ENERGY STAR's Specification Version 5.0 process are available at www.energystar.gov/products/spec/commercial_refrigerators_and_freezers_specification_version_5_0_pd (last accessed March 11, 2023).

with self-contained refrigeration equipment. 20 CCR § 1602. 87 FR 39164, 39177.

Furthermore, the EPA's ENERGY STAR program's Final Draft Version 5.0 Eligibility Criteria for commercial refrigerators and freezers includes a definition for "preparation or buffet table" as a commercial refrigerator, freezer, or refrigerator-freezer with a food condiment rail designed to hold open perishable food and may or may not be equipped with a lower compartment that may or may not be refrigerated.

In the June 2022 NOPR, DOE stated that the configuration of salad bars, buffet tables, and refrigerated preparation tables may raise questions as to whether a unit is commercial hybrid refrigeration equipment. 87 FR 39164, 39177. DOE defines "commercial hybrid refrigeration equipment" as a unit of CRE (1) that consists of two or more thermally separated refrigerated compartments that are in two or more different equipment families, and (2) that is sold as a single unit. 10 CFR 431.62.

DOE discussed in the June 2022 NOPR that additional detail may be necessary to distinguish between a unit that is a salad bar, buffet table, or refrigerated preparation table and a unit that is commercial hybrid equipment that includes a salad bar, buffet table, or refrigerated preparation table. 87 FR 39164, 39177. Refrigerated salad bars, buffet tables, and preparation tables typically have removable pans or bins that directly contact the chilled air in the refrigerated compartment of the unit. With that configuration, the entirety of the chilled compartment and surface pans would potentially be considered a refrigerated salad bar, buffet table, or preparation table. In contrast, if a unit includes solid partitions between the chilled compartment and the pans or bins on top of the unit, such a configuration would potentially be considered thermal separation and the unit would be considered a commercial hybrid consisting of a refrigerated salad bar, buffet table, or preparation table with a refrigerator and/or freezer.

To delineate this equipment from other types of CRE, DOE proposed in the June 2022 NOPR to define the term "buffet table or preparation table." 87 FR 39164, 39179. DOE proposed a definition for this term that combines elements of the existing industry and ENERGY STAR definitions, includes language for consistency with DOE's existing CRE definitions, and includes further specificity regarding the

characteristics of this equipment. *Id.* Specifically, DOE proposed to define this term as follows:

"Buffet table or preparation table" means a commercial refrigerator with an open-top refrigerated area, that may or may not include a lid, for displaying or storing merchandise and other perishable materials in pans or other removable containers for customer self-service or food production and assembly. 87 FR 39164, 39179. The unit may or may not be equipped with a refrigerated storage compartment underneath the pans or other removable containers that is not thermally separated from the open-top refrigerated area. *Id.*

DOE did not propose in the NOPR to define the term "salad bar," as this equipment would be captured within the proposed definition of "buffet table or preparation table." 87 FR 39164, 39179. DOE tentatively determined that additional equipment definitions are not necessary for the purposes of testing buffet tables and preparation tables. *Id.*

Additionally, DOE did not propose in the NOPR any reference to storage temperature or duration in the proposed definition for "buffet table or preparation table." 87 FR 39164, 39179–39180. DOE recognized that these are important aspects of the equipment operation but has tentatively determined that they are not necessary for the purpose of defining the equipment to establish test procedures. *Id.* By specifying that such units are commercial refrigerators, buffet tables and preparation tables would be units capable of operating at or above 32 °F (± 2 °F).

As discussed, CRE may include single refrigeration systems to provide cooling to multiple compartments or areas within a unit. Additionally, CRE may include multiple distinct refrigeration systems or evaporator coils to individually cool separate compartments or refrigerated areas. DOE's proposed definition in the June 2022 NOPR would include units both with and without a refrigerated storage compartment underneath the pans or other removable containers. The proposed definition in the June 2022 NOPR, however, specifies that units including a refrigerated storage compartment underneath the pans or other removable containers may not be thermally separated from the open-top refrigerated area.

DOE noted in the June 2022 NOPR that while industry may use the term "hybrid" to refer to different combinations of equipment capabilities and configurations, the term "commercial hybrid" is specifically

defined by DOE in 10 CFR 431.62. 87 FR 39164, 39180. Currently, CRE with refrigerated storage compartments thermally separated from the open-top refrigerated area of the buffet table or preparation table are "commercial hybrid" CRE and must be tested in accordance with the applicable test procedures and comply with the applicable standards. Such equipment would continue to be tested as currently required to determine compliance with the existing energy conservation standards applicable to the non-buffet table or preparation table element. As noted, DOE has not established energy conservation standards for CRE covered under the proposed definition of "buffet table or preparation table." DOE discussed in the April 2014 Final Rule that because only the refrigerated storage compartment is subject to current energy conservation standards, the unit would be tested with the buffet table or preparation table portion disabled and not included in the determination of energy consumption. 79 FR 22277, 22289. If the same refrigeration system serves both the refrigerated compartment and the open-top refrigerated area and refrigeration of the open-top area cannot be disabled, manufacturers may apply for a test procedure waiver for such equipment if the measured energy use would not be representative of the portion of the unit that is not a buffet table or preparation table of the CRE basic model. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed definition for "buffet table or preparation table." 87 FR 39164, 39180. DOE also requested information on whether any additional definitions are necessary for the purposes of testing this equipment, or whether any additional equipment characteristics are necessary to differentiate this equipment from other categories of CRE. *Id.*

Hoshizaki supported this proposed definition and stated that it is like the definition given in ASTM F2143–16. (Hoshizaki, No. 30, p. 2)

Hillphoenix agreed with the proposed definitions for buffet table and preparation table as documented in the NOPR. (Hillphoenix, No. 35, p. 3)

NEEA supported the new definitions DOE proposed for buffet tables and preparation tables, stating that these equipment types have unique applications compared to other CRE, and these definitions allow consideration (potential standards), categorization (equipment classes), and testing of this equipment separate from other CRE. (NEEA, No. 39, p. 2)

Continental commented it continues to support the use of NSF 7–2019

(defined within NSF/ANSI 170–2019, “Glossary of Food Equipment Terminology”) definitions for “Refrigerated Buffet Units” and “Refrigerated Food Preparation Units.” (Continental, No. 29, p. 4)

True commented that the terms used to define the categories of “buffet table” and “preparation table” correspond to (match) those as defined by NSF/ANSI 170 (referenced in NSF/ANSI 7–2021). (True, No. 28, p. 2) True commented that the definition for a buffet table can be found at NSF/ANSI 170 3.22, which defines a buffet unit as “Equipment that is designed to receive and maintain food product(s) at proper temperatures and is intended for customer service,” and that the definition for a preparation table can be found at NSF/ANSI 170 3.173, which defines a refrigerated food preparation unit as “Equipment designed with a refrigerated open top or open condiment rail such as refrigerated sandwich units, pizza preparation tables, and similar equipment. The unit may or may not be equipped with a lower refrigerated compartment.” *Id.*

AHRI commented that it found the proposed definition for “buffet table or preparation table” to be broad enough for testing this equipment and defining necessary equipment characteristics; as a result, additional definitions may be unnecessary. (AHRI, No. 38, p. 5) AHRI recommended that DOE should specify that this definition applies to self-contained units and add to the definition whether the equipment does or does not share a coil. *Id.*

Hussmann commented that while it did not oppose the proposed definitions, it requested that DOE include that the definition pertained to self-contained units only, and that DOE include language about sharing the coil with other compartments. (Hussmann, No. 32, p. 4) Hussmann also commented that the definition included “may or may not be equipped with a refrigerated storage compartment underneath the pans” but did not mention any other equipment category, and that the buffet/prep section may share a coil with a different equipment category other than storage and mention should be in the definition because it already considers the lower storage. *Id.* Hussmann requested clarification about, and a definition of, “non-thermally separated compartments,” as the proposal stated “closed.” (Hussmann, No. 32, p. 5) Hussmann commented that currently, open display cases (“SVO”) share the same coil/discharge air with the buffet/prep section. *Id.* Hussman questioned whether DOE considered this condition as not thermally separated. *Id.* Hussmann added that if so, a “no-load”

in the SVO section of the case would result in higher infiltration of warm air. *Id.* Hussmann also commented by asking if night curtains would be allowed to be installed on the case or if the unloaded compartment could be protected or, alternatively, if the SVO section of the case could be loaded. *Id.*

The CA IOUs commented that DOE’s proposed definition for “buffet table or preparation table” raises the issue that if an energy conservation standard is established in the future for this equipment, refrigerated rails will have to meet the same energy conservation standard as prep tables with a refrigerated bottom component if that bottom component is not “thermally separated” from the open-top refrigerated area. (CA IOUs, No. 36, p. 1) The CA IOUs also commented that DOE should consider defining “refrigerated rail” separately from “buffet table or preparation table” and that the definition of “buffet table or preparation table” include both sandwich and pizza prep tables; and that “commercial hybrid” CRE consists of compartments refrigerated by separate evaporators with fully independent temperature control between the different compartments. (CA IOUs, No. 36, p. 3)

The CA IOUs amended the proposed NOPR definitions with strikeout deletions and underline additions. *Id.* The CA IOUs agreed with the current definition of a “refrigerated rail.” *Id.* The CA IOUs amended the proposed NOPR definition of “buffet table or preparation table” to “a commercial refrigerator with an open-top refrigerated area, that may or may not include a lid, for displaying or storing merchandise and other perishable materials in pans or other removable containers for customer self-service or food production and assembly. The unit may or may not be equipped with a refrigerated storage compartment underneath the pans or other removable containers, that is not thermally separated from the open-top refrigerated area that is conditioned by the same refrigeration circuit as the open-top refrigerated area.” *Id.* The CA IOUs slightly altered the definition of “commercial hybrid” refrigeration equipment to “a unit of CRE (1) that consists of two or more thermally separated refrigerated compartments with independent control of temperature amongst the refrigerated compartments and that are in two or more different equipment families, and (2) that is sold as a single unit.” *Id.*

The CA IOUs commented that prep tables (either sandwich tables or pizza prep tables) are similar in having an

open-top refrigerated area with a refrigerated storage compartment underneath. (CA IOUs, No. 36, p. 2) The CA IOUs stated that in the absence of a definition for “thermal separation,” pizza prep tables could be misclassified as “commercial hybrid” CRE with the open-top refrigerated area evaluated as a “buffet table or preparation table” and the refrigerated compartment tested as Vertical Closed Solid (VCS.SC.M), while sandwich prep tables would be tested as “buffet table or preparation table.” *Id.* The CA IOUs commented that rating sandwich prep tables differently from pizza prep tables would create market confusion. *Id.*

Consistent with the June 2022 NOPR, DOE is not limiting the definition of buffet tables or preparation tables to self-contained configurations but is specifying that the test procedure is only applicable to self-contained configurations¹⁹ because DOE has not evaluated test provisions for remote equipment.

The existing hybrid definition is based on thermally separated compartments, not independent coils or separate temperature control. DOE is maintaining the existing approach for hybrids, which will avoid reclassifying all existing hybrid CRE.

DOE acknowledges that energy consumption likely varies depending on equipment configuration. For the purposes of testing, DOE has determined there is not a need to separately define equipment categories within buffet tables or preparation tables and is not establishing separate definitions. DOE has determined that test instructions regarding refrigerated pan areas and compartments are sufficient for testing the referenced configurations. DOE would consider energy impacts of different configurations as part of energy conservation standards rule evaluating this equipment category, and would consider appropriate definitions for those configurations at that time. Therefore, DOE is maintaining definitions as proposed in the June 2022 NOPR, which combine aspects of existing industry definitions, ENERGY STAR definitions, and other DOE definitions for CRE.

b. Test Methods

In the June 2022 NOPR, DOE considered potential test methods for buffet tables and preparation tables. 87 FR 39164, 39180. DOE reviewed both ASTM F2143–16 and NSF 7–2019 in considering test methods for buffet

¹⁹ See section 1.1 of appendix C of the June 2022 NOPR.

tables and preparation tables. As described in section 1 of ASTM F2143–16 (“Scope”), that test method covers evaluation of the energy consumption of refrigerated buffet and preparation tables and allows food service operators to use this evaluation to select a refrigerated buffet and preparation table and understand its energy performance. The foreword to NSF 7–2019 specifies that the purpose of the industry testing standard is to establish minimum food protection and sanitation requirements for the materials, design, construction, and performance of commercial refrigerators and freezers.

The general test approach in ASTM F2143–16 is to load the unit with distilled water in pans and no load in any refrigerated compartment, operate the unit to confirm stability, then conduct testing for 24 hours, with an 8-hour “active period” with lid and door openings followed by a 16-hour “standby period” with no door openings. DOE understands that this test is intended to represent unit operation and energy consumption over a 24-hour day.

The NSF 7–2019 test approach requires loading the unit pans with refrigerated food-simulating test media (a specified mixture of water, salt, and hydroxypropyl methylcellulose) and no load in any refrigerated compartment and operating the unit for 4 hours to determine whether temperatures at all measured locations are within the acceptable range. DOE acknowledges that this test is intended to evaluate the ability of a unit to maintain the temperature of refrigerated pans (and any compartments) during a 4-hour period.

While these two industry test methods contain certain similarities (e.g., loading pans but not compartments, ambient temperature conditions), DOE initially determined in the June 2022 NOPR that ASTM F2143–16 provides the more appropriate basis for an energy consumption test representative of typical use. 87 FR 39164, 39181. As discussed in the following subsections, DOE initially determined in the June 2022 NOPR that 24 hours of maintaining stable temperatures, as required in the ASTM F2143–16 method, is representative of average use for this equipment. *Id.* DOE also tentatively determined in the June 2022 NOPR that the stabilization and operating periods specified in ASTM F2143–16 would ensure that units maintain temperatures on a consistent basis during testing and would allow for comparative energy use measurements across units. *Id.* NSF 7–2019 provides a basis for determining whether a unit is

capable of maintaining certain temperatures over a shorter period, but without additional instructions to ensure energy consumption testing on a consistent basis (*i.e.*, the temperatures maintained over the shorter test period may not necessarily be stable).

For these reasons, DOE proposed in the June 2022 NOPR to reference ASTM F2143–16 as the basis for testing buffet tables and preparation tables. 87 FR 39164, 39181. Consistent with the scope of ASTM F2143–16, DOE proposed test procedures only for self-contained buffet tables and preparation tables. *Id.* While DOE proposed to base the test procedure for buffet tables and preparation tables on ASTM F2143–16, DOE also proposed certain additional and different requirements for test conditions, setup, and conduct to ensure the representativeness of the test procedure, as discussed in the following sections. *Id.*

To avoid confusion regarding testing of other CRE, DOE also proposed in the June 2022 NOPR to establish the test procedure for buffet tables and preparation tables as a new appendix C to subpart C of 10 CFR part 431. 87 FR 39164, 39181. DOE also proposed to refer to the proposed appendix C as the test procedure for buffet tables and preparation tables in 10 CFR 431.64. *Id.*

In the June 2022 NOPR, DOE requested comment on its proposal to adopt through reference certain provisions of ASTM F2143–16 as the basis for testing buffet tables and preparation tables. 87 FR 39164, 39181. DOE also sought comment on the proposal to specify test procedures only for self-contained buffet tables and preparation tables, consistent with ASTM F2143–16. *Id.*

The Joint Commenters supported DOE’s proposed changes regarding the proposed test methods for additional equipment categories including buffet and preparation tables. (Joint Commenters, No. 31, p. 1)

NEEA stated its support for DOE’s proposal to establish test procedures for new and/or newly defined categories of CRE, and restated its recommendation from the 2021 CRE TP RFI that DOE establish test methods for new CRE product types, including refrigerated preparation and buffet tables. (NEEA, No. 39, p. 2)

The Joint Commenters expressed support for establishing test procedures for buffet and preparation tables, citing a statistic from the California Energy Commission (“CEC”) Modernized Appliance Efficiency Database System (“MAEDbS”) that listed over 100 buffet/preparation tables with a broad range of energy usage, and a 2014 report that

discussed testing on 11 preparation tables, revealing a wide range of measured energy consumption. (Joint Commenters, No. 31, p. 2) The Joint Commenters stated that findings in the 2014 report suggested the potential for meaningful energy savings for these products and establishing test procedures for buffet and preparation tables would ensure that the energy consumption of this equipment would be measured in a consistent manner. *Id.*

Continental commented that it supports the NOPR proposal to add new test procedures for product categories such as refrigerated buffet and preparation tables. (Continental, No. 29, p. 1) Continental noted, however, that attempting to develop test procedures that combine aspects of different existing industry standards and introducing significant modifications is not sufficient or appropriate for this type of rulemaking. *Id.* Continental recommended that DOE work with ASHRAE, AHRI, ASTM, and other stakeholders to develop suitable test procedures for any additional product categories so that new or modified industry standards are comprehensive, reliable, and repeatable for many equipment types, with minimal additional testing burden. *Id.* Continental expressed significant concerns with ASTM F2143–16, stating that DOE recognized many of the same issues in the NOPR and, as a result, DOE should delay adoption of a test procedure for refrigerated buffet and preparation tables, and work in depth with industry associations and other stakeholders to develop an appropriate standard procedure. (Continental, No. 29, p. 4) Continental commented that attempting to combine existing test standards was likely to result in excessive testing burden, inconsistent results, and confusion for stakeholders. *Id.* Continental added that ENERGY STAR had expressed a desire to include buffet tables and preparation tables in its most recent standards revision, but recognized that an appropriate standard test method has not been used by industry and declined to include this equipment. *Id.*

AHRI recommended that DOE use ASTM F2143–16 only as intended and not impose additional provisions and restrictions in testing buffet tables and preparation tables. (AHRI, No. 38, p. 6) AHRI commented that test standards should not be combined and recommended regulating this issue under a single standard. *Id.* AHRI commented with concern that the data set used in testing failed to indicate energy efficiency, and that DOE should wait to update this regulation until

clearer test standards have been determined through consensus by manufacturers and third parties. *Id.* AHRI noted that ENERGY STAR was not employing ASTM F2143–16, indicating that DOE's adoption was premature. *Id.* AHRI commented that it had numerous concerns with ASTM F2143–16 and advised that this standard may not be ready for use in a DOE test procedure. *Id.* AHRI added that if DOE were to use this standard in a test procedure, it should only apply to self-contained equipment. *Id.* AHRI commented that it could not determine the impacts of employing the standard because it is not widely used. *Id.*

Hoshizaki commented in agreement with the proposal to use test procedures from ASTM F–2143–2016, but in disagreement with the proposal to have additional requirements from other standards. (Hoshizaki, No. 30, p. 2) Hoshizaki commented that if DOE wants to use a standard only in part, it should request to have a single standard updated with proposed changes and wait for the standard process to complete before publishing a test procedure. *Id.* Hoshizaki stated that this would give manufacturers a chance to see the final standard and prepare for testing prior to the implementation of new regulations. *Id.*

Hillphoenix stated its disagreement with the proposal to adopt ASTM F2143–16 as the basis for testing buffet and preparation tables, as it is not widely utilized by all manufacturers. (Hillphoenix, No. 35, p. 3) Hillphoenix recommended that DOE approach the industry and request updated testing standards that better reflect actual product intent, stating this approach would (1) cause less confusion than referencing portions of multiple standards, (2) drive consistency within the industry, and (3) be less burdensome on manufacturers. *Id.* Hillphoenix agreed that ASTM F2143–16 only pertained to self-contained models, and if adopted against industry recommendations, the proposed test procedure should reflect self-contained models only, as in ASTM F2143–16. *Id.*

Hussmann cautioned DOE that ASTM F2143–16 was not a commonly used standard in the industry and contained many holes and gaps common to DOE test procedures. (Hussmann, No. 32, p. 4) Hussmann added that combining test standards would cause confusion and disruption to the industry as the

different standards were revised and therefore recommended adopting buffet/prep cases under a single standard that would be widely accepted across the industry. *Id.*

In the August 2022 public meeting, True commented that ASTM–F2143–16 is only required by the State of California for reporting energy, and that it is surprised NSF–7 is not being used as a standard for consideration, since that is a de facto national standard in place for the United States and Canada. (Public Meeting Transcript, No. 41, p. 38) True commented that ASTM F2143–16 is not an industry standard used by the food service industry or by local health inspectors. (True, No. 28, p. 2) True stated that NSF 7 is the food service industry standard for the performance rating, food safety, and evaluation of refrigerated food preparation units (tables); that local United States and Canada food safety and sanitation inspectors (health inspectors) require the NSF 7 compliance logo; and that certificates of occupancy are issued based on NSF 7 Standard compliance. *Id.*

True also commented that the proposed ASTM F2143–16 standard is not a suitable standard that should be used to evaluate these products. (True, No. 28, p. 6) True stated that consideration should be given to the fact ASTM F2143–16 does not address food safe temperatures (water as the test media is not representative of food), and adding this test setup would increase testing and lab burdens to all manufacturers. *Id.* True pointed to NSF/ANSI 7–2021 as the reference standard recommended for this type of equipment and noted that ASTM F2143–16 is in review and has not been presented publicly. *Id.*

As discussed in section III.C.1.a, DOE is establishing test procedures only for self-contained buffet tables or preparation tables.

DOE agrees with commenters that ASTM F2143–16 cannot be referenced as a standalone test method and, accordingly, DOE proposed deviations and additional specifications in the June 2022 NOPR. DOE recognizes that not all manufacturers currently use ASTM F2143–16, but DOE has determined the approach based on ASTM F2143–16 with additional requirements is representative and not unduly burdensome to conduct. If a new or updated industry standard that

measures the energy consumption of buffet tables or preparation tables becomes available, DOE will consider it in a future test procedure rulemaking.

DOE has evaluated ASTM F2143–16 and identified the need for additional provisions or alternate requirements. To the extent that additional provisions are consistent with requirements in other industry methods, DOE has incorporated by reference those other methods. This approach makes it easier to determine where requirements are harmonized across industry standards. In response to combining multiple standards, DOE is not applying each standard in whole to this equipment, but rather is adopting the appropriate provisions to result in a representative DOE test procedure. The regulatory text is located in appendix C established in this final rule is the DOE test procedure for this equipment, and the requirements in appendix C clearly outline when to use requirements from each standard.

As discussed in section III.C.1.a, NSF 7 is intended to ensure refrigerating performance and food safety, not energy use. ASTM F2143–16 was developed to evaluate energy performance, and with the additional requirements established in this final rule, DOE has determined that referencing ASTM F2143–16 is appropriate and meets the EPCA requirements.

DOE's determination to establish test procedures consistent with EPCA requirements is not impacted by ENERGY STAR's specification review process. To the extent that ENERGY STAR considers this equipment in future updates, the ENERGY STAR program typically adopts DOE test procedures and DOE will coordinate with ENERGY STAR to harmonize requirements.

As discussed, DOE is establishing a test procedure for buffet tables and preparation tables based on ASTM F2143–16 with additional requirements. The following sub-sections describe additional details of the test procedure.

Test Conditions

ASTM F2143–16 specifies different rating conditions for test room dry-bulb temperature and moisture content than the current DOE test procedure. NSF 7–2019 also specifies test conditions similar to those in ASTM F2143–16. Table III.1 summarizes these differences.

TABLE III.1—TEST ROOM DRY-BULB TEMPERATURE AND MOISTURE CONTENT STANDARDS COMPARISON

Equipment type	Test standard	Test room dry bulb temperature	Wet bulb temperature (relative humidity)	Moisture content (lb/lb dry air)
Currently Covered CRE	ASHRAE 72 (2005 and 2022 with Errata).	75.2 °F ±1.8 °F ...	64.4 °F ±1.8 °F (49%–62%)	0.009–0.011.
Buffet and Preparation Tables	ASTM F2143–16	86 °F ±2 °F	66.2 °F ±1.8 °F (30%–40%)	0.008–0.010.
Buffet and Preparation Tables	NSF 7–2019	86 °F ±2 °F	Max 72 °F (based on max 50%)	Max 0.013.

As previously described, the apparent purpose of the NSF 7–2019 test is to determine the capability of a unit to maintain refrigerated temperature in the conditions specified by the industry testing standard. The ASTM F2143–16 ambient conditions match those in NSF 7–2019. However, DOE initially determined in the June 2022 NOPR that these conditions are not necessarily the most representative of typical use. 87 FR 39164, 39182. As discussed in the June 2022 NOPR, buffet tables and preparation tables are typically installed in locations similar to other CRE (e.g., food service areas, supermarkets, commercial kitchens) and would be subject to the same ambient conditions during typical use. *Id.* DOE acknowledged in the June 2022 NOPR that the ambient conditions at the point of installation may vary. *Id.* However, DOE determined that the conditions in ASHRAE 72 (in both the currently referenced 2005 version and the 2022 with Errata version) are appropriately representative of the average use of CRE. 79 FR 22277, 22283. For consistency with other CRE testing, DOE proposed in the June 2022 NOPR that the ambient conditions specified in ASHRAE 72–2018R also apply for testing buffet tables and preparation tables. 87 FR 39164, 39182.

For measuring these ambient conditions, ASHRAE 72–2022 with Errata and ASTM F2143–16 specify the same measurement locations; however, the locations may require further specificity depending on the configuration of the refrigerated buffet table or preparation table under test. For example, the specified measurement location based on the highest point of the unit under test as provided in ASTM F2143–16 could be based on the height of the refrigerated table surface and pan openings or on the height of any lid or cover over the pans, if included. Additionally, the specified measurement location at the center of the unit as provided in ASTM F2143–16 could be based on the geometric center of the unit determined from the height of the open pan surfaces or on the geometric center of any door openings (for those units with

refrigerated compartments below the pan area).

As described, DOE proposed in the June 2022 NOPR to incorporate by reference ASTM F2143–16 rather than NSF 7–2019 as the basis for testing buffet tables and preparation tables. 87 FR 39164, 39182. The ASTM F2143–16 ambient measurement locations are generally consistent with those in the current DOE test procedure and the provisions in ASHRAE 72–2022 with Errata, but ASHRAE 72–2022 with Errata includes additional specificity regarding ambient measurement locations. To ensure appropriate measurement locations, DOE proposed in the NOPR to reference ASHRAE 72–2018R rather than ASTM F2143–16 for ambient condition measurement locations. 87 FR 39164, 39183. To provide additional specifications for thermocouple placement to accommodate different buffet table and preparation table configurations, DOE proposed to add an instruction that the “highest point” of the buffet table or preparation table is determined as the highest point of the open-top refrigerated area of the buffet table or preparation table, without including the height of any lids or covers. *Id.* DOE also proposed to specify that the geometric center of the buffet table or preparation table is: for buffet tables or preparation tables without refrigerated compartments, the geometric center of the top surface of the open-top refrigerated area; and for buffet tables or preparation tables with refrigerated compartments, the geometric center of the door opening area for the refrigerated compartment. *Id.* DOE proposed this specification because the geometric center of the unit is used to measure ambient temperature gradient. *Id.* For units with refrigerated compartments, this instruction referencing the center of the door opening area would ensure that the air entering the compartment during door openings is within the allowable temperature range.

Regarding electrical supply requirements and measurements, appendix A to ASHRAE 72–2022 with Errata provides greater specificity for

testing as compared to ASTM F2143–16. To improve test repeatability and reproducibility, DOE proposed in the June 2022 NOPR to reference the electric supply and measurement requirements specified in appendix A to ASHRAE 72–2018R for testing buffet tables and preparation tables. 87 FR 39164, 39183.

In the June 2022 NOPR, DOE similarly proposed to adopt through reference certain provisions in ASHRAE 72–2018R rather than ASTM F2143–16 for instrumentation requirements for consistency with other CRE testing and with the proposed test conditions (e.g., wet-bulb temperature as specified in ASHRAE 72–2018R rather than relative humidity as specified in ASTM F2143–16). *Id.*

In the June 2022 NOPR, DOE requested comment on the proposal for testing buffet tables and preparation tables with test conditions (i.e., test chamber conditions, measurement location, and electric supply conditions) consistent with ASHRAE 72–2018R, with additional detail specific to buffet tables and preparation tables. *Id.*

AHRI commented that it supports DOE’s inclusion of the ASHRAE 72–2022 ambient testing conditions with the qualification that DOE not combine test standards, which would be unnecessary and inadvisable. AHRI recommended regulation through a singular standard using a test procedure developed through industry consensus and one that had been referred to an appropriate standards committee. (AHRI, No. 38, p. 6)

AHRI noted that ASHRAE 72–2022 does not address areas with two different cooling spaces. (AHRI, No. 38, p. 6)

Continental stated a belief that 86 °F ambient better reflected the application temperature for food preparation tables used in commercial kitchens, which are often in proximity of cooking equipment and that 75 °F conditions reflect an applicable ambient temperature for buffet tables used in restaurant front-of-house and supermarket applications. (Continental, No. 29, p. 5) Continental reiterated that DOE should not attempt to merge different aspects of existing

test methods into a new amalgamated test procedure within a rulemaking, and that DOE should delay adoption of a test procedure for refrigerated buffet and preparation tables, instead working with stakeholders to develop an appropriate standard procedure. *Id.*

Hillphoenix stated agreement with the proposal to use ASHRAE 72 to establish the conditions in which buffet and preparation tables should be tested, as this standard already applies to existing CRE. (Hillphoenix, No. 35, p. 4) Hillphoenix recommended referencing ASHRAE 72–202x, which would align with the incorporation of other standards that are referenced but not yet released. *Id.* Hillphoenix recommended against specifying alternate definitions for portions not covered by an existing industry standard and advised DOE to allow the industry to develop procedures through consensus. *Id.*

Hussmann supported the use of ASHRAE 72 for ambient conditions, which more accurately resemble conditions in normal use, and which would reduce test burden for testing a new equipment category, as industry test chambers and conditions were not set for testing to different standards. (Hussmann, No. 32, p. 4) Hussmann recommended that DOE avoid combining sections from different standards to create a test procedure, because doing so would provide results not yet tested and proven by the industry. *Id.* Hussmann added that combining test standards would cause confusion and disruption to the industry as the different standards went through revisions and stated support for creating a universal standard for buffet/prep tables. *Id.*

Hoshizaki agreed with the proposal to use test procedures from ASTM F2143–2016, but disagreed with the proposal to have additional requirements from other standards. (Hoshizaki, No. 30, p. 2) Hoshizaki commented that if DOE wants to use a standard only in part, DOE should request to have a single standard updated with proposed changes and wait for the standard process to complete before publishing a test procedure, which would give manufacturers a chance to see the final standard and prepare for testing prior to the implementation of new regulations. *Id.*

True recommended the use of NSF ANSI 7–2021, with the following test conditions: (1) ambient temperature of $86 \pm 2^\circ\text{F}$ ($30 \pm 1^\circ\text{C}$); (2) no vertical temperature gradient exceeding 1.5°F/ft (2.5°C/m); (3) maximum relative humidity of 50 percent; and (4) maximum air current velocity of 50 ft/

min (0.25 m/s) across the surfaces of the test pans. (True, No. 28, p. 6)

DOE recognizes that CRE across all categories, including buffet tables or preparation tables, can be used in a range of installations, (e.g., in commercial kitchens or in front-of-house installations). Other CRE currently installed in these locations are tested per the ASHRAE 72 conditions.

DOE understands that ASTM F2143–16 is currently under revision and may harmonize test conditions with ASHRAE 72–2022 with Errata. Buffet tables or preparation tables have the same energy use metric, kWh/day, as other CRE equipment. Test conditions consistent with ASHRAE 72–2022 with Errata will allow for better comparisons between hybrid buffet tables or preparation tables and other buffet tables or preparation tables.

As stated earlier in this section, the purpose of NSF 7 is to determine refrigerating performance for food safety requirements. While the elevated ambient temperature may be appropriate to ensure food safety, DOE has determined that the existing test condition based on ASHRAE 72–2022 with Errata provides the most appropriate test condition for the purpose of energy testing.

For these reasons and consistent with the discussion in section III.C.1.b of the June 2022 NOPR, DOE has determined that the ASHRAE 72–2022 with Errata test conditions are representative for buffet tables or preparation tables. DOE is establishing these conditions in appendix C by referencing ASHRAE 72–2022 with Errata.

Test Setup

Section 9.1 of ASTM F2143–16 specifies installation of the buffet table or preparation table for testing according to the manufacturer's instructions, with 6 in. of rear clearance, at least 12 in. of clearance to any side wall or partition, and at least 3 feet of clearance from the front of the unit. Section 5.2 of ASHRAE 72–2022 with Errata specifies that the test unit be installed next to a wall or vertical partition in the direction of (a) the exhaust, (b) the intake, or (c) both the exhaust and the intake at the minimum clearance, ± 0.5 in., as specified in the installation instructions; if the installation instructions do not provide a minimum clearance, the vertical partition or wall shall be located 4 ± 0.5 in. from the sides or rear of the cabinet and extend at least 12 in. beyond each side of the cabinet from the floor to at least 12 in. above the top of the cabinet.

DOE determined in the June 2022 NOPR that the installation instructions

in ASHRAE 72–2018R are more representative of actual use, as they require testing according to the minimum manufacturer-specified clearance in the direction of air exhaust or intake rather than a constant 6 in. 87 FR 39164, 39183. DOE expects that CRE are typically installed with minimum installation clearances due to the space-constrained locations in which they operate (e.g., commercial kitchens or food service areas). DOE proposed in the June 2022 NOPR to reference the installation requirements in section 5.2 of ASHRAE 72–2018R for buffet table and preparation table testing to represent typical use and to ensure consistency with appendix B test requirements. 87 FR 39164, 39183.

Sections 5.1 and 5.3 of ASHRAE 72–2022 with Errata also provide additional instructions regarding test unit installation and setup that are not addressed in ASTM F2143–16. Specifically, section 5.1 provides instructions regarding test unit installation within the test facility and section 5.3 specifies test requirements for components and accessories. While these provisions were established for conventional CRE, DOE initially determined in the June 2022 NOPR that they are also applicable to buffet table and preparation table installation and use due to both categories having similar installation locations and similar accessories available for use. 87 FR 39164, 39183. DOE proposed in the June 2022 NOPR to also reference these sections in ASHRAE 72–2018R for buffet table and preparation table testing to ensure consistent testing that is representative of actual use. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposal for testing buffet tables and preparation tables with test setup instructions consistent with ASHRAE 72–2018R rather than ASTM F2143–16. *Id.*

Hillphoenix commented that it agrees with the proposal to use ASHRAE 72 for testing setup requirements for buffet and preparation tables as this standard already applies to existing CRE and allows testing that is more representative of the end use installations. (Hillphoenix, No. 35, p. 4) Hillphoenix recommended referencing ASHRAE 72–202X, which would align with the incorporation of other standards that are being referenced but that are not yet released. *Id.*

Hussmann stated its support for the ASTM F2143–16 test set-up instructions as they more closely resembled typical use. (Hussmann, No. 32, p. 4) Hussmann also cautioned DOE against combining sections from different standards to create a test procedure, commenting that

combining different standards would provide unsupported results not yet tested and proven by the industry. *Id.* Hussmann added that combining test standards would cause confusion and disruption to the industry as the different standards were revised. *Id.*

AHRI stated support for test setup conditions consistent with ASTM F2143–16, but with the qualification that test standards not be combined, which would be unnecessary and inadvisable. (AHRI, No. 38, p. 6) AHRI recommended that DOE should regulate this issue under a singular standard and advised that small business retailers especially could be negatively impacted by the proposed leapfrogging of standards, especially for buffet tables, where full analysis of testing had not been completed. *Id.* AHRI commented that ASTM F2143–16 was under review and might be updated within the next one to two years, making it prudent for DOE to wait to further regulate. *Id.*

Hoshizaki repeated their previous comment, commenting in agreement with the proposal to use test procedures from ASTM F–2143–2016, but in disagreement with the proposal to have additional requirements from other standards. (Hoshizaki, No. 30, p. 2) They commented that if DOE wants to use a standard only in part, they should request to have a single standard updated with proposed changes and wait for the standard process to complete before publishing a test procedure. *Id.* Hoshizaki stated that this will give manufacturers a chance to see the final standard and prepare for testing prior to the implementation of new regulations. *Id.*

Continental commented that the ASHRAE 72 committee has discussed requirements for testing buffet and preparation tables, concluded that ASHRAE 72 is not appropriate for these product types, and determined that a new standard procedure would be needed, but that combining existing test standards is unnecessary, inadvisable, and likely to result in excessive testing burden and confusion for stakeholders. (Continental, No. 29, p. 5) Continental commented that DOE should not attempt to merge different aspects of ASHRAE and ASTM standards into a test procedure for refrigerated buffet and preparation tables and instead should work with stakeholders to develop and thoroughly assess a single comprehensive standard procedure. *Id.*

As discussed in the June 2022 NOPR, DOE recognizes that the ASHRAE 72–2022 with Errata provisions apply to conventional CRE, but has determined that the installation instructions specified in ASHRAE 72–2022 with

Errata provide for more representative installation instructions when testing buffet tables and preparation tables as compared to those specified in ASTM F2143–16. Specifically, DOE maintains that this equipment is typically installed in space-constrained locations, and therefore the manufacturer specified minimum clearances are most representative of actual use. Additionally, ASHRAE 72–2022 with Errata provides additional instructions regarding test unit installation within the test facility and for components and accessories. These provisions are necessary to ensure consistent testing.

Regarding combining references to multiple industry test standards within the test procedure in appendix C, as discussed in sections III.B and III.C.1.b of this document, DOE references specific sections of the applicable industry standards for testing in appendix C rather than incorporating the industry standards in full. This approach makes it easier to determine where requirements are harmonized across industry standards.

For these reasons, DOE is maintaining references to ASTM F2143–16 as appropriate for test conduct, but DOE is additionally specifying instructions based on ASHRAE 72–2022 with Errata for certain installation provisions, as appropriate, in appendix C.

Test Load

ASTM F2143–16 specifies that temperature measurements for preparation tables or buffet tables be taken from standardized pans filled with distilled water. ASTM F2143–16 also specifies measuring the temperature in any chilled compartments for refrigerated buffet and preparation tables using three thermocouples in an empty, unloaded compartment. DOE's current test procedure for CRE requires that integrated average temperature measurements be taken from test simulators consisting of a plastic container filled with a sponge saturated with a 2-percent mixture of propylene glycol and distilled water. See ASHRAE 72–2005, section 6.2.1. Additionally, the DOE test procedure requires 70 to 90 percent of the compartment net usable volume to be loaded with filler material and test simulators for testing (60 to 80 percent as proposed in this final rule by referencing section 5.4.8 of ASHRAE 72–2022 with Errata). See ASHRAE 72–2005, section 6.2.5. Buffet tables and preparation tables may not typically be loaded to 70 percent of their net usable volume due to their use for service rather than long-term storage, but testing with the refrigerated compartment

entirely empty also may not be representative of average use.

DOE initially determined in the June 2022 NOPR that the distilled water pan loading as specified in ASTM F2143–16 provides a representative test load for the open-top refrigerated areas of buffet tables and preparation tables, while limiting test burden, and is consistent with the filler material specified in both ASHRAE 72–2005 and ASHRAE 72–2018R (*i.e.*, filler material that consists of water, a 50/50 mixture (± 2 percent) of distilled water and propylene glycol, or wood blocks with an overall density not less than 480 kg/m³ (30 lb/ft³). 87 FR 39164, 39184. Typical food loads are composed mostly of water, such that water is a representative test medium. Additionally, distilled water does not require any additional preparation by the test laboratory, limiting test burden and ensuring a consistent test medium across different test facilities.

DOE acknowledges that using water would not accommodate testing at conditions at and below 32 °F. However, ASTM F2143–16 specifies pan temperature to be within 33 °F and 41 °F for a valid test. As discussed later in this section, DOE proposed in the June 2022 NOPR that the integrated average pan temperature be 38 °F ± 2 °F for buffet table and preparation table testing. 87 FR 39164, 39184. At these temperatures, the distilled water would be liquid and would not result in the testing issues associated with freezing. Additionally, DOE observed during investigative testing that individual pans filled with distilled water did not reach temperatures lower than 33 °F when tested with an integrated average pan temperature of 38 °F ± 2 °F.

In addition to proposing the water test load, DOE proposed in the June 2022 NOPR that pans for testing be loaded to within 0.5 in. of the top of the pan. 87 FR 39164, 39184. For pans that are not configured in a horizontal orientation, DOE proposed that only the lowest side of the pan be loaded to within 0.5 in. of the top of the pan. *Id.* ASTM F2143–16 specifies a pan loading procedure based on the weight of water needed to load pans to 0.5 in. of the top of the pan. DOE expects that a loading method based on marking pans or measuring distance from the water to the top of the pan would limit test burden as compared to the weight-based method in ASTM F2143–16 and that both the loads and loading methods would be substantively the same.

ASTM F2143–16 specifies the pans for holding water to be standard 4-in. deep $\frac{1}{6}$ -size metal steam table pans with a weight of 0.70 ± 0.07 lb. ASTM F2143–16 allows for manufacturer-

specified pans if the unit is designed specifically for such pans. DOE notes that manufacturers typically specify pan dimensions or provide pans for their units, but some manufacturers do not provide a pan depth or may specify a range of possible pan depths. DOE also notes that pan materials can vary and are not always specified by the manufacturer.

Based on a review of buffet tables and preparation tables available on the market, manufacturers typically allow for a range of pan configurations in the open-top refrigerated area. These configurations can nearly always accommodate the 1/6-size steam table pans referenced in ASTM F2143–16. To ensure consistent testing for units that offer multiple pan configurations, DOE proposed in the June 2022 NOPR to reference the pan instructions in ASTM F2143–16. 87 FR 39164, 39184. If a buffet table or preparation table cannot be loaded with the specified standard pans, DOE proposed in the June 2022 NOPR to test with pans that are consistent with the manufacturer installation instructions and with dimensions as close to the standard pans as is available, consistent with the ASTM F2143–16 loading instructions. *Id.*

Under the current test procedure, a thermal separation would be required between the buffet table or preparation table and a refrigerated compartment for that compartment to be subject to the testing requirements, which include test simulators and loading requirements. Buffet tables and preparation tables may include refrigerated compartments that are not thermally separated from the open-top refrigerated area, and in the NOPR, DOE considered whether different loads (or no load) would be appropriate for testing such compartments. 87 FR 39164, 39185.

DOE proposed in the June 2022 NOPR that any refrigerated compartment of a buffet table or preparation table (*i.e.*, any refrigerated compartment that is not thermally separated from the open-top refrigerated area) be tested with no load. *Id.* DOE proposed in the June 2022 NOPR to reference the ASTM F2143–16 requirements, which specify placing three thermocouples in specific locations within the empty refrigerated compartment. *Id.* DOE tentatively determined in the June 2022 NOPR that this approach would limit test burden by not requiring additional test simulator preparation or loading of filler materials. *Id.* Additionally, DOE expects that the refrigerated compartments of buffet tables and preparation tables are typically used for short-term storage of items used during food service and food

preparation (*i.e.*, with additional pans of prepared food or ingredients for food preparation) rather than long-term storage, and that, therefore, an unloaded cabinet would be more representative of typical usage. This is also consistent with the DOE test procedures for consumer refrigeration products, which measure internal compartment temperatures with no load. *See* 10 CFR part 430, subpart B, appendix A and appendix B.

ASTM F2143–16 does not specify whether the internal compartment thermocouples are weighted or unweighted. For consistency with the NSF 7–2019 approach, DOE proposed in the June 2022 NOPR that the thermocouples be weighted—*i.e.*, in thermal contact with the center of a 1.6-oz (45-g) cylindrical brass slug with a diameter and height of 0.75 in. 87 FR 39164, 39185. The brass slugs shall be placed at least 0.5 in from any heat-conducting surface. *Id.* While ASHRAE 72–2022 with Errata requires internal compartment temperatures to be measured using test simulators, ambient temperature measurements are similarly made by thermocouples in contact with cylindrical brass slugs with the same specifications.

In the June 2022 NOPR, DOE requested comment on the proposed test loads and temperature measurement locations for buffet tables and preparation tables—*i.e.*, distilled water in pans for the open-top refrigerated area and no load in any refrigerated compartment—consistent with the approach in ASTM F2143–16. 87 FR 39164, 39185.

Hoshizaki commented that it agrees with the proposal to use test procedures from ASTM F2143–2016. (Hoshizaki, No. 30, p. 3) Hoshizaki noted that if DOE were to seek changes in the future, those changes should go through the ASTM standards committee. *Id.*

Hillphoenix stated agreement with the proposal to load pans with distilled water, assuming there is no requirement to move the pans (*i.e.*, physically relocating, opening of drawer with pans, etc.), which would cause spillage and splashing. (Hillphoenix, No. 35, p. 4) Hillphoenix also agreed with the temperature measurement location in the center of the pan and recommended a sponge or similar material be used to stabilize the measuring device and maintain consistent placement of the sensor. *Id.* Hillphoenix recommended that DOE approach industry and request updated testing standards that better reflect actual product intent, which would drive consistency within the industry and be less burdensome on manufacturers. *Id.*

AHRI commented that it urged DOE to defer requirements for this issue in the test procedure until the ASTM F2143–16 standard has been updated in an estimated 1 to 2 years. (AHRI, No. 38, p. 7) AHRI stated a number of concerns, including the fact that proposed changes under consideration for test mediums or loading would be subjected to a test revision process. *Id.* AHRI pointed out its concerns with the proposed use of distilled water as a medium because it may have limitations in certain applications, even though it is much less burdensome than alternative mediums, such as glycol, used for testing. *Id.* AHRI noted that manufacturers are concerned that test results using distilled water sent to third-party testing labs may be inconsistent and difficult to replicate, and manufacturers need further testing to determine if distilled water is the decisively preferred testing medium, or if a lack of testing repeatability makes distilled water a less-preferred testing medium. *Id.* AHRI also repeated its concern that ENERGY STAR is not yet ready to employ ASTM F2143–16 and that DOE's adoption may be premature. *Id.*

Hussmann commented that distilled water was less of a burden for testing; however, water may have test limitations due to freezing/slush that could affect test measurements. (Hussmann, No. 32, p. 5) Hussmann recommended that DOE refer this issue to a standards committee to determine how water affected the temperature measurements and to determine the appropriate test medium. *Id.*

Continental commented that it had not performed extensive equipment testing using ASTM F2143–16 to provide comprehensive feedback on any proposed test conditions, and stated support for use of a no-load test for buffet tables or preparation tables that do not have a refrigerated storage compartment that is thermally separated from the open-top pan area. (Continental, No. 29, p. 6) Continental advised that empty pans could be used in the top opening to minimize additional burden, but potential inconsistencies in methods and results would need to be evaluated. *Id.* Continental commented that filling pans in the top with distilled water for testing was significantly less burdensome than alternative product simulator compounds, but that this approach is problematic because distilled water can be subject to partial freezing under certain application conditions, resulting in inconsistent test results. *Id.* Continental added that a mixture of propylene glycol and distilled water

would eliminate potential freezing concerns, but also add cost and potentially result in inconsistencies. *Id.* Continental alluded to another type of testing, a special test media, such as a solution of water, sodium chloride, and methocel as prescribed for ANSI/NSF 7–2019 sanitation testing, which would be extremely burdensome for separate energy testing due to relatively expensive ingredients, significant preparation time, and limited shelf life before the solution must be discarded. *Id.* Continental urged DOE to postpone adoption of a test procedure for refrigerated buffet and preparation tables and address these issues with relevant standards committees, such as ASTM, ASHRAE, and AHRI, as well as stakeholders. *Id.*

In the August 2022 public meeting, True commented that the problem with using distilled water in a cabinet, especially a food preparation table, is the threat of dual freeze; in other words, the distilled water dropping below 32 °F. (Public Meeting Transcript, No. 4, p. 56) True stated that when using water, measurements of the actual temperature of the product cannot be taken because as the water changes state, it will not move from 32 °F. *Id.* True added that the design of food preparation tables and buffet tables results in cold air coming out, or a cold rail either making direct contact or blowing directly on pans. *Id.* True stated that because of this, pans will freeze even though the average may be 38 °F. *Id.* Therefore, True stated that using water only as a test media is irresponsible because it is not producing adequate temperatures. *Id.* True suggested instead filling a pan with 50/50 water and glycol. *Id.*

In response to the Hillphoenix comment, DOE is not requiring pans to be moved during testing (as discussed in a later sub-section of III.C.1.b in this document), therefore limiting any spillage or splashing concerns. DOE has not identified an issue with maintaining thermocouple placement in the center of the pan during its internal testing of buffet tables and preparation tables, and therefore is not requiring the use of a sponge or similar material to stabilize the thermocouple during testing.

In response to AHRI's comment, DOE has determined that distilled water is a repeatable and reproducible test medium that limits test burden. Distilled water provides a consistent, representative basis for testing, limits burden by avoiding the need for test facilities to create solutions or mixtures (e.g., propylene glycol and water solutions, methocel, or sawdust mixtures), and is cost effective. In

response to Continental's suggestion that empty pans could be used for testing, DOE has determined that a thermal load in the pans is most representative of actual use and is necessary to allow for temperature measurements of the pan load.

DOE recognizes that water in pans of buffet tables or preparation tables could freeze under certain conditions but that the target pan temperatures are above water's freezing point. Based on DOE's investigative testing, DOE does not expect freezing of water in the pans during the test. If a buffet table or preparation table has a specific design characteristic that results in water freezing in a pan during the DOE test and that prohibits the conduct of the test, manufacturers can petition for a waiver under the provisions in 10 CFR 431.401.

DOE has determined that distilled water represents a consistent test load that represents the thermal load in pans during buffet table or preparation table operation. Therefore, DOE is adopting distilled water as the test medium for pans in buffet tables and preparation tables, and is requiring that any refrigerated compartments in buffet tables and preparation tables be tested with no load using weighted thermocouples, consistent with the June 2022 NOPR approach.

Test Conduct—Defrosts

ASTM F2143–16 does not provide specific instructions for addressing defrost cycles when testing buffet tables and preparation tables, other than indicating in the test report whether a defrost cycle occurred. Section 7.3 of ASHRAE 72–2022 with Errata directs that the test period begins with a defrost cycle. This section also requires that for refrigerators with manual defrost or off-cycle defrost, the test is started at the beginning of a refrigeration system off cycle (if the off-cycle defrost is not identifiable); or, if the refrigeration system never cycles off, the test is started at any point during refrigeration system operation.

Defrost cycles can increase the energy consumption of refrigeration equipment as compared to stable operation; however, DOE has observed that most buffet tables and preparation tables often incorporate off-cycle defrosts, which melt frost accumulation by running the evaporator fan during a compressor off cycle. This method of defrost does not actively introduce heat to melt the accumulated frost and may occur during the compressor's normal cycling operation. With this defrost approach, there may not be an

identifiable defrost occurrence in the measured test data.

In the June 2022 NOPR, DOE determined that to the extent buffet tables or preparation tables incorporate automatic electric or hot gas defrosts (*i.e.*, heating the evaporator to melt frost accumulation), or any automatic extended off-cycle defrost (*i.e.*, off-cycle defrost with a duration longer than a compressor off cycle), the energy consumption of these defrosts should be captured in the test period to measure energy use representative of typical use. 87 FR 39164, 39186. DOE observed during investigative testing that automatic extended off-cycle defrost is used in both buffet tables and preparation tables. To incorporate this energy use and ensure consistent testing of buffet tables and preparation tables, DOE proposed in the June 2022 NOPR to require that test periods for buffet tables and preparation tables account for any defrosts consistent with the requirements in ASHRAE 72–2018R. 87 FR 39164, 39186. This would require capturing a defrost at the start of the test period or starting the test period at the beginning of a refrigeration off cycle if there is no identifiable defrost (or at any point during refrigeration system operation if the refrigeration system never cycles off).

In the June 2022 NOPR, DOE requested comment on the proposal to account for defrosts when testing buffet tables and preparation tables, consistent with the approach in ASHRAE 72–2018R. 87 FR 39164, 39186.

AHRI commented that it supports DOE's proposal to account for defrosts for buffet tables and preparation tables in a test period greater than 4 hours, although AHRI cautioned DOE against combining test standards as it is unnecessary and inadvisable and restated the call for DOE to regulate this issue under a singular standard. (AHRI, No. 38, p. 7)

Hillphoenix stated agreement with the proposal to use ASHRAE 72 for defrost requirements pertaining to buffet and preparation tables as this standard already applies to existing CRE. (Hillphoenix, No. 35, p. 4) Hillphoenix recommended referencing ASHRAE 72–202x, which would align with the incorporation of other standards that are being referenced but that are not yet released. *Id.* Hillphoenix recommended this only be applied to units consisting of open tops with pans that incorporate other refrigerated zones. Hillphoenix commented that in reference to the test period duration, a defrost cycle may not be required due to a shortened active refrigeration time. *Id.*

Continental commented it had not sufficiently tested equipment using the proposed methods to provide an adequate response regarding defrost periods. (Continental, No. 29, p. 6) Continental commented that DOE's recognition of this issue is another indication as to why development of a new test procedure should not be attempted within a rulemaking, and why DOE should delay publication of a test procedure for refrigerated buffet and preparation tables, instead working with stakeholders to develop an appropriate standard procedure. *Id.*

Hussmann cautioned DOE on using a hybrid approach to creating a test procedure, but stated support for accounting for defrosts in a test period greater than 4 hours. (Hussmann, No. 32, p. 5)

Hoshizaki commented that it does not agree with proposing the use of one standard but then incorporating parts of other standards without going through the standard review process. (Hoshizaki, No. 30, p. 3) Hoshizaki noted that if DOE feels that starting the test with defrost is the best way to capture energy values, then DOE should make requests to amend ASTM F-2143 for those changes. *Id.*

In response to the comments regarding DOE referencing multiple test standards, refer to the same comments discussed in sections III.B and III.C.1.b of this document.

Because defrost occurrences can impact energy use, DOE is requiring that the test period begin at the start of a defrost occurrence, or at the beginning of a refrigeration off-cycle if there is no identifiable defrost (or at any point during refrigeration system operation if the refrigeration system never cycles off). This approach is consistent with the test period requirements for other CRE and would ensure repeatable and reproducible testing of buffet tables and preparation tables that is representative of actual use.

Test Conduct—Moving Pans

Section 10.5.6 of ASTM F2143-16 specifies that if it is possible to control cooling to the display area independently of the refrigerated cabinet, the cooling to the display area is turned off and all pans are to be moved from the display area to the refrigerated cabinet underneath after the active period. The ability to control cooling in both the display area and the refrigerated cabinet independently of each other suggests that this language applies to units with thermally separated compartments and pan areas.

DOE currently provides test procedures for any refrigerated

compartments that are combined with buffet tables and preparation tables and that are thermally separate from the open-top refrigerated area. In the June 2022 NOPR, DOE did not propose to amend the test requirements for such thermally separated refrigerated compartments. 87 FR 39164, 39186.

In the June 2022 NOPR, DOE proposed to reference ASTM F2143-16 rather than NSF 7-2019 as the basis for buffet table and preparation table testing. *Id.* Section 10.5.6 of ASTM F2143-16 specifies moving pans from the display area to the refrigerated cabinet underneath after the active period if it is possible to control cooling to the display area independently of the refrigerated cabinet. As stated, the separate cooling control suggests thermal separation between the open-top area and the refrigerated cabinet. Because DOE did not propose changes to the current test requirements for any thermally separated refrigerated cabinets, DOE proposed that all buffet tables and preparation tables be tested with the pans in the display area for the entire test, including the "standby period" specified in section 10.5.6 of ASTM F2143-16. 87 FR 39164, 39186.

DOE determined in the June 2022 NOPR that this proposed approach would limit test burden and variability by avoiding moving pans during the test period, which could introduce varying heat loads depending on how the movement is conducted. *Id.* Additionally, DOE expects that the proposed test procedure is representative of typical buffet table and preparation table use. As previously discussed, DOE expects that buffet tables and preparation tables are used for short-term storage during food service and food preparation. Therefore, it is unlikely that these units would be used for storage in the refrigerated compartment without any pans loaded in the open-top pan area.

In the June 2022 NOPR, DOE requested comment on its proposal to require loading pans in the open-top refrigerated area and not moving them to a refrigerated compartment, if applicable, during testing. 87 FR 39164, 39186-39187.

Hillphoenix stated agreement with the proposal to have open-top pans remain in place once they are loaded and testing begins, which would be consistent with the ASHRAE 72 approach that applies to existing CRE. (Hillphoenix, No. 35, p. 5) Hillphoenix recommended referencing ASHRAE 72-202x, which would align with the incorporation of other standards that are being referenced but that are not yet released. *Id.* Hillphoenix recommended

DOE approach industry and request updated testing standards that better reflect actual product intent, an approach intended to drive consistency within the industry while proving less burdensome on manufacturers. *Id.*

Hoshizaki commented agreeing that keeping the pans in and closing the lid would be simpler for the test. (Hoshizaki, No. 30, p. 3) Hoshizaki commented that manufacturers that have a separated rail and compartment temperature zones would have to change their test process. *Id.* Hoshizaki noted that if DOE wants to change this for all manufacturers regardless of design constraints of units, then this process should be updated in the ASTM F2143 standards committee. *Id.*

Continental commented that equipment with the ability to independently turn off the refrigeration system for the pan display area should be classified separately from other refrigerated buffet and prep tables. (Continental, No. 29, p. 6)

Continental added that if the manufacturer's instructions require relocating pans to the storage area at night, moving the pans would more accurately reflect the actual energy consumption of the equipment usage, although Continental had not tested equipment in this manner to thoroughly judge the suitability of moving pans. (Continental, No. 29, p. 6) Continental found making physical changes to equipment setup, such as relocating pans during a test, to be problematic because it could lead to significant differences in results by, for example, skewing measurements by the order in which pans were removed or arranged in the storage compartment, or how long doors or drawers were opened for the relocation of pans, etc. *Id.* Continental commented that this issue is another reason DOE must delay adoption of a test procedure for refrigerated buffet and preparation tables, and instead work with the standards committees and stakeholders to develop a comprehensive industry standard. *Id.*

AHRI recommended that any changes to the ASTM F2143-16 standard should be addressed by the appropriate standards committee. (AHRI, No. 38, p. 7) AHRI advised DOE that manufacturers have not tested equipment to the specifications proposed, and therefore AHRI does not have the knowledge to advise DOE regarding the appropriateness of this change. *Id.* AHRI commented that it supported DOE's proposal and recommended that DOE should not support moving pans during the test procedure, as this might affect test outcomes. *Id.* AHRI repeated that DOE

should not combine test standards and recommended that DOE regulate this issue under a singular standard.

Hussmann again cautioned DOE against combining sections from different standards to create a test procedure and that doing so would result in unsupported results not yet tested and proven by industry. (Hussmann, No. 32, p. 5) Hussmann commented that the method mentioned provides for testing variability and additional burden of testing on the manufacturer and was not recommended. *Id.* Hussmann instead recommended that the matter be taken before the proper standards committee for validation and vetting before being adopted. *Id.*

In response to the comments regarding DOE referencing multiple test standards, refer to the same comments discussed in sections III.B and III.C.1.b of this document.

DOE agrees with the comments indicating that moving pans in the middle of a test period would increase test burden and potentially increase variability. Therefore, DOE is requiring that pans stay in place for the duration of the test period, consistent with the approach proposed in the June 2022 NOPR.

DOE recognizes that typical buffet table and preparation table use may include movement of food pans from the top pan area or maintaining pans in that location depending on end use. However, the function of this equipment is to provide cooling to food loads in the top pan areas. DOE has determined that maintaining pans in the top open storage area allows for representative measures of energy consumption while limiting test burden.

Test Conduct—Operating Periods and Door/Lid Openings

As described, buffet tables and preparation tables temporarily store and display perishable items during food preparation or service. Because buffet tables and preparation tables are used only during food preparation or service, these equipment types may not be used for the same 24-hour duration used to characterize performance for other categories of CRE. Sections 10.5.5 and 10.5.6 of ASTM F2143–16 specify a 24-hour test, with an active period of 8 hours and a standby period of 16 hours. The active period specified in section 10.5.5 contains instructions for a cover, if equipped (open for 2 hours, then closed for 4 hours, then open for 2 hours), and a door opening sequence for any refrigerated compartments (every 30 minutes, each cabinet door or drawer, or both, shall be fully opened sequentially,

one at a time, for 6 consecutive seconds; for units with pass-thru doors, only the doors on one side of the unit are opened).

DOE tentatively determined in the June 2022 NOPR that buffet tables and preparation tables are typically used for food service and food preparation rather than longer-term food storage. 87 FR 39164, 39187. In the June 2022 NOPR, DOE proposed to test this equipment with pans loaded into the open-top display areas for the duration of the test, which DOE has tentatively determined represents typical use during food service and food preparation. *Id.*

DOE recognizes that the duration of use per day varies based on the application and installation location for this equipment. In the June 2022 NOPR, DOE identified that buffet tables and preparation tables can be used for up to 24 hours per day. DOE initially determined in the June 2022 NOPR that a 24-hour test period as specified in ASTM F2143–16 incorporates the likely aspects of buffet table and preparation table operation—*i.e.*, an active door-opening period and a period of stable operation. 87 FR 39164, 39187. While the actual durations of use may vary based on end-use application, the measured energy use in kWh/day is representative of the energy use of a unit operated in 24 hours and allows for consistent energy use comparisons among models. *Id.* DOE proposed in the June 2022 NOPR to require a 24-hour test period for buffet tables and preparation tables as specified in ASTM F2143–16. *Id.* The proposed 24-hour test period is consistent with the industry test procedure, the test procedure for other CRE; the 24-hour test period also limits test burden and variability by allowing for stable operation over a longer period and incorporates the door openings while allowing the stable operation expected during typical usage. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed 24-hour test period, which is consistent with the approach in ASTM F2143–16. *Id.*

Hoshizaki commented that it continues to agree with DOE's proposal to incorporate ASTM F2143–2016, but with revisions. (Hoshizaki, No. 30, p. 3) Hoshizaki stated that any revisions DOE feels necessary to make should be proposed to the ASTM F2143–2016 standards committee. *Id.*

Continental commented it had not thoroughly tested equipment using ASTM F2143–16 to judge the applicability of the 24-hour test period, but generally believed a 24-hour test to be appropriate. (Continental, No. 29, p.

6) Continental stated DOE should address any concerns raised regarding this test method with the appropriate standards committee and delay adoption of a test procedure for refrigerated buffet and preparation tables. *Id.*

Hillphoenix stated partial agreement with the ASTM 24-hour test period and recommended it only apply to buffet and prep units that share a thermostat with another refrigerated portion (*i.e.*, a refrigerated storage box), as these units could be used to maintain product temperatures while the pan section is not in use. (Hillphoenix, No. 35, p. 5) Hillphoenix commented that buffet and preparation units that incorporate only an open top with pans typically operate between 8–12 hours, after which, product was removed and relocated to other storage units. *Id.* Hillphoenix commented that because of this typical use, the test period should be shortened. *Id.*

AHRI recommended that DOE use this procedure within its intended 8- to 12-hour window, rather than the proposed 24-hour test period, because the equipment in question is generally used during store hours only and a 24-hour test period would not be representative of actual use. (AHRI, No. 38, p. 7) AHRI commented that the hours of uncovered time create a strain on the case and product while not reflecting typical use, and that the procedure is burdensome for those conducting the testing. *Id.* AHRI asked DOE for clarification regarding this issue as a 24-hour test period has been part of the test procedure and has already been confirmed by manufacturers. *Id.*

Hussmann commented that a 24-hour use period was not typical use for these types of CRE, which should therefore be tested in an 8- to 12-hour period that more closely resembled typical use. (Hussmann, No. 32, p. 5) Hussmann added that the hours of uncovered time created a strain on the case and on the product and were not reflective of typical use, and that this procedure was also burdensome for those conducting the testing. *Id.* Hussmann recommended this issue be taken before a standards committee to be tested and accepted by the industry instead of combining sections from different standards. *Id.*

The CA IOUs commented that the current proposed test procedure for buffet tables or preparation tables is not representative of average use for this category because pizza and sandwich prep tables almost always have lids, as this equipment is designed for 24-hour operation while many refrigerated rail models are turned off at night and precooled in the morning. (CA IOUs,

No. 36, p. 3) As a result, the CA IOUs recommended that refrigerated rails with a user-accessible on/off switch be tested for a period of 8 hours excluding the precool time (from ambient to below 40 °F), since the 8-hour period would represent two meal periods typical of most food-service establishments serving breakfast and lunch or lunch and dinner. *Id.* The CA IOUs further recommended including precool energy without pans in place in the daily energy use, in addition to the energy used during the 8-hour test, to maintain pans in the refrigerated rail at the target temperature, because refrigerated rails tested for 8 hours typically do not go into defrost mode, as the condensate is wiped down at the end of the day after pan removal and placement into another refrigerator. *Id.* Finally, the CA IOUs recommended testing refrigerated rails that do not have on/off switches or controllers for a period of 24 hours as currently defined in the ASTM F2143 Standard Test Method for Performance of Refrigerated Buffet and Preparation Tables. *Id.*

True commented that buffet tables and food preparation tables are not effective for around-the-clock food storage, and that the suggested test period (*i.e.*, 8 hours active and 16 inactive) does not represent how these units are meant to be used and operated; both model types are designed to be used during meal rush times (breakfast, lunch, dinner) to store perishable, open food during 1-to-3-hour intervals and not during a constant 8-hour period. (True, No. 28, p. 6) True stated that measuring the energy consumption during the NSF/ANSI 7–2021 7.5.2 test method for refrigerated buffet units and refrigerated food preparation would be the most representative measurement of energy consumption, and if a 24-hour number is required, simply multiplying the energy consumption during the 4-hour test by 6 would suffice. *Id.*

DOE notes that ASTM F2143–16 currently includes a 24-hour test period for all units—with an 8-hour active period, and 16-hour standby period. DOE recognizes that duration of usage per day varies depending on application and installation location. However, as noted by commenters, this equipment can be used for 24 hours. A 24-hour test allows for a representative measurement of energy use and allows for a consistent comparison of energy use. Therefore, DOE is adopting a 24-hour test period for buffet tables and preparation tables, consistent with the approach in ASTM F2143–16. As discussed in the following paragraphs, the 24-hour period includes active and standby periods, consistent

with ASTM F2143–16, to reflect usage during service and storage periods.

As discussed, ASTM F2143–16 includes an 8-hour “active period” that includes instructions for any open-top display area covers (2 hours open, 4 hours closed, and 2 hours open) and any refrigerated compartment doors and/or drawers (fully opened sequentially for 6 seconds every 30 minutes). DOE recognizes that the actual use of buffet tables and preparation tables can vary depending on application. The cover and door opening requirements in ASTM F2143–16 were developed by an industry committee with the intent of evaluating energy performance. While the door openings specified in ASTM F2143–16 are less frequent than those required in ASHRAE 72–2018R, DOE expects that any refrigerated compartments in buffet tables or preparation tables are accessed less frequently than in other CRE because maintaining the refrigerated temperature of food items held in the open-top pan area is the primary function of buffet tables or preparation tables during operation. Additionally, the 8-hour “active period” during which door openings occur is consistent with the 8-hour period of door openings required in ASHRAE 72–2022 with Errata. Based on the foregoing, DOE tentatively determined in the June 2022 NOPR that the cover and door opening provisions of ASTM F2143–16 are appropriately representative. 87 FR 39164, 39188.

Accordingly, DOE proposed in the June 2022 NOPR to incorporate the “active period” requirements for cover and door and/or drawer openings as specified in section 10.5.5 of ASTM F2143–16. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed door and cover opening procedures, which are consistent with the approach specified in ASTM F2143–16. DOE requested data and information on representative usage of buffet tables and preparation tables, including door and cover openings. *Id.*

Hoshizaki commented in agreement with DOE that the cover and door opening provisions of ASTM F2143–16 are appropriately representative for energy testing. (Hoshizaki, No. 30, p. 4) Hoshizaki commented that ASTM F2143–2016 should be either accepted in its entirety or changes suggested should be made at the ASTM F2143–2016 standards committee level and await approval before accepting said standard as a test procedure. *Id.*

Hillphoenix stated agreement with the proposal to use the door and cover opening procedures as referenced in ASTM F2143–16, as they are more

representative of end use than the door opening procedure referenced in ASHRAE 72. (Hillphoenix, No. 35, p. 5) Hillphoenix commented that the doors on this type of equipment are normally operated by store personnel and are not customer facing, which excludes the intent of the opening procedures specified in ASHRAE 72. *Id.* Hillphoenix recommended that DOE approach industry and request updated testing standards that better reflect actual product intent, an approach that would drive consistency within the industry and be less burdensome on manufacturers. *Id.*

AHRI commented that the issue of proposed door and cover opening procedures consistent with ASTM F2143–16 depend on DOE’s ultimate decision regarding use of ASHRAE 72–2018R. (AHRI, No. 38, p. 8) AHRI stated that ambient conditions must be selected in order to select the door type in use for equipment and recommended that changes to this standard be addressed by the appropriate standards committee for review and approval, and that a test procedure should be developed prior to regulating this equipment. *Id.*

Continental commented that it had not performed sufficient testing to ASTM F2143–16 to form a conclusive position on the suitability of utilizing the proposed door and cover opening procedures, but stated concerns with the practicality, burden, and repeatability of the simultaneous door and cover opening method specified in the ASTM test method. (Continental, No. 29, p. 7) Continental stated that results may be significantly skewed by ambient test conditions and the process used, and DOE should delay adoption of a test procedure for refrigerated buffet and preparation tables and address feedback regarding ASTM F2143–16 with the appropriate standards committee. *Id.*

Hussmann commented that due to the uncertainty of DOE selecting sections from both standards, it would be difficult to choose what method would work for a majority of manufacturers. (Hussmann, No. 32, p. 6) Hussmann commented that options determined from this test procedure may include: ASHRAE 72 conditions with ASHRAE 72 door openings; ASHRAE 72 conditions with the ASTM door opening procedure; ASTM conditions with the ASTM door opening procedure; or ASTM conditions with ASHRAE door openings. *Id.* Hussmann requested that DOE select test conditions in order to determine the suitable door opening procedure and cautioned against combining test standards for this reason. *Id.* Hussmann added that overall

measurements and results would have varying effects based on openings, ambient conditions, and test mediums used, and recommended that any changes be brought to the appropriate standards committee for review and approval prior to adoption. *Id.*

DOE agrees that the usage of buffet tables or preparation tables likely varies between high usage and low usage periods over a 24-hour period. The existing ASTM F2143–16 test procedure is representative of field use because it accounts for high and low usage periods with the active and standby periods. Therefore, DOE is adopting the active mode provisions of the ASTM test procedure for pan covers and door openings of any refrigerated compartments. This includes 4 hours total of uncovered pan area (2 hours open, 4 hours closed, 2 hours open for the 8-hour active period) and 8 hours of door openings (occurring every 30 minutes).

DOE is not adopting door openings based on ASHRAE 72–2022 with Errata as the doors are likely opened less frequently for this equipment, consistent with the ASTM F2143–16 requirements.

DOE recognizes that the impact of uncovered pan operation and door openings will vary depending on ambient conditions. As discussed, DOE has determined that the ASHRAE 72–2022 with Errata ambient conditions are appropriate for testing this equipment. DOE expects that any “strain” on uncovered operation would be mitigated by the lower ambient temperature of ASHRAE 72–2022 with Errata as compared to the ambient temperature specified in ASTM F2143–16, as well as the use of pan covers when applicable during a portion of the active period and the duration of the standby period.

In response to the comments regarding DOE referencing multiple test standards, refer to the same comments discussed in sections III.B and III.C.1.b of this document.

Test Conduct—Stabilization

Sections 10.3 and 10.4 of ASTM F2143–16 require that the unit be operated with empty pans and open covers for at least 24 hours, that the unit operate with empty pans for at least 2 hours, that water be pre-cooled before being loaded into the pans, and, once the water has been loaded into the pans, that the thermostat be calibrated until the pan temperatures are never outside of 33 °F to 41 °F for any 15-minute period over a 4-hour measurement period. In contrast, the current CRE test procedure, by reference to ASHRAE 72–2005, generally provides that the unit be

loaded with test simulators and filler packages prior to pre-cooling, operated to establish steady-state conditions over consecutive 24-hour periods or refrigeration cycles, and, once steady-state conditions have been achieved, continue to operate for at least 12 hours without any adjustment to the controls.

As discussed, DOE proposed in the June 2022 NOPR generally to reference ASTM F2143–16 rather than NSF 7–2019 for buffet table and preparation table testing. 87 FR 39164, 39188. However, the stabilization and thermostat calibration requirements in sections 10.3 and 10.4 of ASTM F2143–16 may require an iterative process of thermostat adjustment and recalibration to achieve stability and then to ensure that appropriate conditions are maintained during the test period. ASHRAE 72–2022 with Errata specifies provisions for other CRE that require stability to be confirmed over two test periods with identical operation in order to avoid the need for an iterative process. In the June 2022 NOPR, DOE proposed to reference sections 7.1 through 7.5 (excluding sections 7.2.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, and 7.3.4, as those sections would not be applicable to self-contained buffet tables or preparation tables because those sections are intended for CRE with remote condensing units, CRE without doors, CRE with different door opening sequences, and CRE with lighting occupancy sensors and controls) of ASHRAE 72–2018R for determining stabilization and specifying the testing sequence for testing buffet tables and preparation tables. 87 FR 39164, 39188. The preparation period under section 7.2 of ASHRAE 72–2018R would include loading the pans with water and adjusting the necessary controls to maintain the specified temperatures. *Id.* For the purposes of determining stability as specified in section 7.5 of ASHRAE 72–2018R, the average temperatures of measured pans would be used to compare Test A and Test B rather than the temperatures of test simulators. *Id.* DOE tentatively determined in the June 2022 NOPR that this approach would ensure stability over the test period and limit test burden by avoiding an iterative approach to determine stability and test conditions. *Id.* This approach would also maintain consistency with the procedures used for testing other CRE. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed stabilization approach for buffet table and preparation table testing, which would reference the approach specified in ASHRAE 72–2018R. *Id.*

AHRI commented that it supports DOE’s proposed stabilization approach while again recommending that DOE regulate this issue under a single standard, cautioning DOE against combining test standards as unnecessary and inadvisable. (AHRI, No. 38, p. 8)

AHRI further noted that buffet tables have not yet been addressed by ASHRAE Standard 72–2022. (AHRI, No. 38, p. 8)

Hussmann stated its support for adopting the stabilization method for self-contained CRE identified in section 7.4 in ASHRAE 72–2018R, but cautioned that this method does not yet address buffet/prep CRE and as a result, the proposed stabilization approach should be taken to the appropriate standards committee prior to adoption. (Hussmann, No. 32, p. 6)

Hillphoenix stated agreement with the proposal to use the ASHRAE 72 approach for stabilization of buffet table and preparation table testing as ASHRAE 72 followed methods used for other CRE equipment. (Hillphoenix, No. 35, p. 5) Hillphoenix commented that ASTM F2143–16 allowed many factors that could be burdensome when trying to stabilize temperatures. *Id.* Hillphoenix recommended that DOE approach industry and request updated testing standards that better reflect actual product intent, an approach that would drive consistency within the industry and be less burdensome on manufacturers. *Id.*

Hoshizaki commented requesting that if DOE is proposing to reference ASTM F2143–2016 for buffet table and preparation table testing but use the stabilization and thermostat calibration requirements as specified in section 7.5 of ASHRAE 72–2022, then those changes should be proposed to the ASTM F2143–2016 standards committee. (Hoshizaki, No. 30, p. 4) Hoshizaki noted that when DOE is content with a proper test procedure, then DOE can propose use of the test procedure at that time. *Id.*

Continental stated a belief that the stabilization period prescribed in ASHRAE 72–2022 may have applicability for buffet or preparation tables, but had not tested this equipment in the proposed manner to inform a comprehensive opinion. (Continental, No. 29, p. 7) Continental maintained that combining aspects of different test standards was inadvisable and that DOE should delay adoption of a test procedure for refrigerated buffet and preparation tables, and work with the appropriate standards committees and other stakeholders to develop an appropriate standard method that addresses this issue. *Id.*

In response to the comments regarding DOE referencing multiple test standards, refer to the same comments discussed in sections III.B and III.C.1.b of this document.

DOE maintains its determination from the June 2022 NOPR that the ASTM F2143–16 approach is burdensome and requires an iterative approach to determine stability, whereas the approach in ASHRAE 72–2022 with Errata allows for consistent testing while limiting test burden. Therefore, DOE is adopting the relevant sections of ASHRAE 72–2022 with Errata to require that stability be confirmed over two identical test periods.

DOE will continue to monitor industry committee work to update relevant standards and will consider any updated industry standards available during future test procedure rulemakings.

Test Conduct—Target Temperatures

ASTM F2143–16 instructs that if a buffet table or preparation table is equipped with a refrigerated compartment, the compartment air temperature is to be between 33 °F and 41 °F. Likewise, the water temperature in each of the pans placed in the display area also is to be between 33 °F and 41 °F. The DOE test procedure for other CRE requires IATs of 38 °F ±2.0 °F for medium temperature applications.

Through research, DOE found that buffet and preparation tables use a variety of refrigeration methods for cooling the pans in the display area and the refrigerated compartment. In some configurations, units might not be able to maintain all pans and the refrigerated compartment within the specified temperature range. For example, units with a single refrigeration system and thermostat control for temperatures in either the refrigerated compartment or in the pan area would control for temperature in either the pan area or refrigerated compartment, and both may not be within the target range. As a result, certain equipment may maintain only the refrigerated compartment or the pan area, but not both, within a specified temperature range during operation.

As discussed, ASTM F2143–16 and NSF 7–2019 both specify a pan and compartment temperature range of 33 °F to 41 °F for testing. The current DOE test procedure for CRE requires testing to an IAT within 2 °F of the specified target temperature. DOE expects that this smaller allowable temperature range would limit test variability as compared to the 8 °F allowable range specified in ASTM F2143–16 and NSF 7–2019.

The ASTM F2143–16 and NSF 7–2019 temperature ranges apply to all measured pan and compartment temperatures, whereas DOE's current temperature specifications apply to the IAT—*i.e.*, the average of all test simulator temperature measurements over the test period. DOE tentatively determined in the June 2022 NOPR that the temperature specification based on an average temperature rather than individual temperature measurements would limit test burden by limiting the need for retests in the case of individual temperature measurements being outside of the required range. 87 FR 39164, 39189. Additionally, DOE determined that the average temperature approach would allow for testing buffet tables and preparation tables with configurations not capable of maintaining all temperature measurements within the required range. *Id.* For example, if the refrigerated compartment provides cooling to the open-top pan area, the refrigerated compartment temperature measurements may be colder than the pan temperatures and not necessarily within a specified range. *Id.* Additionally, certain temperature measurement locations may be warmer or colder than others depending on proximity to the evaporator or refrigerated areas, resulting in “hot” or “cold” spots. *Id.* Testing to a specified average temperature would consider the overall average measured temperature and would allow for testing such configurations. *Id.*

Based on these initial determinations, DOE proposed in the June 2022 NOPR to require testing buffet tables and preparation tables to a specified average temperature rather than an allowable range. *Id.* DOE proposed in the June 2022 NOPR that the average temperature be calculated over the test period separately for the pan temperature measurements (*i.e.*, the average of temperatures measured throughout the test period at each pan measurement location specified in ASTM F2143–16) and the temperature measurements in any refrigerated compartment (*i.e.*, the average of temperatures measured throughout the test period at each of the three compartment measurement locations specified in ASTM F2143–16). DOE proposed in the June 2022 NOPR that the average temperature of all refrigerated pans be 38 °F ±2 °F. *Id.* This temperature is consistent with the current DOE test procedure for medium-temperature CRE and is within the allowable range specified in ASTM F2143–16 and NSF 7–2019. In the June 2022 NOPR, DOE similarly proposed

that the average temperature of any refrigerated compartment also be 38 °F ±2 °F. 87 FR 39164, 39189. If the buffet table or preparation table configuration does not allow independent control of the refrigerated compartment and both the pan average temperature and refrigerated compartment average temperature cannot be maintained within 38 °F ±2 °F over the test period, DOE proposed that the refrigerated compartment be tested to the average temperature necessary to maintain the pan average temperature within the specified range. *Id.* Similar to the existing LAPT provision in section 2.2 of appendix B, DOE also proposed in the June 2022 NOPR that if a unit is not capable of maintaining average pan temperatures within the specified range, the unit would be tested at the LAPT. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed approach for testing buffet tables and preparation tables based on separate pan and compartment average temperatures. *Id.* DOE also requested feedback on the proposed target temperature of 38 °F ±2 °F for each average temperature. *Id.*

Hillphoenix stated agreement with the proposed 38 °F ±2 °F IAT for averaging the temperature for each refrigerated compartment when there are no separate refrigeration controls. (Hillphoenix, No. 35, p. 6) Hillphoenix also agreed with the approach to only apply the 38 °F ±2 °F IAT requirement to open-top pans if the other refrigerated compartments must be operated colder in order to achieve these pan temperatures. *Id.* Hillphoenix disagreed with utilizing the LAPT for the open tops with pans in order to maintain 38 °F as required in other compartments, but stated that the open top with pans should be given priority to achieve 38 °F with other compartments allowed to run colder. *Id.*

Continental repeated its response to DOE's early assessment review, supporting use of target temperature ranges and moving box car average temperatures for pans in the open display area, along with maximum and minimum thermocouple temperature measurements in the refrigerated storage compartment, as prescribed in NSF 7 for this equipment. (Continental, No. 29, p. 7) Continental commented that it had not energy tested relevant equipment in the proposed manner to thoroughly evaluate suitability of this approach and reiterated that DOE should postpone publication of a test procedure for refrigerated buffet and preparation tables, and work with the appropriate standards committees and other stakeholders to develop and evaluate an

appropriate single standard method that addresses this and other issues. *Id.*

Hussmann commented that due to the nature of the small refrigerated pans on this type of CRE, removing pan lids and/or entering defrost could have warming effects on the pans and DOE should therefore use an average IAT of below 41 °F for the target temperature.

(Hussmann, No. 32, p. 6) Hussmann also cautioned DOE against combining sections from different standards to create a test procedure, stating that the proposed changes should be taken to the appropriate standards committee prior to adoption. *Id.*

AHRI recommended that DOE's target temperature should remain below 41 °F and restated its belief that combining test standards was unnecessary and that a single standard should be used to regulate the issue. (AHRI, No. 38, p. 8)

Hoshizaki commented that if DOE is proposing to reference ASTM F2143–2016 for buffet table and preparation table testing but use a modified target temperature range, then those proposed changes should be made to the ASTM F2143–2016 standards committee and await approval before finalizing a test procedure in DOE standards.

(Hoshizaki, No. 30, p. 4) Hoshizaki noted that manufacturers would need to be given the opportunity to test with those new constraints and make viable comments after seeing the differences. *Id.*

True recommended recording the energy consumption during the 4-hour NSF/ANSI 7–2021 test method (7.5.2) for refrigerated buffet units and refrigerated food preparation units because for buffet tables or preparation tables, the average of the pan temperatures is not a food-safe measurement. (True, No. 28, p. 3) True added that this test procedure is the industry standard and that all original equipment manufacturers (“OEMs”) should be able to supply energy consumption data for all equipment already manufactured and certified to NSF Standard 7. True asked DOE if such information had been requested from manufacturers. *Id.*

The 38 °F ±2 °F average pan temperature is generally consistent with the recommended approach for IAT below 41 °F and would allow for consistent comparisons across models by including a target temperature rather than a wide allowable range of IATs. For example, the energy use of a unit maintaining a pan IAT of 34 °F would be expected to be higher than a unit with an IAT of 41 °F. Additionally, testing significantly below the 38 °F ±2 °F range may introduce concerns of the distilled water freezing during testing.

DOE is maintaining pan and compartment target temperatures consistent with June 2022 NOPR and test procedure for other medium temperature CRE. To clarify, achieving the target pan temperature always takes priority over achieving the compartment temperature. LAPT is only allowed if a model cannot achieve the required pan temperature target range.

The boxcar pan temperature averaging approach in NSF 7 is for a test method serving a different purpose—ensuring food safety. For the DOE test procedure, the average pan temperature over the entire test duration is needed to ensure energy consumption corresponds to the maintained pan temperatures. DOE recognizes that an average pan temperature does not necessarily represent food safe temperatures (*i.e.*, each pan temperature may not be at 38 °F), but the DOE test procedure is intended to provide a representative basis for measuring energy consumption while not being unduly burdensome to conduct rather than ensuring food safety or sanitation. DOE has determined that the pan temperature averaging approach as proposed in the June 2022 NOPR satisfies the EPCA requirements.

Test Conduct—Capacity Metrics

ASTM F2143–16 specifies the reporting of “production capacity,” which is defined as the total volume of the pans when each pan is filled within 0.5 in. of the rim. Energy consumption of refrigerated buffet and preparation tables likely varies with pan volume as well as the volume of any closed refrigerated compartments. Therefore, both values are of interest when considering metrics that define energy performance. Pan surface area could be another possible metric for evaluating energy performance, similar to TDA for horizontal open equipment classes. Reliance on pan surface area may eliminate the variability with different test pan dimensions.

In the June 2022 NOPR, DOE tentatively determined that pan storage volume, pan display area, and refrigerated volume may all contribute to the capacity and energy consumption of a buffet table or preparation table; therefore, DOE proposed that the test procedure include measures of these three metrics. 87 FR 39164, 39190. DOE proposed in the June 2022 NOPR to define and measure “pan volume” consistent with the production capacity specified in ASTM F2143–16. *Id.* DOE proposed to refer to pan volume rather than production capacity to avoid confusion with the other relevant capacity metrics. *Id.*

In the June 2022 NOPR, DOE proposed that the refrigerated volume of buffet table and preparation table refrigerated compartments be tested in accordance with AHRI 1200–202X, consistent with the method proposed for use with other CRE. *Id.* To avoid double counting of refrigerated pan volumes, DOE proposed that the refrigerated compartment volume would not include any volume occupied by the pans loaded in the open-top display area for testing. *Id.*

DOE proposed in the June 2022 NOPR that pan display area be defined and measured as the surface area of the test pan when filled to within 0.5 in. of the rim. *Id.* This surface area measurement would ensure that the pan display area would be consistent with the pan storage volume (*i.e.*, both measurements would be based on the pans as filled for testing). *Id.* Additionally, the measurement based on the surface area of the water as loaded for testing would ensure that the surface area measurement accounts for the actual food storage area and excludes any areas not providing refrigerated storage for food service or food preparation. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed capacity metrics of pan storage volume, compartment volume, and pan display area. *Id.* DOE requested feedback on the proposed methods for measuring each and the extent to which these metrics are relevant capacity metrics for buffet tables and preparation tables. *Id.*

Hillphoenix stated agreement with DOE's intent to only measure volumes and TDAs for the referenced products. (Hillphoenix, No. 35, p. 6) Hillphoenix commented that the method as presented in the NOPR was not clearly written and needed to be better defined. *Id.* Hillphoenix recommended that DOE approach industry and request updated testing standards that better reflect actual product intent, an approach that would drive consistency within the industry and be less burdensome on manufacturers. *Id.*

AHRI recommended that the proposed changes to capacity metrics of pan storage volume, compartment volume, and pan display area need to be updated in tandem with the standard for consistency and alignment with the referenced standard. (AHRI, No. 38, p. 8)

Hussmann commented that the issue of proposed capacity metrics of pan storage volume, compartment volume, and pan display area should be taken to the appropriate standards committee due to the importance of consistency within standards. (Hussmann, No. 32, p. 6)

Continental commented that DOE's proposed use of surface area of the water as loaded for testing would present a confusing and potentially inconsistent method of rating equipment because it deviates from other industry standards. (Continental, No. 29, p. 7) Continental added that DOE should delay adoption of a test procedure for these products and work with the appropriate standards committees and other stakeholders to develop a suitable standard method that sufficiently addresses concerns with capacity measurements, which have significant impact on potential new energy standards in the future. *Id.*

The CA IOUs recommended for the prep table test procedure using $\frac{1}{8}$ -pan capacity as a size (and energy normalization) metric for prep tables instead of pan display area because prep table energy consumption depends mostly on the top pan capacity instead of bottom compartment volume. (CA IOUs, No. 36, p. 4) The CA IOUs pointed out that using total volume in the top pans and bottom compartment as a normalization metric will favor units with fewer top pans and larger bottom compartments compared to units with more top pan capacity. *Id.*

Hoshizaki commented that pan display area is not currently used as a metric in ASTM F2143–2016. (Hoshizaki, No. 30, p. 4) Hoshizaki commented that if DOE wants to add an additional metric for measurement, this should be proposed to the ASTM F2143 standards committee, and that such proposals should give manufacturers and third-party testing agencies the opportunity to do analysis and feedback in the standards committee process. *Id.* Hoshizaki stated that only after all revisions are finalized should the standard be officially proposed as a test procedure for product. *Id.*

DOE maintains that pan display area, pan volume, and refrigerated compartment volume can all impact energy use and provide information regarding usable capacity to end users. Because ASTM F2143–16 includes “production capacity,” which represents a measure of pan storage volume, DOE is adopting additional capacity metrics. These metrics reflect the capacity of buffet tables and preparation tables to store refrigerated items and display or allow access to refrigerated items.

Regarding the CA IOUs recommendation, the measured pan area rather than a number of standard pans would ensure a consistent basis for measuring unit capacity regardless of pan configuration for a given unit.

Regarding confusion and need for test standard updates, the measurements of compartment volume and pan volume are consistent with the existing industry methods (AHRI 1200–2023 and ASTM F2143–16, respectively). Pan area is the surface area of the water in the pans which represents the refrigerated area in contact with the ambient test conditions, which ensures a representative and comparable measurement of the usable capacity that contributes to energy consumption. Commenters did not provide specific information regarding what aspects of the June 2022 NOPR approach were unclear. DOE has reviewed the test instructions as proposed and determined they provide sufficient clarity regarding measuring each of the capacity metrics. Therefore, DOE is adopting the capacity metrics as proposed in the June 2022 NOPR.

2. Pull-Down Temperature Applications

As defined, CRE is equipment that is designed for holding temperature applications²⁰ or pull-down temperature applications. 10 CFR 431.62 (*see also* 42 U.S.C. 6311(9)(A)(vi)). “Pull-down temperature application” is a commercial refrigerator with doors that, when fully loaded with 12-ounce beverage cans at 90 °F, can cool those beverages to an average stable temperature of 38 °F in 12 hours or less. 10 CFR 431.62 (42 U.S.C. 6311(9)(D)). CRE within this definition are typically known as beverage merchandisers or beverage coolers because of their use in displaying individually packaged beverages for sale, and their ability to pull down temperatures of such beverages. Pull-down temperature applications with transparent doors and a self-contained condensing unit are the only pull-down temperature applications currently subject to DOE's energy conservation standards specified at 10 CFR 431.66(e).

DOE's current CRE test procedure does not include specific provisions related to the performance criteria in the pull-down temperature application definition. For example, the test procedure does not provide instructions for the starting conditions of the equipment (*e.g.*, whether the equipment begins the test in a pre-cooled state or at ambient temperature conditions), loading of the cans (*e.g.*, whether the equipment must be loaded to full within a certain amount of time), or a method to measure the temperature of the cans

to confirm cooling to 38 °F. The current CRE test procedure specifies that commercial refrigerators designed for pull-down applications be tested at steady state (*see* 10 CFR 431.64(b) and appendix B section 2.1), consistent with testing other covered CRE categories.

While DOE defines “pull-down temperature application” and has established energy conservation standards for self-contained commercial refrigerators with transparent doors for pull-down temperature applications, no models are currently certified to DOE in this equipment class.⁽²¹⁾ DOE has not established energy conservation standards for other categories of CRE for pull-down temperature applications.

DOE recognizes that manufacturers may represent their models as for use in pull-down temperature applications rather than holding temperature applications. To ensure appropriate application of DOE's definitions, DOE proposed in the June 2022 NOPR a method to determine whether a model meets the definition of “pull-down temperature application.” 87 FR 39164, 39191. Specifically, DOE proposed to include product-specific enforcement provisions for CRE, and proposed to include a section to specify how DOE would confirm whether a commercial refrigerator meets the definition of “pull-down temperature application.” *Id.*

As stated, the pull-down temperature application definition requires that a model be capable of cooling a full load of 12-ounce beverage cans from 90 °F to an average stable temperature of 38 °F in 12 hours or less. To confirm this capability, DOE proposed in the June 2022 NOPR to specify in 10 CFR 429.134 that a classification as pull-down temperature application is valid based on meeting the pull-down temperature application definition by:

(1) Measuring the temperatures of 12-ounce beverage cans loaded into the commercial refrigerator at locations consistent with those specified in ASHRAE 72–2018R (*i.e.*, those temperature measurement locations required for test simulators during DOE testing of other commercial refrigerators);

(2) Operating the commercial refrigerator under the required commercial refrigerator test conditions (*e.g.*, 75.2 °F \pm 1.8 °F dry-bulb temperature) and at the control setting necessary to achieve a stable integrated average temperature of 38 °F prior to loading;

(3) Fully loading the commercial refrigerator with 12-ounce beverage cans maintained at 90 °F \pm 2 °F;

²⁰ “Holding temperature application” means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer. 10 CFR 431.62 (*see also* 42 U.S.C. 6311(9)(B)).

(4) Determining the duration of pull down (which must be 12 hours or less) starting from closing the commercial refrigerator door after completing the 12-ounce beverage can loading until the integrated average temperature reaches 38 °F ±2 °F; and

(5) Determining an average stable temperature of 38 °F by operating the commercial refrigerator for an additional 12 hours after initially reaching 38 °F ±2 °F with no changes to control settings, and determining an integrated average temperature of 38 °F ±2 °F at the end of the 12-hour stability period. 87 FR 39164, 39191.

The proposed product-specific enforcement provisions are consistent with the existing definition of “pull-down temperature application,” but would provide additional clarity regarding how DOE would determine whether a commercial refrigerator could be classified as such. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed product-specific enforcement provisions regarding how DOE would determine whether a model meets the pull-down temperature application definition. 87 FR 39164, 39191. DOE also requested data and comment on whether the proposed product-specific enforcement provisions sufficiently differentiate pull-down temperature applications from holding temperature applications. *Id.*

AHRI commented that detailed information regarding pull down of “full load” wasn’t available. (AHRI, No. 38, p. 9) As a result, AHRI believed this proposal is in conflict with NSF requirements. *Id.* AHRI cited DOE’s slide deck used in an August 1, 2022, webinar for the CRE test procedure, noting two concerns with pull-down temperature and enforcement actions. *Id.*

AHRI commented by citing issue 24 (a question on the request for comment for pull-down temperature applications) to ask whether DOE is referring only to the category of pull-down CRE, or if DOE is adding pull down to all categories for enforcement. AHRI also asked if this would allow for the randomized placement of bottles during a legitimate test procedure. *Id.* AHRI referred to issue 56 related to certified volume versus volume measurement to ask if this will allow manufacturers to use their discretion. *Id.*

The Joint Commenters stated their support for the proposed test procedure to verify pull-down temperature performance. (Joint Commenters, No. 31, p. 3) The Joint Commenters noted they had expressed previous support for eliminating the pull-down temperature

CRE class. As discussed in their comments to the preliminary TSD for CRE standards, the Joint Commenters now supported the proposed NOPR amendment maintaining the pull-down class as it would clarify how DOE would determine whether a model is appropriately certified as a pull-down unit. *Id.*

NAMA expressed concern about the pull-down temperature provision because of the lack of specificity and asked if the provision related only to those products for which DOE had pull-down requirements or whether the provision referred to all CRE equipment that stored and cooled beverage cans/bottles. (NAMA, No. 33, p. 2) NAMA noted that large beverage companies had requirements for pull down, based on customer preference and sanitary conditions for food items that must reach 38 °F in 16 hours, not 12 hours. *Id.* NAMA commented that the DOE proposal would set up a conflicting set of requirements as more and more bottle coolers were used to store food in addition to beverages, making 12 hours a much shorter pull-down time. *Id.* NAMA suggested that DOE harmonize at 16 hours since the customers of its manufacturers already had specifications on pull down, adding that manufacturers already must test to determine pull down in 16 hours, and additional testing to show an arbitrary pull down at 12 hours was unnecessary and unduly burdensome. *Id.*

NAMA additionally requested that DOE develop specific test procedures for placing cans/bottles into the cooler, stating it was possible to obtain different results with a cooler packed with every conceivable space used and shelves removed versus cans/bottles packed as in a retail store; different results could also be obtained with cans versus bottles. (NAMA, No. 33, p. 2) NAMA recommended that DOE use a glycol liquid, as with the beverage vending machine (BVM) test procedure. *Id.*

In the August 2022 public meeting, True commented that the subject of 12-ounce cans will lead to some serious discussions on loading them. (Public Meeting Transcript, No. 41, p. 53) True stated these cans are very convenient to load two or three high per shelf, and if they are not single-loaded on a shelf, there could be a situation in which the middle cans are getting far less surface area and are more difficult to cool down. *Id.* True commented that some specification is needed on how to load these cans so this situation doesn’t happen, stating that if someone put one shelf in the bottom and stacked it to the ceiling with cans, they would never pass this test. *Id.*

The CA IOUs urged DOE to amend the definition for “pull-down temperature application” to specify “a blast chiller or freezer” and exclude beverage merchandisers, which in practice are used in holding-temperature applications. (CA IOUs, No. 36, p. 6) The CA IOUs commented that in the CRE industry, pull-down refrigeration specifically means equipment capable of rapidly lowering food temperature in a food-safe manner and that only blast chillers/freezers are considered to have pull-down applications by industry while beverage merchandisers are rated as Vertical Closed Transparent Medium Temperature (“VCT.M”) CRE and designed for holding-temperature applications. *Id.* The CA IOUs pointed out that there will be no need to establish a “pull-down” refrigeration test method for VCT.M equipment if DOE updates the definition for “pull-down temperature application” in accordance with industry practice. *Id.* The CA IOUs added that if DOE retains the current definition for “pull-down temperature applications,” DOE should share data on what percentage of operating hours are spent in “pull down” versus “holding mode” operation compared to other CRE considered “holding temperature applications” and recommends that the daily energy usage for these “pull-down temperature applications” be weighted by the percentage of time spent in each mode. *Id.*

To clarify, the provisions proposed in the June 2022 NOPR related to pull-down temperature applications are specific to the procedures DOE would follow for verifying claims of pull-down temperature applications as defined in EPCA and by DOE. DOE currently only specifies standards for pull-down temperature application equipment with self-contained condensing units and transparent doors. Manufacturers may claim their equipment is for pull-down temperature applications rather than holding temperature applications. The intent of the provisions proposed in the June 2022 NOPR for pull-down temperature applications is to ensure appropriate application of DOE’s definitions. Such testing would not be necessary to verify claims of equipment for holding temperature applications. Blast chiller and blast freezer testing is addressed separately in section III.C.3 of this document.

In the June 2022 NOPR, DOE proposed loading instructions consistent with ASHRAE 72–2018R. Additional instructions are not necessary because these provisions outline the process DOE will use to determine appropriate equipment

category (*i.e.*, manufacturers are not required to conduct testing in accordance with these provisions, but may choose to do so to ensure appropriate application of DOE's definitions).

In response to AHRI's comment regarding placement of bottles during a test procedure and certified volume versus volume measurement, this pull-down verification procedure would be separate from the DOE test procedure in appendix B and only represents the process DOE would follow to verify claims of pull-down temperature applications.

Based on the definition of pull-down temperature applications specified in EPCA (42 U.S.C. 6311(9)(D)) and replicated in 10 CFR 431.62, loading is for 12 ounce beverage cans only. The EPCA definition specifies 12 hours or less of pull-down time, so DOE is maintaining that requirement in the verification approach rather than harmonizing with any 16-hour periods used by manufacturers.

DOE is not requiring propylene glycol to be used in the cans—such a solution is not necessary because the operating temperatures will not result in potential freezing for other can solutions, like water. DOE notes that DOE's test procedure for BVMs²¹ does not require propylene glycol solution either.

DOE recognizes that these provisions do not follow NSF or standard industry terminology; however, DOE is maintaining the June 2022 NOPR verification provisions for pull-down temperature applications based on the EPCA definition. The other provisions regarding blast chillers and blast freezers established in this final rule clarify DOE consideration of equipment in that category.

3. Blast Chillers and Blast Freezers

As stated, CRE is equipment that, in part, is designed for holding temperature applications. (42 U.S.C. 6311(9)(A)(vi)) EPCA defines "holding temperature application" as use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer. (42 U.S.C. 6311(9)(B)) Per the definition, "holding temperature application" includes blast chillers and blast freezers, even if such equipment meets the criteria of "pull-down temperature application."

In general, blast chillers and blast freezers are CRE with solid doors intended for the rapid temperature pull down of hot-food products.

Blast chiller and blast freezer operation is typically characterized by three cycles. The first cycle pulls the air temperature within the unit down until it reaches a target air temperature set by the manufacturer (*e.g.*, 0 °F for blast chillers and -28 °F for blast freezers). This target air temperature within the unit is maintained until the food reaches a certain temperature, set by the manufacturer, as measured by the unit's temperature probe. Once the food reaches a certain temperature, the second cycle begins by allowing the air temperature within the unit to drift up until it reaches the same temperature as the target food temperature (*e.g.*, 38 °F for blast chillers and 0 °F for blast freezers). Once the food reaches the target food temperature, the last cycle begins by proceeding to a holding pattern during which the blast chiller or blast freezer behaves similarly to a typical CRE—*i.e.*, cycling the refrigeration system to maintain a target temperature.

Within the general sequence of operations, many blast chillers and blast freezers provide users with options to alter the specific pull-down profile based on the food load. For example, a "soft chill" mode may provide a slower temperature pull down intended for more delicate food, as compared to a "hard chill" mode that cools food as quickly as possible.

ASHRAE has established a standard project committee ("SPC") to consider the development of an industry test standard for this equipment: SPC 220P, *Method of Testing for Rating Small Commercial Blast Chillers, Chiller-Freezers, and Freezers* ("ASHRAE 220").²² DOE is participating in this process and is aware of a draft test standard underway that contains certain definitions, requirements, and procedure. DOE will consider the final version of the SPC 220P standard if available during future test procedure rulemakings.

a. Definitions

DOE does not define blast chiller or blast freezer. The California Code of Regulations provides the following definition for a blast chiller:

- *Blast chiller*—a refrigerator designed to cool food products from 140 °F to 40 °F within four hours. (CCR, Title 20, section 1602)

The SPC for ASHRAE 220 has provided the following tentative definitions for blast chiller and blast freezer, and a related term:

- *Blast chiller*—a rapid pull-down cooler designed to cool food to a safe refrigerated temperature (typically between 32 °F and 41 °F), but not freeze it.

- *Blast chiller-freezer*: a rapid pull-down cooler designed to function as both a blast chiller and blast freezer depending on user inputs.

- *Blast freezer*—a rapid pull-down cooler designed to freeze food.

- *Rapid pull-down cooler*—commercial refrigeration equipment intended for the rapid intermediate chilling or freezing of hot food products within a specified time period and holding the food at a safe temperature when not engaged in the chilling or freezing process.

NSF 7-2019 provides the following performance specification for rapid pull-down refrigerators and freezers:

- *Rapid pull-down refrigerators and freezers*—capable of reducing the internal temperature of their contents from 135 °F to 40 °F within a period of 4 hours or in the time specified by the manufacturer, whichever is less.

Based on the comments from interested parties and DOE's review of existing State definitions, tentative and established industry definitions, and equipment available on the market, DOE tentatively determined in the June 2022 NOPR that the characteristic of blast chillers and blast freezers that differentiate this equipment from other categories of CRE are the oversized refrigeration systems that allow for the rapid temperature pull-down of hot food products within a specified time period. 87 FR 39164, 39192. Blast chillers and blast freezers specifically differ from other types of CRE intended for pull-down temperature applications because of the intended product (hot food product for blast chillers and blast freezers versus 12-ounce beverage cans for pull-down temperature applications), initial product temperature (minimum 135 °F for blast chillers and blast freezers versus 90 °F for pull-down temperature applications), and intended product storage duration (minimal storage duration for blast chillers and blast freezers versus long-term storage duration for pull-down temperature applications).

As discussed, blast chillers and blast freezers provide rapid cooling to ensure hot food is quickly pulled down to safe refrigerated storage temperatures. In the June 2022 NOPR, DOE tentatively identified the capability to pull down hot food from 135 °F to 40 °F within 4 hours as the primary operating characteristic of blast chillers and blast freezers. 87 FR 39164, 39192. This is

²¹ See appendix B to subpart Q of 10 CFR part 431.

²² See www.ashrae.org/technical-resources/standards-and-guidelines/project-committee-interim-meetings.

consistent with the performance specification for rapid pull-down refrigerators and freezers specified in NSF 7–2019, the California definition, and tentative definitions provided by the SPC for ASHRAE 220. Although DOE did not propose to test blast chillers and blast freezers according to NSF 7–2019, as discussed in the following section, DOE expects that any blast chiller or blast freezer meeting the NSF 7–2019 performance specification would be capable of pulling down hot food from 135 °F to 40 °F within 4 hours when tested as proposed in the NOPR. 87 FR 39164, 39192. As discussed in section III.C.1.b, DOE is proposing a lower ambient temperature condition than the ambient temperature condition specified in NSF 7–2019.

To delineate blast chillers and blast freezers from other categories of CRE, including from CRE designed for pull-down temperature applications, DOE proposed in the NOPR to define the terms “blast chiller” and “blast freezer.” 87 FR 39164, 39192. DOE proposed definitions for these terms that combine parts of existing definitions, add language for consistency with DOE’s existing CRE definitions, and include further specificity regarding the characteristics of this equipment. *Id.* Specifically, DOE proposed to add the following definitions to 10 CFR 431.62: “Blast chiller” means commercial refrigeration equipment, other than a blast freezer, that is capable of the rapid temperature pull-down of hot food products from 135 °F to 40 °F within a period of 4 hours, when measured according to the DOE test procedure. *Id.* “Blast freezer” means commercial refrigeration equipment that is capable of the rapid temperature pull down of hot food products from 135 °F to 40 °F within a period of 4 hours and capable of achieving a final product temperature of less than 32 °F when measured according to the DOE test procedure. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed definitions of “blast chiller” and “blast freezer.” 87 FR 39164, 39192.

NEEA commented that it supports the new definitions DOE proposed for “blast chiller” and “blast freezer,” stating that these equipment types have unique applications compared to other CRE, and these definitions allowed consideration (potential standards), categorization (equipment classes), and testing of this equipment separate from other CRE. (NEEA, No. 39, p. 2)

AHRI commented to recommend that DOE align its definitions of “blast chiller” and “blast freezer” with the SPC language for ASHRAE 220 (“Method of Testing for Rating Small

Commercial Blast Chillers, Chiller Freezers, and Freezers”) for the proposed definitions of “blast chiller” and “blast freezer” (see bulleted language). (AHRI, No. 38, p. 9)

- “Blast chiller—a rapid pull-down cooler designed to cool food to a safe refrigerated temperature (typically between 32 °F and 41 °F), but not freeze it.

- Blast freezer—a rapid pull-down cooler designed to freeze food.

- Rapid pull-down cooler—commercial refrigeration equipment intended for the rapid intermediate chilling or freezing of hot food products within a specified time period and holding the food at a safe temperature when not engaged in the chilling or freezing process.” *Id.*

AHRI commented that alignment with ASTM, ASHRAE, or other established standards would also be acceptable. *Id.* AHRI further urged DOE to go through the standard review process and not attempt to address this through either an amendment to the DOE test procedure or development of a new standard. *Id.*

DOE considered available industry definitions when developing the proposals in the June 2022 NOPR, including the definitions in the draft version of ASHRAE 220. ASHRAE 220 has not published a public review draft and is still in draft form and DOE is not aware of any updates to the definitions considered in developing the proposal in the June 2022 NOPR. Therefore, DOE is adopting the definitions proposed in the June 2022 NOPR. DOE will consider any published standard when available during any future test procedure rulemakings.

b. Test Methods

In the June 2022 NOPR, DOE reviewed the ASHRAE 220 test method in development to determine the suitability of the test method for a DOE test procedure. The draft ASHRAE 220 test method determines the pull-down energy consumption per pound of food product, hot food product temperature pull-down performance, and other performance factors for self-contained commercial blast chillers and blast freezers that have a refrigerated volume of up to 500 ft³. DOE acknowledges that the ASHRAE 220 test method has certain deviations from DOE’s current CRE test procedures and ASHRAE 72–2022 with Errata.

DOE tentatively determined in the June 2022 NOPR that test procedures that account for the pull-down operation of blast chillers and blast freezers are appropriate. 87 FR 39164, 39193. The primary function of blast chillers and blast freezers is the rapid

cooling of hot food product and minimal storage duration rather than long-term storage duration. DOE has considered the draft ASHRAE 220 standard as the basis for many of the test procedure proposals.

DOE has also reviewed the ISO 22042:2021 test standard. Many of the provisions in the ISO 22042:2021 method are similar to those included in the draft ASHRAE 220 (*e.g.*, ambient temperature, starting food load temperature, final blast freezer temperature). DOE tentatively determined in the June 2022 NOPR that the provisions in draft ASHRAE 220 provide a more representative basis for testing (*e.g.*, blast chiller target temperature of 38 °F rather than 50 °F) and would limit test variability as compared to ISO 22042:2021 (*e.g.*, using a well-defined food simulator test load rather than actual food and defining door openings for pan loading). 87 FR 39164, 39193. DOE also participated in ENERGY STAR’s specification review process to establish version 5.0 Eligibility Criteria for commercial refrigerators and freezers. ENERGY STAR considered including blast chillers and blast freezers as part of the version 5.0 Eligibility Criteria,²³ but did not include them in the specification due to the lack of a standardized test procedure.

Consistent with the tentative scope of ASHRAE 220, DOE proposed in the June 2022 NOPR test procedures for self-contained commercial blast chillers and blast freezers that have a refrigerated volume of up to 500 ft³. 87 FR 39164, 39193. DOE proposed to incorporate certain provisions from draft ASHRAE 220 and certain deviations, as discussed in the following sections. *Id.* DOE acknowledged that, to the extent feasible, ASHRAE 220 will likely harmonize with requirements included in ASHRAE 72–2018R. *Id.* For this reason, DOE proposed in the June 2022 NOPR to refer ASHRAE 72–2018R for certain test requirements rather than using the approach in the ongoing draft ASHRAE 220. *Id.* The intent of these proposals was to harmonize with the eventual ASHRAE 220 final test standard approach.

To avoid confusion regarding testing of other CRE, DOE also proposed in the June 2022 NOPR to establish the test procedure for blast chillers and blast freezers as a new appendix D to subpart C of 10 CFR part 431. 87 FR 39164,

²³ See the Version 5.0 Specification and Test Method Discussion Guide, December 2020, at www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Commercial%20Refrigerators%20and%20Freezers%20V5.0%20Discussion%20Guide_0.pdf.

39193. DOE also proposed to refer to the proposed appendix D as the test procedure for blast chillers and blast freezers in 10 CFR 431.64. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposal to establish test procedures for self-contained commercial blast chillers and blast freezers that have a refrigerated volume of up to 500 ft³.

The Joint Commenters stated their support for establishing test procedures for blast chillers and freezers, noting that DOE had tentatively identified the capability to pull down hot food from 135 °F to 40 °F within 4 hours as the primary operating characteristic of blast chillers and blast freezers. (Joint Commenters, No. 31, p. 3)

NEEA stated its support for DOE’s proposal to establish test procedures for new and newly defined categories of CRE, and restated its recommendation from the 2021 CRE TP RFI that DOE establish test methods for new CRE product types, including blast chillers and blast freezers. (NEEA, No. 39, p. 2)

Continental commented that it supports the NOPR proposal to add new test procedures for product categories such as blast chillers and blast freezers. (Continental, No. 29, p. 1) Continental noted, however, that attempting to develop test procedures that combine aspects of different existing industry standards and introduce significant modifications is not sufficient or appropriate for this type of rulemaking. *Id.* Continental recommended that DOE work with ASHRAE, AHRI, ASTM, and other stakeholders to develop suitable test procedures for any additional product categories so that new or modified industry standards are comprehensive, reliable, and repeatable for many equipment types, with minimal additional testing burden. *Id.*

The Joint Commenters stated that DOE proposed to add test procedures only for self-contained commercial blast chillers and freezers with a refrigerated volume of up to 500 ft³, and that while the Joint Commenters understood that most of the blast chillers/freezers market consists of self-contained equipment,

remote condensing blast chillers/freezers are available on the market; thus, the Joint Commenters encouraged DOE to consider establishing test procedures for remote condensing blast chillers/freezers as part of a future rulemaking. (Joint Commenters, No. 31, p. 3)

The CA IOUs also stated their support for DOE’s decision to limit scope to self-contained blast chillers/freezers, which represents the vast majority of the market. (CA IOUs, No. 36, p. 6). In the August 2022 public meeting, the CA IOUs commented that ASHRAE 220 was developed for blast chillers up to 500 ft³, but that self-contained blast chillers would be significantly smaller than that and most likely would have the volume to accommodate a single rolling rack. (Public Meeting Transcript, No. 41, p. 48)

Consistent with draft version of ASHRAE 220 and the June 2022 NOPR, DOE is establishing a test procedure for self-contained blast chillers and blast freezers only. In response to Continental’s comment, DOE has harmonized the June 2022 NOPR and the test procedure established in this final rule with the expected industry test method to the extent possible. DOE will consider harmonizing with any available industry test method, including regarding expanded scope, in future test procedure rulemakings.

In the June 2022 NOPR, DOE sought comment on the proposal to incorporate certain provisions from the draft ASHRAE 220 and certain deviations for the blast chillers and blast freezers test procedures. 87 FR 39164, 39193.

The Joint Commenters commented that they support DOE’s proposed changes regarding the proposed test methods for additional equipment categories, including blast chillers and freezers. (Joint Commenters, No. 31, p. 1)

The Joint Commenters added that they support the proposed test methods that are consistent with ASHRAE 220 and include pre-cooling the blast chiller’s or blast freezer’s cabinet to a pre-set or controlled operating

temperature, loading of hot food pans into the blast chiller or blast freezer, and pull down of the hot food pans to the target temperature. (Joint Commenters, No. 31, p. 3) The Joint Commenters stated that this method captured energy usage during pull-down operation, as a representative method for estimating the energy usage of blast chillers/freezers. *Id.*

True commented that DOE should not reinvent the wheel by referencing NSF or ASHRAE for blast chiller and freezer cabinets for professional use. (True, No. 28, p. 7) True commented that the reference standard for blast chillers and blast freezers should be ISO 22042:2021 since these products were developed in Europe and are being evaluated for the EU EcoDirective energy labeling program. *Id.*

As discussed in the June 2022 NOPR, DOE has reviewed ISO 22042:2021. Many provisions are similar to those included in the draft version of ASHRAE 220 (e.g., ambient temperature, starting food load temperature, final blast freezer temperature). However, DOE has determined that other provisions included in the draft ASHRAE 220 and proposed in the June 2022 NOPR are more representative of blast chiller and blast freezer operation (e.g., blast chiller target temperature of 38 °F rather than 50 °F) and would limit test variability as compared to ISO 22042:2021 (e.g., using a well-defined food simulator test load rather than actual food and defining door openings for pan loading). Therefore, DOE is establishing the test procedure for blast chillers and blast freezers based on the draft of ASHRAE 220, and as included in appendix D to subpart C of 10 CFR part 431.

Instruments

DOE reviewed the latest version of the draft ASHRAE 220 standard and compared it to ASHRAE 72–2022 with Errata, as shown in Table III.2, to determine appropriate instrument requirements for blast chiller and blast freezer testing.

TABLE III.2—INSTRUMENTATION REQUIREMENTS COMPARISON BETWEEN ASHRAE 220 AND ASHRAE 72–2022 WITH ERRATA

	ASHRAE 220	ASHRAE 72–2022 with errata
Calibration	Instruments shall be calibrated traceable to National Institute of Standards and Technology (“NIST”) standards annually..	Measurements from the instruments shall be traceable to primary or secondary standards calibrated by NIST (or other rating standards). Instruments shall be recalibrated on regular intervals that do not exceed the intervals prescribed by the instrument manufacturer, and with an interval no longer than 1 year.

TABLE III.2—INSTRUMENTATION REQUIREMENTS COMPARISON BETWEEN ASHRAE 220 AND ASHRAE 72–2022 WITH ERRATA—Continued

	ASHRAE 220	ASHRAE 72–2022 with errata
Temperature	Accuracy of temperature measurements shall be within ±1.4 °F. Accuracy of temperature-difference measurements shall be within ±0.2 °F. Temperature measurements not specified shall be made per ANSI/ASHRAE Standard 41.1.2.	Required Accuracy: ±1.4 °F. Temperature measurement methods and instruments shall be applied and used in accordance with ASHRAE Standard 41.1–2020.
Time	Time measurements shall be made with an accuracy of ±0.5% of the time period being measured.	Required Accuracy: ±0.5% of time period measured.
Energy	Electrical energy measurements shall be made with instruments accurate to ±2% of the quantity measured..	Required Accuracy: must be measured with an integrating watt-hour meter with accuracy ±2.0% of the quantity measured and graduated to 0.01 kWh.
Electrical supply potential and supply frequency.	None specified	Required Accuracy: ±2.0% of the quantity measured.

Generally, ASHRAE 72–2022 with Errata has the same instrumentation requirements as draft ASHRAE 220. DOE acknowledges that ASHRAE 220 intends to harmonize with ASHRAE 72–2022 with Errata to the extent possible to maintain consistent test requirements across similar equipment types. Because ASHRAE 72–2022 with Errata provides greater detail on the instrumentation requirements, and DOE expects that the final ASHRAE 220 standard will likely adopt the ASHRAE 72–2022 with Errata requirements, DOE proposed in the June 2022 NOPR to reference section 4 and the relevant portions of appendix A of ASHRAE 72–2018R for blast chiller and blast freezer instrumentation requirements. ASHRAE 72–2022 with Errata provides additional requirements for instruments that are not necessary for testing blast chillers and blast freezers (e.g., air velocity, radiant heat, dry-bulb temperature gradient, and test chamber illuminance). DOE proposed in

the June 2022 NOPR to incorporate requirements only for instruments necessary to test blast chillers and blast freezers (i.e., those listed in Table III.2). In the June 2022 NOPR, DOE sought comment on the proposal to reference section 4 and the relevant portions of appendix A of ASHRAE 72–2018R for instrumentation requirements for the blast chiller and blast freezer test procedures. 87 FR 39164, 39194. AHRI commented cautioning DOE against referencing the ASHRAE 220 standard with this test procedure, as it would create inconsistencies to reference ASHRAE 220 and ASHRAE 72–2022 simultaneously. (AHRI, No. 38, p. 9) DOE is maintaining the approach proposed in the June 2022 NOPR, based on the draft version of ASHRAE 220. As ASHRAE 220 is not yet available, DOE is not incorporating that standard by reference. DOE is adopting the test procedure for blast chillers and blast

freezers in appendix D and incorporating by reference the relevant sections of ASHRAE 72–2022 with Errata. DOE recognizes that certain additional requirements are pulled from other standards, but including multiple incorporations by reference as appropriate ensures consistent testing and clarifies where test requirements are harmonized across test procedures.

Test Conditions

Blast chillers and blast freezers are typically intended for use only in commercial kitchens, as compared to other categories of CRE, which are typically used in either commercial kitchens or in customer-facing environments.

ASHRAE 220 specifies different test conditions for testing blast chillers and blast freezers compared to the current DOE CRE test procedures, as illustrated in Table III.3.

TABLE III.3—AMBIENT TEMPERATURE AND HUMIDITY TEST CONDITIONS COMPARISON

	ASHRAE 220	DOE’s current CRE test procedure
Dry Bulb	Measured at point T _A ; Average: 86.0 °F ±1.8 °F Individual: 86.0 °F ±3.6 °F	Measured at point T _A for open CRE and T _B for closed CRE; Average: 75.2 °F ±1.8 °F Individual: 75.2 °F ±3.6 °F.
Humidity	No test condition specified	Wet Bulb measured at point T _A for open CRE and T _B for closed CRE; Average: 64.4 °F ±1.8 °F Individual: 64.4 °F ±3.6 °F

The dry bulb is required to be measured in ASHRAE 220 at the same point (TA) as specified in section 6.1 of ASHRAE 72–2022 with Errata. ASHRAE 220 does not specify the type of thermocouple to be used when taking dry-bulb measurements. ASHRAE 72–2022 with Errata specifies that the thermocouples used to measure dry-bulb temperatures shall be in thermal

contact with the center of 1.6 oz. cylindrical brass slug with a diameter and height of 0.75 in. The brass slugs shall be placed at least 0.50 in. from any heat-conducting surface. DOE tentatively determined in the June 2022 NOPR that the test conditions specified in ASHRAE 220 are more representative of actual blast chiller and blast freezer operation as compared to

the existing CRE test procedure conditions. 87 FR 39164, 39194. As stated, blast chillers are typically only used in commercial kitchens, whereas other conventional CRE are used in a range of environments. DOE recognizes that harmonizing test conditions across different CRE categories may provide users with measures of energy use that can be

compared on a consistent basis. However, given the particular application of blast chillers and blast freezers in rapidly lowering the temperature of hot food products, it is not expected that other CRE would serve as a substitute for blast chillers and blast freezers (and vice versa). Moreover, as indicated by a 2012 ASHRAE report,²⁴ the test conditions in the draft ASHRAE 220 are more representative for blast chillers and blast freezers than the test conditions applicable to CRE generally.

Because blast chillers and blast freezers experience different ambient conditions than other types of CRE, and because the proposed test procedures for blast chillers and blast freezers would use a different energy use and capacity metric, DOE proposed in the June 2022 NOPR to require the representative dry-bulb temperatures specified in the tentative ASHRAE 220 draft. 87 FR 39164, 39194. DOE also proposed in the June 2022 NOPR to incorporate section 6.1 and Figure 6 of ASHRAE 72–2018R to specify the point T_A where the dry-bulb temperatures are to be measured and to specify the dry-bulb thermocouple setup. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposal to require the dry-bulb temperatures specified in the tentative ASHRAE 220 draft and incorporate section 6.1 and Figure 6 of ASHRAE 72–2018R to specify the point T_A where the dry-bulb temperatures are to be measured and the type of thermocouple to use when measuring dry bulb in the blast chillers and blast freezers test procedures. *Id.*

AHRI commented that it would be appropriate to measure dry-bulb temperatures in blast chiller and blast freezer test procedures using ASHRAE Standard 220 where necessary. (AHRI, No. 38, p. 10)

The CA IOUs stated their support for DOE's proposal to test blast chillers/freezers at an ambient temperature of 86 °F where other CRE categories are tested at 75 °F because blast chillers and freezers are typically only used in commercial kitchens, and as such, 86 °F is more representative than 75 °F for blast chiller/freezer operation. (CA IOUs, No. 36, p. 6)

DOE is maintaining the ambient test conditions of 86 °F based on the draft version of ASHRAE 220 and as supported in comments. DOE recognizes that this ambient condition is different from the condition used for testing other CRE categories, and that DOE has

intended to harmonize conditions when possible to ensure consistent testing across CRE categories. However, the metrics for blast chiller and blast freezer testing are sufficiently different from other CRE testing (*i.e.*, kWh/day) that comparisons of energy use cannot be made across these CRE categories, so there is little benefit in harmonizing the ambient test conditions for blast chillers and blast freezers.

ASHRAE 220 specifies the same requirements for the power supply, voltage, and frequency as ASHRAE 72–2022 with Errata. Specifically, ASHRAE 220 specifies that the rated voltage be maintained at an average of ± 2.0 percent over the duration of the test and individual recorded voltages be within ± 4.0 percent of the rated voltage. ASHRAE 220 specifies that the rated frequency be maintained within ± 1.0 percent. Because ASHRAE 72–2022 with Errata specifies the same requirements for voltage and frequency, DOE proposed in the June 2022 NOPR to incorporate the portions of appendix A in ASHRAE 72–2018R, which specify the requirements for voltage and frequency.

In the June 2022 NOPR, DOE sought comment on the proposal to incorporate the portions of appendix A in ASHRAE 72–2018R that specify the requirements for voltage and frequency in the blast chillers and blast freezers test procedures. 87 FR 39164, 39194.

AHRI recommended that the matter of adopting portions of ASHRAE 72–2018R concerning voltage and frequency requirements in blast chiller and blast freezer test procedures should be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 10)

As stated in the June 2022 NOPR, the proposed conditions were consistent with those considered for the draft of ASHRAE 220. Therefore, DOE is maintaining the reference to ASHRAE 72–2022 with Errata, consistent with the June 2022 NOPR.

ASHRAE 72–2022 with Errata specifies additional test conditions that ASHRAE 220 does not specify. These include requirements for air currents, radiant heat, dry-bulb temperature gradient, and test chamber illuminance. DOE expects that these requirements in ASHRAE 72–2022 with Errata are primarily intended to limit variability of testing for CRE without doors or with transparent doors. DOE is only aware of blast chillers and blast freezers with solid doors, and therefore tentatively determined in the June 2022 NOPR that the additional test conditions in ASHRAE 72–2018R are not necessary for blast chiller and blast freezer testing,

consistent with the draft of ASHRAE 220. 87 FR 39164, 39194, 39195.

In the June 2022 NOPR, DOE sought comment on whether any additional test conditions are appropriate for blast chiller and blast freezer testing, including those specified in sections 6.2 and 6.3 and appendix A in ASHRAE 72–2018R. 87 FR 39164, 39195.

DOE received no additional comments on this topic in response to the June 2022 NOPR, and therefore is establishing the test conditions as proposed.

Test Setup

The ASHRAE 220 draft specifies certain test unit setup instructions for components and accessories, electrical loads, condensate pan heaters and pumps, and crankcase heaters that are based on sections 5.3, 5.3.1, 5.3.5, and 5.3.15 in ASHRAE 72–2022 with Errata. DOE notes that sections 5.3 and 5.3.5 of ASHRAE 72–2022 with Errata contain minor differences from the draft ASHRAE 220. Section 5.3 of ASHRAE 72–2022 with Errata refers to installing all necessary components and accessories prior to loading the storage and display areas with test simulators and filler material, whereas ASHRAE 220 does not use test simulators and filler material. Section 5.3.5 of ASHRAE 72–2022 with Errata refers to a self-contained refrigerator instead of a blast chiller or blast freezer and does not specify that the condensate pan shall be emptied before testing (this instruction is provided in section 7.2.3 of ASHRAE 72–2022 with Errata) and that if a condensate heater is used during the test, it shall be recorded.

ASHRAE 220 specifies that the manufacturer's recommendation on clearances shall be followed on all sides with a minimum of 3 feet on the door(s) opening sides. The current DOE CRE test procedures do not specify any clearance requirements. Section 5.2 and appendix A of ASHRAE 72–2022 with Errata specify that there must be greater than or equal to 59.1 in. ± 1.0 in. of clearance from the front of the unit under test and a vertical partition or wall shall be located at the minimum clearance, ± 0.5 in., as specified in the installation instructions. Section 5.2 also provides that if the installation instructions do not provide a minimum clearance, the vertical partition or wall shall be located 4.0 ± 0.5 in. from the sides or rear of the cabinet and extend at least 12.0 ± 0.5 in. beyond each side of the cabinet from the floor to not less than 12.0 ± 0.5 in. above the top of the cabinet.

DOE tentatively determined in the June 2022 NOPR that because ASHRAE

²⁴ ASHRAE RP–1469, “Thermal Comfort in Commercial Kitchens,” Final Report, January 6, 2012, page 24.

72–2018R provides similar, equal, or greater detail on the installation and settings, clearance, and components and accessories requirements as compared to the draft of ASHRAE 220, the ASHRAE 72–2018R instructions are appropriate for DOE testing. 87 FR 39164, 39195. DOE also acknowledges that, to the extent feasible, ASHRAE 220 intends to harmonize with ASHRAE 72–2022 with Errata requirements, and therefore will likely adopt similar instructions in the final version of the standard. DOE proposed in the June 2022 NOPR to incorporate sections 5.1, 5.2, 5.3 (including sub-sections 5.3.1 to 5.3.17), and the relevant portions of appendix A of ASHRAE 72–2018R for testing blast chillers and blast freezers with the following deviations:

- The term “refrigerator” shall instead refer to “blast chiller” or “blast freezer,” as applicable. 87 FR 39164, 39195.
- For section 5.3 of ASHRAE 72–2018R, replace “all necessary components and accessories shall be installed prior to loading the storage and display areas with test simulators and filler material” with “all necessary components and accessories shall be installed prior to precooling the unit under test.” *Id.*
- Section 5.3.5 would be included with the additional requirement that the condensate pan be emptied before precooling the unit under test. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposal to incorporate sections 5.1, 5.2, 5.3 (including subsections 5.3.1 to 5.3.17), and the relevant portions of appendix A of ASHRAE 72–2018R, with the proposed deviations, for the blast chillers and blast freezers test procedures. *Id.*

AHRI commented that it recommended the matter of adopting portions of ASHRAE 72–2018R concerning blast chiller and blast freezer test procedures should be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 10)

As stated, DOE expects that ASHRAE 220 will harmonize with the ASHRAE 72–2022 with Errata requirements for test setup when appropriate, and is adopting the ASHRE 72–2022 with Errata requirements, with deviations, as proposed in the June 2022 NOPR.

Appendix A of ASHRAE 72–2022 with Errata specifies electrical measurements at the equipment terminals. ASHRAE 220 specifies the following electrical measurement locations: at the plug-in location for units with a standard wall plug, or at the terminal box for units that are hard wired to the building electrical system. Because the electrical measurement

location in appendix A of ASHRAE 72–2022 with Errata is similar to ASHRAE 220, DOE expects that the ASHRAE 72–2022 with Errata approach is the likely final approach to be used in the eventual final ASHRAE 220 standard. For that reason, DOE proposed in the June 2022 NOPR to incorporate the relevant portions of appendix A of ASHRAE 72–2018R for the electrical measurement locations. 87 FR 39164, 39195.

In the June 2022 NOPR, DOE sought comment on the proposal to incorporate the relevant portions of appendix A of ASHRAE 72–2018R for the electrical measurement locations for the blast chillers and blast freezers test procedures. *Id.*

AHRI commented that it recommended the matter of adopting portions of ASHRAE 72–2018R concerning electrical measurement locations in blast chiller and blast freezer test procedures should be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 10)

As stated, DOE expects that ASHRAE 220 will harmonize with the ASHRAE 72–2022 with Errata requirements for electrical measurement locations, and is therefore adopting the ASHRE 72–2022 with Errata requirements, as proposed in the June 2022 NOPR.

Capacity and Loading

ASHRAE 220 provides instructions for measuring the gross refrigerated volume of blast chillers and blast freezers. The gross refrigerated volume is calculated by multiplying the internal length, width, and height of the cabinet excluding panels and space occupied by the evaporator or evaporator fan. Appendix C of AHRI 1200–2023 specifies instructions for determining the refrigerated volume of display merchandisers and storage cabinets. DOE reviewed the instructions in AHRI 1200–2023 for determining refrigerated volume and determined that the instructions can be applied to blast chillers and blast freezers because of the similar construction of these CRE. DOE proposed in the June 2022 NOPR to refer to AHRI 1200–202X for measuring the refrigerated volume of blast chillers and blast freezers. 87 FR 39164, 39195.

In the June 2022 NOPR, DOE sought comment on the proposal to reference AHRI 1200–202X for measuring the refrigerated volume of blast chillers and blast freezers. *Id.*

AHRI stated its support for the proposal to reference AHRI 1200–202X for measuring the refrigerated volume of blast chillers and freezers. (AHRI, No. 38, p. 10)

DOE is maintaining the measurement of volume per AHRI 1200–2023 consistent with the June 2022 NOPR.

ASHRAE 220 specifies that the standard product vessel shall be a 12 in. by 20 in. by 2.5 in. 22 gauge or heavier and 300 series stainless steel pan. ASHRAE 220 states that if the test unit is not capable of holding the standard product pan, the manufacturer’s recommended pan size is used, conforming as closely as possible to the standard product load. Based on a review of blast chillers and blast freezers available on the market, DOE observed that all units are intended for use with food pans, and nearly all units available can accommodate the specified standard pan sizes. DOE tentatively determined in the June 2022 NOPR that the pans as specified in ASHRAE 220 are representative of typical use and DOE proposed to incorporate the standard product pan specifications included in the draft of ASHRAE 220. 87 FR 39164, 39195.

In the June 2022 NOPR, DOE sought comment on the proposal to incorporate the standard product pan specifications in ASHRAE 220 for the blast chillers and blast freezers test procedures. *Id.*

AHRI stated its support for the proposal to incorporate the standard product pan specification in ASHRAE 220 for the blast chillers and blast freezers test procedures. (AHRI, No. 38, p. 11)

DOE is maintaining the standard product pan specifications as proposed in the June 2022 NOPR.

ASHRAE 220 specifies that the manufacturer’s recommended maximum 12 in. by 20 in. by 2.5 in. pan capacity should be used for testing. DOE has reviewed the ASHRAE 220 specifications and equipment available on the market. Based on DOE’s review, it was determined in the NOPR that additional specifications may be needed to determine how many standard product pans are used in the test unit. 87 FR 39164, 39195. The number of standard product pans that would be used for testing is dependent on the specified product capacity of the test unit based on food weight. The ASHRAE 220 committee tentatively determined that having a uniform food simulator thickness across all standard product pans is important for repeatable and comparable results, manufacturer design parameters, and consistency with European blast chiller and blast freezer testing requirements.²⁵ The ASHRAE 220 committee tentatively concluded that a uniform food simulator thickness of 2 in. in the standard product pan (*i.e.*,

²⁵ See ISO 22042:2021.

filled to within 0.5 in. of the top of the pan) is appropriate. Based on this conclusion, the number of pans required for testing blast chillers and blast freezers would be determined by the number of standard product pans filled with the standard food simulator load to 2 in. deep that can fit in the blast chiller or blast freezer without exceeding the manufacturer's recommended capacity. Because this approach could potentially require the tested capacity to be smaller than the manufacturer's stated capacity, if the stated capacity is not evenly divisible by the number of pans, the ASHRAE 220 committee considered allowing for one additional pan that has a thickness less than 2 in., which would make up the difference to meet the manufacturer's rated capacity, but that this additional pan would not require temperature measurement. Based on the ASHRAE 220 committee approach, DOE proposed in the June 2022 NOPR that the number of pans required for testing blast chillers and blast freezers be determined by the number of standard product pans filled to 2 in. deep with food simulator product that can be loaded into the blast chiller or blast freezer without exceeding the manufacturer's stated food load capacity by weight, plus one additional standard product pan, if needed, to meet the manufacturer's stated food load capacity.

In the June 2022 NOPR, DOE sought comment on the proposed method to determine the number of pans required for testing blast chillers and blast freezers. 87 FR 39164, 39196.

AHRI recommended that the matter of using ASHRAE 72–2018R to determine the number of pans required for testing blast chillers and blast freezers should be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 11)

DOE notes that ASHRAE 72–2022 with Errata is not used to determine the number of pans required for testing blast chillers and blast freezers. DOE is adopting the approach proposed in the June 2022 NOPR, which is consistent with the expected ASHRAE 220 approach.

ASHRAE 220 specifies that the tested product capacity is determined based on loading the test unit with the maximum number of pans with food product up to the manufacturer's recommended maximum food product weight capacity. The food product weight does not include the weight of the pans.

The ASHRAE 220 committee determined that blast chiller and blast freezer capacity based on food product weight is relevant in addition to refrigerated volume because the

throughput of food product by weight is the primary function provided to users, as compared to long-term refrigerated storage volume for typical CRE. Blast chillers and blast freezers with the same volume may have different pull-down capacities by weight depending on the design of the cooling system.

DOE expects that manufacturers specify capacity by food weight based on the maximum food load that can be loaded into the blast chiller or blast freezer while meeting the performance requirement of NSF 7–2019. DOE reviewed the ASHRAE 220 specifications and equipment available on the market and tentatively determined in the June 2022 NOPR that additional specifications may be needed to determine the product capacity used during the test. DOE proposed in the June 2022 NOPR that when determining the product capacity, all manufacturer literature that is included with the unit would be reviewed, and the largest product capacity stated in the literature would be used. 87 FR 39164, 39196. If the unit is able to operate as both a blast chiller and a blast freezer in different operating modes and the literature specifies different product capacities for blast chilling and blast freezing, the largest capacity stated for the respective operating mode during the test would be used.

If no product capacity is stated in the manufacturer literature, DOE proposed in the June 2022 NOPR that the product capacity be represented by the maximum number of standard pans that can fit in the test unit with each pan filled 2 in. deep with product, consistent with the ASHRAE 220 approach, with capacity determined as the sum of the food weights within the individual pans loaded for testing. 87 FR 39164, 39196. As discussed further in a subsequent section, DOE proposed use of a food simulator. *Id.* The tested capacity would not include the weight of the pans, temperature sensors, or wires. If, upon testing, a blast chiller or blast freezer with no stated product capacity is not capable of pulling down temperatures from 135 °F to 40 °F within a period of 4 hours with the load specified in the proposed test procedure, DOE proposed in the June 2022 NOPR that one pan be removed until the unit achieves the specified pull-down operation. 87 FR 39164, 39196.

To ensure repeatability of testing, DOE proposed in the June 2022 NOPR that the tested capacity (determined as the sum of the food weights for individual pans loaded for testing) be within ± 5 percent or ± 2 lb of the rated capacity, whichever is less. 87 FR

39164, 39196. DOE acknowledged that the actual weight of food simulator may be slightly different in each pan because each pan may not be loaded with food simulator to the exact same specified thickness. Specifying a tolerance on the overall tested capacity would ensure that the total food load by weight is consistent from test to test.

In the June 2022 NOPR, DOE sought comment on the proposal to determine the tested product capacity for the blast chillers and blast freezers test procedures. 87 FR 39164, 39196.

AHRI recommended that any proposed changes be brought to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 11)

As stated, a final version of ASHRAE 220 has not been published. DOE has harmonized with the expected ASHRAE 220 requirements to the extent feasible. Therefore, DOE has adopted the provisions as proposed in the June 2022 NOPR regarding determining blast chiller and blast freezer capacity.

ASHRAE 220 specifies where to place the standard product pans in the blast chiller or blast freezer if a full load of pans is not needed to meet the manufacturer's stated capacity. ASHRAE 220 specifies that if there are fewer pans than there are rack spaces in the unit, the pans shall be placed evenly in the unit with top and bottom shelves occupied. If not all shelves are occupied by pans, the pan locations shall be recorded. The ASHRAE 220 committee has also discussed specifying that pans would be loaded without pans nesting on each other and without touching the top and the bottom of the cabinet.

DOE reviewed the ASHRAE 220 specifications and equipment available on the market. Based on DOE's review, DOE tentatively determined that additional specifications may be needed to determine where to place the standard product pans. DOE proposed in the June 2022 NOPR that once the number of standard product pans needed for the test has been determined, the pans should be spaced evenly throughout each vertical column of rack positions in the test unit without the pans touching any other pans and without the pans touching the top and the bottom of the cabinet. 87 FR 39164, 39196. For test units that have an additional pan with a product thickness of less than 2 in., DOE proposed in the June 2022 NOPR to require placing the additional pan as close to the middle rack position as possible while maintaining an even distribution of all pans. *Id.* DOE also proposed in the June 2022 NOPR that if not all rack positions are occupied by pans, the pan locations shall be recorded. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed method for distributing the pans within the test unit's cabinet for testing blast chillers and blast freezers. *Id.*

AHRI commented advising DOE to reference ASTM 26 testing standards as a method for distributing pans within the test unit's cabinet. (AHRI, No. 38, p. 11)

DOE expects that the requirements in the ASTM standard will be harmonized with those in the ASHRAE 220 standard. DOE understands that the ASTM standard is intended to assess blast chiller and blast freezer operating performance whereas the ASHRAE 220 standard is intended to measure energy consumption. Therefore, DOE has determined that ASHRAE 220 is the appropriate basis for the DOE test procedure.

ASHRAE 220 specifies that if multiple pans are used per level (*i.e.*, pans can be loaded side-by-side at the same level), only one pan needs to be measured with product temperature sensors per level. ASHRAE 220 provides a figure illustrating an example for test units with multiple pans per level, indicating which pans would include thermocouples. In the figure, each level includes two side-by-side pans, and the thermocouple location is staggered such that it alternates between the left and right pan at each level, and such that each vertical column does not have two measured pans in sequential levels.

DOE reviewed the draft ASHRAE 220 pan loading approach and tentatively determined in the June 2022 NOPR that it provides a representative measure of food load temperature within the blast chiller or blast freezer while limiting test burden. 87 FR 39164, 39197. DOE acknowledged that food temperatures within the cabinet may vary depending on proximity to the evaporator or airflow pathway through the cabinet but expects that measuring one pan per level and staggering the measured pans would ensure a representative food temperature average would be measured during testing. *Id.* DOE also determined that this approach would limit test burden by avoiding the need for every pan to include a thermocouple, thereby avoiding the setup of the thermocouple within the pan and the routing of additional thermocouple wires from inside the cabinet. *Id.*

Based on the review of ASHRAE 220, DOE proposed in the June 2022 NOPR to incorporate the ASHRAE 220 approach with additional instructions. *Id.* DOE proposed that if multiple standard product pans are used per level, only one pan per level be measured with a temperature sensor. *Id.*

DOE proposed to specify that the pan measured should alternate vertical columns so that each vertical column does not have two measured pans in sequential levels and that if a test unit uses an additional pan that has a thickness less than 2 in., this additional pan would not be measured for product temperature. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed method to determine which standard product pans would include temperature measurement sensors for the blast chillers and blast freezers test procedures. *Id.*

AHRI commented that the ASHRAE 220 committee is in the process of adding a requirement to determine which standard product pans would include temperature measurement sensors for blast chillers and blast freezers test procedures; consequently, AHRI added, for DOE to create a similar requirement would be redundant and unnecessary. (AHRI, No. 38, p. 11)

As stated, ASHRAE 220 has not had a public review period and is still in draft form. DOE developed the proposal in the June 2022 NOPR to be consistent with the ASHRAE 220 approach, with additional specificity where needed. Therefore, DOE is adopting the provisions as proposed in the June 2022 NOPR regarding pan temperature measurements.

ASHRAE 220 specifies measuring the product temperature in the geometric center of any measured pans and provides an example figure illustrating the temperature sensor location in a measured pan and, in particular, showing the unweighted thermocouple as being placed $\frac{5}{8}$ in. above the bottom of the pan. ASHRAE 220 provides that temperature sensor leads must allow for the transfer of pans from the heating compartment to the test unit cabinet.

In the June 2022 NOPR, DOE proposed to incorporate this approach with additional instruction to specify explicitly details that are shown visually in the example figure in ASHRAE 220. 87 FR 39164, 39197. DOE proposed that product temperature shall be measured in the geometric center of the product pan, $\frac{5}{8}$ in. above the bottom of the pan, that the temperature sensor shall be unweighted, and that the temperature sensor leads shall be secured to the bottom of the pan while also allowing for the transfer of the pan from the heating source into the test unit's cabinet. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed method of measuring the product temperature in the measured pans for the blast chillers and blast freezers test procedures. *Id.*

AHRI commented recommending that any proposed changes to measurement of the product temperature in the measured pans for the blast chillers and blast freezers test procedures be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 11)

As stated, DOE developed the proposal in the June 2022 NOPR to be consistent with the ASHRAE 220 approach, with additional specificity where needed. A public review draft of ASHRAE 220 has not yet been published; therefore, DOE is adopting the provisions as proposed in the June 2022 NOPR regarding temperature measurements within individual pans.

ASHRAE 220 specifies instructions to prepare the product medium mixture to be placed in the standard product pans as follows:

(a) Determine the manufacturer's recommended maximum food product weight capacity.

(b) Prepare a 20-percent-by-volume propylene glycol (1,2-Propanediol) mixture in water.

(c) In each pan, pour the propylene glycol mixture over #20 mesh southern yellow pine sawdust to create a 22-percent-to-78-percent-by-mass slurry. Mixture must be pre-portioned for each individual pan to avoid large batch component separation.

(d) Mix until the sawdust becomes completely saturated and leave uncovered in the pan. The weight of the mixture shall correspond with the determined weight. Record the weight of each pan, weight of the mixture, and number of pans to be loaded. Weight of the thermocouples shall be omitted.

Note: Acceptable Sawdust Specification Example: American Wood Fibers brand, #20 Mesh Pine Sawdust (50 lb bags), Item # 30020205018.

(e) Verify that the pan thermocouple is fully submerged in the mixture, reposition the thermocouple in the geometric center of the mixture if it is not.

The ASHRAE 220 committee developed the food simulator specifications based on the food load specified in NSF 7–2019 for rapid pull-down refrigerators and freezers. Because this test load is already in use for this equipment, and because its heat transfer characteristics are similar to actual food loads, DOE tentatively determined in the June 2022 NOPR that the food simulator load specified in the ASHRAE 220 draft is representative for testing blast chillers and blast freezers. 87 FR 39164, 39197.

In the June 2022 NOPR, DOE proposed to incorporate the ASHRAE 220 approach with additional

specifications to ensure repeatability. *Id.* As stated, each pan would be loaded to 2 in. of food load thickness (*i.e.*, depth) within the pan and an additional pan would be loaded as needed to meet the manufacturer's stated capacity. *Id.* DOE proposed that each pan shall be weighed prior to heating, before and after the food product simulator is added. *Id.* A cumulative total of the product weight shall be calculated and the pans shall continue to be loaded with the product mixture until the cumulative total reaches the manufacturer's stated capacity (the total product weight shall be within ± 5 percent or ± 2 lbs of the manufacturer's stated capacity, whichever is less). *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed method for preparing the product medium mixture to be placed in the standard product pans for the blast chillers and blast freezers test procedures. *Id.*

AHRI commented recommending that any proposed changes to the method for preparing the product medium mixture to be placed in the standard product pans for the blast chillers and blast freezers test procedures be taken to the ASHRAE 220 committee for review and approval. (AHRI, No. 38, p. 11)

As stated, DOE developed the proposal in the June 2022 NOPR to be consistent with the ASHRAE 220 approach, with additional specificity where needed. A public review draft of ASHRAE 220 has not yet been published; therefore, DOE is adopting the provisions as proposed in the June 2022 NOPR regarding test medium preparation.

Test Conduct

The overall test approach in the ASHRAE 220 draft includes pre-cooling the blast chiller's or blast freezer's cabinet to a pre-set or controlled operating temperature, loading of hot food pans into the blast chiller or blast freezer, and pull down of the hot food pans to the target temperature. The ASHRAE 220 committee also considered including an operating period in which the blast chiller or blast freezer would maintain the food load at the target temperature (*i.e.*, a "holding period"). However the ASHRAE 220 committee determined that the primary function of the blast chiller or blast freezer is to pull down hot food temperatures and that the prioritization of throughput through the blast chiller or blast freezer would result in less operation in holding periods. DOE tentatively determined in the June 2022 NOPR that the ASHRAE 220 approach is appropriate for blast chiller and blast freezer testing and proposed in the June

2022 NOPR to only include pre-cooling and pull-down operation within the test. 87 FR 39164, 39197.

In the June 2022 NOPR, DOE sought comment on the proposal to include pre-cooling and pull-down operation in the blast chiller and blast freezer test procedure and to not include any holding periods during testing. *Id.*

The CA IOUs recommended that the blast chiller and blast freezer test procedure include equipment pre-cool energy as well as a triplicate testing to ensure repeatability. (CA IOUs, No. 36, p. 5) The CA IOUs noted that different blast chiller and blast freezer models may pre-cool to different cabinet and evaporator temperatures prior to the start of the test, affecting blast cooling energy consumption. *Id.* The CA IOUs stated support for DOE's proposal to record pre-cool energy along with pull-down energy and requested that DOE require reporting of the recorded pre-cool energy. *Id.* The CA IOUs also stated support for DOE's proposal to exclude "holding energy" needed to maintain the food load at a target temperature after completion of the blast chilling cycle. *Id.* The CA IOUs further recommended normalizing energy usage by initial measured weight of the product to be cooled down (excluding pan weight) instead of by blast chiller and blast freezer volume or the manufacturer's rating and suggested reporting blast chiller and blast freezer energy by either kWh/cycle/lb or kWh/day/lb. *Id.*

See the following Calculations subsection for discussion regarding triplicate testing. DOE is not adopting reporting requirements as part of this final rule, but is requiring that both pre-cool and blast chilling or blast freezing cycle energy be recorded during testing. DOE is not requiring any measurement of holding energy. As recommended by the CA IOUs and proposed in the June 2022 NOPR, DOE is adopting a calculation of energy consumption normalized by the total weight of product loaded into the blast chiller or blast freezer for testing.

ASHRAE 220 specifies that all measurements shall be continuously recorded during the test in intervals no greater than 10 seconds. The current DOE CRE test procedures require that measurement intervals do not exceed 3 minutes and ASHRAE 72–2022 with Errata requires certain measurements at 1-minute intervals. Because the blast chiller and blast freezer test procedure is not conducted at stable cabinet temperature conditions, as is the case for other CRE testing, DOE tentatively determined in the June 2022 NOPR that a shorter measurement interval is

appropriate to accurately identify unit performance (*e.g.*, determining when all pans reach the target temperatures). 87 FR 39164, 39198. Therefore, in the June 2022 NOPR, DOE proposed to incorporate the ASHRAE 220 approach requiring data acquisition at 10-second intervals. *Id.*

ASHRAE 220 specifies that data would be recorded once a steady-state condition is established. ASHRAE 220 specifies that the test unit stabilize at ambient temperatures for at least 24 hours before pre-cooling and that the prepared product be heated for a minimum of 8 hours in the standard product pans at the required temperature prior to loading into the blast chiller or blast freezer. Consistent with these requirements, DOE proposed in the June 2022 NOPR that the test unit stabilize at ambient temperatures for at least 24 hours, and then data acquisition would be recorded prior to the pre-cool period. 87 FR 39164, 39198. For the prepared product in the standard product pans, DOE proposed that data acquisition begin prior to the minimum 8-hour heating period. *Id.*

ASHRAE 220 specifies a procedure for pre-cooling the test unit from ambient conditions prior to pull-down operation. The test unit is to remain in the required ambient conditions for at least 24 hours before pre-cooling. The test unit's pre-cooling cycle is used, if available. For test units with more than one pre-cool cycle, the cycle used is recorded. For units without a pre-cooling cycle, an empty blast cycle should be run in its entirety. During the pre-cool cycle, the test unit's sensing probe will remain in its default or holstered position. Pre-cool is deemed complete when the test unit's pre-cool notification reports. If the test unit does not have a pre-cool cycle or pre-cool completion notification, the pre-cool is deemed complete when the compressor first cycles off. The pre-cool data to be recorded is the selected cycle name, pre-cool duration, temperature, and energy consumed.

Because the main function of a blast chiller or blast freezer is to pull down the product temperature of hot food, DOE tentatively determined in the June 2022 NOPR that measuring performance during the pre-cool period is not necessary, other than to determine when pre-cooling is complete. 87 FR 39164, 39198. However, because pull-down testing is initiated after the completion of pre-cooling, operation during pre-cooling may impact pull-down performance. Based on DOE's review of ASHRAE 220, additional specifications regarding pre-cooling may be needed.

DOE proposed in the June 2022 NOPR that the pre-cool cycle may be initiated on blast chillers and blast freezers once the test unit has been maintained at ambient temperatures without operating for at least 24 hours. 87 FR 39164, 39198. Rather than selecting and recording any pre-cooling cycle, DOE proposed in the June 2022 NOPR that the fastest pre-cooling cycle be selected. DOE proposed to specify that the pre-cool cycle is complete when the test unit notifies the user that the pre-cool is complete, consistent with ASHRAE 220, but that if the test unit does not notify the user that the pre-cool cycle is complete, the pre-cool will be deemed complete when the test unit reaches 40 °F or 2 °F based on the test unit's sensing probe for blast chillers and blast freezers, respectively. DOE tentatively determined in the June 2022 NOPR that this approach would ensure a consistent starting point for pull-down testing from unit to unit rather than the first compressor off cycle. 87 FR 39164, 39198.

For test units without any defined pre-cooling cycles, DOE proposed in the June 2022 NOPR that the fastest blast chilling or blast freezing cycle shall be run with an empty cabinet until the test unit reaches 40 °F \pm 2 °F based on the test unit's sensing probe. Consistent with ASHRAE 220, during the pre-cool cycle, the test unit's sensing probe will remain in its default or holstered position. The pre-cool test data to be recorded are the ambient conditions, pre-cool cycle selected, pre-cool duration, and final pre-cool cabinet temperature based on the test unit's sensing probe.

As stated, DOE proposed in the June 2022 NOPR that test procedures for blast chillers and blast freezers are to measure the energy consumed by the product temperature pull-down operation. 87 FR 39164, 39198. Additionally, blast chillers and blast freezers may run multiple pull-down cycles consecutively without the need for individual pre-cooling cycles. However, DOE acknowledges that the energy consumed during the pre-cool period may be relevant to the overall energy consumption of blast chillers and blast freezers and requests comment on whether pre-cooling energy use should be measured and considered in the overall energy consumption metric for blast chillers and blast freezers.

ASHRAE 220 specifies instructions for loading the prepared standard product pans into the test unit. Measured standard product pans are maintained at an average temperature of 160.0 °F \pm 1.8 °F and an individual pan temperature tolerance of 160 °F \pm 10 °F for a minimum of 8 hours prior to being

loaded into the test unit. Non-measured pans are also required to be heated for a minimum of 8 hours. The test unit door is opened for loading at 4.0 \pm 1.0 minutes after the test unit completes its pre-cool cycle. ASHRAE 220 specifies that the door remain open to load all of the standard product pans for the entirety of the loading procedure. ASHRAE 220 further specifies that the door is open for 20 seconds per roll-in rack and 15 seconds per pan for roll-in and standard test units, respectively. The test unit's sensing probe is inserted into the geometric center of a standard product pan in the center level of the cabinet. If the center level has capacity for multiple pans, the probed pan should be furthest away from the evaporator. The probe must not touch the bottom of the pan or be exposed to the air. The location of the pan with the probe is recorded. The factory probe is placed so that it does not interfere with the test thermocouple measurement. The door remains closed for the remainder of the test.

DOE proposed in the June 2022 NOPR to adopt ASHRAE 220's approach with additional specifications and certain deviations to ensure consistent testing. 87 FR 39164, 39198. DOE proposed that while maintaining the temperature of the measured standard product pans prior to loading into the blast chiller or blast freezer, the non-measured standard product pans shall be placed in alternating positions with the measured standard product pans in the heating device for a minimum of 8 hours prior to being loaded into the test unit to ensure consistent product temperatures. *Id.* The test unit door would be opened for loading at the specified time in ASHRAE 220, but DOE proposed to specify more precise values (*i.e.*, 4.0 \pm 1.0 minutes). *Id.* DOE proposed in the June 2022 NOPR that the total door-open period for loading pans would have a tolerance of \pm 5 seconds to account for different test lab operation. *Id.* DOE proposed in the June 2022 NOPR that the door would be fully open, based on the definition of "fully open" in ASHRAE 72–2018R, for the duration specified in ASHRAE 220, to ensure test repeatability. 87 FR 39164, 39199. DOE proposed in the June 2022 NOPR that the test unit's sensing probe would be inserted into the geometric center of the standard product pan approximately 1-in. deep in the product mixture at the median pan level in the test unit, which adds greater specificity for test repeatability. *Id.* If the standard product pan at the median level is the additional pan with less than 2 in. of product thickness, DOE proposed in the

June 2022 NOPR to specify that the closest pan or pan level that is farthest away from the evaporator fan would be used to insert the test unit's sensing probe, consistent with the ASHRAE 220 approach. *Id.* DOE proposed in the June 2022 NOPR to add that the product temperature sensor wiring not affect energy performance, consistent with section 5.4.9 of ASHRAE 72–2018R. *Id.*

ASHRAE 220 specifies instructions to operate the blast chilling or blast freezing cycle. A blast chilling or blast freezing cycle is selected for blast chilling and blast freezing tests, respectively. ASHRAE 220 specifies that the cycle selected should provide the most rapid product cool down designed for the densest food product as stated in manufacturer literature. ASHRAE 220 provides that a manufacturer may provide additional clarification on cycle selection. ASHRAE 220 specifies that the selected cycle name and settings are recorded.

ASHRAE 220 further specifies the following: Temperature and energy measurement starts once the first pan is loaded in the unit; the selected cycle continues until all individual measured pan temperatures are below the final temperatures of 40 °F and 2 °F for blast chilling and blast freezing tests, respectively; if the selected cycle program terminates prior to all product temperatures reaching below the test's prescribed final temperature, the standard product pans remain in the unit until it does so; if the temperature does not reach below the test's prescribed temperature after two additional hours, unit temperature settings are adjusted to achieve the desired final temperature; temperature and energy measurements end once the door is opened to remove the standard product pans; and energy consumption, temperature, and time is reported starting with the first pan loaded in the unit and ending with the final pan reaching the prescribed final temperature.

Based on DOE's review of ASHRAE 220, DOE determined in the June 2022 NOPR that additional specifications and certain deviations may be needed to improve test repeatability and reproducibility. 87 FR 39164, 39199. Consistent with the integrated average temperature requirements from the current DOE CRE test procedures, DOE proposed that a blast chilling cycle with a target temperature of 38 °F and a blast freezing cycle with a target temperature of 0 °F be selected for blast chilling and blast freezing tests, respectively. *Id.* Consistent with ASHRAE 220, the cycle selected would be the cycle with the most rapid product temperature pull

down that is designed for the densest food product, as stated in the test unit's manufacturer literature. Ambient conditions and time measurements would be recorded from the pre-cool cycle. Product temperature measurements from the measured standard product pans would be recorded from the 8-hour period of heating prior to being loaded into the test unit to ensure that pull-down performance data is recorded. Voltage, frequency, and energy consumed would start to be recorded as soon as the test unit door is opened to load the standard product pans so that blast chiller and blast freezer tests are started at a consistent point across all tests. Once the test unit door is closed, the blast chilling or blast freezing cycle would be selected and initiated as soon as is practicable. The blast chilling or blast freezing cycle selected would be recorded. The blast chilling or blast freezing test period would continue from the door opening until all individual measured pan temperatures are at or below 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, regardless of whether the selected cycle program has terminated. If all individual measured pan temperatures do not reach 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, 2 hours after the selected cycle program has terminated, the test would be repeated and the target temperature would be lowered by 1.0 °F until all individual measured pan temperatures are at or below 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, at the conclusion of the test. The duration of the blast chiller or blast freezer test would be recorded.

In the June 2022 NOPR, DOE sought comment on the proposed method to conduct the blast chilling or blast freezing test, including data recording rates, data collection periods, pre-cooling cycles, product loading, and selecting and running the test cycle. 87 FR 39164, 39198–39199.

AHRI commented that the method to conduct testing for blast chillers and blast freezers is reflected in ASTM 26 testing standards and advised DOE to reference this standard. Specifically, AHRI recommended referencing ASTM 26 for data recording rates, data collection periods, pre-cooling cycles, pan loading, and test conduct. (AHRI, No. 38, p. 12)

The CA IOUs suggested that in the case where the blast chiller/freezer cannot pull down the initial load to the specified temperature, the unit should be retested with one less pan instead of the NOPR's proposal to retest with the temperature lowered by 1 °F, because

requiring a retest with a lower temperature setpoint may not be feasible for some equipment and will likely result in excessive test burden. (CA IOUs, No. 36, p. 5)

As discussed in the previous subsection, DOE expects that the requirements in the ASTM 26 standard will be harmonized with those in the ASHRAE 220 standard. Because the ASHRAE 220 standard is intended for measuring blast chiller and blast freezer energy use, DOE has determined that ASHRAE 220 is the appropriate basis for the DOE test procedure and is maintaining the test conduct provisions as proposed in the June 2022 NOPR.

DOE recognizes that the approach of lowering the set point temperature if the final temperatures are not met may require multiple test runs, but DOE expects that end users will operate the blast chiller fully loaded and would adjust temperature to meet their needs. DOE maintains the proposed approach in the June 2022 NOPR of decreasing the temperature setting if all individual pan temperatures do not reach the specified temperatures. DOE is not adopting the provision of removing test pans until the unit can achieve temperatures except for units that have no specified product capacity (in weight). The definition of blast chiller is based on the unit pulling down product temperature within the specified time. If a unit is not capable of that operation at the specified loading, it would not meet the definition of blast chiller or blast freezer.

Calculations

ASHRAE 220 specifies calculations used to report the energy consumed during the test. The measured energy consumption is divided by the test product capacity in pounds, averaged for three repeated tests. DOE proposed in the June 2022 NOPR to incorporate the ASHRAE 220 approach (and to specify that the measured energy consumption is reported in kilowatt-hours) except that only one test would be needed in order to limit test burden. 87 FR 39164, 39199. ASHRAE test standards do not generally provide requirements for multiple tests, as sampling plans are typically established by the rating programs that reference the ASHRAE test standard. However, DOE already provides sampling plans for the determination of CRE represented energy or efficiency values at 10 CFR 429.42(a). Accordingly, DOE determined that the three tests considered for the ASHRAE 220 standard are not necessary for representations, and DOE is not planning to incorporate ASHRAE's

method of averaging over three tests. 87 FR 39164, 39199.

In the June 2022 NOPR, DOE sought comment on the proposed method for calculating the reported energy use metric for blast chillers and blast freezers. *Id.*

The CA IOUs commented that they were concerned with the proposal in the NOPR to use ASHRAE 220 with a single test for blast chillers/freezers instead of the three repeated tests specified by ASHRAE 220, stating that the need for accuracy outweighs DOE's goal of limiting test burden. (CA IOUs, No. 36, p. 5) The CA IOUs commented that the blast chiller/freezer test method is complex and there is room for user or test product consistency error. *Id.* The CA IOUs requested that DOE share further data illustrating the reduction in accuracy of energy consumption and product weight calculation of using a single test compared with triplicate tests. *Id.*

DOE recognizes the need for accurate and repeatable results. However, DOE's test procedures themselves typically do not include repeat runs; DOE addresses the need for a data sample in making representations of energy use or energy efficiency by establishing sampling plans in 10 CFR part 429. DOE is adopting the requirement as proposed in the June 2022 NOPR that the test only be conducted once. For any representations, manufacturers would be required to apply the sampling provisions in 10 CFR 429.42, which require multiple test units.

For these reasons, DOE is maintaining the approach as proposed in the June 2022 NOPR, which includes a single calculation of measured energy use divided by test product capacity in pounds.

4. Chef Bases and Griddle Stands

DOE defines “chef base or griddle stand” as CRE that is designed and marketed for the express purpose of having a griddle or other cooking appliance placed on top of it that is capable of reaching temperatures hot enough to cook food. 10 CFR 431.62.

As discussed in the April 2014 Final Rule, the explicit categorization of griddle stands covers equipment that experiences temperatures exceeding 200 °F. 79 FR 22277, 22282. As explained, this was to distinguish between equipment that experiences cooking temperatures and equipment that experiences temperatures at which food is kept warm. *Id.* However, DOE notes that the current definition for chef bases and griddle stands does not specify a quantitative temperature and

instead states “hot enough to cook food.”

DOE stated in the April 2014 Final Rule that chef bases and griddle stands are able to be tested according to the DOE test procedure, but that their refrigeration systems require larger compressors to provide more cooling capacity per storage volume than equipment with compressors that are appropriately sized for conventional CRE and more typical room temperature conditions. 79 FR 22277, 22281–22282. However, the definition does not include specifications for the refrigeration systems to differentiate this equipment from typical CRE.

ENERGY STAR has published a Final Draft Version 5.0 Eligibility Criteria for the ENERGY STAR program for commercial refrigerators and freezers.²⁶ This final draft specification includes a definition for “chef base or griddle stand” consistent with DOE’s current definition and would require testing according to the existing DOE test procedure in place for CRE.

DOE has considered whether additional detail regarding the characteristics of chef bases or griddle stands would better differentiate it from other CRE. As discussed, chef bases or griddle stands are designed for use with cooking equipment placed on top of the unit. Typical chef bases or griddle stands may include oversized refrigeration systems and additional cabinet insulation to ensure the unit can maintain cold storage temperatures with the additional heat load from the cooking equipment. However, these characteristics may not be readily identifiable in a given chef base or griddle stand. For example, manufacturers may not offer CRE in a different CRE equipment class with similar designs to any chef base or griddle stand, in which case there would not be a point of comparison available to determine whether the chef base or griddle stand includes more insulation or an oversized refrigeration system.

While ENERGY STAR’s Final Draft Version 5.0 Eligibility Criteria includes a definition of “chef base or griddle stand” consistent with DOE’s definition, it also includes definitions for similar equipment types (*i.e.*, worktop and undercounter²⁷ CRE). Both of these

definitions include a minimum height requirement of 32 in. Chef bases or griddle stands have similar construction to worktop and undercounter equipment but are typically shorter to allow for installing cooking equipment above the refrigerated cabinet at a normal working height. Consistent with the ENERGY STAR definitions for worktop and undercounter, DOE proposed in the June 2022 NOPR to amend the definition for chef base or griddle stand to specify that the equipment has a maximum height of 32 in., including any legs or casters. 87 FR 39164, 39201.

In the June 2022 NOPR, DOE requested comment on the proposed amendment to the definition for a chef base or griddle stand, which specifies a maximum height of 32 in. for this equipment. DOE requested information on any other identifiable equipment characteristics that may differentiate chef bases and griddle stands from other similar CRE. *Id.*

Hoshizaki commented agreeing with the proposal to add a maximum height of 32 in. for chef bases or griddle stands. (Hoshizaki, No. 30, p. 5)

AHRI commenting stating that it has no objection to the proposed height characteristic and recommended that DOE examine ENERGY STAR Version 5.0 for griddle stands. (AHRI, No. 38, p. 12) AHRI commented that in light of ENERGY STAR’s target where ~20 percent of the market is listed with ENERGY STAR, DOE should examine having a higher kWh allowance than ENERGY STAR, taking into consideration mandatory versus optional compliance. *Id.*

Hillphoenix stated agreement with the proposed definition for chef bases and griddle stands, but found it unclear why the 32-in. limit would be added. (Hillphoenix, No. 35, p. 6) Hillphoenix recommended clearly defining these products to not include CRE or hybrid CRE in which a food warmer or such can be placed on a section of the CRE unit. *Id.*

Continental commented a belief that DOE’s current definition of “chef bases or griddle stands” was sufficient, and the proposed additional specification of equipment having a maximum height of 32 in., including any legs or casters, is unnecessary and could cause confusion

as some specialized, low-profile, undercounter models of CRE are available with an overall height less than 32 in., but they are not designed or intended to be used with cooking equipment on the top. (Continental, No. 29, p. 8) Continental disagreed with DOE’s statement that chef bases or griddle stands have similar construction to worktop and undercounter equipment, but are typically shorter to allow for installing cooking equipment above the refrigerated cabinet at a normal working height. *Id.* Continental pointed out that commenters noted, and DOE acknowledged, that chef bases or griddle stands include oversized refrigeration systems and additional cabinet insulation to ensure the unit can maintain cold storage temperatures with the additional heat load from the cooking equipment. *Id.* Continental added that this type of equipment is also provided with heavy-duty cabinet construction to support excessive weight loads, and may have specialized insulation to protect against damage from exposure to very high temperatures. *Id.* Continental concluded by stating that characteristics such as larger evaporator coils, fans, and upsized compressors may not be readily identifiable in a given chef base or griddle stand, yet still represent distinct features that impact energy consumption and separate these products from other types of CRE. *Id.*

True commented that chef bases and griddle stands are intended to be used in conjunction with cooking equipment installed on top (of the counter) of the refrigerated unit, with temperatures easily exceeding 500 °F, and the refrigeration systems are usually larger than a standard storage refrigeration system due to the very high ambient temperature and conditions they are subjected to. (True, No. 28, p. 3) True commented that the 32-in. height may be excessive as the top of the griddle (or other cooking equipment) should be at about a 36-in. height, making a 28-in. height or less recommended as more appropriate. *Id.* True added that the ADA requires a working height of 34-in. or less, that the smallest griddles are more than 6 in. high, and that most grills are more than 15 in. high. *Id.*

The definition proposed in the June 2022 NOPR is largely consistent with the existing definition, with the additional height requirement. DOE has determined this height limit is appropriate as it harmonizes with ENERGY STAR definitions and because any units taller than 32” would not have cooking equipment at appropriate working height.

²⁶ For information on the Version 5.0 specification development, see www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Version%205.0%20Commercial%20Refrigerators%20and%20Freezers%20Final%20Draft%20Specification_0.pdf.

²⁷ Undercounter: A vertical closed commercial refrigerator or freezer that has no surface intended

for food preparation. The equipment is intended for installation under a separate counter or workspace. This equipment may have doors or drawers and shall have a minimum height of 32 in., including legs or casters. Worktop: A vertical closed commercial refrigerator or freezer that has a surface intended for food preparation that is incapable of supporting cooking equipment. This equipment may have doors or drawers and shall have a minimum height of 32 in., including legs or casters.

The current definition of chef bases or griddle stands specifically refers to cooking equipment capable of reaching temperatures hot enough to cook food. Therefore, no exclusions of other types of equipment that can be placed on top of the equipment are necessary.

DOE recognizes that chef bases may be shorter to allow for taller cooking equipment, as indicated in True’s comment, but DOE set the height limit at a level that would be inclusive of all chef bases or griddle stands, not an average or typical height.

DOE recognizes that there are other CRE that are not chef bases or griddle stands with heights under 32” (e.g., undercounter models). These CRE would not be included in the definition despite their height because the definition would maintain that the equipment is designed to have cooking equipment placed on top of the unit.

DOE agrees with the characteristics identified for chef bases (i.e., oversized refrigeration, insulation, cabinets

capable of supporting weight) but has not determined identifiable aspects of these characteristics for inclusion in the definition. To the extent that these characteristics impact energy consumption, DOE will consider these impacts when evaluating potential energy conservation standards for this equipment.

For these reasons and those discussed in the June 2022 NOPR, DOE is maintaining the definition of chef bases and griddle stands as proposed in the June 2022 NOPR.

Regarding testing for chef bases or griddle stands, DOE determined in the June 2022 NOPR that the existing DOE test procedure provides an appropriate basis for measuring the energy consumption of this equipment. 87 FR 39164, 39201. DOE recognized that chef bases or griddle stands can be installed and used in ambient environments that are different from other CRE, but DOE proposed to test this equipment in the

same conditions because DOE tentatively determined that the additional heat loads of cooking equipment do not affect measured energy use. *Id.*

Additionally, DOE conducted testing similar to the PG&E and SCE testing²⁸ to investigate whether cooking equipment operation would impact chef base or griddle stand energy use during typical operation, as illustrated in Table III.4. DOE tested chef base or griddle stand refrigerators and freezers to the current DOE CRE test procedure with and without an active griddle installed on top of the test unit. During the tests with an active griddle installed, the griddle was turned on 3 hours after the start of the defrost period and maintained a target griddle surface temperature of 185 °F for 8 hours, concurrent with the door opening period. After the 8-hour period of griddle operation, the griddle was turned off for the remainder of the test.

TABLE III.4—CHEF BASE OR GRIDDLE STAND ENERGY CONSUMPTION COMPARISON WITH AND WITHOUT AN ACTIVE GRIDDLE

Test unit	Refrigerated volume (ft ³)	Energy consumption with griddle installed (kWh/day)	Energy consumption without griddle installed (kWh/day)	Energy consumption difference (percent)
Refrigerator #1	5.21	0.97	0.96	-0.5
Refrigerator #2	9.17	1.04	1.03	-0.5
Refrigerator #3	9.72	1.59	1.58	-0.1
Freezer #1	6.56	7.28	7.29	+0.2
Freezer #2	11.31	8.58	8.70	+1.4

* DOE tested an additional freezer that is not shown in the table due to inconsistent issues with the evaporator icing during testing.

Consistent with the findings in the PG&E and SCE report, DOE observed that chef bases or griddle stands consumed similar amounts of energy with and without cooking equipment operating above the unit. DOE has been unable to determine why Freezer #2 consumed slightly more energy without a griddle installed. For these reasons, DOE proposed in the June 2022 NOPR to maintain the existing CRE test procedure for testing chef bases or griddle stands (with the additional proposals as discussed in this NOPR). 87 FR 39164, 39202.

In the June 2022 NOPR, DOE requested comment on its proposal to test chef bases and griddle stands according to the test procedure used for other CRE. *Id.*

The CA IOUs recommended standardizing chef base internal volume

measurements by defining standardized pans as full-size, 4-in.-deep hotel pans (12 by 20 by 4 in.) since this is a standard pan size that all units can accommodate. (CA IOUs, No. 36, p. 7) The CA IOUs added that for chef bases able to hold 6-in.-deep pans, the volume calculation should account for the extra 2 in. of depth. *Id.* The CA IOUs pointed out that some 36-in.-wide chef bases only accommodate one pan per drawer, but have extra room to accommodate a 4- or 6-in.-deep, 1/6-size pan measuring 6 by 6 in.; for such bases that cannot fit 12-by-20-in. hotel pans, the CA IOUs recommended adding 1/6-size pans to its volume and suggested that any refrigerated volume that cannot accommodate a 1/6 pan should not be counted as usable volume. *Id.*

The Joint Commenters supported DOE’s proposed changes regarding the

test methods for additional equipment categories, including chef bases and griddle stands. (Joint Commenters, No. 31, p. 1)

The Joint Commenters stated their support for establishing test procedures for chef bases and griddle stands, citing a 2016 report that found significant variation in energy performance of chef bases,²⁹ suggesting there is opportunity for efficiency improvements. (Joint Commenters, No. 31, p. 3). The Joint Commenters expressed a belief that it was reasonable to test chef bases or griddle stands according to the same test procedure as other CRE, which would allow end users to compare energy consumption with other currently covered equipment. *Id.*

NEEA stated its support for DOE’s proposal to establish test procedures for new and/or newly defined categories of

²⁸ See www.caetrm.com/media/reference-documents/ET15SCE1010_Chef_Bases_Report_final2.pdf.

²⁹ See “Chef Bases for Foodservice Applications,” p. 9. www.caetrm.com/media/referencedocuments/ET15SCE1010_Chef_Bases_Report_final2.pdf.

CRE, and restated its recommendation from the 2021 CRE TP RFI that DOE establish test methods for new CRE product types, including chef bases or griddle stands. (NEEA, No. 39, p. 2)

Hillphoenix commented that it agreed with using the test conditions and test setup as required for CRE equipment, but disagreed with utilizing the standard door opening procedure as documented in ASHRAE 72, as the door openings of this equipment would be better represented by a reduced opening procedure. (Hillphoenix, No. 35, p. 7) Hillphoenix commented that the doors on this type of equipment are normally operated by store personnel and are not customer facing, which excludes the intent of the opening procedures in ASHRAE 72. *Id.*

Continental commented that it supports DOE's proposal in the NOPR to add new test procedures for product categories such as griddle stands and chef bases. (Continental, No. 29, p. 1) Continental agreed with DOE's desire to develop test procedures for additional product types, including chef bases and griddle stands, but added that new test methods should only be introduced after suitable industry-accepted standards have been adequately vetted with stakeholder feedback and approved for publication. (Continental, No. 29, p. 8) Continental commented that DOE should clarify that any test procedure proposed for chef bases or griddle stands would only apply to self-contained equipment. *Id.* Continental stated disagreement with DOE's recommendation to test chef bases and griddle stands in the same manner as other CRE—using ASHRAE Standard 72—because, as DOE recognizes, this equipment is designed to operate with higher heat loads than other types of CRE and that as stated in the NOPR, an ASHRAE research project found that average temperatures in commercial kitchen preparation areas are typically 72 °F to 79 °F, while cooking areas are typically 79 °F to 93 °F. *Id.* Continental commented that testing at an ambient temperature of 75 °F would not represent how chef bases and griddle stands are used in real-world conditions and that higher ambient conditions should be used to even come close to simulating representative conditions for chef bases and griddle stands located in the midst of commercial kitchen cooking areas, with high-temperature cooking equipment on the top, as well as adjacent to them in most situations. *Id.* Continental commented that energy consumption at the elevated ambient temperature conditions would need to be evaluated thoroughly as part of any future rulemaking regarding potential

energy standards for this equipment. *Id.* Continental pointed out that DOE provided a summary of some limited energy testing performed on five chef base models as justification that energy consumption does not vary significantly when tested with a griddle placed on the top and operated for a limited time, and yet little information about this testing was offered and the procedure and results had not been widely vetted by stakeholders. *Id.* Continental requested that DOE share details and data from this testing, while maintaining any needed confidentiality, for thorough assessment and feedback. *Id.* Continental cited an analysis by Southern California Edison (ET15SCE1010) from August 2016, which evaluated chef bases for energy consumption of six different units using ASHRAE Standard 72–2014 test conditions. *Id.* Continental pointed out that an additional heat load was not included because when an electric griddle was placed on top of a chef base, there was reportedly insignificant variation in energy test results. *Id.* Continental believed this conclusion was based on insufficient data and lack of a thorough understanding of the application, as refrigerated chef bases are subject to extreme heat loads from high-temperature cooking equipment adjacent to and on top of the unit, and a variety of heavy-duty gas and electric cooking equipment is typically used in this application. *Id.* Continental commented that as a result, standardizing to one piece of equipment could lead to varied results in the field, and the Southern California Edison study also found an extremely wide variation in energy consumption of the six units tested. *Id.* Continental urged a thorough review and evaluation of prior studies used by DOE to evaluate the appropriateness of the proposed test method to ensure reliability and confidence, and it repeated its statement that DOE should continue to work with ASHRAE and allow time for completion of an industry-accepted procedure before incorporating a test procedure for chef bases and griddle stands. *Id.*

AHRI recommended that DOE provide more information on the size of chef bases and griddle stands that are tested, as well as more information about the size and heat load for griddles, noting there is no current test standard specific to chef bases. (AHRI, No. 38, p. 12) AHRI commented that if DOE incorporates standard ASHRAE 72, AHRI would like to work with the committee to craft an energy test for chef bases. *Id.* AHRI stated concerns with DOE's proposal to test chef bases

and griddle stands, and with how DOE proposed testing be conducted in the NOPR. *Id.* AHRI stated that chef bases and griddle stands are primarily drawer units designed for higher ambient conditions, which renders the temperature standard for CRE inapplicable and is the reason chef bases are currently exempt. *Id.*

Hoshizaki stated that it would need additional information to comment on this proposal. (Hoshizaki, No. 30, p. 5) In particular, Hoshizaki stated that it would need to know the size of the equipment used in DOE's testing method (*i.e.*, the condensing unit size for the refrigerators and freezers; the griddle size). *Id.* Also, Hoshizaki stated that it would be helpful to know whether the griddle was at a stable temperature or actively recreating a cooking environment during the testing period. *Id.* Hoshizaki recommended that this matter be proposed to the ASHRAE 72 standards committee for input regarding changes needed to test chef bases along with specifying the test criteria with heat loads. *Id.*

Regarding capacity measurements, DOE is maintaining the proposal in the June 2022 NOPR to measure the refrigerated volume according to AHRI 1200–2023. Most chef bases or griddle stands use drawers for storing pans. The definition does not require drawers or pans, so other configurations are possible. This is also true of other CRE categories (*e.g.*, undercounter units may be configured with drawers for storing pans). To allow for consistent comparisons across such equipment, DOE is maintaining the same volume metric as the relevant capacity metric for chef bases or griddle stands.

Regarding the test data presented in the June 2022 NOPR, during the tests with an active griddle installed, the griddle was turned on three hours after the start of the defrost period and maintained a target griddle surface temperature of 185 °F for 8 hours, concurrent with the door opening period, and after the 8-hour period of griddle operation, the griddle was turned off for the remainder of the test. 87 FR 39164, 39201. The griddles for testing were appropriately sized to meet the dimensions of the various chef bases or griddle stands, which ranged in volume from 5.2 to 11.3 cubic feet.

DOE expects the specific installation conditions and door openings to vary among CRE depending on actual end use. DOE has determined that ASHRAE 72–2022 with Errata door openings are representative of CRE intended to be used in commercial kitchens. However, DOE agrees that chef bases or griddle stands would be used in cooking areas

with ambient temperatures higher than those specified in ASHRAE 72–2022 with Errata. DOE stated in the April 2014 Final Rule that chef bases and griddle stands are able to be tested according to the DOE test procedure, but that their refrigeration systems require larger compressors to provide more cooling capacity per storage volume than conventional CRE used in more typical room temperature conditions. 79 FR 22277, 22281–22282. In the June 2022 NOPR, DOE recognized that chef bases or griddle stands can be installed and used in ambient environments that are different from other CRE, but DOE proposed to test this equipment in the same conditions because DOE tentatively determined that the additional heat loads of cooking equipment do not affect measured energy use. 87 FR 39164, 39201. Based on DOE’s testing in support of this rulemaking, as presented in Table III.4, DOE has determined that chef bases or griddle stands consume similar amounts of energy with and without cooking equipment operating above the unit and is therefore not adopting any test provisions to directly account for operation of cooking equipment. However, based on the comments received in response to the June 2022 NOPR as well as previous comments received in response to the June 2021 RFI, as summarized in the following paragraphs, DOE recognizes that the cooking areas of commercial kitchens would typically have higher ambient temperatures than those specified in ASHRAE 72–2022 with Errata, and is adopting amended test conditions for chef bases or griddle stands.

Ambient Conditions

DOE initially requested comment in the June 2021 RFI on whether modifications to the current CRE test procedure would be appropriate for testing chef bases and griddle stands to better represent real-world use conditions. 86 FR 31182, 31189. DOE received limited feedback regarding ambient conditions in response to the June 2021 RFI. The CA IOUs and Joint Commenters commented that DOE should establish higher ambient temperature and relative humidity conditions for evaluating the performance of chef bases. (CA IOUs, No. 10, p. 2–3; Joint Commenters, No. 8, p. 2) The CA IOUs recommended adopting conditions from ASTM F2143–16 or the emerging ASHRAE Standard 220, which have an ambient temperature of 86 °F ±2 °F and relative humidity of 35 percent ±5 percent. (CA IOUs, No. 10, p. 2–3) The CA IOUs commented that these elevated kitchen

temperatures are supported by a 2012 ASHRAE research project benchmarking the thermal conditions in 100 commercial kitchens in the United States, which found that the average temperature in preparation areas ranged from 72 °F to 79 °F, while the average temperature in cooking areas ranged from 79 °F to 93 °F. (*Id.*) AHRI did not provide detailed information on ambient temperature, but noted that the current test procedure does not account for the high ambient conditions for chef bases or griddle stands. (AHRI, No. 3, p. 10)

Although not specific to ambient conditions, DOE received comments in response to the June 2021 RFI from ITW, True, Hoshizaki, NEEA, and the CA IOUs stating that the test procedure should not change to limit burden. (ITW, No. 2, p. 8; True, No. 4, p. 15–16; Hoshizaki, No. 13, p. 3; NEEA, No. 5, p. 2; CA IOUs, No. 10, p. 1–2)

As discussed earlier in this section, DOE tentatively determined in the June 2022 NOPR that the existing test procedure provides an appropriate basis for measuring the energy consumption of chef bases or griddle stands. 87 FR 39164, 39201.

In response to the June 2022 NOPR, Continental referred to the same ASHRAE research project as the CA IOUs referenced in response to the June 2021 RFI, noting that average temperatures in commercial kitchen preparation areas are typically 72 °F to 79 °F, while cooking areas are typically 79 °F to 93 °F. (Continental, No. 29, p. 8) Continental commented that testing at an ambient temperature of 75 °F would not represent how chef bases and griddle stands are used in real-world conditions and that higher ambient conditions should be used. (*Id.*) In response to the June 2022 NOPR, AHRI stated that chef bases and griddle stands are primarily drawer units designed for higher ambient conditions, which renders the temperature standard for CRE inapplicable. (AHRI, No. 38, p. 12) Both AHRI and Hoshizaki recommended that the industry test standard committee should evaluate appropriate testing for chef bases or griddle stands. (AHRI, No. 38, p. 12; Hoshizaki, No. 30, p. 5)

Hillphoenix commented that it agreed with using the test conditions and test setup as required for CRE equipment. (Hillphoenix, No. 35, p. 7) The Joint Commenters and NEEA supported DOE’s approach from the June 2022 NOPR, but did not specifically refer to ambient conditions. (Joint Commenters, No. 31, p. 3) (NEEA, No. 39, p. 2)

After evaluating these comments received regarding chef base or griddle

stand ambient test conditions, DOE acknowledges that multiple interested parties representing a range of viewpoints (*i.e.*, efficiency advocates, utilities, and industry) have supported the use of higher ambient temperatures for testing chef bases or griddle stands. DOE also recognizes that chef bases or griddle stands are uniquely used only in the cooking areas of commercial kitchens, as compared to other conventional CRE that may be installed in a range of locations. Based on the referenced ASHRAE study, DOE has determined that 86 °F is the ambient condition most representative of chef base or griddle stand operation, as that is the mid-point of the 79 °F to 93 °F range identified for cooking areas. This ambient condition is also consistent with the 86.0 °F ambient condition established in this final rule for blast chillers and blast freezers, equipment that is also used in the cooking areas of commercial kitchens. Consistent with this higher ambient dry-bulb temperature, DOE is also amending test conditions for wet-bulb temperature to require testing at 73.7 °F (*i.e.*, maintaining the same ambient relative humidity at the higher ambient dry-bulb temperature), and radiant heat temperature to require testing at greater than or equal to 81.0 °F. For both dry-bulb and wet-bulb temperature, DOE is maintaining the tolerances for ambient temperature measurements: tolerance for the average over the test period of ±1.8 °F, and a tolerance for the individual measurements of ±3.6 °F.

For the reasons discussed in this section, the June 2022 NOPR, and the April 2014 Final Rule, DOE is maintaining that chef bases or griddle stands do not require separate test provisions, except that the dry-bulb temperature, wet-bulb temperature, and radiant heat temperature will require higher temperatures during the test. Therefore, the test procedure in appendix B, as established in this final rule, is the test procedure applicable to chef bases or griddle stands.

5. Mobile Refrigerated Cabinets

DOE does not currently define or specify test procedure provisions specific to other categories of refrigerated holding and serving equipment, such as certain mobile refrigerated cabinets. Specifically, mobile refrigerated cabinets chill the refrigerated compartment before being unplugged from power and taken to a remote location to hold food products while maintaining cooling. Such equipment meets the definition of CRE as defined at 10 CFR 431.62; however, unlike typical CRE, mobile refrigerated

cabinets are not continuously connected to a power supply. As discussed in the April 2014 Final Rule, DOE determined that such other categories of refrigerated holding and serving equipment meet the definition of CRE and could be subject to future test procedures and energy conservation standards. 79 FR 22277, 22281. To better distinguish mobile refrigerated cabinets from other defined categories of CRE, DOE considered developing a definition for this equipment in the June 2022 NOPR. 87 FR 39164, 39202.

Based on a review of mobile refrigerated cabinets available on the market, the operation and use of this equipment is subject to varied end-use applications, which may be specific to individual models. DOE did not identify data or information that would inform development of representative test conditions for such equipment. As such, DOE did not propose to establish test procedures for mobile refrigerated cabinets in the June 2022 NOPR. 87 FR 39164, 39202.

To better distinguish mobile refrigerated cabinets from other defined categories of CRE, DOE proposed in the NOPR to add the following definition to 10 CFR 431.62 for mobile refrigerated cabinets:

A “mobile refrigerated cabinet” means commercial refrigeration equipment that is designed and marketed to operate only without a continuous power supply. *Id.*

CRE that allow the user to choose whether to operate with or without a continuous power supply do not meet the definition of a mobile refrigerated cabinet.

Although DOE did not propose in the June 2022 NOPR to establish test procedure provisions specific to mobile refrigerated cabinets, CRE that do not meet the definition of mobile refrigerated cabinets are subject to DOE’s test procedure at appendix B and energy conservation standards under the applicable CRE equipment class. 87 FR 39164, 39202.

In the June 2022 NOPR, DOE requested comment on the proposed definition for “mobile refrigerated cabinet.” DOE also requested comment on the proposal not to establish test procedures for mobile refrigerated cabinets. 87 FR 39164, 39202–39203.

Hillphoenix agreed with DOE’s proposed definition of “mobile refrigerated cabinet” and also agreed with not establishing test procedures since the unit’s operation and use were subject to varied end-use applications and did not represent a significant portion of the CRE market. (Hillphoenix, No. 35, p. 7) Hillphoenix assumed no

energy conservation category would be developed since no test procedure is being developed. *Id.*

True commented that the proposed definition for “mobile refrigerated cabinet” needs to be more specific, as mobile refrigeration normally refers to DC voltage (12V DC) for applications in vehicles. (True, No. 28, p. 5) True requested the following information from DOE: Since some units require a power converter (12V DC to 120V AC) does “mobile refrigerated cabinet” refer to both AC and DC power supplies? *Id.*

AHRI stated its assumption that if no test procedure is developed for mobile refrigerated cabinets, no energy conservation standard will be developed either. (AHRI, No. 38, p. 13)

The CA IOUs urged that the product definition for “mobile refrigerated cabinets” proposed in the NOPR be based on technical specifications rather than on end use, and recommended refining the proposed definition to explicitly exclude vertical self-contained CRE. (CA IOUs, No. 36, p. 9) The CA IOUs commented that the following options should be added to distinguish mobile refrigerated cabinets from other types of CRE: solid doors, minimum insulation thickness (1-in. diameter minimum, presence of handles designed to move the equipment, a bumper guard around the bottom perimeter, heavy-duty wheels or casters (5 percent diameter minimum), a power switch and analog or digital external temperature display, a door latch, and the presence of a cord wrap. *Id.* The CA IOUs recommended adding “for temporary storage and transport of prepared food products and not for retail sale of merchandise” to the definition if DOE decides to retain language based on end use. *Id.* The CA IOUs stated that because this category represents limited sales volume and consumer utility is dependent on minimizing thermal losses, the test method should be excluded. *Id.*

DOE agrees that definitions should be based on technical specifications and characteristics where possible, however, for mobile refrigerated cabinets, DOE cannot identify a single characteristic for this equipment at issue other than its use without the ability to use a continuous power supply. DOE notes that none of characteristics identified by the CA IOUs are specific to mobile refrigerated cabinets. DOE has determined that the operation of the equipment without a continuous power supply is sufficiently different than other CRE intended for holding temperature applications or pull-down temperature applications, which are used with continuous power supplies,

that equipment meeting the mobile refrigerated cabinet definition will be identifiable.

In response to True’s comments, the term mobile in this context does not mean for use in vehicles; rather it is intended to address equipment that is used without a continuous connection to a power supply (*i.e.*, can be moved away from the power supply location). The definition as proposed reflects this and so DOE is maintaining it as proposed in the June 2022 NOPR.

In response to comments regarding test procedures and applicability of energy conservation standards, equipment without a test procedure would not be subject to energy conservation standards as DOE would have no basis on which to evaluate potential standards. As DOE is not establishing a test procedure for this equipment category, other CRE energy conservation standards would not apply. DOE may consider test procedures and corresponding energy conservation standards for mobile refrigerated cabinets as part of future rulemakings.

6. Additional Covered Equipment

DOE provided examples of potential CRE that may require additional test procedure provisions in the June 2021 RFI. 86 FR 31182, 31190. DOE determined in the June 2022 NOPR that additional test procedure provisions to account for what is likely unique equipment operation or usage are not needed at this time. 87 FR 39164, 39203. The existing DOE test procedure is reasonably designed to produce test results which reflect energy efficiency and energy use of the CRE subject to the test procedure during a representative average use cycle, and is not unduly burdensome to conduct. Because the test procedure provides a representative average use cycle, DOE is unable to account for every combination of operating conditions and usage without the resulting test procedures being unduly burdensome. If the test procedure cannot be conducted for certain equipment, or if the test procedure results in measures of energy consumption so unrepresentative of the equipment’s true energy consumption characteristics as to provide materially inaccurate comparative data, manufacturers may petition DOE for a test procedure waiver under the provisions of 10 CFR 431.401.

DOE did not receive any comments and is therefore maintaining the June 2022 NOPR approach and not adopting additional provisions for other categories of CRE.

D. Harmonization of Efficiency Standards and Testing With NSF 7–2019 Food Safety

NSF 7–2019 establishes minimum food protection and sanitation specifications for the materials, design, manufacture, and performance of commercial refrigerators and freezers and their related components. Section 2.3 of appendix B in the CRE test procedure states that for CRE that is also tested in accordance with NSF test procedures (Type I and Type II),³⁰ integrated average temperatures and ambient conditions used for NSF testing may be used in place of the DOE-prescribed integrated average temperatures and ambient conditions provided they result in a more stringent test. To that end, the ambient temperature may be higher, but not lower than the DOE test condition, and the IAT may be lower, but not higher, than that measured at the DOE ambient test condition. *Id.* The test conditions and possible different thermostat settings under NSF 7–2019 may result in measured energy use that is more representative of average use in applications for which users prioritize food safety over energy efficiency. Permitting the use of NSF 7–2019 test conditions may also reduce testing burden for manufacturers.

In the June 2022 NOPR, DOE did not propose any additional amendments to the test procedures to further reference or harmonize with NSF 7–2019 testing. 87 FR 39164, 39203.

DOE did not receive any additional comments on this topic in response to the June 2022 NOPR. Therefore, DOE is not adopting any additional amendments regarding harmonizing with NSF 7 testing. The existing test procedure instructions in section 2.3 of appendix B allow for the use of NSF 7–2019 test data to be used for DOE testing subject to certain requirements. DOE recognizes that NSF 7–2019 testing is not applicable or appropriate for all equipment types. For those equipment types, the DOE test procedure provides the required test instructions—including additional IAT rating temperatures—and reference to NSF 7–2019 is not needed. DOE maintains that the amended DOE test procedure, by reference to AHRI 1200–2023 and ASHRAE 72–2022 with Errata for conventional CRE, provides a measure of energy use of CRE during a representative average use cycle and is not unduly burdensome to conduct. The optional NSF 7–2019 test provides a

³⁰ Type I equipment is designed to operate in 75 °F ambient conditions and Type II equipment is designed to operate in 80 °F ambient conditions.

means to further reduce test burden in certain instances, but it is not required for DOE testing.

E. Dedicated Remote Condensing Units

DOE is aware of remote condensing CRE models for which specific dedicated condensing units are intended for use with specific refrigerated cases. For some of these models, the remote condensing units are intended to be installed on or near the refrigerated case within the same conditioned space. For other models, the remote condensing units are intended to be installed outdoors, but the refrigerated case is intended to be used specifically with the designated remote condensing unit.

For this equipment, the combined refrigerated case and condensing unit refrigeration system would effectively operate as if it were CRE with a self-contained condensing unit. Under the current DOE test procedure, remote CRE energy consumption is determined from the energy use of components in the refrigerated case plus a calculated compressor energy consumption based on the enthalpy change of refrigerant supplied to the case at specified conditions. The compressor energy use calculation is based on typical reciprocating compressor energy efficiency ratios (“EERs”) at a range of operating conditions. *See* Table 1 in AHRI 1200–2010. For CRE used with dedicated condensing units, the actual compressor used during normal operation is known (*i.e.*, the compressor in the dedicated condensing unit). Accordingly, testing the whole system using the same approach as required for a self-contained CRE unit may produce energy use results that are more representative of how this equipment actually operates in the field. Additionally, testing such a system as a complete system rather than using the test procedures for remote condensing units may be less burdensome, because it would not require the use of a test facility capable of maintaining the required liquid and suction line refrigerant conditions as currently required for testing remote CRE (*i.e.*, the refrigerant conditions consistent with ASHRAE 72–2005 requirements and at the conditions necessary to maintain the appropriate case temperature for testing).

DOE understands that remote CRE are most commonly installed with rack condensing systems, and that installations with dedicated condensing units represent a very small portion of the remote CRE market. Additionally, DOE has not identified a method to determine whether a remote CRE unit

would be installed with a dedicated condensing unit rather than a rack condensing system. DOE is not aware of any remote CRE that are capable of installations only with a dedicated remote condensing unit (*i.e.*, DOE expects that all remote CRE may be installed with rack condensing systems).

DOE tentatively determined in the June 2022 NOPR that an amended test procedure to account for remote CRE installed with dedicated remote condensing units is not appropriate. 87 FR 39164, 39205.

In the June 2022 NOPR, DOE requested comment on its tentative determination not to propose amended test procedures for dedicated remote condensing units. *Id.*

AHRI stated its support for DOE’s tentative determination to not propose amended test procedures for dedicated remote condensing units and thanked DOE for this determination. (AHRI, No. 38, p. 13)

Hillphoenix commented that it agreed with not proposing a test procedure for dedicated remote condensing units, as the customization of each unit would create an unreasonable burden on manufacturers while not resulting in reasonable energy savings. (Hillphoenix, No. 35, p. 7)

DOE is maintaining the June 2022 NOPR approach and not adopting test provisions for dedicated remote condensing units at this time.

F. Test Procedure Clarifications and Modifications

1. Defrost Cycles

The test period requirements in ASHRAE 72–2005, incorporated by reference in the current CRE test procedure, and in ASHRAE 72–2018 require a 24-hour test period, which begins with a defrost after steady-state conditions are achieved.³¹ Use of a fixed 24-hour test period can provide for a degree of variability in the measured energy consumption, depending on when additional defrost cycles occur after the initial defrost cycle (*e.g.*, the test period may capture only a portion of a defrost cycle at the end of the test period rather than a complete number of defrost cycles). Typically, if multiple complete defrost cycles occur within the 24-hour period, the impact of capturing partial defrost cycles would be small. Similarly, if the defrost cycle duration is slightly greater than 24 hours, the impact of capturing a partial defrost

³¹ ASHRAE 72–2005 and ASHRAE 72–2018 define “steady state” as the condition in which the average temperature of all test simulators changes less than 0.4 °F from one 24-hour period or refrigeration cycle to the next.

cycle would be small. However, the impact may be more substantial if the defrost cycle duration is very long (*i.e.*, multiple days between defrost) or if the defrost cycle is slightly less than 24 hours (*i.e.*, the test period would capture two defrost occurrences but only one period of “normal” operation between defrosts). DOE also notes that ASHRAE 72–2005 does not have any specific provisions for CRE with variable defrost control schemes (*i.e.*, defrosts that may be triggered based on conditions or other parameters rather than only a timer) and does not account for CRE with no automatic defrost (*i.e.*, manual defrost).

DOE has addressed similar issues in the test procedures for consumer refrigeration products. The test procedures for those products apply a two-part test period (one period for steady-state operation and one period to capture events related to the defrost cycle) to account for defrost energy consumption for products with long defrost cycle durations or with variable defrost control. The energy use calculations then weigh the performance from each test period based on the known compressor runtime between defrosts or on a calculated average time between defrosts in field operation that is based on the control parameters for variable defrosts. See appendices A and B to subpart B of 10 CFR part 430.

Additionally, DOE has addressed testing of certain CRE models that do not have automatic defrost in a waiver granted to AHT published on October 30, 2018. 83 FR 54581 (“October 2018 Waiver”). For the basic models subject to the waiver, the test period begins after steady-state conditions occur (instead of beginning with a defrost cycle) and the door-opening period begins 3 hours after the start of the test (instead of 3 hours after a defrost cycle). 83 FR 54581, 54583. DOE also granted AHT an interim waiver for testing certain models with defrost cycles longer than 24 hours. 82 FR 24330 (May 26, 2017; “May 2017 Interim Waiver”).³² The interim waiver required that AHT test the specified models using a two-part test method similar to the method for consumer refrigerators, with the first part capturing normal compressor operation between defrosts, including an 8-hour period of door openings, and the second part capturing all operation associated with a defrost, including any pre-cooling or

temperature recovery following the defrost. 82 FR 24330, 24332–24333.

For testing CRE with no automatic defrost, ASHRAE 72–2022 with Errata incorporates instructions for starting the test period and door openings that are consistent with those provided in the October 2018 Waiver (*i.e.*, the instructions do not require a defrost occurrence). Therefore, DOE incorporating by reference ASHRAE 72–2022 with Errata addresses this test issue.

For testing CRE with variable defrost, DOE tentatively determined in the June 2022 NOPR that the existing 24-hour test period represents typical operation during a day, including a period of door openings and a period of closed-door operation, and did not propose any additional test requirements. 87 FR 39164, 39206. Units with variable defrost controls may initiate more frequent defrosts in response to door openings, which is captured by the current test procedure.

The 24-hour test period specified in ASHRAE 72–2022 with Errata provides a representative basis for measuring energy consumption of most CRE, capturing the defrost occurrences and door opening periods expected for a 24-hour period. Most CRE include multiple defrosts during a 24-hour test period, and any incomplete defrost cycle captured in the test period does not significantly impact measured energy consumption. DOE is not proposing to amend the 24-hour test to require that the test procedure capture complete defrost cycles in situations where the defrost interval is less than 24 hours.

DOE tentatively determined in the June 2022 NOPR that for CRE with defrost cycles longer than 24 hours, the 24-hour test period would overestimate the actual average defrost energy contribution during a day. 87 FR 39164, 39206. Therefore, DOE proposed in the June 2022 NOPR to allow the use of a two-part test for CRE with defrost cycles longer than 24 hours. *Id.* DOE proposed the two-part test approach, consistent with the approach in the May 2017 Interim Waiver, for such equipment—rather than extending the existing test period in 24-hour increments—in order to limit test burden. *Id.* For the basic models addressed in the May 2017 Interim Waiver, testing in 24-hour increments would require three 24-hour periods (*e.g.*, the duration between defrosts is 3.5 days, and introducing a fourth 24-hour period would result in the test period capturing two defrosts). Additionally, the 24-hour increment approach would continue to overestimate energy consumption associated with defrosts, albeit to a

lesser extent, for defrost intervals that are not exact multiples of 24 hours (as is the case with the basic models covered by the May 2017 Interim Waiver). The two-part test approach eliminates the need for multiple door opening periods and may allow for much shorter overall test durations while accounting for defrost occurrences based on actual defrost interval durations.

Also consistent with the May 2017 Interim Waiver, DOE proposed in the June 2022 NOPR that the two-part test would be optional because it would increase test duration compared to the existing approach (by requiring both a 24-hour test plus a defrost test), and manufacturers may determine that the existing test procedure may be more appropriate their models, even if the models incorporate defrost intervals longer than 24 hours. 87 FR 39164, 39206. Specifically, DOE proposed to allow for testing equipment with defrost intervals greater than 24 hours using a two-part test in which the first part is a 24-hour period of stable operation, including door openings as specified in ASHRAE 72–2018R, but without any defrost operation. *Id.* Stability for the first part of the test would be determined according to section 7.5 in ASHRAE 72–2022 with Errata, by comparing temperatures determined during Test A and Test B. A defrost may occur during the test alignment period, as defined in section 7.4 of ASHRAE 72–2022 with Errata, between Test A and Test B. The second part of the test would capture a defrost cycle, including any pre-cooling and temperature recovery associated with a defrost. Rather than referencing the consumer refrigeration product test procedures (as done in the May 2017 Interim Waiver approach), DOE proposed to require that the start and end of the test period be determined as, respectively, the last time before and first time after a defrost occurrence, when the measured average simulator temperature (*i.e.*, the instantaneous average of all test simulator temperature measurements) is within 0.5 °F of the IAT as measured during the first part of the test. 87 FR 39164, 39206, 39207. This would ensure that the defrost part of the test captures any pre-cooling operation and temperature recovery following a defrost while limiting the overall duration of the second part of the test.

The May 2017 Interim Waiver includes certain parameters specific to the models covered by the waiver, namely the duration between defrosts. DOE granted the interim waiver based on the minimum defrost interval possible for the equipment (*i.e.*, 3.5

³² On June 2, 2021, AHT sent a letter to DOE requesting that this interim waiver be withdrawn. See www.regulations.gov/document/EERE-2017-BT-WAV-0027-0015.

days). To generalize the May 2017 Interim Waiver approach for other CRE models, DOE proposed in the June 2022

NOPR that the two-part calculation be applied based on the minimum duration between defrosts permitted by the unit's

controls as shown in the following equation. 87 FR 39164, 39207.

$$DEC = ET1 \times \frac{(1,440 - t_{NDI})}{1,440} + \frac{ET2}{t_{DC}}$$

$$t_{NDI} = \frac{t_{DI}}{t_{DC}}$$

Where DEC is the daily energy consumption in kWh/day; ET1 is the energy consumed during the first part of the test, in kWh/day; ET2 is the energy consumed during the second part of the test, in kWh; t_{NDI} is the normalized length of defrosting time per day, in minutes; t_{DI} is the length of time of the defrosting test period, in minutes; t_{DC} is the minimum time between defrost occurrences, in days; and 1,440 is a

conversion factor, in minutes per day. DOE recognizes that the two-part test approach could result in slightly less door-opening energy contribution as the first part of the test, with no defrost and 8 hours of door openings, would be combined with the defrost portion of the test by a calculation. To investigate this impact, DOE conducted testing on equipment with defrost intervals longer than 24 hours and compared results of

the existing test procedure (24-hour test period, starting with a defrost), the May 2017 Interim Waiver approach (two-part test, as proposed in the June 2022 NOPR), and a full-duration approach (multiple 24-hour periods, each with door opening periods, through a complete defrost cycle) as illustrated in Table III.5.

TABLE III.5—MAY 2017 INTERIM WAIVER APPROACH INVESTIGATIVE TESTING

HCT.SC.I	Total display area (ft ²)	Current DOE CRE test procedure (kWh/day)	May 2017 interim waiver approach (kWh/day)	Full defrost cycle duration approach (kWh/day)
Unit #1	12.72	7.12	6.66	6.66
Unit #2	14.84	6.12	5.61	5.62

DOE's testing showed that the two-part waiver test approach provides an accurate representation of energy consumption when measured over a full defrost cycle (and is therefore representative of average use). Additionally, the testing showed that the existing test procedure approach can overestimate measured energy use for CRE with defrost cycles longer than 24 hours.

Based on DOE's investigative testing, DOE tentatively determined in the June 2022 NOPR that the May 2017 Interim Waiver approach, and the approach proposed in the June 2022 NOPR, is representative of a full defrost cycle duration approach for equipment with defrost intervals greater than 24 hours. 87 FR 39164, 39207.

With regard to CRE models with multiple evaporators (and, therefore, potentially multiple defrosts) connected to a single- or multi-stage condensing unit, ASHRAE 72–2005 does not specify which evaporator should be used to determine the defrost cycle that initiates the test. Additionally, if the defrost cycles for multiple evaporators do not activate at the same time during the test,

ASHRAE 72–2005 does not specify which defrost cycle should be used to determine the start of the 24-hour test period. ASHRAE 72–2005 also does not explicitly address the treatment of defrost cycles for multi-compartment CRE models (i.e., hybrid CRE) with different evaporator temperatures and defrost sequences.

As discussed earlier in this section, CRE with automatic defrost typically include multiple defrost occurrences per day. DOE expects that any multi-evaporator CRE with multiple unique defrost cycle durations would similarly defrost multiple times per day, and therefore no change to the existing test procedure is necessary. However, to ensure that the 24-hour test period captures a representative number of defrosts for each evaporator's defrost, DOE proposed in the June 2022 NOPR to specify that for CRE with multiple unique defrost intervals for multiple evaporators, the test period as specified in ASHRAE 72–2018R would start with a defrost occurrence for the evaporator defrost having the longest interval between defrosts. 87 FR 39164, 39208.

In the June 2022 NOPR, DOE requested comment on the proposed approach to account for long-duration defrost cycles using an optional two-part test procedure consistent with the existing waiver approach granted for such models. *Id.* DOE also requested comment on whether any additional provisions are necessary to account for different defrost operation or controls, and on DOE's proposed approach in which the test period would start with the defrost occurrence having the longest interval between defrosts. *Id.*

AHRI stated its support for DOE's proposed approach to account for long-duration defrost cycles using an optional two-part test procedure, and further recommended that DOE bring this approach to the ASHRAE 72 committee for review. (AHRI, No. 38, p. 13)

The Joint Commenters commented that they support DOE's proposals regarding testing equipment with long defrost cycles. (Joint Commenters, No. 31, p. 1)

AHT stated its support for the proposed approach to account for long-duration defrost cycles using the

optional two-part test procedure consistent with the existing waiver. (AHT, No. 38, p. 1)

Hillphoenix agreed with the proposed long defrost duration approach for determining energy on CRE equipment that incorporate a defrost interval longer than 24 hours. (Hillphoenix, No. 35, p. 7) Hillphoenix recommended that DOE approach ASHRAE and request this approach be evaluated for inclusion in ASHRAE 72. *Id.*

The Joint Commenters supported DOE's proposal for testing equipment with defrost cycles greater than 24 hours. (Joint Commenters, No. 31, p. 4) The Joint Commenters stated that as DOE discussed in the NOPR, use of a fixed 24-hour test period might provide a degree of variability in measured energy consumption based on additional defrost cycles, which DOE proposed to address through an optional two-part test procedure, based on an existing test waiver, wherein the first part captured energy usage during a 24-hour operating period and the second part captured a single defrost cycle. *Id.* The Joint Commenters stated that this approach mirrored that used to address a similar issue for consumer refrigeration equipment, and they supported this approach because it provides a more representative estimate of energy usage for CRE with defrost periods lasting longer than 24 hours. *Id.*

As discussed, the current industry test procedures do not include provisions to specifically account for defrost cycles longer than 24 hours. DOE has determined such test provisions are appropriate to ensure representative testing of such equipment. To the extent that future industry standards incorporate updated provisions to address defrosts, DOE would consider those standards as part of a future test procedure rulemaking.

For these reasons and consistent with the comments received, DOE is adopting the approach for accounting for defrosts as proposed in the June 2022 NOPR.

2. Total Display Area

Section 3.2 of appendix B provides instructions regarding the measurement of TDA, specifying that TDA is the sum of the projected area(s) of visible product, expressed in square feet (“ft²”) (*i.e.*, portions through which product can be viewed from an angle normal, or perpendicular, to the transparent area).

For certain CRE configurations, merchandise is not necessarily located at an angle directly normal, or perpendicular, to the transparent area despite this area being intended for customer viewing. For example, for service over counter ice-cream freezers,

the ice-cream containers may be placed within the chest portion of the refrigerated case, with a glass display panel on the front and glass rear doors located above the merchandise storage area. If the glass display areas are nearly vertical, the ice-cream containers may be positioned low enough in the case that they are not at a viewing angle perpendicular to the glass. However, during typical use, customers would stand close enough to the display glass that the ice-cream would be visible from other angles not perpendicular to the glass.

AHRI 1200–2023 maintains the existing definition and approach for TDA, which is based on the visibility of merchandise at a location normal to the display surface, but includes additional diagrams to clarify the determination of TDA. *See* appendix D to AHRI 1200–2023. Figure 10 in AHRI 1200–2023 appendix D shows a service over counter unit similar to the example described earlier in this section. The food load is included only in the lowest portion of the refrigerated cabinet, and as a result, only portions of the transparent areas are considered for the TDA (*i.e.*, the portions through which the food load is visible at an angle normal to the transparent area).

Consistent with the updated version of AHRI 1200–202X, DOE did not propose revisions to the current TDA in the June 2022 NOPR. 87 FR 39164, 39208. As discussed, DOE proposed in the June 2022 NOPR to incorporate by reference AHRI 1200–202X, which includes the new appendix D to provide clarification on how to apply the current TDA approach to different CRE configurations. 87 FR 39164, 39208.

DOE is aware that the current DOE test procedure includes conflicting instructions regarding the calculation of TDA for CRE with transparent and non-transparent areas over the length of the case. The instructions in section 3.1 of appendix B specify determining the length of the display area as the interior length of the CRE model, provided no more than 5 in. of that length consists of non-transparent material; or, for those cases with greater than 5 in. of non-transparent area, the length shall be determined as the projected linear dimension(s) of visible product plus 5 in. Figures A3.4 and A3.5 of appendix B show a similar approach, but instead reference 10 percent of the total length as the threshold of non-transparent area rather than 5 in. The captions for these figures reference 5 in., consistent with section 3.1. The April 2014 Final Rule established these TDA provisions in appendix B. 79 FR 22277, 22300–22301. In the April 2014 Final Rule, DOE stated

that the 10-percent approach rather than the 5-in. approach would allow for more consistent application of the TDA requirements across CRE models. *Id.*

In addition, DOE incorrectly applied the 10-percent threshold approach as shown in Figures A3.4 and A3.5 of appendix B. As discussed, DOE intended to provide a consistent TDA approach for cases with transparent and non-transparent areas. The equation for length shown in Figure A3.5 shows that length equals the total transparent dimension, multiplied by 1.10. As a result, the non-transparent area would represent 10 percent of the transparent dimension, not 10 percent of the total length. The correct application would have length equal to the transparent dimension divided by 0.9—resulting in a non-transparent area representing 10 percent of the total length.

Section D.1.1.1 of AHRI 1200–202X appendix D includes correct equations regarding TDA and case length as intended in the April 2014 Final Rule. Specifically, AHRI 1200–202X applies the 10-percent threshold approach for non-transparent area and correctly calculates the length of the CRE for cases with non-transparent areas greater than 10 percent of the length of the case. As discussed, DOE proposed in the NOPR to incorporate by reference AHRI 1200–202X, which would correct the errors regarding TDA calculations currently included in appendix B.

DOE did not receive any comments in response to the June 2022 NOPR regarding the TDA instructions, and is adopting the provisions as proposed by referencing AHRI 1200–2023.

G. Alternative Refrigerants

DOE's current test procedure for remote condensing CRE requires the estimation of compressor EER from Table 1 of AHRI 1200–2010. The EER ratings in the table are based on performance of reciprocating compressors and were developed based on refrigerants that historically have been commonly used for CRE (*i.e.*, R–404A).

Certain remote CRE installations can use R–744; however, the existing remote CRE test procedure does not address the unique operation for these systems. For example, the current DOE test procedure requires an inlet refrigerant liquid temperature of 80 °F with a saturated liquid pressure corresponding to a condensing temperature of 89.6 °F to 120.2 °F. *See* ASHRAE 72–2005, sections 4.3.2 and 4.3.3. R–744 has a critical point of 87.8 °F and 1,070 pounds per square inch (“psi”), above which it is a supercritical fluid. Accordingly, R–744 cannot be a liquid

at the specified condensing temperature conditions (*i.e.*, it would either be a gas or supercritical fluid, depending on pressure). Additionally, R-744 systems typically include multiple stages of compression and cooling, resulting in liquid supplied to the refrigerant cases at conditions not necessarily defined by the typical condensing unit conditions. DOE has recently granted a waiver for specific models of CRE to address R-744 operating conditions for testing walk-in cooler and walk-in freezer unit coolers. 86 FR 14887 (March 19, 2021; “March 2021 Waiver”). For testing of the specified basic models, the March 2021 Waiver requires liquid inlet saturation temperature and liquid inlet subcooling of 38 °F and 5 °F, respectively. 86 FR 14887, 14889. The March 2021 Waiver also maintains the existing compressor energy consumption determination based on an approach consistent with the CRE remote calculations using AHRI 1200–2010 (the walk-in requirements instead refer to the walk-ins rating standard, AHRI 1250–2009, which includes the same EER table as AHRI 1200–2010). *Id.*

For all remote CRE, the DOE test procedure requires measuring energy consumption of the refrigerated case and the heat gain of the refrigerant providing cooling to the remote case. AHRI 1200–2010 specifies a calculation of compressor energy consumption based on the heat gain measured for the test refrigerant. DOE is aware that manufacturers may specify the use of multiple refrigerants for a single remote CRE cabinet and that the current test procedure allows for consistent testing of such equipment regardless of refrigerant used for testing. Manufacturers are already testing and rating systems that can use R-744, likely by testing with non-R-744 refrigerants under the existing test conditions, according to the existing approach, which references AHRI 1200–2010. DOE expects that any ratings for current R-744 systems are based on testing with another refrigerant capable of maintaining the conditions specified in ASHRAE 72–2005.

Based on a review of CRE that are capable of using R-744, DOE observed that many of these models also may be installed for use with other refrigerants that can be tested under the existing approach. However, any remote CRE that are intended for use only with R-744 would not be able to be tested according to the current DOE test procedure due to the specified liquid conditions specified in ASHRAE 72–2005. To allow for testing remote CRE with R-744, DOE proposed in the June 2022 NOPR to adopt alternate

refrigerant conditions consistent with those granted in the March 2021 Waiver for walk-in cooler and walk-in freezer unit coolers with CO₂ refrigerant. 87 FR 39164, 39209. DOE proposed that for remote CRE tested with direct expansion CO₂, the liquid inlet saturation temperature be 38 °F with liquid inlet subcooling of 5 °F. 87 FR 39164, 39209, 39210.

DOE research into the performance of different configurations of R-744 booster systems indicates that enhanced R-744 cycles can match conventional refrigerants in average efficiency. Even though the EER values included in AHRI 1200–202X for remote compressors were initially established for conventional refrigerants, DOE tentatively determined in the June 2022 NOPR that they are also appropriate for determining compressor energy consumption of CO₂ remote systems. 87 FR 39164, 39210. DOE recognizes that the actual compressor energy consumption of a specific remote system will vary based on a number of parameters (*e.g.*, ambient conditions, refrigerant conditions necessary for the remote cases), but tentatively determined in the June 2022 NOPR that the values included in AHRI 1200–202X are appropriate for determining the energy consumption of an average use cycle for all remote CRE as tested under the proposed test procedure. *Id.*

In addition to R-744, in this final rule, DOE has determined that the EER table in AHRI 1200–2023 is appropriate for other alternative refrigerants. DOE similarly researched compressor EERs at a range of operating conditions for refrigerants other than R-404A, including R-407A, R-407F, and R-507A, and found the existing EERs to be representative based on expected operating conditions. Additionally, AHRI 1200–2023 further improves the consistency of the EER approach by including additional instructions regarding the use of high-glide refrigerants. DOE did not propose additional amendments to address alternative refrigerants other than CO₂ in the June 2022 NOPR. 87 FR 39164, 39210.

In the June 2022 NOPR, DOE requested comment on the proposed alternate refrigerant conditions to be used for testing remote CRE with CO₂ refrigerant. *Id.* DOE requested comment on whether any other aspects of the current test procedure require amendment to allow for testing with CO₂ or any other alternative refrigerants. *Id.*

AHRI commented that regarding testing with CO₂ (*i.e.*, R-744) or any other alternate refrigerants, it is not

aware of any alternative refrigerants, nor is it aware of any aspects of the current test procedure that would require amendments to the test procedure. (AHRI, No. 38, p. 13) AHRI stated that manufacturers are still working to determine which refrigerants they will use to comply with the AIM Act, and advised DOE to consider that there may be additional refrigerants and properties to those refrigerants that are currently unknown and will need to be taken under consideration. *Id.* AHRI tentatively agreed with the proposed alternate condition for testing CRE with CO₂ refrigerant as specified by DOE, that “the liquid inlet saturation temperature be 38 °F with liquid inlet subcooling of 5 °F.” *Id.* AHRI stipulated that it would be necessary to add tolerances to both liquid temperature and subcooling values and recommended DOE wait for the ASHRAE 72 committee to address typical conditions for CO₂ remote CRE in its ASHRAE 72 update. *Id.*

The Joint Commenters commented that they support DOE’s proposals regarding the use of a CO₂ refrigerant (*i.e.*, R-744). (Joint Commenters, No. 31, p. 1) The Joint Commenters also stated their support for DOE’s proposed specifications regarding CO₂ refrigerant in remote condensing CRE. (Joint Commenters, No. 31, p. 4) The Joint Commenters noted that DOE’s current test procedure did not account for the unique operating conditions of CO₂-charged systems and that DOE proposed in the NOPR to adopt alternate refrigerant conditions consistent with those granted in a March 2021 waiver for walk-in cooler and walk-in freezer unit coolers using CO₂ refrigerant.³³ *Id.* The Joint Commenters expressed support for this change, stating it would result in more representative energy usage for CRE utilizing CO₂ refrigerant. *Id.*

Hillphoenix tentatively agreed with the proposed alternate condition for testing CRE with CO₂ refrigerant (*i.e.*, R-744) as specified by DOE: “the liquid inlet saturation temperature be 38 °F with liquid inlet subcooling of 5 °F”; however, Hillphoenix stated that it would be necessary to add tolerances to both liquid temperature and subcooling values. (Hillphoenix, No. 35, p. 7) Hillphoenix recommended that DOE should wait for an update to ASHRAE 72 because the committee is addressing typical conditions for CO₂ remote CRE testing. *Id.*

In the August 2022 public meeting, Arneg commented that if regarding the proposal for the liquid inlet saturation temperature to be 38 °F and a 5 °F sub-

³³ 87 FR 39209, 39210.

cooling, or bottom-line 33 °F liquid, there would be an operational problem at the medium-temperature CO₂ (*i.e.*, R-744) application. (Public Meeting Transcript, No. 41, p. 48) Arneg stated that it is not sure what that 38 °F and 5 °F are representing. *Id.* Arneg commented that at this rate, for 33 °F liquid inlet temperature, there is an issue with medium-temperature application. *Id.* When prompted as to whether there was any temperature it considers more appropriate or representative, Arneg stated that 36 °F to 38 °F seems to be a reasonable temperature range. *Id.*

Zero Zone commented that the proposed temperatures for testing CO₂ (*i.e.*, R-744) are appropriate but recommended that DOE utilize tolerances similar to those stated for liquid refrigerant temperature in the current draft of ASHRAE 72. (Zero Zone, No. 37, p. 9) Zero Zone commented that CO₂ systems have a certain degree of operational instability and recommended that there should be a tolerance for the average and a tolerance for individual measurement. *Id.* Zero Zone recommended these tolerances should be applied to the refrigerant temperature and the saturated refrigerant temperature of CO₂. *Id.* Zero Zone further urged that this issue should be addressed by the ASHRAE 72 working group. *Id.*

DOE agrees with commenters that revisions to certain liquid refrigerant test conditions and tolerances are appropriate for the liquid refrigerant test conditions. DOE recognizes that remote CRE using R-744 are currently available and that a future version of ASHRAE 72 may include liquid refrigerant test conditions for CRE connected to a direct expansion remote condensing unit with R-744, however an updated version of ASHRAE 72 with such conditions is not yet available.

ASHRAE 72-2022 with Errata specifies liquid refrigerant temperature, liquid refrigerant pressure, and liquid refrigerant subcooling for liquid refrigerant test conditions for direct-expansion remote units. In the June 2022 NOPR, DOE proposed a liquid inlet saturation temperature of 38 °F with a liquid inlet subcooling of 5 °F for R-744, which together would require a liquid refrigerant temperature of 33 °F, which is consistent with Arneg's comment in the August 2022 public meeting.

As stated, Arneg also suggested a different liquid refrigerant temperature of between 36 °F to 38 °F (mid-point temperature is 37 °F).

Commenters agreed with the liquid inlet saturation temperature (specified

as the liquid refrigerant pressure or the saturated liquid pressure corresponding to a condensing temperature in ASHRAE 72-2022 with Errata) of 38 °F and, consistent with feedback from commenters, DOE is maintaining that test condition in this final rule. However, as suggested by comments received in response to the June 2022 NOPR, DOE considered tolerances for the liquid refrigerant temperature, saturation temperature, and subcooling requirements.

ASHRAE 72-2022 with Errata specifies the liquid refrigerant temperature to be 80.0 °F with a tolerance for the average over the test period of ±5.0 °F and a tolerance for the individual measurements of ±10.0 °F. Also, ASHRAE 72-2022 with Errata specifies the saturated liquid pressure corresponding to a condensing temperature in the range of 89.6 °F to 120.2 °F (*e.g.*, roughly a ±15 °F range) for the average over test period. These liquid conditions and tolerances are based on operation in a single-compressor-stage system rejecting heat to outdoor ambient conditions. Because the liquid entering display cases in CO₂ booster systems is at an intermediate temperature and pressure (*i.e.*, at a level between the high-side outdoor heat rejection conditions and the low-side display case evaporating conditions), it is not expected that the potential range of its temperature or pressure could be as large. In order to maintain test condition flexibility while addressing these differences for CO₂, DOE is selecting reduced allowable ranges for the saturated temperature and temperature conditions, specifically ±6 °F for the average saturation temperature, and ±3 °F for the average liquid temperature. Therefore, for commercial refrigerators, freezers, and refrigerator-freezers connected to a direct expansion remote condensing unit with R-744, DOE is requiring in this final rule that, instead of the saturated liquid pressure corresponding to a condensing temperature range specified in appendix A to ASHRAE 72-2022 with Errata, the saturated liquid pressure corresponding to a condensing temperature range shall be 38.0 °F ±6.0 °F or 32.0 °F to 44.0 °F for the average over test period.

DOE notes that, during operation, liquid temperature must remain below saturation temperature to prevent formation of bubbles in the liquid line, which can cause flow instability through the refrigerant expansion device. Hence, DOE is reducing the specified liquid temperature from the 33 °F level adopted in the Hussmann waiver to 30 °F. This would not

completely eliminate crossover of these temperature with the selected tolerances, but would limit the potential for such crossover (*i.e.*, maximum liquid temperature would be 33 °F, while minimum saturation temperature would be 32 °F).

To ensure that no such crossover could occur, DOE is requiring that subcooling (the difference between saturation temperature and liquid temperature) be at least 2 °F. While ASHRAE 72-2022 with Errata specifies subcooling >0 °R, the specified accuracy for the temperature measurement is ±1.4 °F. Therefore, to ensure subcooling occurs, DOE has determined to use the test condition tolerance for liquid refrigerant subcooling of >2 °R for average over test period, which with the given accuracy requirement would ensure at least 0.6 °F subcooling.

DOE recognizes that fluctuations could occur during testing, *e.g.*, the refrigerant liquid temperature could fluctuate. As mentioned above, DOE is requiring that the average refrigerant temperature vary no more than 3 °F from the specified 30 °F target. To limit fluctuations, DOE is additionally requiring that the maximum range of individual liquid temperature measurements be ±5 °F. This is consistent with the operating tolerance ranges for refrigerant liquid saturation temperature and subcooling allowed for testing of WICF unit coolers³⁴ in AHRI 1250-2020 (*i.e.*, the latest version of the test standard specified in the March 2021 Hussmann waiver). Therefore, for commercial refrigerators, freezers, and refrigerator-freezers connected to a direct expansion remote condensing unit with R-744, DOE is requiring in this final rule that, instead of the liquid refrigerant test conditions specified in appendix A to ASHRAE 72-2022 with Errata, the liquid refrigerant temperature shall be 30.0 °F with a tolerance for the average over test period of ±3.0 °F and a tolerance for the individual measurements of ±5.0 °F.

DOE has determined that these liquid refrigerant test conditions for CRE connected to a direct expansion remote condensing unit with R-744 are representative, repeatable, and reproducible.

In summary, for commercial refrigerators, freezers, and refrigerator-freezers connected to a direct expansion remote condensing unit with R-744, DOE is requiring in this final rule that, instead of the liquid refrigerant

³⁴ Unit coolers are the walk-in component most comparable to remote refrigerated cabinets, in that they operate with high-pressure subcooled liquid entering the component and low-pressure superheated vapor leaving it.

measurements for direct-expansion remote units specified in appendix A to ASHRAE 72–2022 with Errata, the liquid refrigerant measurements for direct-expansion remote units shall be: liquid refrigerant temperature shall be 30.0 °F with a tolerance for the average over test period of ± 3.0 °F and a tolerance for the individual measurements of ± 5.0 °F; liquid refrigerant pressure shall be the saturated liquid pressure corresponding to a condensing temperature in the range of 32.0 °F to 44.0 °F for the average over test period; and liquid refrigerant subcooling shall be greater than 2.0 °R for the average over test period.

If manufacturers adopt additional refrigerant types that cannot be tested according to the test procedure as established in this final rule, manufacturers may petition for a waiver to ensure that equipment using such refrigerants can be tested and certified to DOE.

H. Certification of Compartment Volume

DOE's current test procedure incorporates by reference AHAM HRF–1–2008 to measure compartment volume. DOE acknowledges that manufacturers often use CAD in designing their equipment. However, the current test procedure and certification provisions for CRE do not provide for using CAD drawings to determine compartment volume. Using CAD drawings as the basis for determining compartment volumes may be particularly helpful when the geometric designs of the CRE make physical measurements in accordance with AHAM HRF–1–2008 difficult. Currently, DOE's certification requirements in 10 CFR part 429 include provisions for certifying volume for basic models of consumer refrigeration products, commercial gas-fired and oil-fired instantaneous water heaters, and hot water supply boilers using CAD drawings. 10 CFR 429.72(c), (d), and (e).

DOE tentatively determined in the June 2022 NOPR that calculating volume according to CAD drawings would reduce manufacturer test burden and may allow for more accurate measurements of volume for complicated cabinet designs. 87 FR 39164, 39210. DOE proposed in the June 2022 NOPR to adopt provisions in 10 CFR part 429 to allow for certifying volume for basic models of CRE using CAD drawings. To ensure that volumes determined based on CAD drawings are consistent with testing actual production models, DOE also proposed certain enforcement provisions as

discussed in section III.J of this final rule.

DOE did not receive any comments in response to the proposal for using CAD drawings for volume measurements, and is adopting those provisions as proposed in the June 2022 NOPR.

I. Test Procedure Waivers

A person may seek a waiver from the test procedure requirements for a particular basic model of a type of covered equipment when the basic model for which the petition for waiver is submitted contains one or more design characteristics that (1) prevent testing according to the prescribed test procedure or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1).

In addition to the test procedure waivers discussed, DOE granted test procedure waivers to address certain CRE designed for specialized applications. Specifically, on September 12, 2018, DOE published a test procedure waiver for ITW for testing specified basic models of grocery and general merchandise system equipment (*i.e.*, refrigerated storage allowing for order storage and customer pickup). 83 FR 46148 (“September 2018 Waiver”). The specified basic models have characteristics that include floating suction temperatures for individual compartments, different typical door-opening cycles, and a high-temperature “ambient” compartment. 83 FR 46148, 46149. DOE similarly granted Hussmann an interim waiver for testing CRE intended for short-term storage and designed for loading and retrieving product a limited number of times per day. 86 FR 40548 (July 28, 2021; “July 2021 Interim Waiver”).

DOE proposed in the June 2022 NOPR to adopt test procedure provisions to address the equipment characteristics at issue in the September 2018 Waiver and the July 2021 Interim Waiver. 87 FR 39164, 39211. For both waiver cases, the subject basic models are intended for short-term storage of refrigerated merchandise and limited door opening cycles per day (*e.g.*, holding customer orders and maintaining refrigerated temperatures until customer pickup). DOE acknowledges that this equipment includes individual-secured compartments that are accessible only to the customer for order retrieval (*e.g.*, by providing the customer with a unique unlocking function to access the compartment). DOE also conducted a review of the market of this type of

equipment and found similar characteristics and features in currently available models (*e.g.*, contactless pickup of customer orders using digital locks). Therefore, DOE proposed in the NOPR to name this equipment “customer order storage cabinets” to differentiate it from other CRE. DOE is proposing to define “customer order storage cabinets” as CRE that store customer orders and include individual, secured compartments with doors that are accessible to customers for order retrieval. 87 FR 39164, 39211.

Consistent with the waiver and interim waiver, DOE proposed in the June 2022 NOPR that customer order storage cabinets be tested according to the conventional CRE test procedure, except that the door openings be conducted by opening each door to the fully open position for 8 seconds, once every 2 hours, for 6 door-opening cycles. *Id.* DOE tentatively determined in the June 2022 NOPR that this proposed approach, consistent with the September 2018 Waiver and the July 2021 Interim Waiver, was representative of typical use of this equipment. *Id.*

In the June 2022 NOPR, DOE requested comment on the proposed term “customer order storage cabinet” and its definition to describe the equipment currently addressed in the September 2018 Waiver and the July 2021 Interim Waiver. *Id.* DOE requested comment on the proposal to test such equipment with reduced door openings, consistent with the waiver and interim waiver approach. *Id.*

AHRI supported the proposed definition of “customer order storage cabinet,” and recommended that DOE consult with the ASHRAE 72 committee on this approach. (AHRI, No. 38, p. 14)

Hillphoenix agreed with the term “customer order storage cabinet” and definitions as proposed in the NOPR. (Hillphoenix, No. 35, p. 8) Hillphoenix recommended that DOE provide research for the opening characteristics used to determine the door-opening procedure. *Id.* Hillphoenix recommended that DOE approach industry and request updated testing standards that better reflect actual product intent, which would drive consistency within the industry and be less burdensome on manufacturers. *Id.*

In the August 2022 public meeting, True stated that regardless of whether the equipment is limited-opening or limited-application, it still has to comply with the food safety temperature requirements of NSF 7. (Public Meeting Transcript, No. 41, p. 24) True commented that providing the option for a different procedure on this application would be giving somebody

a pass for something that should not be considered. *Id.* True commented that the proposed term “customer order storage cabinet” and definition should not exist, as equipment intended to be used for order retrieval applications is designed to operate around the clock and not only at certain times, nor is it unplugged at night. (True, No. 28, p. 5) True commented that such units would therefore logically fall under the same category as a storage refrigerator or a storage freezer and should meet the same energy and temperature performance requirements (*i.e.*, -15°F , 0°F , and 38°F) since these units are used to store perishable food items and therefore need to follow NSF/ANSI 7–2021. *Id.*

In the August 2022 public meeting, the CA IOUs commented that they wanted DOE to be aware that there are also heated and non-cooled storage cabinets, and there are products on the market that can do all three for the same compartments. (Public Meeting Transcript, No. 41, p. 24) As a result, the CA IOUs recommended that DOE add the word “refrigerated” to clarify things. *Id.*

DOE has reviewed operating characteristics for this equipment through the waivers received. DOE has based the reduced number of door openings on the customer usage data presented in those petitions for waiver and has determined that the number of openings is representative of an average use cycle for this equipment based on the available data. DOE notes that the available data indicate that the door openings for this equipment are significantly less frequent than for other types of CRE.

In response to True’s comments, the purpose of DOE’s test procedure measures the energy consumption of equipment during a representative average use cycle as compared to the purpose of NSF 7, which is ensuring food safety. DOE has identified unique equipment characteristics for this equipment and is establishing the definition of customer order storage cabinet as proposed in the June 2022 NOPR. DOE recognizes that the reduced number of door openings would result in lower energy use for this equipment as compared to the test procedure with door openings as specified in ASHRAE 72–2022 with Errata.

Because DOE has determined that this equipment can be defined by unique characteristics (*i.e.*, storing customer orders and including individual, secured compartments with doors that are accessible to customers for order retrieval) and it has significantly different operating characteristics as

compared to other CRE (*i.e.*, 6 door-opening cycles in 24 hours as compared to 48 door-opening cycles for other CRE), DOE is adopting the definition and test method for this equipment as proposed in the June 2022 NOPR.

Regarding heated or non-cooled storage cabinets, such storage cabinets without cooling functionality would not meet the definition of CRE. The definition of customer order storage cabinet specifies that this equipment is a commercial refrigerator, freezer, or refrigerator-freezer; therefore, DOE has determined that specifying customer order storage cabinets are refrigerated is not necessary.

In addition to door-opening cycles, the September 2018 Waiver specifies testing provisions for other characteristics of the specified basic models, including floating suction temperatures for individual compartments and the presence of a high-temperature “ambient” compartment. 83 FR 46148, 46149–46152.

To address the floating suction temperature aspect of the basic models subject to the September 2018 Waiver, DOE requires the use of an alternate test approach for testing and rating the equipment in a manner similar to the remote CRE test procedure. 83 FR 46148, 46151. Specifically, DOE requires that this equipment be tested using an inverse refrigeration load test (*i.e.*, a reverse heat leak method). *Id.* This test allows for determining the thermal load of the cabinet at the specified storage temperatures without requiring refrigerant to be supplied to the unit (as refrigerant is supplied from an integral condensing unit). The September 2018 Waiver specifies calculating energy consumption associated with the thermal load based on assumed EERs, consistent with those specified in AHRI 1200–2010. 83 FR 46148, 46151–46152. The calculations also account for component energy consumption and heat loads. *Id.* DOE proposed in the June 2022 NOPR to adopt this alternate test procedure for any customer order storage cabinets that supply refrigerant to multiple individual-secured compartments and that allow the suction pressure from the evaporator in each individual-secured compartment to float based on the temperature required to store the customer order in that individual-secured compartment. 87 FR 39164, 39211.

For the high-temperature “ambient” compartments in the basic models specified in the September 2018 Waiver, DOE requires that testing be based on a 75°F storage temperature for these

compartments and that the ambient compartment be treated as a medium-temperature compartment at 75°F . 83 FR 46148, 46150. The September 2018 Waiver also requires that all volume and energy consumption calculations be included within the medium-temperature category and summed with other medium-temperature compartment calculations. *Id.* The September 2018 Waiver further requires that compartments that are convertible between ambient and refrigerator temperature ranges be tested at the refrigerator temperature (38°F) and that compartments that are convertible between refrigerator and freezer (0°F) temperature ranges be tested at both temperatures. *Id.* DOE proposed in the June 2022 NOPR to adopt the existing waiver instructions for customer order storage cabinets that have at least one individual-secured compartment that is not capable of maintaining an IAT below the ambient dry-bulb temperature (*i.e.*, the individual-secured compartment(s) may include refrigeration systems to ensure proper storage temperatures but are only intended to operate at an IAT of $75^{\circ}\text{F} \pm 2^{\circ}\text{F}$ and not at a LAPT or the specified refrigerator or freezer temperatures). 87 FR 39164, 39211. Additionally, with the proposed introduction of high-temperature refrigerators, as discussed in sections III.A.1 and III.B.1.b of this final rule, DOE proposed that such compartments would be treated as high-temperature refrigerators rather than refrigerators upon the compliance date of any new energy conservation standards for high-temperature refrigerators. *Id.*

In the June 2022 NOPR, DOE requested comment on the additional proposed test procedure amendments that would allow for reverse heat leak testing of customer order storage cabinets with floating suction pressures for multiple different temperature compartments. *Id.*

AHRI requested more information from DOE regarding the additional proposed test procedure amendments that would allow for reverse heat leak testing of customer order storage cabinets with floating suction pressures for multiple temperature compartments. (AHRI, No. 38, p. 14)

Hillphoenix stated tentative disagreement with the additional proposed test procedure amendments and recommended clarification of the proposed process. (Hillphoenix, No. 35, p. 8) Hillphoenix commented that DOE should not adopt the amendments until industry reviews, tests, and approvals are given by industry standards committees. *Id.*

As discussed in the petition leading to the September 2018 Waiver, the condensing unit control functionality is similar to that found on a parallel rack in a supermarket, with refrigeration capacity managed with a floating or moving saturated suction temperature. See 82 FR 33081, 33092. DOE received no comments in response to the notice announcing the petition for waiver and interim waiver approach, and granted the September 2018 Waiver. DOE has determined that this equipment has a different usage profile as compared to other CRE, and is establishing the alternate test procedure as proposed in the June 2022 NOPR, and consistent with the approach granted in the September 2018 Waiver.

J. Enforcement Provisions

Subpart C of 10 CFR part 429 establishes enforcement provisions applicable to covered products and covered equipment, including CRE. Product-specific enforcement provisions are established in 10 CFR 429.134. Various provisions in 10 CFR 429.134 specify which ratings or measurements DOE will use to determine compliance with applicable energy or water conservation standards. Generally, DOE provides that the certified metric is used for enforcement purposes (*e.g.*, calculation of the applicable energy conservation standard) if the average value measured during assessment and enforcement testing is within a specified percent of the rated value. Otherwise, the average measured value would be used.

Section 429.134 currently does not contain product-specific enforcement provisions for CRE. However, DOE does currently provide product-specific enforcement provisions for refrigerated bottled or canned beverage vending machines, specifying that the certified refrigerated volume will be considered valid only if the measurement(s) (either the measured refrigerated volume for a single-unit sample or the average of the measured refrigerated volumes for a multiple-unit sample) is within 5 percent of the certified refrigerated volume. 10 CFR 429.134(j)(1). The test procedure for measuring volume of beverage vending machines is consistent with the procedure required for CRE, and vending machines typically have volumes similar to those for CRE. Because of the same test methods and similar equipment sizes, in the June 2022 NOPR, DOE proposed consistent product-specific enforcement provisions for CRE. 87 FR 39164, 39211. Specifically, DOE proposed in the June 2022 NOPR to add a new product-specific enforcement provision section

stating that the certified volume for CRE will be considered valid only if the measurement(s) (either the measured volume for a single-unit sample or the average of the measured volumes for a multiple-unit sample) is within 5 percent of the certified volume; otherwise, the measured volume would be used as the basis for determining the applicable energy conservation standard. *Id.*

DOE has also established product-specific enforcement provisions for transparent areas of beverage vending machines. 10 CFR 429.134(j)(2). However, display area is only used to determine equipment class for beverage vending machines and TDA is not a metric used to determine applicable energy conservation standards. For consistency with the volume approach, DOE proposed in the June 2022 NOPR that the certified TDA for CRE will be considered valid only if the measurement(s) (either the measured TDA for a single-unit sample or the average of the measured TDAs for a multiple-unit sample) is within 5 percent of the certified TDA. 87 FR 39164, 39212. If the certified TDA is found not to be valid, the measured TDA would be used to determine the applicable energy conservation standard.

In the June 2022 NOPR, DOE requested comment on the proposed product-specific enforcement provisions for CRE. 87 FR 39164, 39212.

AHRI commented expressing concern that the proposed product-specific enforcement provisions for CRE are not open-ended, but it offered tentative support for the proposed provisions and requested that DOE provide more information through a public meeting to clarify intent. (AHRI, No. 38, p. 14)

Hillphoenix recommended that DOE clarify how enforcement would be applied if the sampling plan were to be adopted and how implementing such provisions would benefit end users and/or manufacturers. (Hillphoenix, No. 35, p. 8)

NAMA commented that it understood the desire to develop common language on certified volume measurements; however, a beverage vending machine and a bottle cooler are not necessarily the same product since in a BVM, bottles or cans have specific placement and the volume could be constructed based on the uniform measurement of the refrigerated space available for the beverage containers, while a bottle cooler's refrigerated space depends on how a customer decides on placement. (NAMA, No. 33, p. 3) NAMA urged DOE to study this issue more closely and to use examples of how DOE intended to

measure the volume in this case and why it believed certified volume should be stated in the same way as BVM because manufacturers might file Test Procedure Waivers for individual cases. *Id.*

The relevant capacity metrics for CRE will continue to be tested in accordance with the DOE test procedure for CRE, not BVMs. DOE referred to BVMs only as an example of another equipment type with product-specific enforcement provisions and a similar capacity metric (*i.e.*, volume).

Product-specific enforcement provisions are included to clarify how DOE would determine compliance in the case of any enforcement actions. For equipment such as CRE, the applicable energy conservation standard is calculated based on the capacity metric. Product-specific enforcement provisions provide manufacturers certainty that DOE will determine compliance based on the same capacity metrics as the manufacturer, so long as the capacity metrics are rated correctly (*i.e.*, these provisions provide certainty regarding the maximum daily energy consumption for a given CRE basic model, if volume or TDA are rated correctly). DOE has these provisions for many similar products and equipment. If the tested volume or TDA from DOE enforcement testing is near the certified value, DOE will use the certified value as the basis for calculating the applicable standard for compliance determinations. For the reasons discussed, DOE is adopting the product-specific enforcement provisions as proposed in the June 2022 NOPR.

The product-specific enforcement provisions are intended to provide clarity on the energy conservation standard applicable to a specific basic model of CRE. Determinations of compliance based on tested energy consumption will continue to be based on the enforcement provisions in 10 CFR 429.110.

K. Lowest Application Product Temperature

Section 2.2 of appendix B specifies that if a unit is not able to be operated at the specified IAT, the unit is tested at the LAPT, defined in 10 CFR 431.62 as the lowest IAT at which a given basic model is capable of consistently operating (*i.e.*, maintaining so as to comply with the steady-state stabilization requirements specified in ASHRAE 72–2005 for the purposes of testing under the DOE test procedure). Section 2.2 of appendix B specifies that for units equipped with a thermostat, LAPT is the lowest thermostat setting; for remote condensing equipment without a thermostat or other means of

controlling temperature at the case, the LAPT is the temperature achieved with the dew point temperature (as defined in AHRI Standard 1200–2010) set to 5 degrees colder than that required to maintain the manufacturer’s lowest specified application temperature.

DOE’s Compliance Certification Database³⁵ lists all CRE models certified to DOE, including the LAPT used for rating each model, if applicable. Of the 28,478 single-compartment individual models included in the Compliance Certification Database at the time of the June 2022 NOPR analysis, 460 individual models are rated at LAPTs. Of these individual models, 77 are rated at LAPTs below the required test IAT. For example, multiple refrigerator models are rated at an IAT of 34 °F (instead of 38 °F ±2 °F), and multiple freezer models are rated at an IAT of –7 °F (instead of 0 °F ±2 °F).

DOE proposed in the June 2022 NOPR to maintain the current LAPT provisions and add an additional provision for testing CRE that are only capable of maintaining temperatures below the specified IAT range (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test). 87 FR 39164, 39212. For these units, DOE proposed in the June 2022 NOPR to test at the highest thermostat setting, which would allow testing the CRE under the setting closest to the required IAT (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test). *Id.* Also in the NOPR, DOE proposed to amend the definition of LAPT in 10 CFR 431.62 to the following:

“Lowest application product temperature” means the integrated average temperature (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test) at which a given basic model is capable of consistently operating that is closest to the integrated average temperature (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test) specified for testing under the DOE test procedure. 87 FR 39164, 39212.

For testing, DOE proposed in the June 2022 NOPR to specify that if a unit is not able to operate at the integrated average temperature specified for testing (or average pan temperature, as applicable), test the unit at the LAPT, as defined in 10 CFR 431.62. *Id.* DOE proposed that for units equipped with a

thermostat, LAPT is the lowest thermostat setting (for units that are only able to operate at temperatures above the specified integrated average temperature or average pan temperature) or the highest thermostat setting (for units that are only able to operate at temperatures below the specified integrated average temperature or average pan temperature). *Id.* DOE proposed that for remote condensing equipment without a thermostat or other means of controlling temperature at the case, the LAPT is the temperature achieved with the dew point temperature, or mid-point evaporator temperature for high-glide refrigerants (as defined in AHRI Standard 1200–202X), set to 5 degrees colder than that required to maintain the manufacturer’s specified application temperature closest to the specified integrated average temperature or average pan temperature. *Id.*

DOE tentatively determined in the June 2022 NOPR that this proposal would not affect current CRE ratings or testing costs, because the models currently available on the market that would be tested under the newly proposed provision are already testing and rating in accordance with the proposed approach. *Id.*

In response to the June 2022 NOPR, The CA IOUs commented that they support the proposal to shift to testing CRE product classes at consistent temperatures versus testing at the LAPT within each category, such as: low-temperature freezer (to be tested at 0 °F ±2 °F); medium-temperature refrigerator (to be tested at 38 °F ±2 °F); and high-temperature refrigerator (operates above 38 °F ±2 °F, to be tested at 55 °F). (CA IOUs, No. 36, p. 10) The CA IOUs added that testing at consistent product temperatures would improve comparability of energy consumption between products within each category. *Id.*

The updated provisions for ice cream freezers, low temp freezers, medium temp refrigerators, and high-temp refrigerators will limit the need to apply LAPT testing in the future. Equipment will be categorized and rated based on operating temperatures, consistent with the CA IOUs recommendations. To the extent that equipment in these categories cannot maintain the specified IAT, the equipment would either be classified in a different category or would be tested under the LAPT provisions.

Even with the updated operating temperature categories, basic models may still only be capable of maintaining temperatures below the specified IAT range for testing. DOE is adopting the

LAPT rating provisions as proposed in the June 2022 NOPR to allow for testing and rating such basic models.

L. Removal of Obsolete Provisions

The DOE test procedure in appendix B is required for testing CRE manufactured on or after March 28, 2017, and appendix A applies to CRE manufactured prior to that date. As such, appendix A is now obsolete for new units being manufactured. Therefore, DOE proposed in the NOPR to remove appendix A. 87 FR 39164, 39212. DOE did not propose to redesignate appendix B as appendix A to avoid confusion regarding the appropriate version of the test procedure required for use. *Id.*

Additionally, the title to appendix B is currently “Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers.” To avoid confusion with the other test procedure amendments proposed in this final rule, DOE proposed in the NOPR to amend the title to appendix B to remove the word “amended.” 87 FR 39164, 39212.

In the June 2022 NOPR, DOE also proposed to remove outdated standards incorporated by reference in 10 CFR 431.63 that would no longer be referenced under the proposed test procedure. *Id.* Specifically, DOE proposed to remove reference to ANSI/AHAM HRF–1–2004, AHAM HRF–1–2008, and ASHRAE 72–2005. *Id.* DOE would maintain the listing of standards referenced in 10 CFR 431.66 (“Energy conservation standards and their effective dates”) and would consider removing those referenced standards when proposing any amendments to that section of the CFR as part of any future amended energy conservation standards. *Id.*

DOE received no comments in response to the amendments proposed in the June 2022 NOPR and is adopting the changes as proposed.

M. Sampling Plan

DOE’s current certification requirements mandate reporting of the chilled or frozen compartment volume in cubic feet, the adjusted volume in cubic feet, or the TDA (as appropriate for the equipment class). 10 CFR 429.42(b)(2)(iii). However, the sampling plan requirements in 10 CFR 429.42(a) do not specify how to determine the represented value of volume or TDA for each basic model based on the test results from the sample of individual models tested. Similar to the requirements for other covered products and commercial equipment, DOE

³⁵ U.S. Department of Energy Compliance Certification Database, available at www.regulations.doe.gov/certification-data.

proposed in the June 2022 NOPR that any represented value of volume or TDA for the basic model be determined as the mean of the measured volumes or TDAs for the units in the test sample, based on the same tests used to determine the reported energy consumption. 87 FR 39164, 39213. Although not currently specified in 10 CFR 429.42, DOE expects manufacturers are currently certifying CRE performance based on the tested volume and TDA. *Id.* Therefore, the amendment proposed in the June 2022 NOPR would clarify the certification requirements but not impose any additional burden on manufacturers. *Id.*

In the June 2022 NOPR, DOE sought comment on the proposed sampling plan for CRE volume and TDA. *Id.*

AHRI commented that the proposed sampling plan for CRE volume and TDA required modification and that DOE should certify the volume and TDA, stating that these are important values and critical to determining the allowable energy consumption of a product. AHRI recommended that DOE work with AHRI to modify standard AHRI 1200–202X and develop appropriate tolerances and also raise this issue with the appropriate standards committee for review and approval. (AHRI, No. 38, p. 14)

NAMA commented that it agreed with AHRI and advised DOE that the proposed sampling plan for CRE volume and TDA needed modification. (NAMA, No. 33, p. 4) NAMA commented that the current plan included no tolerances, and if DOE intended to measure and enforce standards for CRE volume and TDA, DOE must provide tolerances. *Id.* NAMA stated that DOE should also bring this issue to the appropriate standards committee for review and approval. *Id.*

Hussmann commented that the proposed sampling plan for CRE volume and TDA needed modification because it included no tolerances. (Hussmann, No. 32, p. 6) Hussmann commented that if DOE intended to measure and enforce standards for CRE volume and TDA, DOE must provide tolerances, and that DOE should take this issue to the appropriate standards committee for review and approval. *Id.*

Zero Zone stated agreement that DOE should certify the volume and TDA, as these are important values and critical to determining the allowable energy consumption of a product. (Zero Zone, No. 37, p. 10) Zero Zone commented that DOE's proposal of a 5-percent tolerance is too large, and that if the TDA measurements are different, equipment that passes when tested by a manufacturer could fail when tested by

DOE. *Id.* Zero Zone recommended that DOE work with AHRI to modify standard 1200 to develop appropriate tolerances. *Id.*

Hillphoenix commented that if DOE intended to measure and enforce standards for CRE volume and TDA, then the process should be evaluated by the appropriate standards committee for approval. (Hillphoenix, No. 35, p. 8)

DOE's certification requirements in 10 CFR 429.42(b)(2) currently require manufacturers to certify volume or TDA for basic models. The sampling plan requirements established in this final rule, and consistent with those proposed in the June 2022 NOPR, clarify that the certified volume or TDA must be based on the mean of the measured values for the tested units of the basic model, based on the same tests used to determine the reported energy consumption.

In response to the comments regarding tolerance associated with the sampling plan to determine compliance and enforce standards, DOE interprets the comments as referring to DOE applying a tolerance around certified volumes or TDAs to determine the applicable maximum daily energy consumption standard level for a basic model. Such tolerances are applied in product-specific enforcement provisions as specified in 10 CFR 429.134. DOE is adopting product-specific enforcement provisions for CRE, as discussed in section III.J of this document.

N. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In the June 2022 NOPR, DOE proposed to amend the existing test procedure for CRE to:

(1) Establish new definitions for high-temperature refrigerator, medium-temperature refrigerator, low-temperature freezer, and mobile refrigerated cabinet, and amend the definition for ice-cream freezer;

(2) Incorporate by reference the most current versions of industry standards AHRI 1200, ASHRAE 72, and AHRI 1320–2011;

(3) Establish definitions and test procedures for buffet tables and preparation tables;

(4) Establish definitions and test procedures for blast chillers and blast freezers;

(5) Amend the definition for chef base or griddle stand;

(6) Specify alternate conditions for alternative refrigerants;

(7) Allow for certification of compartment volumes based on CAD drawings;

(8) Incorporate provisions for defrosts and customer order storage cabinets currently specified in waivers and interim waivers;

(9) Adopt product-specific enforcement provisions;

(10) Clarify use of the LAPT provisions;

(11) Remove the obsolete test procedure in appendix A; and

(12) Specify a sampling plan for volume and TDA.

87 FR 39164, 39213–39214.

DOE tentatively determined in the June 2022 NOPR that the proposed amendments to the test procedure for CRE currently subject to testing would not impact testing costs, and manufacturers would be able to rely on data generated under the current test procedure should any of these additional proposed amendments be finalized. *Id.*

DOE proposed in the June 2022 NOPR to establish test procedures for additional categories of CRE not currently subject to the DOE test procedure: buffet tables or preparation tables, and blast chillers and blast freezers. *Id.* If a manufacturer chooses to make representations of the energy consumption of this equipment, beginning 360 days after a final rule, were DOE to finalize the proposal, manufacturers would be required to test according to the proposed test procedure. (42 U.S.C. 6314(d)) DOE discusses the costs associated with testing this equipment, if a manufacturer chooses to make representations of the energy consumption, in the following paragraphs.

In the November 2010 NOPR, DOE estimated CRE testing costs to be approximately \$5,000 per unit. 75 FR 71596, 71607. Based on testing at third-party test facilities, DOE tentatively determined in the June 2022 NOPR that \$5,000 is still a representative CRE test cost based on the existing DOE test procedure. 87 FR 39164, 39214. DOE has also tentatively determined that \$5,000 is a representative per-test cost for the new test procedures proposed for the additional CRE categories (*i.e.*, buffet tables or preparation tables, blast chillers, and blast freezers).

For chef bases or griddle stands, DOE is amending the ambient test conditions in this final rule based on comments received in response to the June 2022 NOPR. Because DOE did not receive any information in response to the June 2022 NOPR indicating testing costs would change based on a different ambient test condition, DOE determined that the amended ambient test

conditions would not impact the \$5,000 representative per-test cost for the amended CRE test procedure.

Chef bases or griddle stands are currently eligible for ENERGY STAR certification under Product Specification for Commercial Refrigerators and Freezers Version 5.0 which references 10 CFR part 431, subpart C, Appendix B as the required test method.³⁶ DOE observed that to the extent that chef bases or griddle stand manufacturers make representations regarding the energy consumption of their models, they do so in accordance with ENERGY STAR and the existing DOE test procedure. EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use of CRE, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) Therefore, the manufacturers currently making representations of the energy consumption of chef bases or griddle stands will be required to retest according to the test procedure beginning 360 days after this final rule, and may incur some retesting costs associated with their chef bases or griddle stand models if they choose to continue making such representations.

For any manufacturers not currently making representations of the energy use of chef bases or griddle stands, testing according to the amended test procedure will not be required for use (other than if making voluntary representations of energy consumption) until determining compliance with any energy conservation standards for chef bases or griddle stands, should DOE adopt such standards.

For buffet tables and preparation tables, the overall test duration would be similar to the test duration for CRE currently subject to the test procedure. The test would be a 24-hour test, and in the June 2022 NOPR DOE proposed stabilization requirements consistent with CRE currently subject to the test procedure. 87 FR 39164, 39214. The proposed test setup would not require the use of test simulators or test filler materials loaded in any refrigerated compartments, but would require loading pans with distilled water and identifying the appropriate control setting to maintain the specified average

temperatures. DOE expects the overall test burden associated with loading and determining appropriate control settings to be similar for testing buffet tables and preparation tables, as proposed, and other CRE currently subject to the test procedure. While DOE has not quantified the differences in test burden, DOE determined that the test burden and duration for buffet and preparation tables is similar to CRE currently subject to the test procedure, and therefore the \$5,000 per-test cost is appropriate.

For blast chillers and blast freezers, the overall duration of a test as proposed would be shorter than the 24-hour test period and stabilization period required for CRE currently subject to the test procedure. As proposed in the June 2022 NOPR, blast chiller and blast freezer testing would require the preparation of food simulator material, heating that material to the specified temperature, loading the heated test pans, and then conducting the test procedure as specified (DOE estimates approximately an 8-hour test duration per test). While DOE has not quantified the differences in test burden, DOE expects the increased test burden and decreased test burden to be comparable. Therefore, DOE tentatively determined in the June 2022 NOPR that \$5,000 is a representative per-unit test cost for blast chillers and blast freezers, based on the test procedure proposed. 87 FR 39164, 39214.

Under the proposed test procedures, were a manufacturer to choose to make representations of the energy consumption of buffet tables or preparation tables, blast chillers, or blast freezers beginning 360 days after a final rule, and were DOE to finalize the proposal, manufacturers would be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d))

Based on a review of blast chillers and blast freezers available on the market, DOE determined in the June 2022 NOPR that manufacturers make no claims regarding the energy consumption of their models. 87 FR 39164, 39214.

After establishing any test procedure for blast chillers and blast freezers, DOE expects that the manufacturers currently electing to make no claims regarding energy consumption would continue to do so. Therefore, DOE tentatively determined in the June 2022 NOPR that the proposed test procedure for blast chillers and blast freezers would not impact testing costs should the proposed test procedure be finalized. 87 FR 39164, 39214.

Buffet tables and preparation tables are currently subject to test procedures

under the California Code of Regulations. DOE observed that to the extent that buffet table and preparation table manufacturers make representations regarding the energy consumption of their models, they do so in accordance with the California Code of Regulations. EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) Therefore, the manufacturers currently making representations of the energy consumption of buffet tables and preparation tables will be required to retest according to the test procedure beginning 360 days after this final rule, and may incur some retesting costs associated with their buffet table and preparation table models.

For any manufacturers not currently making representations of the energy use of buffet tables or preparation tables, blast chillers, or blast freezers, testing according to the test procedure will not be required (other than if making voluntary representations of energy consumption) until the compliance date of any energy conservation standards for that equipment, should DOE adopt such standards.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; section 8(c) of appendix A 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

The test procedures for CRE at 10 CFR 431.63 incorporate by reference AHRI 1200–2010 for definitions, test rating conditions, and calculations; ASHRAE 72–2005 for test conditions, equipment, measurements, and test conduct; and AHAM HRF–1–2008 for the volume measurement method.

In the June 2022 NOPR, DOE requested comment on the benefits and burdens of the proposed updates and additions to industry standards

³⁶ See www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%205.0%20%28Rev.%20November%20-%202022%29%20Commercial%20Refrigerators%20and%20Freezers%20Specification.pdf.

referenced in the test procedure for CRE. 87 FR 39164, 39215. DOE discusses comments received in response to the June 2022 NOPR regarding adopting provisions of industry standards in the relevant discussion sections of this final rule. DOE further describes industry standards incorporated by reference in section IV.N of this document.

AHRI 1200–2010 has been updated to AHRI 1200–2023 to provide additional direction regarding application of the standard and to provide volume measurement instructions (eliminating the need to reference AHAM HRF–1–2008). ASHRAE 72–2005 has similarly been updated in ASHRAE 72–2022 with Errata to reorganize the standard, provide updated setup instructions, revise the test sequence, and provide additional instructions for some test measurements. DOE tentatively determined in the June 2022 NOPR that these updates (at the time, in earlier or draft versions of the standards) provide additional detail for testing but would otherwise not impact energy consumption measurements compared to the current approach. In the June 2022 NOPR, DOE also proposed to incorporate by reference an existing industry standard for testing buffet tables and preparation tables: ASTM F2143–16. This standard provides instructions regarding setup and test conduct. DOE is also aware of the CRE industry standard NSF/ANSI 7–2021,³⁷ which establishes minimum food protection and sanitation requirements for the materials, design, manufacture, construction, and performance of CRE and CRE components.

O. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 360-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2)) To

receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 360-day period and must detail how the manufacturer will experience undue hardship. (*Id.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 431.401(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments proposed in this document pertain to issues addressed by waivers and interim waivers granted to AHT (Case Nos. CR–006, 2017–007, 2020–023, 2020–025, 2022–001, and 2022–002), ITW (Case No. CR–007), and Hussmann (Case No. 2020–003). See sections III.F.1 and III.I of this final rule for a discussion of the proposals to address the issues in the existing waivers and interim waivers.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563 and 14094

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify

performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this final regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (“FRFA”) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: www.energy.gov/gc/office-general-counsel. DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial

³⁷ In response to the June 2022 NOPR, interested parties commented in reference to NSF 7–2019. NSF 7–2021 was published after the June 2022 NOPR comment period ended. DOE did not observe any changes from the 2019 to 2021 version that would impact the comments received or DOE’s proposal to reference industry standards other than NSF 7–2019 or NSF 7–2021.

number of small entities. The factual basis for this certification is as follows.

DOE uses the Small Business Administration (“SBA”) small business size standards to determine whether manufacturers qualify as “small businesses,” which are listed by the North American Industry Classification System (“NAICS”). The SBA considers a business entity to be small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. CRE manufacturers, who produce the equipment covered by this final rule, are classified under NAICS code 333415, “Air-conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered a small business for this category. This employee threshold includes all employees in a business’s parent company and any other subsidiaries.

DOE has recently conducted a focused inquiry into small business manufacturers of the CRE covered by this rulemaking. As with the initial regulatory flexibility analysis, DOE accessed its Compliance Certification Database (“CCD”),³⁸ California Energy Commission’s Modernized Appliance Efficiency Database System (“MAEDbS”),³⁹ and other public sources, including manufacturer websites, to create a list of companies that produce, manufacture, import, or private label the CRE covered by this rulemaking. DOE refreshed its equipment database in support of the FRFA. DOE then consulted other publicly available data, such as manufacturer specifications and product literature, import/export logs (*e.g.*, bills of lading from Panjiva⁴⁰), and basic model numbers, to identify original equipment manufacturers (“OEMs”) of the equipment covered by this rulemaking. DOE further relied on public sources and subscription-based market research tools (*e.g.*, Dun & Bradstreet reports⁴¹) to determine company location, headcount, and

annual revenue. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the SBA’s definition of a “small business,” or are foreign-owned and operated.

DOE initially identified 83 OEMs selling CRE into the U.S. market. Of the 83 OEMs identified, DOE estimates that 25 qualify as small OEMs and are not foreign-owned and operated.

In this final rule, DOE amends and establishes test procedures for CRE as follows:

(1) Establish new definitions for high-temperature refrigerator, medium-temperature refrigerator, low-temperature freezer, and mobile refrigerated cabinet, and amend the definition for ice-cream freezer;

(2) Incorporate by reference the most current versions of industry standards AHRI 1200, ASHRAE 72, and AHRI 1320;

(3) Establish definitions and a new appendix C including test procedures for buffet tables and preparation tables;

(4) Establish definitions and a new appendix D including test procedures for blast chillers and blast freezers;

(5) Amend the definition and certain test conditions for chef bases or griddle stands;

(6) Specify refrigerant conditions for CRE that use R-744;

(7) Allow for certification of compartment volumes based on computer-aided design models;

(8) Incorporate provisions for defrosts and customer order storage cabinets currently specified in waivers and interim waivers;

(9) Adopt product-specific enforcement provisions;

(10) Clarify use of the lowest application product temperature provisions;

(11) Remove the obsolete test procedure in appendix A; and

(12) Specify a sampling plan for volume and total display area.

DOE maintains that the amendments detailed in the final rule would not impact testing costs, which would remain at approximately \$5,000 per-unit. Furthermore, DOE does not expect manufacturers would need to re-test or re-certify equipment as manufacturers would be able to rely on data generated under the current test procedure for the amendments detailed in this final rule.

For the test procedures established by this final rule for additional categories of CRE not currently subject to the DOE test procedure (*i.e.*, buffet tables or preparation tables, and blast chillers and blast freezers), testing would not be required (other than making voluntary representations of energy consumption)

until the compliance date of any energy conservation standards for equipment in these categories. If a manufacturer chooses to make representations of the energy consumption of this equipment, beginning 360 days after a final rule, manufacturers would be required to test according to the adopted test procedure. (42 U.S.C. 6314(d)) DOE has determined that \$5,000 is a representative per-test cost for the new test procedures for the additional CRE categories.

For the amended test procedure established by this final rule for chef bases or griddle stands, testing similarly would not be required until the compliance date of any energy conservation standards for equipment in these categories. However, any representations of energy use for chef bases or griddle stands must be made in accordance with the amended test procedure starting 360 days after this notice publishes in the **Federal Register**. Manufacturers currently choosing to make representations of the energy consumption of this equipment according to the existing test procedure may continue to do so until 360 days after publication of this final rule. To the extent that a manufacturer chooses to test according to the amended test procedure, DOE has determined that \$5,000 is a representative per-test cost, consistent with the other CRE categories.

Based on a review of commercially available blast chillers and blast freezers, DOE has determined that manufacturers make no claims regarding the energy consumption of their models. To the extent that buffet table and preparation table manufacturers make claims regarding the energy consumption of their models, DOE observed that they do so in accordance with the California Code of Regulations. The manufacturers currently making representations of the energy consumption of buffet tables and preparation tables would be required to test according to the adopted test procedure beginning 360 days after the final rule.

DOE reviewed California Energy Commission’s MAEDbS and identified two small domestic OEMs currently making representations of the energy consumption of buffet table or preparation table models. According to MAEDbS, one small OEM makes claims regarding the energy consumption of 26 buffet table or preparation table models and the other small OEM makes claims regarding the energy consumption of 15 buffet table or preparation table models. Based on Dun & Bradstreet reports,⁴²

³⁸ U.S. Department of Energy’s Compliance Certification Database is available at www.regulations.doe.gov/certification-data (Last accessed February 24, 2023).

³⁹ California Energy Commission’s Modernized Appliance Efficiency Database System is available at cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx (Last accessed February 24, 2023).

⁴⁰ Panjiva Supply Chain Intelligence is available at: panjiva.com/import-export/United-States (Last accessed March 28, 2023).

⁴¹ The Dun & Bradstreet Hoovers subscription login is available online at app.dnbhoovers.com/ (Last accessed March 28, 2023).

⁴² *Id.*

both small OEMs have an estimated annual revenue of over \$100 million. As previously discussed, DOE estimates a per-unit test cost of \$5,000. Therefore, DOE estimates that the potential costs associated with re-testing would be minimal, accounting for approximately 0.1 percent of annual revenue for both small businesses.

AHRI commented that they disagree with DOE's conclusion that "the amendments detailed in the NOPR would not have a significant impact on a substantial number of small entities." (AHRI, No. 38, p. 14) AHRI expressed concern about the impact of the proposed amendments on small entities, including both manufacturers and end users, because the proposed amendments could drive a continued use of older, less efficient, and leaky equipment. *Id.* AHRI commented further that Natural Resources Canada ("NRCAN") would likely harmonize with this requirement, resulting in additional cost associated with third-party testing for NRCAN and also for ENERGY STAR, which would create an undue burden, especially on small businesses. *Id.*

NAMA stated its agreement with AHRI and advised DOE that this conclusion was inaccurate, and that NAMA had profound concerns about the impact of the proposed amendments on small entities, including both manufacturers and end users. (NAMA, No. 33, p. 4) NAMA commented that its concerns centered around the possibility of the proposed amendments driving a continued use of older, less efficient, and refrigerant-leaky equipment, as well as a continuation of the trend of greater sale of refurbished products that do not meet current DOE standards. *Id.* NAMA also advised DOE that NRCAN would likely harmonize with this requirement, creating additional costs associated with the testing for NRCAN, especially for new classifications—and costs associated with third-party testing (required for both NRCAN and ENERGY STAR) would create an undue burden, especially on small businesses. *Id.*

Continental commented that as previously stated in its comments, some proposed changes to test procedures, including use of ASHRAE 72–2022, would increase test burden on manufacturers and testing agencies, and prove particularly burdensome to small manufacturers like itself. (Continental, No. 29, p. 9)

Hoshizaki commented that they disagree with DOE, and stated that adding new test standards to previously unregulated products will require testing at least two of each model to

fully realize the impact of new test standards. (Hoshizaki, No. 30, p. 5) Hoshizaki commented that DOE requires listing of the product with the CCD, and accurate testing will be needed to qualify such listings. *Id.* They noted that since NRCAN is likely to harmonize with DOE requirements, third-party certification is required for NRCAN listing. *Id.* They commented that costs associated with this third-party testing is an undue burden on small business manufacturers. *Id.*

Regarding the small business impacts, as previously discussed, DOE does not expect small manufacturers would need to re-test or re-certify CRE models as a direct result of the amendments detailed in this final rule. For the two small manufacturers that may incur some re-testing costs associated with making voluntary representations of energy consumption, DOE's analysis indicates that re-testing costs would have de minimis cost impacts on the small manufacturers, which would account for approximately 0.1 percent of annual revenue for each of the small businesses. Regarding the estimated test procedure costs, see section III.N.1 of this final rule for additional discussion of the per-unit testing costs.

DOE does not anticipate that the adopted test procedure amendments would result in increased testing costs for the vast majority of manufacturers, including small manufacturers. DOE estimates that two small businesses may incur some re-testing costs associated with their buffet table and preparation table models. However, DOE's research indicates these costs would account for approximately 0.1 percent of annual revenue for both small OEMs identified. Therefore, DOE concludes that the cost effects accruing from the final rule would not have a "significant economic impact on a substantial number of small entities," and that the preparation of a FRFA is not warranted. DOE will submit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CRE must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all

covered consumer products and commercial equipment, including CRE. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for CRE in this final rule. Further, certification data will be required for buffet tables and preparation tables, blast chillers, and blast freezers; however, DOE is not proposing certification or reporting requirements for these categories of CRE in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for these categories under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CRE. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at www.energy.gov/gc/office-general-counsel. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule

that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of

reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; “FEAA”) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (“FTC”) concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for CRE adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standards: AHRI 1200–2023, AHRI 1320–2011, ASHRAE 72–2022 with Errata, and ASTM F2143–16. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.*, whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards: AHRI 1200–2023 is an industry-accepted test procedure that provides rating instructions, calculations, and methods for CRE. The test procedure discussed in this final rule references AHRI 1200–2023 for specific rating instructions, calculations, and rating methods for CRE. AHRI 1200–2023 is available at www.ahrinet.org/standards/search-standards.

AHRI 1320–2011 is an industry accepted test procedure that provides rating instructs, calculations, and methods for CRE used with secondary coolants. The test procedure discussed in this final rule references AHRI 1320–2011 regarding specific provisions regarding secondary coolants, but otherwise references AHRI 1200–2023 as discussed. AHRI 1320–2011 is available at www.ahrinet.org/standards.

ANSI/ASHRAE Standard 72–2022 is an industry-accepted test procedure that provides setup, instrumentation, measurement, and test conduct instructions for testing CRE. The test procedure discussed in this final rule references ASHRAE 72–2022 as the basis for test setup and test conduct requirements.

Errata sheet for ANSI/ASHRAE Standard 72–2022, *Method of Testing Open and Closed Commercial Refrigerators and Freezers*, November 11, 2022. This errata sheet corrects the note preceding Normative Appendix A of ASHRAE 72–2022.

ASHRAE 72–2022 is available at www.techstreet.com/standards/ashrae-72-2022?product_id=1710927 and the November 11, 2022 Errata is available at www.ashrae.org/technical-resources/standards-and-guidelines/standards-errata.

ASTM F2143–16 is an industry-accepted test procedure that provides setup, instrumentation, conditions, measurement, and test conduct instructions for testing buffet tables and preparation tables. The test procedure discussed in this final rule references ASTM F2143–16 as the basis for test setup and test conduct for buffet tables and preparation tables. Copies of ASTM F2143–16 can be purchased at www.astm.org/f2143-16.html.

ASTM E1084–86 (Reapproved 2009), which appears in the regulatory text, has already been incorporated by reference for that text; no change is being made to this standard.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on September 8, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 12, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.42 is amended by adding paragraphs (a)(3) and (4) to read as follows:

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

(a) * * *

(3) *Represented value calculations.*

The volume and total display area (TDA) of a basic model, as applicable, is the mean of the measured volumes and the mean of the measured TDAs, as applicable, for the tested units of the basic model, based on the same tests used to determine energy consumption.

(4) *Convertible equipment.* Each basic model of commercial refrigerator, freezer, or refrigerator-freezer that is capable of operating at integrated average temperatures that spans the operating temperature range of multiple equipment classes, either by adjusting a thermostat for a basic model or by the marketed, designed, or intended operation for a basic model with a remote condensing unit but without a thermostat, must determine the represented values, which includes the certified ratings, either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM to comply with the requirements necessary to certify to each equipment class that the basic model is capable of operating within.

(i) *Customer order storage cabinets.* For customer order storage cabinets that have individual-secured compartments that are convertible between the ≥ 32 °F and < 32 °F operating temperatures, the customer order storage cabinets must determine the represented values, which includes the certified ratings, either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM, with all convertible compartments operating either as medium temperature refrigerators or all convertible compartments as low-temperature freezers, or at the lowest application product temperature for each equipment class as specified in § 431.64 of this chapter, to comply with the requirements necessary to certify to each equipment class that the basic model is capable of operating within.

(ii) [Reserved]

* * * * *

■ 3. Amend § 429.72 by adding paragraph (f) to read as follows:

§ 429.72 Alternative methods for determining non-energy ratings.

* * * * *

(f) *Commercial refrigerators, freezers, and refrigerator-freezers.* The volume of a basic model of a commercial refrigerator, refrigerator-freezer, or freezer may be determined by performing a calculation of the volume based upon computer-aided design (CAD) models of the basic model in lieu

of physical measurements of a production unit of the basic model. If volume is determined by performing a calculation of volume based on CAD drawings, any value of volume of the basic model reported to DOE in a certification of compliance in accordance with § 429.42(b)(2)(iii) must be calculated using the CAD-derived volume(s) and the applicable provisions in the test procedures in 10 CFR part 431.64 for measuring volume.

■ 4. Amend § 429.134 by adding reserved paragraphs (dd) and (ee) and paragraph (ff) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(dd)–(ee) [Reserved]

(ff) *Commercial refrigerators, freezers, and refrigerator-freezers—(1) Verification of volume.* The volume will be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of the certified volume of the basic model. The certified volume will be considered valid only if the average measured volume is within five percent of the certified volume.

(i) If the certified volume is found to be valid, the certified volume will be used as the basis for determining the maximum daily energy consumption allowed for the basic model.

(ii) If the certified volume is found to be invalid, the average measured volume of the units in the sample will be used as the basis for determining the maximum daily energy consumption allowed for the basic model.

(2) *Verification of total display area.* The total display area will be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of the certified total display area of the basic model. The certified total display area will be considered valid only if the average measured total display area is within five percent of the certified total display area.

(i) If the certified total display area is found to be valid, the certified total display area will be used as the basis for determining the maximum daily energy consumption allowed for the basic model.

(ii) If the certified total display area is found to be invalid, the average measured total display area of the units in the sample will be used as the basis for determining the maximum daily energy consumption allowed for the basic model.

(3) *Determination of pull-down temperature application.* A classification of a basic model as pull-down temperature application will be considered valid only if a model meets the definition of “pull-down temperature application” specified in § 431.62 of this chapter as follows.

(i) 12-ounce beverage can temperatures will be measured for 12-ounce beverage cans loaded at the locations within the commercial refrigerator that are as close as possible to the locations that would be measured by test simulators according to the test procedure for commercial refrigerators specified in § 431.64 of this chapter.

(ii) The commercial refrigerator will be operated at ambient conditions consistent with those specified for commercial refrigerators in § 431.64 of this chapter and at the control setting necessary to achieve a stable integrated average temperature of 38 °F, prior to loading.

(iii) 12-ounce beverage cans to be fully loaded into the commercial refrigerator (with and without temperature measurements) will be maintained at 90 °F ± 2 °F based on the average measured 12-ounce beverage can temperatures prior to loading into the commercial refrigerator.

(iv) The duration of pull-down (which must be 12 hours or less) will be determined starting from closing the commercial refrigerator door after completing the 12-ounce beverage can loading until the integrated average temperature reaches 38 °F ± 2 °F.

(v) An average stable temperature of 38 °F will be determined by operating the commercial refrigerator for an additional 12 hours after initially reaching 38 °F ± 2 °F with no changes to control settings, and determining an integrated average temperature of 38 °F ± 2 °F at the end of the 12 hour stability period.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 431.62 is revised to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

Air-curtain angle means:

(1) For equipment without doors and without a discharge air grille or discharge air honeycomb, the angle

between a vertical line extended down from the highest point on the manufacturer's recommended load limit line and the load limit line itself, when the equipment is viewed in cross-section; and

(2) For all other equipment without doors, the angle formed between a vertical line and the straight line drawn by connecting the point at the inside edge of the discharge air opening with the point at the inside edge of the return air opening, when the equipment is viewed in cross-section.

Basic model means all commercial refrigeration equipment manufactured by one manufacturer within a single equipment class, having the same primary energy source, and that have essentially identical electrical, physical, and functional characteristics that affect energy consumption.

Blast chiller means commercial refrigeration equipment, other than a blast freezer, that is capable of the rapid temperature pull-down of hot food products from 135 °F to 40 °F within a period of four hours, when measured according to the test procedure at appendix D to subpart C of part 431.

Blast freezer means commercial refrigeration equipment that is capable of the rapid temperature pull-down of hot food products from 135 °F to 40 °F within a period of four hours and capable of achieving a final product temperature of less than 32 °F, when measured according to the test procedure at appendix D to subpart C of this part.

Buffet table or preparation table means a commercial refrigerator with an open-top refrigerated area, that may or may not include a lid, for displaying or storing merchandise and other perishable materials in pans or other removable containers for customer self-service or food production and assembly. The unit may or may not be equipped with a refrigerated storage compartment underneath the pans or other removable containers that is not thermally separated from the open-top refrigerated area.

Chef base or griddle stand means commercial refrigeration equipment that has a maximum height of 32 in., including any legs or casters, and that is designed and marketed for the express purpose of having a griddle or other cooking appliance placed on top of it that is capable of reaching temperatures hot enough to cook food.

Closed solid means equipment with doors, and in which more than 75 percent of the outer surface area of all doors on a unit are not transparent.

Closed transparent means equipment with doors, and in which 25 percent or

more of the outer surface area of all doors on the unit are transparent.

Commercial freezer means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating below 32 °F (± 2 °F).

Commercial hybrid means a unit of commercial refrigeration equipment:

(1) That consists of two or more thermally separated refrigerated compartments that are in two or more different equipment families, and

(2) That is sold as a single unit.

Commercial refrigerator means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating at or above 32 °F (± 2 °F).

Commercial refrigerator-freezer means a unit of commercial refrigeration equipment consisting of two or more refrigerated compartments where at least one refrigerated compartment is capable of operating at or above 32 °F (± 2 °F) and at least one refrigerated compartment is capable of operating below 32 °F (± 2 °F).

Commercial refrigerator, freezer, and refrigerator-freezer means refrigeration equipment that—

(1) Is not a consumer product (as defined in § 430.2 of this chapter);

(2) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(3) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(4) Displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically;

(5) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(6) Is designed for pull-down temperature applications or holding temperature applications; and

(7) Is connected to a self-contained condensing unit or to a remote condensing unit.

Customer order storage cabinet means a commercial refrigerator, freezer, or refrigerator-freezer that stores customer orders and includes individual, secured compartments with doors that are accessible to customers for order retrieval.

Door means a movable panel that separates the interior volume of a unit of commercial refrigeration equipment from the ambient environment and is designed to facilitate access to the refrigerated space for the purpose of loading and unloading product. This includes hinged doors, sliding doors, and drawers. This does not include night curtains.

Door angle means:

(1) For equipment with flat doors, the angle between a vertical line and the line formed by the plane of the door, when the equipment is viewed in cross-section; and

(2) For equipment with curved doors, the angle formed between a vertical line and the straight line drawn by connecting the top and bottom points where the display area glass joins the cabinet, when the equipment is viewed in cross-section.

Fully open (for drawers) means opened not less than 80% of their full travel.

High-temperature refrigerator means a commercial refrigerator that is not capable of an operating temperature at or below 40.0 °F.

Holding temperature application means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

Horizontal Closed means equipment with hinged or sliding doors and a door angle greater than or equal to 45°.

Horizontal Open means equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

Ice-cream freezer means:

(1) Prior to the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers (see § 431.66), a commercial freezer that is capable of an operating temperature at or below -5.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or

(2) Upon the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers (see § 431.66), a commercial freezer that is capable of an operating temperature at or below -13.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

Integrated average temperature means the average temperature of all test package measurements taken during the test.

Lighting occupancy sensor means a device which uses passive infrared, ultrasonic, or other motion-sensing technology to automatically turn off or dim lights within the equipment when no motion is detected in the sensor's coverage area for a certain preset period of time.

Lowest application product temperature means the integrated average temperature (or for buffet tables or preparation tables, the average pan

temperature of all measurements taken during the test) at which a given basic model is capable of consistently operating that is closest to the integrated average temperature (or for buffet tables or preparation tables, the average pan temperature of all measurements taken during the test) specified for testing under the DOE test procedure (see § 431.64).

Low-temperature freezer means a commercial freezer that is not an ice-cream freezer.

Medium-temperature refrigerator means a commercial refrigerator that is capable of an operating temperature at or below 40.0 °F.

Mobile refrigerated cabinet means commercial refrigeration equipment that is designed and marketed to operate only without a continuous power supply.

Night curtain means a device which is temporarily deployed to decrease air exchange and heat transfer between the refrigerated case and the surrounding environment.

Operating temperature means the range of integrated average temperatures at which a self-contained commercial refrigeration unit or remote-condensing commercial refrigeration unit with a thermostat is capable of operating or, in the case of a remote-condensing commercial refrigeration unit without a thermostat, the range of integrated average temperatures at which the unit is marketed, designed, or intended to operate.

Pull-down temperature application means a commercial refrigerator with doors that, when fully loaded with 12-ounce beverage cans at 90 degrees F, can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.

Rating temperature means the integrated average temperature a unit must maintain during testing (*i.e.*, either as listed in the table at § 431.66(d)(1) or the lowest application product temperature).

Remote condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

Scheduled lighting control means a device which automatically shuts off or dims the lighting in a display case at scheduled times throughout the day.

Self-contained condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an

integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.

Semivertical Open means equipment without doors and an air-curtain angle greater than or equal to 10° and less than 80° from the vertical.

Service over counter means equipment that has sliding or hinged doors in the back intended for use by sales personnel, with glass or other transparent material in the front for displaying merchandise, and that has a height not greater than 66 in. and is intended to serve as a counter for transactions between sales personnel and customers.

Test package means a packaged material that is used as a standard product temperature-measuring device.

Transparent means greater than or equal to 45 percent light transmittance, as determined in accordance with ASTM E1084–86 (Reapproved 2009) (incorporated by reference, see § 431.63) at normal incidence and in the intended direction of viewing.

Vertical Closed means equipment with hinged or sliding doors and a door angle less than 45°.

Vertical Open means equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.

Wedge case means a commercial refrigerator, freezer, or refrigerator-freezer that forms the transition between two regularly shaped display cases.

■ 7. Amend § 431.63 by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 431.63 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Avenue SW, EE–5B, Washington, DC 20024, (202)–586–9127, Buildings@ee.doe.gov, www.energy.gov/eere/buildings/building-technologies-office. For information on the availability of this material at NARA,

visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from the sources in the following paragraphs of this section:

* * * * *

(c) *AHRI*. Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201; (703) 524–8800; ahri@ahrinet.org; www.ahrinet.org/.

(1) ARI Standard 1200–2006, *Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, 2006; IBR approved for § 431.66.

(2) AHRI Standard 1200 (I–P)–2010 (“AHRI Standard 1200 (I–P)–2010”), *2010 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, 2010; IBR approved for § 431.66.

(3) AHRI Standard 1200–2023 (I–P) (“AHRI 1200–2023”), *2023 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, copyright 2023; IBR approved for appendices B, C, and D to this subpart.

(4) AHRI Standard 1320–2011 (I–P), (“AHRI 1320–2011”) *2011 Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets for Use With Secondary Refrigerants*, copyright 2011; IBR approved for appendix B to this subpart.

(d) *ASHRAE*. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle NE, Atlanta, GA 30329; (404) 636–8400; ashrae@ashrae.org; www.ashrae.org/.

(1) ANSI/ASHRAE Standard 72–2022 (ASHRAE 72–2022), *Method of Testing Open and Closed Commercial Refrigerators and Freezers*, approved June 30, 2022; IBR approved for appendices B, C, and D to this subpart.

(2) Errata sheet for ANSI/ASHRAE Standard 72–2022 (ASHRAE 72–2022 Errata), *Method of Testing Open and Closed Commercial Refrigerators and Freezers*, November 11, 2022; IBR approved for appendices B, C, and D to this subpart.

(e) *ASTM*. ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428; (877) 909–2786; www.astm.org/.

(1) ASTM E1084–86 (Reapproved 2009), *Standard Test Method for Solar Transmittance (Terrestrial) of Sheet Materials Using Sunlight*, approved April 1, 2009; IBR approved for § 431.62.

(2) ASTM F2143–16, *Standard Test Method for Performance of Refrigerated*

Buffet and Preparation Tables, approved May 1, 2016; IBR approved for appendix C to this subpart.

■ 8. Section 431.64 is revised to read as follows:

§ 431.64 Uniform test method for the measurement of energy consumption of commercial refrigerators, freezers, and refrigerator-freezers.

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the energy consumption or energy efficiency for a given equipment category of commercial refrigerators, freezers, and refrigerator-freezers.

(b) *Testing and calculations.* (1) Determine the daily energy consumption and volume or total display area of each covered commercial refrigerator, freezer, or refrigerator-freezer by conducting the appropriate test procedure set forth below in appendix B, to this subpart. The daily energy consumption of commercial refrigeration equipment shall be calculated using raw measured values and the final test results shall be reported in increments of 0.01 kWh/day.

(2) Determine the daily energy consumption and pan storage volume, pan display area, and refrigerated volume of each buffet table or preparation table by conducting the appropriate test procedure set forth below in appendix C to this subpart. The daily energy consumption shall be calculated using raw measured values and the final test results shall be recorded in increments of 0.01 kWh/day.

(3) Determine the energy consumption per weight of product and product capacity of each blast chiller and blast freezer by conducting the appropriate test procedure set forth below in appendix D to this subpart. The energy consumption per weight of product shall be calculated using raw measured values and the final test results shall be recorded in increments of 0.01 kWh/lb.

Appendix A [Removed and Reserved]

■ 9. Appendix A to subpart C of part 431 is removed and reserved.

■ 10. Appendix B to subpart C of part 431 is revised to read as follows:

Appendix B to Subpart C of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers

Note: On or after September 20, 2024, any representations, including for certification of compliance, made with respect to the energy use or efficiency of commercial refrigeration equipment, except for buffet tables or preparation tables, blast chillers, blast

freezers, or mobile refrigerated cabinets, must be made in accordance with the results of testing pursuant to this appendix. Prior to September 20, 2024, any representations with respect to energy use or efficiency of commercial refrigeration equipment, except for buffet tables or preparation tables, blast chillers, blast freezers, or mobile refrigerated cabinets, must be made either in accordance with the results of testing pursuant to this appendix or with the results of testing pursuant to this appendix as it appeared in appendix B to subpart C of part 431 in the 10 CFR parts 200–499 edition revised as of January 1, 2023. Buffet tables or preparation tables are subject to the test method requirements in appendix C to subpart C of part 431. Blast chillers and blast freezers are subject to the test method requirements in appendix D to subpart C of part 431.

The test procedure for equipment cooled only by secondary coolants in section 1.1.3 of this appendix is not required for use until the compliance date(s) of any amended energy conservation standard(s) (see § 431.66) for such commercial refrigeration equipment.

High-temperature refrigerators must be tested as medium-temperature refrigerators according to section 2.1.3 of this appendix based on the lowest application product temperature until the compliance date(s) of any amended energy conservation standard(s) (see § 431.66) established for high-temperature refrigerators. On and after the compliance date(s) of such energy conservation standard(s) (see § 431.66), high-temperature refrigerators must be tested as high-temperature refrigerators according to section 2.1.4 of this appendix.

0. Incorporation by Reference

DOE incorporated by reference in § 431.63 the entire standard for AHRI 1200–2023; AHRI 1320–2011; ASHRAE 72–2022 and ASHRAE 72–2022 Errata (the latter two collectively referenced as ASHRAE 72–2022 with Errata). However, only enumerated provisions of AHRI 1200–2023 and AHRI 1320–2011 are applicable to this appendix as follows:

0.1. AHRI 1200–2023

(a) Section 3, “Definitions,” as referenced in section 1.1 of this appendix.

(b) Section 3.2.8, “Dew Point,” as referenced in section 2.2. of this appendix.

(c) Section 3.2.20, “Total Display Area (TDA),” as referenced in section 3.2 of this appendix.

(d) Section 4, “Test Requirements,” as referenced in section 1.1 of this appendix.

(e) Section 4.1.1.1, “High Temperature Applications,” as referenced in section 2.1.4 of this appendix.

(f) Section 4.1.1.2, “Ice Cream Applications,” as referenced in section 2.1.1 of this appendix.

(g) Section 4.1.1.3, “Low Temperature Applications,” as referenced in section 2.1.2 of this appendix.

(h) Section 4.1.1.4, “Medium Temperature Applications,” as referenced in section 2.1.3 of this appendix.

(i) Section 5.1, “Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets” as

referenced in sections 1.1.2, 1.1.3, and 1.5.3.3 of this appendix.

(j) Section 5.2, “Rating Requirements for Self-Contained Commercial Refrigerated Display Merchandisers and Storage Cabinets,” as referenced in section 1.1.1 of this appendix.

(k) Section 9, “Symbols and Subscripts,” as referenced in section 1.1 and 2.2 of this appendix.

(l) Appendix C, “Commercial Refrigerated Display Merchandiser and Storage Cabinet Refrigerated Volume Calculation—Normative” as referenced in section 3.1 of this appendix.

(m) Appendix D, “Commercial Refrigerated Display Merchandiser and Storage Cabinet Total Display Area (TDA) Calculation—Normative,” as referenced in section 3.2 of this appendix.

0.2. AHRI 1320–2011

(a) Sections 5.2.7 and 5.2.8 as referenced in section 1.1.3 of this appendix.

(b) [Reserved].

1. Test Procedure

1.1. Determination of Daily Energy Consumption. Determine the daily energy consumption of each covered commercial refrigerator, freezer, or refrigerator-freezer by conducting the test procedure set forth in AHRI 1200–2023, section 3, “Definitions,” section 4, “Test Requirements,” and section 9, “Symbols and Subscripts.”

1.1.1. For each commercial refrigerator, freezer, or refrigerator-freezer with a self-contained condensing unit, also use AHRI 1200–2023, section 5.2, “Rating Requirements for Self-Contained Commercial Refrigerated Display Merchandisers and Storage Cabinets.”

1.1.2. For each commercial refrigerator, freezer, or refrigerator-freezer with a remote condensing unit, also use AHRI 1200–2023, section 5.1, “Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets.”

1.1.3. For each commercial refrigerator, freezer, or refrigerator-freezer used with a secondary coolant, test according to section 1.1.2 of this appendix, except in place of the equations for CDEC and CEC in sections 5.1.2 and 5.1.2.1 of AHRI 1200–2023, respectively, apply the following equations:

$$\text{CDEC} = \text{CEC} + [\text{FEC} + \text{LEC} + \text{AEC} + \text{DEC} + \text{PEC}] * + \text{CPEC}$$

$$\text{CEC} = [(\text{Q}_r + \text{Q}_{CP}) \cdot (t - t_{di})] / (\text{EER} \cdot 1000)$$

Where CPEC and Q_{CP} are as specified in sections 5.2.7 and 5.2.8 of AHRI 1320–2011 and EER is determined based on a temperature that is 6.0 °F lower than the secondary coolant cabinet inlet temperature.

1.2. Methodology for Determining Applicability of Transparent Door Equipment Families. To determine if a door for a given model of commercial refrigeration equipment is transparent:

(a) Calculate the outer door surface area including frames and mullions;

(b) calculate the transparent surface area within the outer door surface area excluding frames and mullions;

(c) calculate the ratio of (2) to (1) for each of the outer doors; and

(d) the ratio for the transparent surface area of all outer doors must be greater than 0.25 to qualify as a transparent equipment family.

1.3. Drawers. Drawers shall be treated as identical to doors when conducting the DOE test procedure. Commercial refrigeration equipment with drawers intended for use with pans shall be configured with stainless steel food service pans, installed in a configuration per the manufacturer's instructions utilizing the maximum pan sizes specified. If the manufacturer does not specify the pan sizes, the maximum pan depth and pan volume allowed shall be used. For commercial refrigeration equipment with drawers intended for use with pans, the net usable volume includes only the interior volume of the pan(s) in the drawer. The net usable volume shall be measured by the amount of water needed to fill all the pan(s) to within 0.5 inches of the top rim, or determined by calculating the total volume of all pan(s) using the pan manufacturers' published pan volume. For commercial refrigeration equipment with drawers not intended for pans, the net usable volume shall be equal to the total volume of the drawer to the top edge of the drawer. Test

simulators shall be placed in commercial refrigeration equipment with drawers as follows: For each drawer, there shall be two test simulators placed at each of the following locations: at the left end, at the right end, and at consistent 24 inch to 48 inch intervals across the width of the drawer (for drawers wider than 48 inches). For drawers with overall internal width of 48 inches or less, only the left and right ends shall have test simulators. If test simulators are to be placed at a pan edge or divider, the test simulator shall be placed at the nearest adjacent location. For each drawer, one test simulator shall be placed on the bottom of the pan or drawer at each of the front and rear test simulator locations of the drawer. Test simulators shall be placed in contact with the drawer or pan end or ends unless load limiting stops are provided as part of the case. Test simulators shall be secured such that the test simulators do not move during the test. The net usable volume where test simulators are not required shall be filled with filler material so that between 60 percent and 80 percent of the net usable volume is occupied by test simulators and uniformly occupied by filler material.

1.4. Long-time Automatic Defrost. For commercial refrigeration equipment not capable of operating with defrost intervals of 24 hours or less, testing may be conducted using a two-part test method.

1.4.1. First Part of Test. The first part of the test shall be a 24-hour test starting in steady-state conditions and including eight hours of door opening (according to ASHRAE 72–2022 with Errata). The energy consumed in this test, ET1, shall be recorded.

1.4.2. Second Part of Test. The second part of the test shall be a defrost cycle, including any operation associated with a defrost. The start and end of the test period be determined as the last time before and first time after a defrost occurrence when the measured average simulator temperature (*i.e.*, the instantaneous average of all test simulator temperature measurements) is within 0.5 °F of the IAT as measured during the first part of the test. The energy consumed in this test, ET2, and duration, t_{DI} , shall be recorded.

1.4.3. Daily Energy Consumption. Based on the measured energy consumption in these two tests, the daily energy consumption (DEC) in kWh shall be calculated as:

$$DEC = ET1 \times \frac{(1,440 - t_{NDI})}{1,440} + \frac{ET2}{t_{DC}}$$

$$t_{NDI} = \frac{t_{DI}}{t_{DC}}$$

Where:

DEC = daily energy consumption, in kWh;
 ET 1 = energy consumed during the first part of the test, in kWh;
 ET 2 = energy consumed during the second part of the test, in kWh;
 t_{NDI} = normalized length of defrosting time per day, in minutes;
 t_{DI} = length of time of defrosting test period, in minutes;
 t_{DC} = minimum time between defrost occurrences, in days; and
 1440 = conversion factor, minutes per day.

1.5. Customer Order Storage Cabinets. Customer order storage cabinets shall conduct door openings according to ASHRAE 72–2022 with Errata, except that each door shall be opened to the fully open position for 8 seconds, once every 2 hours, for 6 door-opening cycles.

1.5.1. Ambient Compartments. For customer order storage cabinets that have at least one individual-secured compartment that is not capable of maintaining an integrated average temperature below the ambient dry-bulb temperature, the individual-secured compartment(s) at ambient dry-bulb temperature shall be

categorized as a high-temperature refrigerator compartment for the purpose of testing and rating. All volume, total display area, and energy consumption calculations shall be included within the high-temperature refrigerator category and summed with other high-temperature refrigerator category compartment(s) calculations.

1.5.2. Convertible Compartments. For customer order storage cabinets that have individual-secured compartments that are convertible between the ambient dry-bulb temperature and the ≥ 32 °F operating temperature, the convertible compartment shall be tested as a medium-temperature refrigerator compartment or at the lowest application product temperature as specified in section 2.2 of this appendix.

1.5.3. Inverse Refrigeration Load Test. For customer order storage cabinets that supply refrigerant to multiple individual-secured compartments and that allow the suction pressure from the evaporator in each individual-secured compartment to float based on the temperature required to store the customer order in that individual-secured compartment, test according to section 1.1.2 of this appendix, except that energy (heat)

loss shall be allowed at a rate and ΔT equivalent to the energy gains of a standard refrigerated cabinet as specified in sections 1.5.3.1–1.5.3.3 of this appendix.

1.5.3.1. Anti-sweat door heaters. Anti-sweat door heaters shall be de-energized for the inverse refrigeration load test specified in section 1.5.3. of this appendix.

1.5.3.2. Integrated Average Temperature. For medium-temperature refrigerator compartments, the integrated average temperature shall be 112.4 °F ± 2.0 °F. For low-temperature freezer compartments, the integrated average temperature shall be 150.4 °F ± 2.0 °F. For ambient compartments, the integrated average temperature shall be 75.4 °F ± 2.0 °F.

1.5.3.3. Daily Energy Consumption. Determine the calculated daily energy consumption (“CDEC”) and the EER based on AHRI 1200–2023, section 5.1, “Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets,” except that the compressor energy consumption (“CEC”) shall be calculated by applying the following equations:

$$CEC = \frac{[(Q \times t) + ML + (FEC + AEC + DEC) \times 3.412]}{EER \times 1000}$$

$$Q = \frac{W_{in} \times 3.412}{t}$$

$ML = N_d \times (A_e + A_m)$

$A_e = [(H_a - H_c) - (H_t - H_a)] \times m_a$

$A_m = C_{p,liner} \times W_{liner} \times \Delta T_{liner}$

Where:

CEC = compressor energy consumption, kWh per day;

Q = inverse refrigeration load (does not include waste heat from auxiliary components and moisture infiltration), in BTU per h;

t = test duration, in h;

ML = moisture load impacts, BTU per day;

FEC = evaporator fan motor(s) energy consumption, Wh per day;

AEC = anti-condensate heater(s) energy consumption, Wh per day;

DEC = defrost heater(s) energy consumption, Wh per day;

3.412 = conversion factor, BTU per Wh;

EER = energy efficiency ratio, BTU per Wh;

1000 = conversion factor, W per kW;

W_{in} = energy input measured over the test period for all energized components (heaters, controls, and fans) located in the refrigerated compartments, in Wh;

N_d = number of door openings during test, unitless;

A_e = enthalpy adjustment, BTU per day;

A_m = moisture/frost accumulation, BTU per day;

H_a = ambient air enthalpy, BTU per pound;

H_c = compartment air enthalpy based on air conditions during cold operation (e.g., 0 °F dry bulb/ -20 °F dew point for freezer compartment, 38 °F dry bulb/ 20 °F dew point for refrigerator compartment, 75 °F dry bulb/20 °F dew point for ambient compartment), BTU per pound;

H_t = compartment air enthalpy during heat leak test based on dew point being equal to ambient air dew point, BTU per pound;

m_a = mass of compartment air exchanged (30% of total compartment volume) based density of air during cold operation, pounds;

$C_{p,liner}$ = specific heat of liner material, BTU per °F per pound;

W_{liner} = weight of all liner parts, pounds; and

ΔT_{liner} = maximum temperature rise of all liner parts (e.g., 4.5 °F, 2.5 °F, and 1 °F for freezer, refrigerator, and ambient compartments, respectively), °F.

2. Test Conditions

2.1. Integrated Average Temperatures. Conduct the testing required in section 1 of this appendix, and determine the daily energy consumption at the applicable integrated average temperature as follows:

2.1.1. Ice-Cream Freezers. Test ice-cream freezers and ice-cream freezer compartments to the integrated average temperature specified in section 4.1.1.2, "Ice Cream Applications," of AHRI 1200–2023.

2.1.2. Low-Temperature Freezers. Test low-temperature freezers and low-temperature freezer compartments to the integrated average temperature specified in section 4.1.1.3, "Low Temperature Applications," of AHRI 1200–2023.

2.1.3. Medium-Temperature Refrigerators. Test medium-temperature refrigerators and medium-temperature refrigerator compartments to the integrated average temperature specified in section 4.1.1.4, "Medium Temperature Applications," of AHRI 1200–2023.

2.1.4. High-Temperature Refrigerators. Test high-temperature refrigerators and high-temperature refrigerator compartments to the integrated average temperature specified in section 4.1.1.1, "High Temperature Applications," of AHRI 1200–2023.

2.2. Lowest Application Product Temperature. If a unit of commercial refrigeration equipment is not able to be operated at the integrated average temperature specified in section 2.1 of this appendix, test the unit at the lowest application product temperature (LAPT), as defined in § 431.62. For units equipped with a thermostat, LAPT is the measured temperature at the lowest thermostat setting of the unit (for units that are only able to operate at temperatures above the specified test temperature) or the highest thermostat setting of the unit (for units that are only able to operate at temperatures below the specified test temperature). For remote condensing equipment without a thermostat or other means of controlling temperature at the case, the lowest application product temperature is measured at the temperature achieved with the dew point temperature (as defined in section 3.2.8, "Dew Point," of AHRI 1200–2023) or mid-point evaporator temperature (as defined in section 9, "Symbols and Subscripts," of AHRI 1200–2023) set to 5 degrees colder than that required to maintain the manufacturer's specified application temperature that is closest to the specified integrated average temperature.

2.3. Testing at NSF Test Conditions. For commercial refrigeration equipment that is also tested in accordance with NSF test procedures (Type I and Type II), integrated average temperatures and ambient conditions used for NSF testing may be used in place of the DOE-prescribed integrated average temperatures and ambient conditions provided they result in a more stringent test. That is, the measured daily energy consumption of the same unit, when tested at the rating temperatures and/or ambient conditions specified in the DOE test procedure, must be lower than or equal to the measured daily energy consumption of the unit when tested with the rating temperatures or ambient conditions used for NSF testing. The integrated average

temperature measured during the test may be lower than the range specified by the DOE applicable temperature specification provided in section 2.1 of this appendix, but may not exceed the upper value of the specified range. Ambient temperatures and/or humidity values may be higher than those specified in the DOE test procedure.

2.4. Liquid Refrigerant Pressure Required Accuracy. The liquid refrigerant pressure required accuracy is ± 35 kPa (± 5.1 psi).

2.5 Commercial Refrigerator, Freezer, and Refrigerator-Freezer connected to a Direct Expansion Remote Condensing Unit with R-744. For commercial refrigerators, freezers, and refrigerator-freezers connected to a direct expansion remote condensing unit with R-744, instead of the liquid refrigerant measurements for direct-expansion remote units specified in appendix A to ASHRAE 72–2022 with Errata, the liquid refrigerant measurements for direct-expansion remote units shall be: liquid refrigerant temperature shall be 30.0 °F with a tolerance for the average over test period of ± 3.0 °F and a tolerance for the individual measurements of ± 5.0 °F; liquid refrigerant pressure shall be the saturated liquid pressure corresponding to a condensing temperature in the range of 32.0 °F to 44.0 °F for the average over test period; and liquid refrigerant subcooling shall be greater than 2.0 °R for the average over test period.

2.6 Chef Base or Griddle Stand Test Conditions. For chef bases or griddle stands, instead of the dry-bulb temperature, wet-bulb temperature, and radiant heat temperature specified in appendix A to ASHRAE 72–2022 with Errata: dry-bulb temperature shall be 86.0 °F with a tolerance for the average over test period of ± 1.8 °F and a tolerance for the individual measurements of ± 3.6 °F; wet-bulb temperature shall be 73.7 °F with a tolerance for the average over test period of ± 1.8 °F and a tolerance for the individual measurements of ± 3.6 °F; and radiant heat temperature shall be greater than or equal to 81.0 °F.

3. Volume and Total Display Area

3.1. Determination of Volume. Determine the volume of a commercial refrigerator, freezer, and refrigerator-freezer using the method set forth in AHRI 1200–2023, appendix C, "Commercial Refrigerated Display Merchandiser and Storage Cabinet Refrigerated Volume Calculation—Normative."

3.2. Determination of Total Display Area. Determine the total display area of a commercial refrigerator, freezer, and refrigerator-freezer using the method set forth in AHRI 1200–2023, section 3.2.20, "Total Display Area (TDA)," and appendix D, "Commercial Refrigerated Display Merchandiser and Storage Cabinet Total Display Area (TDA) Calculation—Normative."

■ 11. Appendix C to subpart C of part 431 is added to read as follows:

**Appendix C to Subpart C of Part 431—
Uniform Test Method for the
Measurement of Energy Consumption of
Buffet Tables or Preparation Tables**

Note: On or after September 20, 2024, any representations, including for certification of compliance, made with respect to the energy use or efficiency of buffet tables or preparation tables must be made in accordance with the results of testing pursuant to this appendix.

0. Incorporation by Reference

DOE incorporated by reference in § 431.63 the entire standard for AHRI 1200–2023, ASHRAE 72–2022, ASHRAE 72–2022 Errata (the latter two collectively referenced as ASHRAE 72–2022 with Errata), and ASTM F2143–16. However, only enumerated provisions of those documents are applicable to this appendix as follows:

0.1. AHRI 1200–2023

(a) Section 3.2.17, “Refrigerated Volume (Vr),” as referenced in section 2.2 of this appendix.

(b) Normative Appendix C, “Commercial Refrigerated Display Merchandiser and Storage Cabinet Refrigerated Volume Calculation,” as referenced in section 2.2 of this appendix.

0.2 ASHRAE 72–2022 with Errata

(a) Section 5.1, “Installation and Settings,” as referenced in section 1.3 of this appendix.

(b) Section 5.2, “Wall or Vertical Partition Placement,” as referenced in section 1.3 of this appendix.

(c) Section 5.3, “Components and Accessories,” as referenced in section 1.3 of this appendix.

(d) Section 6.1, “Ambient Temperature and Humidity,” as referenced in section 1.2 of this appendix.

(e) Section 7.1, “Sequence of Operations,” as referenced in section 1.5 of this appendix.

(f) Section 7.2, “Preparation Period” (excluding sections 7.2.1 and 7.2.2), as referenced in section 1.5 of this appendix.

(g) Section 7.3, “Test Periods A and B” (excluding sections 7.3.1, 7.3.2, 7.3.3, and 7.3.4), as referenced in sections 1.5 and 1.5.1 of this appendix.

(h) Section 7.4, “Test Alignment Period,” as referenced in section 1.5 of this appendix.

(i) Section 7.5, “Determining Stability,” as referenced in sections 1.5 and 1.5.2 of this appendix.

(j) Normative Appendix A, “Measurement Locations, Tolerances, Accuracies, and Other Characteristics,” (only the measured quantities specified in section 1.2 of this appendix) as referenced in sections 1.2 and 1.5.3 of this appendix.

0.3 ASTM F2143–16

(a) Section 3, “Terminology,” as referenced in section 1.1 of this appendix.

(b) Section 6.1, “Analytical Balance Scale,” as referenced in section 1.1 of this appendix.

(c) Section 6.2, “Pans,” as referenced in section 1.1 of this appendix.

(d) Section 7, “Reagents and Materials,” as referenced in section 1.1 of this appendix.

(e) Section 9, “Preparation of Apparatus” (section 9.6 only), as referenced in sections 1.1 and 1.4.2 of this appendix.

(f) Section 10.1, “General” (section 10.1.1 only), as referenced in sections 1.1 and 1.5.3 of this appendix.

(g) Section 10.2, “Pan Thermocouple Placement,” as referenced in section 1.1 of this appendix.

(h) Section 10.5, “Test” (sections 10.5.5 and 10.5.6 only), as referenced in sections 1.1 and 1.5.1 of this appendix.

(i) Section 11.4, “Energy Consumption” (section 11.4.1 only), as referenced in section 1.1 of this appendix.

(j) Section 11.5, “Production Capacity,” as referenced in sections 1.1 and 2.1 of this appendix.

1. Test Procedure

1.1. Determination of Daily Energy Consumption. Determine the daily energy consumption of each buffet table or preparation table with a self-contained condensing unit by conducting the test procedure set forth in ASTM F2143–16 section 3, “Terminology,” section 6.1, “Analytical Balance Scale,” section 6.2, “Pans,” section 7, “Reagents and Materials,” section 9.6, “Preparation of Apparatus,” section 10.1, “General” (section 10.1.1 only), section 10.2, “Pan Thermocouple Placement,” section 10.5, “Test” (sections 10.5.5 and 10.5.6 only), section 11.4, “Energy Consumption” (section 11.4.1 only), and section 11.5, “Production Capacity,” with additional instructions as described in the following sections.

1.2. Test Conditions. Ambient conditions and instrumentation for testing shall be as specified in the “Chamber conditions” and “Electricity supply and consumption of unit under test and components metered separately” portions of appendix A to ASHRAE 72–2022 with Errata and measured according to section 6.1 of ASHRAE 72–2022 with Errata and the specifications in appendix A of ASHRAE 72–2022 with Errata. The “highest point” of the buffet table or preparation table shall be determined as the highest point of the open-top refrigerated area of the buffet table or preparation table, without including the height of any lids or covers. The geometric center of the buffet table or preparation table is: for buffet tables or preparation tables without refrigerated compartments, the geometric center of the top surface of the open-top refrigerated area; and for buffet tables or preparation tables with refrigerated compartments, the geometric center of the door opening area for the refrigerated compartment.

1.3. Test Setup. Install the buffet table or preparation table according to sections 5.1, 5.2, and 5.3 of ASHRAE 72–2022 with Errata.

1.4. Test Load.

1.4.1. Pan Loading. Fill pans with distilled water to within 0.5 in. of the top edge of the pan. For pans that are not configured in a horizontal orientation, only the lowest side of the pan is filled to within 0.5 in. of the top edge of the pan with distilled water.

1.4.2. Refrigerated Compartments. Measure the temperature of any refrigerated compartment(s) as specified in section 9.6 of ASTM F2143–16. The thermocouples for

measuring compartment air temperature shall be in thermal contact with the center of a 1.6-oz (45-g) cylindrical brass slug with a diameter and height of 0.75 in. The brass slugs shall be placed at least 0.5 in from any heat-conducting surface.

1.5. Stabilization and Test Period. Prepare the unit for testing and conduct two test periods to determine stability according to sections 7.1 through 7.5 of ASHRAE 72–2022 with Errata, excluding sections 7.2.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, and 7.3.4. The preparation period under section 7.2 of ASHRAE 72–2022 with Errata includes loading the test unit pans with distilled water and adjusting the controls to maintain the desired performance.

1.5.1. Test Periods A and B. Conduct two test periods, A and B, as specified in section 7.3 of ASHRAE 72–2022 with Errata (excluding sections 7.3.1, 7.3.2, 7.3.3, and 7.3.4). The 24-hour test periods shall begin with an 8-hour active period as specified in section 10.5.5 of ASTM F2143–16. Following the active period, the remaining 16 hours of the test period shall be a standby period with the pans remaining in place, any pan covers in the closed position, and with no additional door openings.

1.5.2. Stability. Average pan temperatures shall be used to determine stability, as specified in section 7.5 of ASHRAE 72–2022 with Errata, rather than average test simulator temperatures.

1.5.3. Data Recording. For each test period, record data as specified in section 10.1.1 of ASTM F2143–16, except record wet-bulb temperature rather than relative humidity. Rather than voltage, current, and power as specified in section 10.1.1 of ASTM F2143–16, record the electrical supply potential and frequency and energy consumption as specified in appendix A of ASHRAE 72–2022 with Errata.

1.6. Target Temperatures.

1.6.1. Average Pan Temperature. The average of all pan temperature measurements during the test period shall be 38 °F ±2 °F. If the unit under test is not able to be operated at this average temperature range, test the unit at the lowest application product temperature (LAPT), as defined in § 431.62. For units equipped with a thermostat, LAPT is measured at the lowest thermostat setting of the unit (for units that are only able to operate at temperatures above the specified test temperature) or the highest thermostat setting of the unit (for units that are only able to operate at temperatures below the specified test temperature).

1.6.2. Average Compartment Temperature. The average of all compartment temperature measurements during the test period shall be 38 °F ±2 °F. If the unit under test is not capable of maintaining both average pan temperature and average compartment temperature within the specified range, the average compartment temperature shall be the average temperature necessary to maintain average pan temperature within the specified range. If the unit is tested at the LAPT for the average pan temperature, as described in section 1.6.1 of this appendix, the average compartment temperature is the average of all compartment temperature measurements at that control setting.

2. *Capacity Metrics*

2.1. Pan Volume. Determine pan volume according to section 11.5 of ASTM F2143–16.

2.2. Refrigerated Volume. Determine the volume of any refrigerated compartments according to section 3.2.17 and appendix C of AHRI 1200–2023. The refrigerated volume excludes the volume occupied by pans loaded in the open-top display area for testing.

2.3. Pan Display Area. Determine the pan display area based on the total surface area of water in the test pans when filled to within 0.5 in. of the top edge of the pan, or for test pans that are not configured in a horizontal orientation, when the lowest side of the pan is filled to within 0.5 in. of the top edge of the pan with water.

■ 12. Appendix D to subpart C of part 431 is added to read as follows:

Appendix D to Subpart C of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Blast Chillers or Blast Freezers

Note: On or after September 20, 2024, any representations, including for certification of compliance, made with respect to the energy use or efficiency of blast chillers or blast freezers must be made in accordance with the results of testing pursuant to this appendix.

0. *Incorporation by Reference*

DOE incorporated by reference in § 431.63 the entire standard for AHRI 1200–2023, ASHRAE 72–2022, and ASHRAE 72–2022 Errata (the latter two collectively referenced as ASHRAE 72–2022 with Errata). However, only enumerated provisions of those documents are applicable to this appendix as follows:

0.1 AHRI 1200–2023

(a) Appendix C, “Commercial Refrigerated Display Merchandiser and Storage Cabinet Refrigerated Volume Calculation—

Normative,” as referenced in section 1.1.1. of this appendix.

(b) Reserved.

0.2 ASHRAE 72–2022 with Errata

(a) Section 4, “Instruments,” as referenced in section 1.2 of this appendix.

(b) Section 5, “Preparation of Unit Under Test” (except section 5.4, “Loading of Test Simulators and Filler Material”), as referenced in section 1.2 of this appendix.

(c) Section 6.1, “Ambient Temperature and Humidity,” as referenced in sections 1.2 and 1.4 of this appendix.

(d) Figure 6, “Location of Ambient Temperature Indicators,” as referenced in sections 1.2 and 1.4 of this appendix.

(e) Normative Appendix A, “Measurement Locations, Tolerances, Accuracies, and Other Characteristics,” (only the measured quantities specified in section 1.2.1 of this appendix) as referenced in sections 1.2 and 1.4 of this appendix.

1. *Test Procedures*

1.1. Scope. This section provides the test procedures for measuring the energy consumption in kilowatt-hours per pound (kWh/lb) for self-contained commercial blast chillers and blast freezers that have a refrigerated volume of up to 500 ft³.

1.1.1. Determination of Refrigerated Volume. Determine the refrigerated volume of a self-contained commercial blast chiller or blast freezer using the method set forth in AHRI 1200–2023, appendix C, “Commercial Refrigerated Display Merchandiser and Storage Cabinet Refrigerated Volume Calculation—Normative.”

1.2. Determination of Energy Consumption. Determine the energy consumption of each covered blast chiller or blast freezer by conducting the test procedure set forth in ASHRAE 72–2022 with Errata section 4, “Instruments,” section 5, “Preparation of Unit Under Test” (except section 5.4, “Loading of Test Simulators and Filler Material”), section 6.1, “Ambient Temperature and Humidity,” Figure 6,

“Location of Ambient Temperature Indicators,” and normative appendix A, “Measurement Locations, Tolerances, Accuracies, and Other Characteristics” (only the measured quantities specified in section 1.2.1 of this appendix), as well as the requirements of this appendix.

1.2.1. Measured Quantities in Normative Appendix A of ASHRAE 72–2022 with Errata. The following measured quantities shall be in accordance with the specifications of normative appendix A of ASHRAE 72–2022 with Errata: dry bulb temperature (except for deviations specified in sections 1.3 and 1.4 of this appendix), electrical supply frequency, electrical supply potential, energy consumed (except for deviations specified in section 1.3 of this appendix), extent of non-perforated surface beyond edges of unit under test, front clearance, rear or side clearance, and time measurements.

1.2.2. Additional Specifications for ASHRAE 72–2022 with Errata. The term “refrigerator” used in ASHRAE 72–2022 with Errata shall instead refer to “blast chiller” or “blast freezer,” as applicable. In section 5.3 of ASHRAE 72–2022 with Errata, the phrase “all necessary components and accessories shall be installed prior to loading the storage and display areas with test simulators and filler material” shall be replaced with “all necessary components and accessories shall be installed prior to precooling the unit under test.” Section 5.3.5 shall also require that, prior to precooling the unit under test, the condensate pan shall be dry.

1.3. Data Recording Measurement Intervals. Measurements shall be continuously recorded during the test in intervals no greater than 10 seconds.

1.4. Test Conditions. The required test conditions shall have dry bulb temperature values according to Table D.1 when measured at point A in figure 6 of ASHRAE 72–2022 with Errata and according to section 6.1 of ASHRAE 72–2022 with Errata.

TABLE D.1—TEST CONDITION VALUES AND TOLERANCES

Test condition	Value	Tolerance
Dry Bulb	86.0 °F	Average over test period: ±1.8 °F. Individual measurements: ±3.6 °F.

1.5. Product Pan. The product pan shall be a 12 in. by 20 in. by 2.5 in., 22 gauge or heavier, and 300 series stainless steel pan. If the blast chiller or blast freezer is not capable of holding the 12 in. by 20 in. by 2.5 in. product pan dimensions, the manufacturer’s recommended pan size shall be used, conforming as closely as possible to the 12 in. by 20 in. by 2.5 in. pan dimensions.

1.6. Product Temperature Measurement. The product temperature shall be measured in the geometric center of the measured product pans using an unweighted thermocouple placed 5/8 of an in. above the bottom of the measured product pan. The thermocouple leads shall be secured to the bottom of the measured product pan while also allowing for the transfer of the measured

product pan from the heating source into the blast chiller’s or blast freezer’s cabinet.

1.7. Product Preparation. The product shall be made for each product pan and shall be loaded to 2 in. of product thickness (*i.e.*, depth) within the product pan unless an additional product pan with a product thickness of less than 2 in. is needed to meet the product capacity determined in section 2.1 of this appendix. A 20-percent-by-volume propylene glycol (1,2-Propanediol) mixture in water shall be prepared. In each product pan, pour the propylene glycol mixture over #20 mesh southern yellow pine sawdust to create a 22 percent to 78 percent by mass slurry. An example of an acceptable sawdust specification is the American Wood Fibers brand, #20 Mesh Pine Sawdust. Mix until the sawdust becomes completely saturated and

leave uncovered in the product pan. Verify that the product pan thermocouple is fully submerged in the product mixture and reposition the product pan thermocouple to the requirements of section 1.6. of this appendix if the product pan thermocouple is incorrectly positioned after mixing. Each product pan shall be weighed before and after the food product simulator is added and prior to heating the product. The weight of the product shall not include the weight of the pans, thermocouples, or wires. A cumulative total of the product weight shall be calculated and the product pans shall continue to be loaded with the product mixture until the cumulative total reaches, but not exceeds, the product capacity determined in section 2.1 of this appendix with a tolerance of ±5 percent or ±2 pounds,

whichever is less. The cumulative total weight of product, the weight of product in each individual pan, and the number of pans shall be recorded.

1.8. Product Pan Heating. Measured product pans shall be maintained at an average temperature of 160.0 °F ±1.8 °F and individual pan temperatures shall be maintained at 160 °F ±10 °F for a minimum of 8 hours prior to being loaded into the blast chiller or blast freezer. Non-measured product pans shall also be heated for a minimum of 8 hours prior to being loaded into the blast chiller or blast freezer and the non-measured product pans shall be placed in alternating positions with the measured product pans in the heating device. Data acquisition for the temperature of the measured product pans and time measurements shall begin to be recorded prior to the minimum of 8 hours heating period.

1.9. Product Pan Distribution. The product pans shall be spaced evenly throughout each vertical column of rack positions in the blast chiller or blast freezer without the product pans touching any other product pans and without the product pans touching the top and the bottom of the blast chiller or blast freezer cabinet. For blast chillers or blast freezers that have an additional product pan with a product thickness of less than 2 in., the additional product pan shall be placed as close to the middle rack position as possible while maintaining an even distribution of all product pans. If not all rack positions are occupied by product pans, the product pan locations shall be recorded.

1.10. Measured Product Pans. If multiple product pans are required per level of the blast chiller or blast freezer (*i.e.*, product pans can be loaded side-by-side at the same level), only the product temperature of one product pan per level shall be measured and the product pans measured should alternate vertical columns of the blast chiller or blast freezer cabinet so that each vertical column does not have two measured product pans on sequential levels. If a blast chiller or blast freezer requires an additional product pan with a thickness less than 2 in., the additional product pan shall not be measured for product temperature.

1.11. Stabilization. The blast chiller or blast freezer shall stabilize at the test conditions specified in section 1.4 of this appendix for at least 24 hours without operating.

1.12. Pre-cool Cycle. Data acquisition for the test condition temperatures specified in section 1.4 of this appendix and time measurements shall begin to be recorded prior to the pre-cool cycle. The pre-cool cycle shall be initiated on a blast chiller or blast freezer once the stabilization specified in section 1.11 of this appendix is complete. The fastest pre-cool cycle shall be selected. The pre-cool cycle shall be complete when the blast chiller or blast freezer notifies the user that the pre-cool is complete. If the blast chiller or blast freezer does not notify the user that the pre-cool cycle is complete, the pre-cool cycle shall be deemed complete

when the blast chiller or blast freezer reaches 40 °F or 2 °F based on the blast chiller's or blast freezer's sensing probe for blast chillers and blast freezers, respectively. For blast chillers or blast freezers without any defined pre-cool cycles, the fastest blast chilling or blast freezing cycle shall be run with an empty cabinet until the blast chiller or blast freezer reaches 40 °F or 2 °F based on the blast chiller's or blast freezer's sensing probe. During the pre-cool cycle, the blast chiller's or blast freezer's sensing probe shall remain in its default or holstered position. The pre-cool test data to be recorded are the test condition temperatures specified in section 1.4 of this appendix, pre-cool cycle selected, pre-cool duration, and final pre-cool cabinet temperature based on the blast chiller's or blast freezer's sensing probe.

1.13. Loading. The blast chiller or blast freezer door shall be fully open to an angle of not less than 75 °F for loading at 4.0 ±1.0 minutes after the blast chiller or blast freezer completes the pre-cool cycle as specified in section 1.12 of this appendix. The door shall remain open to load all of the product pans for the entirety of the loading procedure. The door shall remain open for 20 seconds per roll-in rack and 15 seconds per product pan for roll-in and standard blast chillers or blast freezers, respectively. The total door open period shall have a tolerance of ±5 seconds. The blast chiller's or blast freezer's sensing probe shall be inserted into the geometric center of a product pan approximately 1 in. deep in the product mixture at the median pan level in the blast chiller or blast freezer. If the product pan at the median level is the additional product pan with less than 2 in. of product thickness, the closest product pan or product pan level that is farthest away from the evaporator fan shall be used to insert the blast chiller's or blast freezer's sensing probe. If the median pan level has capacity for multiple product pans, the probed product pan shall be the furthest away from the evaporator. The sensing probe shall not touch the bottom of the product pan or be exposed to the air. The location of the product pan with the sensing probe shall be recorded. The sensing probe shall be placed so that there is no interference with the product pan thermocouple. The product pan thermocouple wiring shall not affect the energy performance of the blast chiller or blast freezer. The door shall remain closed for the remainder of the test.

1.14. Blast Chilling or Blast Freezing Cycle. Determine the blast chilling or blast freezing cycle that will conduct the most rapid product temperature pull-down that is designed for the densest food product, as stated in the blast chiller's or blast freezer's manufacturer literature. A blast chilling cycle shall have a target temperature of 38.0 °F and a blast freezing cycle shall have a target temperature of 0.0 °F. The test condition temperatures specified in section 1.4 of this appendix and the time measurements shall continue to be recorded from the pre-cool cycle. Measured product pan temperatures shall continue to be recorded from the minimum of 8-hour period of heating prior

to the loading of the product pans into the blast chiller or blast freezer. Electrical supply frequency, electrical supply potential, and energy consumed shall start to be recorded as soon as the blast chiller or blast freezer door is opened to load the product pans. Once the blast chiller or blast freezer door is closed, the blast chilling cycle or blast freezing cycle shall be selected and initiated as soon as is practicable. The blast chilling cycle or blast freezing cycle selected shall be recorded. The blast chilling or blast freezing test period shall continue from the door opening until all individual measured pan temperatures are at or below 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, regardless of whether the selected cycle program has terminated. If all individual measured pan temperatures do not reach 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, two hours after the selected cycle program has terminated, the test shall be repeated with the target temperature lowered by 1.0 °F until all individual measured pan temperatures are at or below 40.0 °F or 2.0 °F for blast chiller and blast freezer tests, respectively, at the conclusion of the test. The duration of the blast chiller or blast freezer test shall be recorded.

1.15. Calculations. The measured energy consumption determined in section 1.14 of this appendix shall be reported in kilowatt-hours and shall be divided by the cumulative total weight of product determined in section 1.7 of this appendix in pounds.

2. Capacity Metric

2.1. Product Capacity. Determine the product capacity by reviewing all manufacturer literature that is included with the blast chiller or blast freezer. The largest product capacity by weight that is stated in the manufacturer literature shall be the product capacity. If the blast chiller or blast freezer is able to operate as both a blast chiller and a blast freezer when set to different operating modes by the user and the manufacturer literature specifies different product capacities for blast chilling and blast freezing, the largest capacity by weight stated for the respective operating mode shall be the product capacity. If no product capacity is stated in the manufacturer literature, the product capacity shall be the product capacity that fills the maximum number of 12 in. by 20 in. by 2.5 in. pans that can be loaded into the blast chiller or blast freezer according to section 1.7 of this appendix. If the blast chiller or blast freezer with no product capacity stated in the manufacturer literature is not capable of meeting the definition of a blast chiller or blast freezer according to § 431.62 upon testing according to section 1 of this appendix, one 12 in. by 20 in. by 2.5 in. pan shall be removed from the blast chiller or blast freezer until the definition of a blast chiller or blast freezer is met according to § 431.62 when testing according to section 1 of this appendix.

[FR Doc. 2023–19999 Filed 9–25–23; 8:45 am]

BILLING CODE 6450–01–P



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 185

September 26, 2023

Part III

Federal Communications Commission

47 CFR Chapter I

Possible Revision or Elimination of Rules; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CB Docket No. 23–283; DA 23–710; FR ID 170395]

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Regulatory review; comments requested.

SUMMARY: In this document, the Federal Communication Commission (FCC or Commission) invites the general public to comment on the Commission's rules to be reviewed pursuant to the Regulatory Flexibility Act of 1980, as amended. The purpose of the review is to determine whether Commission rules that the FCC adopted in calendar years 2007–2012 should be continued without change, amended, or rescinded in order to minimize any significant impact the rule(s) may have on a substantial number of small entities. Upon receiving comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s), or retain the rule(s) without modification.

DATES: Comments may be filed on or before November 27, 2023.

ADDRESSES: You may submit comments, identified by CB Docket No. 23–283 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to

mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). See <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Joy Ragsdale, Director, Office of Communications Business Opportunities, 202–418–1697, OCBOInfo@fcc.gov or visit www.fcc.gov/ocbo.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice document in CB Docket No. 23–283, DA 23–710, released on August 17, 2023. The full version of this document can be located at <https://docs.fcc.gov/public/attachments/DA-23-710A1.pdf>.

Annually, the Commission will publish a list of 10-year-old rules for review and comment by interested parties pursuant to section 610 of the RFA.

Synopsis

By the Public Notice document, the Office of Communications Business Opportunities announces the Federal Communications Commission's (Commission) plan to review rules the agency adopted in calendar years 2007–2012 that have or will have a significant economic impact on a substantial number of small entities. Section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 610, requires the Commission to determine whether such rules should be continued without change, amended, or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Appendix of the Public Notice document lists the rules the Commission will review during the next 12 months. Annually, the Commission will publish a list for the review of rules promulgated 10 years preceding the year of review.

The Commission will consider the following factors in reviewing each rule in a manner consistent with section 610(b) of the RFA:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments from the public concerning the rule;

- (c) The complexity of the rule;

- (d) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

- (e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Appendix of the Public Notice document includes a brief description, the need for and legal basis of each rule. The Commission invites the general public to comment on these rules in accordance with the instructions below. The Commission will consider all relevant and timely filed comments before it takes final action in this proceeding.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

The proceeding this document initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to

¹ 47 CFR 1.1200 *et seq.*

be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Joy Ragsdale,

Director, Office of Communications Business Opportunities.

■ The Federal Communications Commission (Commission) will review the rules below pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 610, for the 10-year period beginning in January 2007 and ending December 2012. All of the rules listed below are in Title 47 of the Code of Federal Regulations.

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedures—Forbearance Proceedings

Brief Description: These rules establish procedures for the submission and handling of petitions for forbearance filed pursuant to section 10 of the Communications Act of 1934, as amended.² In particular, the rules require that forbearance petitions be “complete as filed” and establish procedures to ensure that forbearance petitions are addressed in a timely, equitable, and predictable manner. Further, a forbearance petition may no longer be withdrawn or significantly narrowed by the petitioner without Commission authorization after the tenth business day after the due date for reply comments.

Need: These rules implement procedures for handling forbearance petitions in a manner that is front-loaded, actively managed, transparent, and fair.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155(c), 160, 201, and 303(r).

² 47 U.S.C. 160(c) (“Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.”).

Section Number and Title:

1.55 Public notice of petitions for forbearance.

1.56 Motions for summary denial of petitions for forbearance.

1.57 Circulation and voting of petitions for forbearance.

1.58 Forbearance petition quiet period prohibition.

1.59 Withdrawal or narrowing of petitions for forbearance.

Brief Description: These rule sections implement the Truth in Caller ID Act of 2009,³ and prohibit any person or entity from knowingly spoofing caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Sections 1.80(a)(4), (b)(3) and (c) establish forfeiture provisions for violations of the Truth in Caller ID Act or the Commission's rules under the Truth in Caller ID Act.

Need: These rule sections carry out the Commission's statutory obligation to implement the Truth in Caller ID Act.

Legal Basis: Section 2 of the Truth in Caller ID Act of 2009, Public Law 11–331, 47 U.S.C. 151, 154(i), 154(j), 227, and 303(r).

Section Number and Title:

1.80(a)(4), (b)(3), (c) Forfeiture Proceedings.

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

Brief Description: Section 1.767 of the Commission's rules sets forth the application filing requirements for submarine cable landing licenses. During the relevant review period, the Commission amended the cable landing license application rules and application procedures to require applicants to certify their compliance with the Coastal Zone Management Act of 1972 (CZMA).

Need: The rules are needed to ensure that Commission processing of certain submarine cable landing license applications comports with the consistency review procedures specified in the CZMA.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

Section Number and Title:

1.767(a)(10) note, (j), (k)(4) Cable landing licenses.

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Brief Description: These rules specify the schedule of annual regulatory fees

³ The President signed the Truth in Caller ID Act into law on December 22, 2010. Truth in Caller ID Act of 2009, Public Law 111–331, codified at 47 U.S.C. 227(e).

and filing locations for the designated payors.

Need: Congress sets the amount the Commission must collect each year in the Commission's fiscal year appropriations. Section 9(a)(2) of the Communications Act of 1934, as amended (Act) requires the Commission to collect fees sufficient to offset the amount appropriated.⁴ These rules specify the fees for the Commission's regulatees.

Legal Basis: 47 U.S.C. 159.

Section Number and Title:

1.1102 Revised—Schedule of charges for applications and other filings in the wireless telecommunications services.

1.1103 Revised—Schedule of charges for experimental radio services.

1.1104 Revised—Schedule of charges for applications and other filings for media services.

1.1105 Revised—Schedule of charges for applications and other filings for the wireline competition services.

1.1106 Revised—Schedule of charges for applications and other filings for the enforcement services.

1.1107 Revised—Schedule of charges for applications and other filings for the international services.

1.1108 Reserved.

1.1109 Revised—Schedule of charges for applications and other filings for the Homeland services.

1.1110 [correctly redesignated as 1.112]; new 1.1110 correctly added Attachment of charges.

1.1111 [correctly redesignated as 1.113]; new 1.1111 correctly added Payment of charges.

1.1112 [correctly redesignated as 1.114]; new 1.1112 correctly added Form of payment.

1.1113 [correctly redesignated as 1.115]; new 1.1113 correctly added Filing locations.

1.1114 Conditionality of Commission or staff authorizations.

1.1115 Return or refund of charges.

1.1116 General exemptions to charges.

1.1117 Adjustments to charges.

1.1118 Penalty for late or insufficient payments.

1.1119 Petitions and applications for review.

1.1120 [correctly redesignated from 1.1118]; (a) revised Error claims.

1.1121 [correctly redesignated from 1.1119]; (b) revised Billing procedures.

1.1152 Revised—Schedule of annual regulatory fees for wireless radio services.

⁴ 47 U.S.C. 159(a)(2).

1.1153 Revised—Schedule of annual regulatory fees and filing locations for mass media services.

1.1154 Revised—Schedule of annual regulatory charges for common carrier services.

1.1155 Revised—Schedule of regulatory fees for cable television services.

1.1156 Revised; Eff. Date corrected; Revised—Schedule of regulatory fees for international services.

1.1164 (c) Revised—Penalties for late or insufficient regulatory fee payments.

1.1166 (b) Revised—Waivers, reductions and deferrals of regulatory fees.

1.1166 (d) Amended—Waivers, reductions and deferrals of regulatory fees.

Subpart X—Spectrum Leasing

Brief Description: These rules pertain to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees.

Need: These rules extend the Commission's secondary market spectrum manager spectrum leasing policies, procedures, and rules that apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of a Mobile Satellite Service (MSS) system.

Legal Basis: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

Section Number and Title:

1.9001 Purpose and scope.

1.9005 Included services.

1.9020 Spectrum manager leasing arrangements.

1.9049 Special Provisions relating to spectrum leasing arrangements involving the Ancillary Terrestrial Component of Mobile Satellite Services.

Subpart AA—Competitive Bidding for Universal Service Support

Brief Description: These rules set forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding. The rules establish requirements for applications to participate in competitive bidding, restrict certain communications during the competitive process, and establish a winning bidder's obligation to apply for support.

Need: These rules implement competitive bidding processes for the allocation of high-cost universal service support, helping to ensure the most efficient and effective use of public resources.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

1.21000 Purpose.

1.21001 Participation in competitive bidding for support.

1.21002 Prohibition of certain communications during the competitive bidding process.

1.21003 Competitive bidding process.

1.21004 Winning bidder's obligation to apply for support.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart B—Allocation, Assignment, and Use of Radio Frequencies

Brief Description: Section 2.106 contains the Table of Frequency Allocations, which specifies the Federal and non-Federal radio services that may operate in certain frequency bands, as well as the operating conditions for each service, including power limits and coordination procedures. Footnote US23 governs Amateur Radio Service operations in the 5330.5–5406.4 kHz band. Footnote US64 governs Medical Device Radiocommunication Service (MedRadio) operations in the 401–406 MHz, 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands. Footnote US338 governs Wireless Communications Service (WCS) operations in the 2305–2320 MHz band.

Need: The Table of Frequency Allocations is needed to allow Federal and non-Federal services to operate safely and without causing harmful interference. The Table is amended frequently to revise existing allocations and add new allocations, generally promoting more efficient and productive use of radio spectrum.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106 US23, US64, US338 Table of Frequency Allocations.

Brief Description: Part 2 contains the Commission's Table of Frequency Allocations as well as terminology and rules governing bandwidths, call signs, and other transmission identifiers, distress, disaster and emergency communications, prohibition against use of radio devices for eavesdropping, and marketing of radio-frequency devices.

Need: Part 2 rules establish the allocations for spectrum use.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106 Table of Frequency Allocations.

Subpart J—Equipment Authorization Procedures

Brief Description: Section 2.1093 specifies which portable devices must undergo radiofrequency (RF) radiation exposure evaluation and 2.1093(c) specifies how that evaluation must be done.

Need: These rules are needed to satisfy the Commission's responsibilities under the National Environmental Policy Act to evaluate the environmental significance of its actions and to minimize the chance of harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1093(c) Radiofrequency radiation exposure evaluation: portable devices.

Subpart K—Importation of Devices Capable of Causing Harmful Interference

Brief Description: Section 2.1204 specifies the conditions under which RF devices may be imported into the United States. Section 2.1204(a)(9) governs medical implant transmitters, specifying that these devices must either comply with the Part 95 rules or be only for the personal use of the person in whom the device has been inserted or on whom the body-worn device is applied.

Need: These rules are needed to prevent unauthorized and non-complaint RF devices from being imported into the United States and causing harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1204(a)(9) Import conditions.

PART 4—DISRUPTIONS TO COMMUNICATIONS

Brief Description: These rules expanded the Commission's existing Part 4 outage reporting requirement to include a new class of providers—Interconnected Voice over internet Protocol. They also provide for the appropriate thresholds for outage impact and duration to trigger reporting obligations to the Commission.

Need: These provisions support the Commission's statutory obligations to ensure the public safety can make

emergency calls by ensuring the integrity and reliability of the Nation's communications networks and the service those in need use to reach 911. The expansion and continued use of IP-based voice protocols for consumer calling, particularly in emergencies, underscores the relevance of these provisions.

Legal Basis: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b).

Section Number and Title:

4.3 Communications Providers Covered by the Requirements of this Part.

4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

4.9 Outage reporting requirements—threshold criteria.

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

Subpart A—Scope—Who must comply with these rules?

Brief Description: Part 6, subpart A implements section 255 of the Telecommunications Act to ensure that people with disabilities have access to telecommunications services and related equipment, if readily achievable. These rules increase the accessible products and services available in the marketplace. section 255 of the Act requires manufacturers of “telecommunications equipment or customer premises equipment” to ensure that such equipment is accessible to and usable by individuals with disabilities, if readily achievable, and requires providers of a “telecommunications service” to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. In 2007, the rules were amended by adding paragraphs (d) and (e) to § 6.1, extending those disability access requirements that applied to telecommunications service providers and equipment manufacturers under section 255 of the Act and 47 CFR part 6, to providers of “interconnected Voice over internet Protocol (VoIP) services,” as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services.

Need: The added rules extend the disability access requirements that applied to telecommunications service providers and equipment manufacturers under section 255 of the

Communications Act of 1934, as amended, to providers of “interconnected Voice over internet Protocol services,” as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services.

Legal Basis: 47 U.S.C. 151–154, 251, 255, and 303(r).

Section Number and Title:

6.1(d) Applicability.

6.1(e) Applicability.

Subpart B—Definitions

Brief Description: Part 6, Subpart B implements sections 251 and 255 of the Communications Act of 1934, as amended. In adopting section 255, Congress sought to ensure that all Americans, including Americans with disabilities, benefit from advances in telecommunications services and equipment. Section 255 requires providers of telecommunications services and manufacturers of telecommunications equipment or customer premises equipment to ensure that such services and equipment are accessible to and usable by individuals with disabilities, if readily achievable. Section 251(a)(2) of the Act prohibits telecommunications carriers from installing network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255. These rules clarify who must comply with requirements covering telecommunications equipment and services and define certain terms related to those manufacturers and service providers to which the rules apply.

Need: The rules are intended to facilitate communication by persons with disabilities by ensuring that all commonly used communications equipment and services are available to and accessible by individuals with disabilities, including recently developed equipment and services, such as equipment and service used with Voice over internet Protocol (VoIP).

Legal Basis: 47 U.S.C. 151, 152, 251, 255, and 303(r).

Section Number and Titles:

6.3(c), (e), (j), (k) Definitions.

PART 8—INTERNET FREEDOM

Brief Description: Section 8.11(a) provides a definition of “broadband internet access service;” § 8.11(d) provides a definition of “reasonable network management practices.”

Need: These definitions are needed in connection with Commission programs such as the Broadband Data Collection.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257,

301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, and 1302.

Section Number and Title:

8.11(a), (d) Transparency.

PART 10—WIRELESS EMERGENCY ALERTS

Subpart A—General Information

Brief Description: These rules provide the parameters for wireless service providers to implement the statutory Commercial Mobile Alert System (CMAS), now referred to as Wireless Emergency Alerts (WEA), including relevant timeframes and technical parameters associated with WEA infrastructure, messaging support, alert tones and similar.

Need: These provisions support the operation of WEA—a statutory component of the Nation's alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

10.20 Purpose.

10.10 Definitions.

10.11 CMAS Implementation Timeline.

Subpart C—System Architecture

10.320 Provider Alert Gateway Requirements.

10.330 Provider Infrastructure Requirements.

Brief Description: These rules support the operational changes necessary and the implementation/testing requirements for the Commercial Mobile Alert System (CMAS), now known as Wireless Emergency Alerts (WEA)—a statutory component of the Nation's alert and warning system. They direct the installation of necessary equipment, and prescribe the parameters for testing the system and keeping record of its operation.

Need: These provisions support the operation of WEA—a statutory component of the Nation's alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

10.340 Digital Television Transmission Towers Retransmission Capability

10.350 CMAS Testing Requirements

Subpart D—Alert Message Requirements

Brief Description: These rules provide the parameters for wireless service providers to implement the statutory Commercial Mobile Alert System (CMAS), now referred to as Wireless Emergency Alerts (WEA), including relevant timeframes and technical parameters associated with WEA infrastructure, messaging support, alert tones and similar.

Need: These provisions support the operation of WEA—a statutory component of the Nation’s alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

- 10.400 Classification.
- 10.410 Prioritization.
- 10.420 Message Elements.
- 10.430 Character Limit.
- 10.440 Embedded Reference Prohibition.
- 10.450 Geographic Targeting.
- 10.470 Roaming.

Subpart E—Equipment Requirements

Section Number and Title:

- 10.500 General Requirements.
- 10.510 Call preemption prohibition.
- 10.520 Common Audio Attention Signal.
- 10.530 Common Vibration Cadence.

PART 11—EMERGENCY ALERT SYSTEM (EAS)

Subpart A—General

Brief Description: Part 11 sets forth the rules governing the Emergency Alert System (EAS).

Need: The rules are needed to implement the Commission’s policies and requirements concerning the EAS, which provides Federal, State, local, territorial, and Tribal government agencies with the capability to provide immediate communications and information to the general public regarding emergency situations. EAS is a system for distributing emergency alerts by transmitting audio and visual messages over the facilities of radio and television broadcasters, cable service providers, direct broadcast satellite providers, and other participating entities.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

- 11.2 Definitions.

11.11(a), (d) The Emergency Alert System (EAS).

11.21(a) State and Local Area Plans and FCC Mapbook.

Subpart B—Equipment Requirements

Brief Description: EAS uses a four-part message for an emergency activation of the EAS. The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and Preamble and EAS End of Message (EOM) Codes. Subpart B outlines the equipment requirements to provide the service.

Need: These amendments specify up-to-date technology to ensure that EAS messages are provided seamlessly, promptly, and accurately.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

- 11.31 (c), (e), (f) EAS Protocol.
- 11.32 (a)(2), (a)(3), (a)(9)(iv) EAS Encoder.
- 11.33 (a) introductory text, (a)(1), (a)(4), (a)(7), (a)(11) EAS Decoder.
- 11.34(d) Acceptability of the equipment.
- 11.35(a), (b) Equipment operational readiness.

Subpart C—Organization

Brief Description: Entities that wish to voluntarily participate in the national level EAS may submit a written request to the Chief, Public Safety and Homeland Security Bureau. Subpart C provides the regulatory organization for EAS.

Need: The revision provides that All EAS Participants specified in § 11.11 are categorized as Participating National (PN) sources and must have immediate access to an EAS Operating Handbook.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

- 11.41 Participation in EAS.

Subpart D—Emergency Operations

Brief Description: Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. Subpart D outlines Emergency operations.

Need: The revisions provide for modernizing the EAS to make it capable of processing Common Alerting Protocol (CAP) formatted alert messages is necessary and consistent with the Commission’s statutory goals, because a CAP-based EAS will be more flexible

and robust than the current system. In this regard, we observe that the rules we adopt today will integrate the EAS with the Federal Emergency Management Agency’s (FEMA) Integrated Public Alert and Warning System (IPAWS). This will allow authorized alert initiators to issue alerts that will be delivered simultaneously by the EAS as well as the Personal Localized Alerting Network (PLAN). A CAP-based EAS will also be compatible with the many State alerting systems that are switching to CAP.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

11.51(a), (c), (d), (g)(3), (h)(3), (i), (j) introductory text, (j)(2), (m), (p) EAS code and Attention Signal Transmission requirements.

11.52(a), (d), (e) introductory text, (e)(2) EAS code and Attention Signal Monitoring requirements.

11.54 EAS operation during a National Level emergency.

11.55(a), (c) introductory text, (c)(3) and (4), (c)(7) and (8), (d) EAS operation during a State or Local Area emergency.

11.56 Obligation to process CAP-formatted EAS messages.

Subpart E—Tests

Brief Description: Subpart E sets forth the rules governing testing of the Emergency Alert System (EAS).

Need: The EAS is subject to weekly and monthly tests at the State and local level, such tests may not expose vulnerabilities in functioning or gaps in nationwide coverage. For example, EAS PEP station operational and maintenance requirements are the responsibility of FEMA, which tests the PEP stations but typically does not test other stations. The NWS tests its own National Weather Radio (NWR) facilities independently or as integrated with State and local level emergency alert delivery architectures, but again, its focus is solely on the proper operation of NWS/NWR facilities as those facilities interact with State and local EAS architectures. State EOC facilities are maintained by their respective State officials. None of these entities has been responsible for “top-to-bottom” national testing of EAS. Sections 11.61 (a), (a)(1)(i), (a)(2)(ii), (a)(3), and (b) provide for more complete testing including end to end testing.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

11.61(a) introductory text, (a)(1)(i), (a)(2)(ii), (a)(3), (b) Tests of EAS procedures.

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart A—Scope

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 includes a temporary self-executing exemption for small businesses to avoid the possibility of unreasonably burdening small and entrepreneurial innovators during the initial compliance period. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services (ACS) and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities. The temporary self-executing exemption for small businesses expired

on October 8, 2013, is no longer needed and may be deleted.

Legal Basis: 47 U.S.C. 151–154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Titles:

- 14.1 Applicability.
- 14.2 Limitations.
- 14.3 Exemption for Customized Equipment or Services.
- 14.4 Exemption for Small Entities.
- 14.5 Waivers—Multi-purpose Services and Equipment.

Subpart B—Definitions

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services ("ACS") and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. 151–154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Titles:

- 14.10 Definitions.

Subpart C—Implementation Requirements—What must covered entities do?

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services (ACS) and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. 151–154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Titles:

- 14.20 Obligations.
- 14.21 Performance Objectives.

Subpart D—Recordkeeping, Consumer Dispute Assistance, and Enforcement

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services ("ACS") and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. 151–154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Titles:

- 14.30 Generally.
- 14.31 Recordkeeping.
- 14.32 Consumer Dispute Assistance.
- 14.33 Informal or formal complaints.
- 14.34 Informal complaints; form, filing, content, and consumer assistance.
- 14.35 Procedure; designation of agents for service.

14.36 Answers and replies to informal complaints.

14.37 Review and disposition of informal complaints.

14.38 Formal Complaints; General pleading requirements.

14.39 [superseded by subpart E of part 1, 1.722] Format and content of formal complaints.

14.40 [superseded by subpart E of part 1, 1.723] Damages.

14.41 [superseded by subpart E of part 1, 1.725] Joinder of complainants and causes of action.

14.42 [superseded by subpart E of part 1, 1.726]

14.43 [superseded by subpart E of part 1, 1.727] Cross-complaints and counterclaims.

14.44 [superseded by subpart E of part 1, 1.728] Replies.

14.45 [superseded by subpart E of part 1, 1.729] Motions.

14.46 [superseded by subpart E of part 1, 1.721(r) and (s)] Formal complaints not stating a cause of action; defective pleadings.

14.47 [superseded by subpart E of part 1, 1.730] Discovery.

14.48 [superseded by subpart E of part 1, 1.731] Confidentiality of information produced or exchanged by the parties.

14.49 [superseded by subpart E of part 1, 1.732] Other required written submissions.

14.50 [superseded by subpart E of part 1, 1.733] Status conference.

14.51 [superseded by subpart E of part 1, 1.49 through 1.52] Specifications as to pleadings, briefs, and other documents; subscription.

14.52 [superseded by subpart E of part 1, 1.734] Copies; service; separate filings against multiple defendants.

PART 15—RADIO FREQUENCY DEVICES

Subpart A—General

Brief Description: These rules set forth the definitions for various terms and the measurement procedures that must be used to determine whether devices comply with the Commission's RF emissions limits. These rules cover, among other devices, Broadband Power Line (BPL) devices, Unlicensed Personal Communications Service (UPCS) devices, and field disturbance sensors.

Need: These rules are needed to allow operators of devices, including Broadband Power Line (BPL) devices, Unlicensed Personal Communications Service (UPCS) devices, and field disturbance sensors, to accurately measure and determine whether their devices comply with the Commission's RF emissions limits.

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

Section Number and Title:

- 15.3(hh) Definitions.
- 15.31(a)(2), (f)(2) and (3) Measurement standards.
- 15.35(b) Measurement detector functions and bandwidths.
- 15.38 Incorporation by reference.

Subpart C—Intentional Radiators

Brief Description: Section 15.212 defines the different types of modular transmitters and sets forth the requirements for obtaining approval for these devices under Part 15 of the Commission's rules.

Need: These rules are needed to provide efficient equipment authorization procedures for modular transmitter devices, enabling manufacturers to develop more advanced unlicensed transmitter technologies without causing harmful interference.

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

Section Number and Title:

- 15.212 Modular transmitters.

Subpart D—Unlicensed Personal Communications Service Devices

Brief Description: These rules set forth general technical requirements for Unlicensed Personal Communications Service (UPCS) devices, and specific requirements for UPCS devices operating in the 1920–1930 MHz band.

Need: These rules are needed to ensure UPCS devices operate as intended and do not cause harmful interference.

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

Section Number and Title:

- 15.319(b) General technical requirements.
- 15.323(a), (c)(5), (d), (e) Specific requirements for devices operating in the 1920–1930 MHz band.

Subpart G—Access Broadband Over Power Line (Access BPL)

Brief Description: Section 15.611 sets forth general technical requirements for Broadband Power Line (BPL) systems. Paragraph (c) of this section specifies the interference mitigation and avoidance requirements for BPL systems. Paragraph (c)(1)(i) of this section clarifies that for frequencies below 30 MHz, when a notch filter is used to avoid interference to a specific band, the BPL system must be capable of attenuating emissions within that band to a level at least 25 dB below the applicable part 15 limits.

Need: This rule clarifies what steps a Broadband Power Line (BPL) system operator must take to avoid causing harmful interference.

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

Section Number and Title:

15.611(c)(1)(i) General technical requirements.

Subpart H—White Space Devices

Brief Description: These rules specify how White Space Devices may operate safely in certain bands. These rules cover the scope of subpart H, definitions, cross references, user information, permissible channels of operation, general technical requirements, interference avoidance methods, interference protection requirements, white space databases, database administration fees, database administrators, and white space devices that rely on spectrum sensing.

Need: These rules enable white space devices to operate on an unlicensed basis using television channels that are vacant in certain markets without causing harmful interference.

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

Section Number and Title:

- 15.701 Scope.
- 15.703 Definitions.
- 15.705 Cross reference.
- 15.706 Information to the user.
- 15.707 Permissible channels of operation.
- 15.709 General technical requirements.
- 15.711 Interference avoidance methods.
- 15.712 Interference protection requirements.
- 15.713 White space database.
- 15.714 White space database administration fees.
- 15.715 White space database administrator.
- 15.717 White space devices that rely on spectrum sensing.

PART 20—COMMERCIAL MOBILE SERVICES

Brief Description: Part 20 rules set forth the Commission's requirements and conditions for commercial mobile radio service providers under the Communications Act of 1934, as amended. Section 20.12(d) requires host carriers to provide automatic roaming to technologically compatible, facilities-based CMRS carriers on reasonable and not unreasonably discriminatory terms and conditions. Sections 20.12(a)(3) and (e) require facilities-based providers of commercial mobile data services to offer roaming arrangements to other such

providers on commercially reasonable terms, subject to certain limitations. Section 20.19 requires wireless handset manufacturers and terrestrial mobile service providers to make available to consumers a minimum number of handsets that meet specified technical criteria for hearing aid compatibility and to disclose certain information to consumers about a handset's hearing aid compatibility.

Need: Section 20.12 is needed on an ongoing basis to implement the Commission's interconnection regulations between local exchange carriers and commercial mobile radio providers. Section 20.19 is needed on an ongoing basis to ensure reasonable access to commercial mobile services by persons with impaired hearing, as required under 47 U.S.C. 610.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615(a), 615(b), and 615(c), unless otherwise noted.

Section Number and Title:

- 20.12(a)(3), (d), (e) Resale and roaming.
- 20.19(a)(3)(i), (b)(3), (c) introductory text, (c)(1)(ii)(C), (e)(1)(ii) and (iii), (f)(2) introductory text, (f)(2)(iii), (f)(3), (l) Hearing aid-compatible mobile handsets.

PART 25—SATELLITE COMMUNICATIONS

Subpart B—Applications and Licenses

Brief Description: Part 25 contains the Commission's rules governing the licensing and operation of space stations and earth stations. It includes application requirements, technical requirements, operational requirements, and coordination requirements for various satellite services. The rules also define the Commission's processing of applications.

Need: Part 25 rules are needed to ensure that satellite services may be provided without harmful interference and consistent with the public interest.

Legal Basis: 47 U.S.C. 154, 157, 301, 302, 303, 307, 309, 310, 316, 319, 332, 605, and 701–744.

Section Number and Title:

- 25.114 Applications for space station authorizations.
- 25.115 Applications for earth station authorizations.
- 25.130 Filing requirements for transmitting earth stations.
- 25.132 Verification of earth station antenna performance standards.
- 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) and C-

band Small Aperture Terminal (CSAT) networks.

25.138 Blanket Licensing provisions of GSO FSS Earth Stations in 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

25.149 Application requirements for ancillary terrestrial components in Mobile-Satellite Service networks operating in the 1.5/1.6 GHz and 1.62/2.4 GHz Mobile Satellite Service.

25.201 Definitions.

Subpart C—Technical Standards

25.202 Frequencies, frequency tolerance and emission limits.

25.203 Choice of sites and frequencies.

25.204 Power limits for earth stations.

25.205 Minimum antenna elevation angle.

25.209 Earth station antenna performance standards.

25.212 Narrowband analog transmissions, digital transmissions, and video transmissions in the GSO Fixed-Satellite Services.

25.218 Off-axis EIRP density envelopes for FSS earth station transmitting in certain frequency bands.

25.220 Non-routine transmit/receive earth station operations.

25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) band and transmitting in the 5925–6425 MHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service.

25.222 Blanket Licensing provisions for Earth Station on Vessels (ESVs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Orbit (GSO) Satellites in the Fixed-Satellite Service.

25.226 Blanket licensing provisions for domestic, U.S. VMESs operating with GSO FSS space stations in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, and 14.0–14.5 GHz bands.

25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483–2500 MHz bands.

25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz BSS and DBS Service space stations.

Subpart D—Technical Operations

25.271 Control of transmitting stations.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Subpart B—Applications and Licenses

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart B establishes application and licensing requirements applicable to a number of spectrum bands, including among others, 700 MHz (698–746, 746–758, 775–788, and 805–806 MHz); Advanced Wireless Service (AWS) (1710–1755, 2110–2155, 1695–1710, 1755–1780, and 2155–2180 MHz); Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (2150–2160 and 2496–2690 MHz); and Wireless Communications Service (WCS) (2305–2320 and 2345–2360 MHz).

Need: The revised rules specify license periods for BRS and EBS (27.13 (h)); construction requirements for 700 MHz, BRS and EBS, and WCS (27.14 (g)–(p)); and network access requirements for Block C in the 746–757 and 776–787 MHz bands (27.16). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332.

Section Number and Title:

27.13(h) License period.

27.14(g) through (p) Construction requirements.

27.16 Network access requirements for Block C in the 746–757 and 776–787 MHz bands.

Subpart C—Technical Standards

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart C contains technical standards applicable to a number of services and frequency bands.

Need: The additional rules provide for: (1) permissible power and antenna heights; (2) emission limitations; (3) Power flux density limits; (4) efficient deployment of and coexistence between WCS licensees and SDARS licensees; and (5) WCS licensees to take all practicable steps necessary to minimize the risk of harmful interference to AMT and DSN facilities. The need for these rules is on-going.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452.

Section Number and Title:

27.50 Table 2, Table 3, Table 4—Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698–757 MHz, 758–763 MHz, 776–787 MHz and 788–793 MHz Bands.

27.53(d), (e)(1) through (5) Emission limits.

27.55(c) Power strength limits.

27.72 Information sharing requirements.

27.73 WCS, AMT, and Goldstone coordination requirements.

Subpart M—Broadband Radio Service and Educational Broadband Service

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart M contains specific rules applicable to the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) that operate in the 2500–2690 MHz band.

Need: The rules establish competitive bidding and designated entity rules for BRS and EBS. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332.

Section Number and Title:

27.1217 Competitive bidding procedures for the Broadband Radio Service and the Educational Broadband Service.

27.1218 Broadband Radio Service designated entity provisions.

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart A—General

Brief Description: Section 36.4 sets out streamlining procedures for processing petitions for waiver of the Commission's freeze of Local Exchange Carrier study area boundaries.

Need: These rules enable the Commission to more efficiently and effectively process petitions for waiver of the study area freeze.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and §§ 1.1 and 1.1421 of the Commission's rules, 47 CFR 1.1, 1.421.

Section Number and Title:

36.4 Streamlining procedures for processing petitions for waiver of study area boundaries.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES AND CERTAIN AFFILIATES

Brief Description: Part 43 sets forth reporting requirements for common carriers. During the relevant review period, the Commission eliminated the following outdated and unnecessary reporting requirements related to international telecommunications traffic for which the burdens on U.S. international service providers now outweigh the benefits: (1) the quarterly traffic and revenue reports for large carriers; (2) the quarterly traffic and revenue reports for foreign-affiliated switched resale carriers; (3) the circuit-addition report for carriers that have been certified as resellers of private lines; (4) the telegraph toll division report for carriers that provide international telegraph service; and (5) the requirement for carriers holding international section 214 authorizations to file a traffic and revenue report or circuit-status report for traffic between the continental United States and off-shore U.S. points (e.g., Guam or the U.S. Virgin Islands) or between off-shore U.S. points, or to file separate reports for off-shore U.S. points.

Need: In modifying its rules, the Commission ensures that its data collections match its data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority.

Legal Basis: 47 U.S.C. 35–39, 154, 211, 219, and 220.

43.53 [Removed] Reports regarding division of international toll communication charges.

43.61(a) through (c) [Removed] Reports of international telecommunications traffic.

43.82(a) International circuit status report.

PART 51—INTERCONNECTION

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

Brief Description: The purpose of Subpart H is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology—and confirms that, after the transition, the exchange of telecommunications traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

Need: These rules establish the context for Subpart H and support the implementation of bill-and-keep as the ultimate uniform, national methodology for all telecommunications traffic exchanged with a Local Exchange Carrier.

Legal Basis: 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–227, 251–254, 256, 271, 303(r), 332, and 1302, 47 U.S.C. 157 note, unless otherwise noted.

Section Number and Title:

51.700 Purpose of this subpart.

51.701(b)(3) Scope of transport and termination pricing rules.

Subpart J—Transitional Access Service Pricing

Brief Description: Sections 51.901 through 51.919 govern the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology for telecommunications traffic exchanged between telecommunications providers; that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Need: These rules facilitate implementation of bill-and-keep as the national methodology for all telecommunications traffic exchanged between telecommunications providers; that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302; 47 CFR 1.1, 1.421

Section Number and Title:

51.901 Purpose and scope of transitional access service pricing rules.

51.903 Definitions.

51.905 Implementation.

51.907 Transition of price cap carrier access charges.

51.909 Transition of rate-of-return carrier access charges.

51.911 Access reciprocal compensation rates for competitive LECs.

51.913 Transition for VoIP–PSTN traffic.

51.915 Recovery mechanism for price cap carriers.

51.917 Revenue recovery for Rate-of-Return Carriers.

51.919 Reporting and monitoring.

PART 52—NUMBERING

Subpart C—Number Portability

Brief Description: Section 52.23(h) establishes requirements for porting

telephone numbers from a wireline carrier to a wireless carrier. Section 52.34 establishes obligations regarding local number porting to and from interconnected VoIP or internet-based TRS providers. Section 52.35 establishes porting intervals when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over internet Protocol (VoIP) provider and any other service provider. Section 52.36 specifies standard data fields that may be required from customers for simple port order processing.

Need: These rules facilitate prompt transfers of telephone numbers by standardizing the data to be exchanged when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over internet Protocol (VoIP) provider and any other service provider. The rules also mandate one-business day porting intervals to ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services.

Legal Basis: 47 U.S.C. 151, 154(i)–(j), 251, and 303(r).

Section Number and Title:

52.23(h) Deployment of long-term database methods for number portability by LECs.

52.35 Porting intervals.

52.36 Standard data fields for simple port order processing.

PART 54—UNIVERSAL SERVICE

Subpart D—Universal Service Support for High Cost Areas

Brief Description: Section 54.302 establishes a per-line limit on universal service monthly support. The provisions in section 54.304 govern data submission requirements for, and payment of CAF ICC support to, eligible rate-of-return and price-cap carriers. Section 54.307(e) establishes the current methodology for determining Competitive Eligible Telecommunications Carrier high-cost support. Section 54.312 sets out rules for legacy high-cost support in price-cap territories before, during and after the Connect America Fund Phase II and Rural Digital Opportunity Fund Phase I auctions.

Need: These rule sections specify reporting and payment processes integral to the Commission's high-cost program.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303I, 332, 403, and 1302.

Section Number and Title:

54.302 Monthly per-line limit on universal service support.

54.304 Administration of Connect America Fund Intercarrier Compensation Replacement.

54.307(e) Support to a competitive eligible telecommunications carrier.

54.312 Connect America Fund for Price Cap Territories—Phase I.

Subpart E—Universal Service Support for Low-Income Consumers

Brief Description: Section 54.404 details requirements and processes applicable to the National Lifeline Accountability Database, which allows service providers to enroll Lifeline eligible consumers in the program and manage their subscribers. Section 54.405(e) details the process for Eligible Telecommunications Carriers to de-enroll a Lifeline subscriber where there is a reasonable basis for the ETC to believe that the subscriber no longer meets the criteria to be considered a qualifying low-income consumer for purposes of the Lifeline program. Section 54.414 provides that only ETCs that receive high-cost support may receive Link Up, specifies requirements for determining a resident of rural Tribal lands' initial eligibility for Link Up, and establishes recordkeeping requirements that must be met for ETCs to receive reimbursement for providing Tribal Link Up. Section 54.419 provides that electronic signatures have the same legal effect as written signatures for purposes of Subpart E. Section 54.420 sets out requirements for obtaining third-party biennial audits of their compliance with subpart E requirements. Section 54.422 establishes annual reporting requirements applicable to ETC receiving low-income support.

Need: These rules comprise key elements of the Lifeline and Tribal Link Up programs, including provisions for verification of eligibility for the programs and auditing and reporting requirements to support Commission oversight.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

54.404 The National Lifeline Accountability Database.

54.405(e) Carrier obligation to offer Lifeline.

54.414 Reimbursement for Tribal Link Up.

54.419 Validity of electronic signatures.

54.420 Low income program audits.

54.422 Annual reporting for eligible telecommunications carriers that receive low-income support.

Subpart F—Universal Service for Rural Health Care Program

Brief Description: These rules establish the framework for the Healthcare Connect Fund of the Rural Health Care Program, including the criteria for what recipients, services, and equipment are deemed eligible in the program, the requirement that health care providers contribute to the total cost of eligible expenses, and requirements for data collection and reporting.

Need: These rules facilitate the administration of the Health Care Connect Fund, which provides support for high-capacity broadband connectivity to eligible health care providers and encourages the formation of State and regional broadband health care provider networks.

Legal Basis: 47 U.S.C. 151, 152, 154(i)–(j), 201(b), and 254.

Section Number and Title:

- 54.600 Terms and definitions.
- 54.601(b) Health care provider eligibility.
- 54.602 Health care support mechanism.
- 54.607 (formerly 54.630) Eligible recipients.
- 54.609 (formerly 54.631) Designation of consortium leader.
- 54.610 (formerly 54.632) Letters of agency (LOA).
- 54.611 (formerly 54.633) Health care provider contribution.
- 54.612 (formerly 54.634) Eligible services.
- 54.613 (formerly 54.635) Eligible equipment.
- 54.614 (formerly 54.636) Eligible participant-constructed and owned network facilities for consortium applicants.
- 54.615 (formerly 54.637) Off-site data centers and off-site administrative offices.
- 54.616 (formerly 54.638) Upfront payments.
- 54.617 (formerly 54.639) Ineligible expenses.
- 54.618 (formerly 54.640) Data collection and reporting.
- 54.622 (formerly 54.642) Competitive bidding requirement and exemptions.

Subpart L—Mobility Fund and 5G Fund

Brief Description: Sections 54.1001 through 54.1010 establish the regulatory framework for the Mobility Fund—Phase I, the first universal service mechanism dedicated to ensuring

availability of mobile broadband networks in areas where a private-sector business case is lacking. These rules established necessary elements of the Mobility Fund—Phase I, including the geographic areas eligible for support, the application process, public interest obligations, and record retention and reporting requirements.

Need: These rules were necessary to facilitate the administration of the Mobility Fund—Phase I, which provided immediate one-time support to accelerate the deployment of mobile broadband and voice service to unserved areas.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

- 54.1001 Mobility Fund—Phase I.
- 54.1002 Geographic areas eligible for support.
- 54.1003 Provider eligibility.
- 54.1004 Service to Tribal Lands.
- 54.1005 Application process.
- 54.1006 Public interest obligations.
- 54.1007 Letter of credit.
- 54.1008 Mobility Fund Phase I disbursements.
- 54.1009 Annual reports.
- 54.1010 Record retention for Mobility Fund Phase I.

PART 61—TARIFFS

Subpart B—Rules for Electronic Filing

Brief Description: These rules require electronic tariff filing, using the Commission's Electronic Tariff Filing System, for all tariff filers for their tariffs, tariff revisions, Base Documents, and associated documents, including applications for special permission, and petitions and replies to petitions against tariff filings. Sections 61.13 and 61.51 define the scope of electronic filing requirements to apply to all issuing carriers that file tariffs. Sections 61.14–61.17 establish procedures applicable to tariff filings to which electronic filing requirements apply.

Need: By requiring all tariff filers to file electronically, these rules create a more open, transparent, and efficient flow of information to the public, and benefit the public, carriers, and the Commission by creating a uniform system providing online access to all carrier tariffs filed with the Commission.

Legal Basis: 47 U.S.C. 151, 154(i), 201–205, and 226(h)(1)(A).

Section Number and Title:

- 61.13 Scope.
- 61.14 Method of filing publications.
- 61.15 Letters of transmittal and cover letters.

61.16 Base documents.

61.17 Applications for special permission.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Brief Description: Part 63 sets forth, among other things, the processes, requirements, and conditions applicable to international section 214 applications and authorizations to provide global facilities-based and global resale services. During the relevant review period, the Commission modified the rules and procedures to, among other things, reduce the notice period for the discontinuance of international services, clarified the rules governing the provision of international roaming service by U.S. Commercial Mobile Radio Service (CMRS) carriers, and made changes to the *de jure* control of an international section 214 authorization holder and the treatment of asset acquisitions. The Commission also eliminated the requirement to submit circuit-additions report.

Need: These rules provide the applicable framework and establish the general applications, procedures, conditions, and restrictions for the provision of U.S.-international telecommunications services.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

Section Number and Title:

- 63.18(e)(2) introductory text Contents of applications for international common carriers.
- 63.19(a)(1) and (2) Special procedures for discontinuances of international services.
- 63.23(c); (e) [Removed]; (f) redesignated as new (e) Resale-based international common carriers.
- 63.24(b) note; (c) Assignments and transfers of control.

Brief Description: Sections 63.60(a), (b)(3), (e) and (g) extend to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act.

Need: These rule sections protect consumers of interconnected VoIP service from abrupt discontinuance, reduction, or impairment of their service without notice.

Legal Basis: 47 U.S.C. 151, 154(i)–(j), 214, and 303(r).

Section Number and Title:

63.60(a), (b)(3), (e), (g) Definitions.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

Brief Description: Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended. Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure telecommunications relay services (TRS) are available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States. Section 225 defines “TRS” as telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio. The rules provide minimum functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and a carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. In 2007 and 2008, the rules were amended by adding paragraphs (a)(3), (a)(9) (which has been redesignated as (a)(10)), (a)(11) (which has been redesignated as (a)(13)), (a)(12) (which has been redesignated as (a)(14)), (a)(13) (which has been redesignated as (a)(17)), (a)(15) (which has been redesignated as (a)(21)), (a)(17) (which has been redesignated as (a)(22)), (a)(18) (which has been redesignated as (a)(22)), (a)(24) (which has been redesignated as (a)(27)), (a)(25) (which has been redesignated as (a)(28)), and (b) to § 64.601 defining terms and extending the TRS requirements contained in § 64.601 to providers of interconnected VoIP services. Section 64.605 (which has been redesignated as § 9.14) was also added to ensure that emergency calls placed by internet-based TRS users will be routed directly and

automatically to the appropriate emergency services authorities by internet-based TRS providers. Section 64.611 was added to (1) allow the internet-based TRS provider to take steps to associate the internet-based TRS user’s telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures. Furthermore, section 64.613 was added in order to establish a uniform ten-digit numbering system for internet-based forms of TRS: (1) a means for NANP numbers to be assigned to internet-based TRS users and (2) a central numbering directory mechanism that maps each NANP telephone number assigned to an internet-based TRS user to the appropriate internet address.

Section 64.610 of Part 64, Subpart F implements the pilot National Deaf-Blind Equipment Distribution Program (NDBEDP). The NDBEDP was established to enable low-income individuals who are deafblind to access Twenty-First Century communications services. The two-year pilot program, which was extended for three additional years, helped ensure that qualified individuals who are deafblind have specialized customer premises equipment designed to access the internet and advanced communications. Section 64.611(e) prohibits Video Relay Service and IP Relay providers from assigning or issuing toll-free numbers to their customers and requires that, upon request of a customer, VRS and IP Relay providers transfer any already assigned toll-free numbers to a toll-free service provider or Responsible Organization (RespOrg).

Need: The rules implementing section 225 are intended to facilitate communication by persons with hearing or speech disabilities in order to give full effect to the accessibility policies embodied in section 225, and to ensure that individuals with hearing or speech disabilities receive the same quality of service as hearing individuals when they make TRS calls, regardless of where their calls originate or terminate. Further, the rules are designed to further the TRS functional equivalency mandate by ensuring that internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called. These rules also are intended to ensure that emergency calls placed by internet-based TRS users will be routed directly and automatically to the appropriate emergency services authorities by internet-based TRS providers.

Section 64.610 implemented a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which allocated \$10 million annually from the Interstate Telecommunications Relay Service (TRS) Fund for this nationwide equipment distribution effort. These rules were adopted to govern a pilot program to support the distribution of such specialized CPE and the provision of associated services. With the establishment of a permanent NDBEDP in 2016, 47 CFR 64.6201–64.6219, *the pilot program ended, and final accounting was completed. As a result, section 64.610 is no longer needed and may be repealed.* Section 64.611(e) promotes the use of geographically appropriate numbers and provide iTRS customers with access functionally equivalent to that enjoyed by hearing customers.

Legal Basis: 47 U.S.C. 151, 152, 225, and 620.

Section Number and Title:

64.601(a)(3) American Sign Language (ASL).

64.601(a)(9) [redesignated as 64.601(a)(10)] Common carrier or carrier.

64.601(a)(11) [redesignated as 64.601(a)(13)] Default provider.

64.601(a)(12) [redesignated as 64.601(a)(14)] Default provider change order.

64.601(a)(13) [redesignated as 64.601(a)(17)] Hearing carry over (HCO).

64.601(a)(15) [redesignated as 64.601(a)(22)] Internet Protocol Captioned Telephone Service (IP CTS).

64.601(a)(17) [redesignated as 64.601(a)(24)] IP Relay access technology.

64.601(a)(18) [redesignated as 64.601(a)(25)] iTRS access technology.

64.601(a)(24) [redesignated as 64.601(a)(30)] Original default provider.

64.601(a)(25) [redesignated as 64.601(a)(31)] Point-to-point video call.

64.601(b) Definitions and provisions of general applicability.

64.603(a) [cross-reference updated] Provision of Services.

64.604(a)(4) [redesignated as 47 CFR 9.14(a)], (a)(6) and (7), (c)(5)(ii), (c)(5)(iii)(C) redesignated as (c)(5)(iii)(D)], (c)(5)(iii)(F)(1) [cross-references updated], (c)(5)(iii)(F)(4) [cross-references updated], (c)(5)(iii)(L) through (N), (c)(6)(i) [cross-references updated], (c)(6)(iii)(B) [cross-references updated] Mandatory minimum standards.

64.605 [redesignated as 47 CFR 9.14(b)] Additional Operational

Standards Applicable to internet-Based TRS Providers; Emergency Calling Requirements.

64.606 [renumbered; previously 64.605] Internet-based TRS provider and TRS program Certification.

64.607 [renumbered; previously 64.606] Furnishing related customer premises Equipment.

64.608 [renumbered; previously 64.607] Provision of hearing aid compatible telephones by exchange carriers.

64.609 [renumbered; previously 64.608; cross-references updated] Enforcement of related consumer premises equipment rules.

64.610 [superseded by 64.6201 through 64.6219] Establishment of a National Deaf-Blind Equipment Distribution Program.

64.611 internet-based TRS registration.

64.613 Numbering directory for internet-based TRS users.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

Brief Description: In compliance with the requirements of the Junk Fax Prevention Act, the Commission amends § 64.1200(a)(3) of the Commission's rules to expressly recognize an EBR exemption from the prohibition on sending unsolicited facsimile advertisements. (The Commission correspondingly withdraws § 64.1200(a)(3)(i) of its rules from its existing rules, as facsimile senders will now be permitted to send facsimile advertisements to recipients with whom they have an EBR without first securing the recipient's written permission.)

Need: Congress mandated that the Commission issue regulations implementing the Junk Fax Prevention Act of 2005. As set forth in the statute, the Commission: (1) codified an established business relationship (EBR) exemption to the prohibition on sending unsolicited facsimile advertisements; (2) provided a definition of an EBR to be used in the context of unsolicited facsimile advertisements that is not limited in duration; (3) required the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender; and (4) specified the circumstances under which a request to "opt-out" complies with the Junk Fax Prevention Act of 2005.

Legal Basis: 47 U.S.C. 154, 254(k) secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C.

201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

Section Number and Title(s): 64.1200(a), (f) revised Delivery Restrictions.

Brief Description: In a Report and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Do-Not-Call Registry*, the Commission amends its rules under the TCPA to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five-year registration period. Consistent with the Do Not Call Improvement Act of 2007 (DNC Act), the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights. The Commission concludes that eliminating the need for consumers to re-register their numbers will enhance consumer privacy protections and benefit the Federal government in administering the National Registry. Making registrations permanent adequately balances the need to maintain a high level of accuracy in the National Registry with the desire to have a simple and effective means to limit unwanted telemarketing calls.

Need: The *DNC Report and Order* amends the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years, consistent with the DNC Act and FTC policy. This action will benefit consumers, who will no longer be required to re-register every five years, thereby reducing any burdens on consumers in terms of the time and effort required to register and the need to remember when to re-register.

Legal Basis: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k), unless otherwise noted.

Section Number and Title(s): 64.1200(c)(2) introductory text revised Delivery Restrictions.

Brief Description: In this Report and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, the Commission requires prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines. Second, the Commission eliminates the "established business relationship" exemption as it previously applied to prerecorded

telemarketing calls to residential lines. Third, the Commission requires telemarketers to implement an automated, interactive opt-out mechanism for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, which would allow a consumer to opt out of receiving additional calls immediately during a telemarketing robocall. Fourth, the Commission requires that the permissible three percent call abandonment rate be calculated for each calling campaign, so that telemarketers cannot shift more abandoned calls to certain campaigns, as is possible if calculation is made across multiple calling campaigns. Finally, the Commission adopts an exemption to its implementing rules under the Telephone Consumer Protection Act (TCPA) for prerecorded health care-related calls to residential lines, which are already regulated by the Federal Health Insurance Portability and Accountability Act.

Need: The Commission adopts prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines only. Limiting the written consent requirement to telemarketing calls significantly reduces the compliance burden for all entities, including small entities. In adopting the written consent requirement for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, the Commission also concluded that consent obtained pursuant to the E-SIGN Act will satisfy the requirement of its revised rule, including permission obtained via an email, website form, text message, telephone keypress, or voice recording. Accepting consent pursuant to the E-SIGN Act relieves all businesses, including small entities, from the economic impact of generating and retaining a paper document to evidence their compliance.

Legal Basis: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

Section Number and Title(s):

64.1200(a) through (c), (f) revised Delivery Restrictions. [note that the 64.1200(a)(4)(iv) opt out requirement has been removed if permission/consent is for the fax].

Subpart P—Calling Party Telephone Number; Privacy

Brief Description: These rule sections implement the Truth in Caller ID Act of 2009,⁵ and prohibit any person or entity from knowingly spoofing caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Sections 1.80(a)(4), (b)(3) and (c) establish forfeiture provisions for violations of the Truth in Caller ID Act or the Commission's rules under the Truth in Caller ID Act. Sections 64.1600(c), (d), (g) and (h) set out definitions used in connection with the Truth in Caller ID rules. Section 64.1604 establishes the rule against transmission of inaccurate or misleading caller identification information and exceptions to the rule.

Need: These rule sections carry out the Commission's statutory obligation to implement the Truth in Caller ID Act.

Legal Basis: Section 2 of the Truth in Caller ID Act of 2009, Pub. L. 11–331; 47 U.S.C. 151, 154(i), 154(j), 227, and 303 (r).

Section Number and Title:

64.1600(c), (d), (g), (h) Definitions.
64.1604 Prohibition on transmission of inaccurate or misleading caller identification information.

Subpart U—Customer Proprietary Network Information

Brief Description: These rules implement increased safeguards to the Commission's customer proprietary network information (CPNI) rule to protect customers' CPNI against unauthorized access and disclosure. Sections 64.2003(a), (b), (d), (m), (q), and (r) set out definitions of key terms used in the Commission's CPNI rules. Section 64.2003(k) extends the application of the Commission's CPNI rules to providers of interconnected VoIP service. Section 64.2009(e) requires carriers to file with the Commission an annual certification, including an explanation of any actions taken against data brokers and a summary of all consumer complaints received in the previous year regarding the unauthorized release of CPNI. Sections 64.2010(b), (c) and (d) restrict the release of call detail information in customer-initiated telephone contacts, requires mandatory password protection for online account access, and permits carriers to provide CPNI to customers based on in-store contact with a valid

photo ID, respectively.⁶ Section 64.2011 establishes a notification process for both law enforcement and customers in the event of a CPNI breach.⁷

Need: These rules limit pretexters' ability to obtain unauthorized access to personal customer information from carriers the Commission regulates.

Legal Basis: 47 U.S.C. 151, 154(i)–(j), 222, and 303(r).

Section Number and Title:

64.2003(a), (b), (d), (m), (q), (r) Definitions.

64.2005(c)(3) Use of customer proprietary network information without customer approval.

64.2009(e) Safeguards required for use of customer proprietary network information.

64.2010 Safeguards on the disclosure of customer proprietary network information.

64.2011 Notification of customer proprietary network information security breaches.

PART 69—ACCESS CHARGES

Subpart A—General

Brief Description: These rules implement measures to address the artificial stimulation of interstate switched access charges by requiring carriers, or groups of carriers, that engage in access stimulation to refile their tariffs to reflect lower rates for these services. Sections 69.3(e)(12)(i)–(iii) require local exchange carriers, or groups that include at least one local exchange carrier engaged in access stimulation, to: (1) file their own access tariffs, (2) withdraw from interstate access tariffs issued by the National Exchange Carrier Association, and (3) give notice of their intent to withdraw from the National Exchange Carrier Association tariffs within 45 days of beginning access stimulation. Section 69.1(d) provides that the provisions of Part 51—Interconnection, subparts H

⁶ The Commission proposed to amend § 64.2010 to require wireless carriers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device and to immediately notify customers whenever a subscriber identity module (SIM) change request is made on a customer's accounts, and sought comment on other ways to protect customers from fraud related to SIM changes. *Protecting Customers from SIM Swap and Port-Out Fraud*, WC Docket No. 21–341, Notice of Proposed Rulemaking, 36 FCC Red 14120 (2021).

⁷ The Commission has proposed updates to § 64.2011 addressing telecommunications carriers' breach notification duties to ensure that affected customers, the Commission, and other Federal law enforcement agencies receive the information they need to mitigate and prevent harm due to a breach and take action to deter future breaches. *Data Breach Reporting Requirements*, WC Docket No. 22–21, Notice of Proposed Rulemaking, FCC 22–102 (2023).

(Reciprocal Compensation for Transport and Termination of Telecommunications Traffic) and J (Transitional Access Service Pricing) control in the event of a conflict between those provisions and the provisions of part 69.

Need: These rules help to curtail access stimulation, which imposes undue costs on consumers and inefficiently diverts capital away from more productive uses such as broadband deployment.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, and 403.

Section Number and Title:

69.1(d) Application of access charges.

69.3(e)(12)(i) through (iii) Filing of access service tariffs.

PART 73—RADIO BROADCAST SERVICES

Subpart A—AM Broadcast Stations

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08–228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.61(a), (b) AM directional antenna field strength measurements.

Brief Description: This rule addresses corrective actions an AM broadcast station licensee must take when encountering certain difficulties in the operation of a station's AM directional antenna. (*Amendment of the Commission's Rules Regarding AM Directional Antennas*, Report and Order, FCC 07–97)

Need: These rules provide AM licensees with explicit guidance on operating AM broadcast stations with directional antennas.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

⁵ The President signed the Truth in Caller ID Act into law on December 22, 2010. Truth in Caller ID Act of 2009, Public Law 111–331, codified at 47 U.S.C. 227(e).

73.62 Directional antenna system operation and tolerances.

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08–228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.68(a) revised, (b) Sampling systems for antenna monitors.

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08–228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.151 introductory text and (c) Field strength measurements to establish performance of directional antennas.

73.155 Directional antenna performance recertification.

Subpart B—FM Broadcast Stations

Brief Description: This rule implements procedures for allocating new FM channels and modifying the communities of license of existing radio stations. (*Revision of Procedures Governing Amendments to FM Table of*

Allotments and Changes of Community of License in the Radio Broadcast Services, Second Report and Order, FCC 06–163).

Need: These rules are necessary to streamline the process of allocating new FM channels, modifying the communities of existing radio stations, and to reduce backlogs in proceedings to amend the FM Table of Allotments.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.202 Table of Allotments.

73.203 Availability of Channels.

Subpart C—Digital Audio Broadcasting

Brief Description: These rules foster the development of a vibrant terrestrial digital radio service for the public and ensures that radio stations are able to successfully implement digital audio broadcasting. (*Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, FCC 07–33).

Need: These rules are necessary for the operation of a terrestrial digital radio service.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.404 Interim hybrid IOBC DAB operation.

Subpart E—Television Broadcast Stations

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. (*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07–228).

Need: These rules ensured that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.616 Post-transition DTV station interference protection.

73.622(f)(4) Digital television table of allotments.

73.623(a) DTV applications and changes to DTV allotments.

73.624(d)(1) introductory text, (d)(1)(v) through (vii), (d)(3), (g) introductory text, (g)(2) Digital television broadcast stations.

Brief Description: This rule extends the duration of certain licenses and construction permits, to conform to the new, June 12, 2009, digital television transition date. (*Implementation of the DTV Delay Act*, Second Report and Order, FCC 09–11).

Need: These rules modify the tolling standard to extend to construction deadline if a station is unable to meet the digital television transition deadline due to international coordination with Mexico and Canada.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.624(d)(1)(vii), (3)(ii) and (iii) Digital television broadcast stations.

Brief Description: This rule establishes an annual fee for the provision of certain ancillary and supplementary service provided by low power television stations converting to digital operations. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11–110).

Need: This rule is necessary to fulfill the requirements of section 336 of the Communications Act of 1934 that the public recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.624(g) Digital television broadcast stations.

Brief Description: These rules permit the use of distributed transmission system technologies in the digital television service. The rules allow DTV station licensees and permittees to use DTS technologies where feasible in place of a single transmitter to provide service as authorized. (*Digital Television Distributed Transmission System Technologies*, Report and Order, FCC 08–256).

Need: These rules will help improve some DTV stations' ability to serve more of their viewers within their service areas. For example, we expect that DTS will be especially useful in mountainous areas where single transmitters have been unable to reach viewers in valleys or those blocked by elevated terrain.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.626 DTV distributed transmission systems.

Brief Description: These rules modernize rules concerning children's

programming to include restrictions on displaying internet website addresses. They were adopted collectively by the Commission to modernize its rules implementing the Act in light of the Digital TV Transition. (*In the Matter of Children's Television Obligations Of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, FCC 06–143).

Need: These rules are necessary to ensure that the Commission's rules continue to respond the Congressional mandate in the Children's Television Act by protecting children from advertising directing them to internet sites.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.670(b) through (d), Note 1 Commercial limits in children's programs.

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. (*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07–228).

Need: These rules ensured that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.682(d) TV transmission standards.

Brief Description: This rule makes mandatory a technical standard, developed by an industry standards development body, that is designed to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany. (*Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, FCC 11–182).

Need: This rule is necessary to implement the Commercial Advertisement Loudness Mitigation Act to protect viewers from excessively loud commercials.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.682(e), Note TV Transmission standards.

Brief Description: This rule adopts a predictive model for determining the

ability of individual locations to receive an over-the-air digital television broadcast signal at the intensity level needed for service through the use of an antenna. (*Satellite Television Extension and Localism Act of 2010 and Satellite Home Viewer Extension and Reauthorization Act of 2004*, Report and Order and Further Notice of Proposed Rulemaking, FCC 10–194).

Need: This rule is necessary to fulfill the requirement of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.683(d), (e) Field strength contours and presumptive determination of field strength at individual locations.

Brief Description: This rule establishes measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures are used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers. (*Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Report and Order, FCC 10–195).

Need: These rules are necessary to fulfill the requirement of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.684(d), (e) Field strength measurements.

Brief Description: Section 73.686 sets forth the procedures for measuring the field strength of television broadcast stations. Paragraph (d) of this section governs the measurement of NTSC television signal intensity while paragraph (e) of this section governs the measurement of digital television (DTV) signal intensity.

Need: These rules specify how field strength data must be collected for different types of television broadcast stations. This data is then used for propagation analysis. Accurate field strength measurement and propagation analysis are necessary to ensure that television broadcast stations operate as intended and do not cause harmful interference.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.686(d), (e) Field strength measurements.

Subpart G—Low Power FM Broadcast Stations (LPFM)

Brief Description: These rules provide procedures and guidance to promote the operation and expansion of the low power FM (LPFM) service through its technical and ownership rules. (*Creation of a Low Power Radio Service*, Third Report and Order, FCC 07–204).

Need: These rules help ensure the viability and success of the LPFM service.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.809(a), (b) Inference protection to full service FM stations.

73.853(b)(1) through (3) Licensing requirements and service.

73.865 Assignment and transfer of LPFM licenses.

73.870(f) Processing of LPFM broadcast station applications.

73.871(c)(2) through (4) Amendment of LPFM broadcast station applications.

73.872(c)(1) through (3) Selection procedure for mutually exclusive LPFM applications.

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: This rule provides the required content that must be provided by a station as part of a broadcaster's official station identification. (*Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 07–33).

Need: These rules are necessary to ensure broadcast stations, including digital radio and television stations, properly identify themselves to the public.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

73.1201(b) Station identification.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12–44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. 154, 303, 307, and 554.

Section Number and Title:

73.1212(e) Sponsorship identification; list retention; related requirements.

Brief Description: This rule addresses transmission system operations for broadcast television and radio stations. (*Amendment of the Commission's Rules Regarding AM Directional Antennas, Report and Order, FCC 07-97*)

Need: These rules are necessary to ensure licenses maintain and operate a broadcast station in a manner that is consistent with the Commission's rules.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.1350 (b)(2), (d), and (e)

Transmission System Operation.

Brief Description: These rules provide procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments. They were adopted collectively by the Commission.

(*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, FCC 06-163*).

Need: These rules are necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.1690(b)(9) Modification of transmission systems.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398), Second Report and Order, FCC 12-44*).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. 154, 303, 307, and 554.

Section Number and Title:

73.1943(d) Political file.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent

discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217*).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.2090 Ban on discrimination in broadcast transactions.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398), Second Report and Order, FCC 12-44*).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. 154, 303, 307, and 554.

Section Number and Title:

73.2526(b), (e)(11)(i) Online public inspection file of commercial stations.

73.3527(b), (e)(8) Online public inspection file of noncommercial educational stations.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217*).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3555 Note 2 Multiple ownership.

Brief Description: This rule adopts a maximum aggregate national audience reach of any single television station

owner and sets for procedures for divestiture in the even the specified national television ownership limit is reached. (Implementation of section 629 of the Consolidated Appropriations Act, 2004 (National Broadcast Television Ownership), Order, FCC 06-117).

Need: These rules are necessary in furtherance of statute and to promote localism, competition, and diversity.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.3555 (e)(1), (e)(3) Multiple ownership.

Brief Description: These rules provide procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments. They were adopted collectively by the Commission.

(*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order, FCC 06-163*).

Need: These rules are necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.3571(a)(1), (j) Processing of AM broadcast station applications.

Brief Description: This rule implements procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM radio applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures, Second Report and Order, FCC 11-28*).

Need: This rule is necessary to provide a process for filing and processing certain AM radio applications.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3571(h)(1)(ii) and note Processing of AM broadcast station applications.

Brief Description: This rule implements procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM radio applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures, Report and Order and Further Notice of Proposed Rulemaking, FCC 10-24*).

Need: This rule is necessary to provide a process for filing and

processing certain AM radio applications.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3571(h)(4)(iii), (k) Processing of AM broadcast station applications.

Brief Description: This rule implements a process to enable Class A television stations to complete the digital transition process. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11–110).

Need: The rule is necessary to enable Class A stations to complete their transition from analog to digital operations.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3572(h) Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

Brief Description: These rules provide procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments. They were adopted collectively by the Commission. (*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, FCC 06–163).

Need: This rule is necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.3573(a)(1), Note 1, (g) Processing of FM broadcast station applications.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12–44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. 154, 303, 307, and 554.

Section Number and Title:

73.3580(d)(4)(i) and (ii) Local public notice of filing of broadcast applications.

Brief Description: The rule provides for the construction period and manner of extending a construction permit for LPFM stations. (*Creation of a Low Power Radio Service*, Third Report and Order, FCC 07–204).

Need: The rule was adopted to ensure the timely construction of LPFM stations while providing necessary flexibility.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3598(a) introductory text Period of construction.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07–217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3598(a)(1) through (3) Period of construction.

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. (*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07–228).

Need: These rules ensure that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. 154, 303, 334 and 336.

Section Number and Title:

73.3598(a), (b) Period of construction.

Brief Description: This rule extends the duration of certain licenses and construction permits, to conform to the new, June 12, 2009, digital television

transition date. (*Implementation of the DTV Delay Act*, Second Report and Order, FCC 09–11).

Need: These rules modify the tolling standard to extend to construction deadline if a station is unable to meet the digital television transition deadline due to international coordination with Mexico and Canada.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.3598(b)(3) Construction Period

Brief Description: This rule includes reporting requirements on FCC Form 323, "Ownership Report for Commercial Broadcast Stations" to improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09–33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive broadcast ownership in the United States.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.3615(a) Ownership reports.

Subpart I—Procedures for Competitive Bidding and for Applications for Noncommercial Educational Broadcast Stations on Non-Reserved Channels

Brief Description: These rules implement procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM and FM applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures*, Report and Order and Further Notice of Proposed Rulemaking, FCC 10–24).

Need: These rules are necessary in order to set procedures for competitive bidding and applications for noncommercial educational broadcast stations on non-reserved channels.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.5002(c) Application and certification procedures; return of mutually exclusive applications not subject to competitive bidding procedures; prohibition of collusion.

73.5005(a) Filing of long-form applications.

73.5007(a), Note 1 Designated entity provisions.

Brief Description: The rule implements methods to facilitate

investment in eligible entities and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07–217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.5008(c) Definitions applicable for designated entity provisions.

Subpart J—Class A Television Broadcast Stations

Brief Description: These rules permit the use of distributed transmission system technologies in the digital television service. The rules allow DTV station licensees and permittees to use DTS technologies where feasible in place of a single transmitter to provide service as authorized. (*Digital Television Distributed Transmission System Technologies*, Report and Order, FCC 08–256).

Need: These rules will help improve some DTV stations' ability to serve more of their viewers within their service areas. For example, we expect that DTS will be especially useful in mountainous areas where single transmitters have been unable to reach viewers in valleys or those blocked by elevated terrain.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.6023 Distributed transmission systems.

Brief Description: This rule extends FCC Form 323 ownership reporting requirements to low power television stations, including Class A stations, to file biennially. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09–33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of broadcast ownership in the United States.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.6026 Broadcast regulations applicable to Class A television stations.

Subpart K—Application and Selection Procedures for Reserved Noncommercial Educational Channels, and for Certain Applications for Noncommercial Educational Stations on Non-Reserved Channels

Brief Description: These rules implement procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM and FM applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures*, Report and Order, FCC 11–28).

Need: These rules are necessary to help promote access to radio services in rural areas.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.7000 Definition of terms (as used in subpart K only).

73.7002(b) Fair distribution of service on reserved band FM channels.

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

Subpart—General; Rules Applicable to All Services in Part 74

Brief Description: This rule reduces the regulatory burden for the 18 GHz band by adding new channel-size options for FS operations along with channelization and emission flexibility for multichannel video programming distributors below 18.3 GHz, thereby facilitating the relocation to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz. (*Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services*, Report and Order, FCC 06–141).

Need: These rules are necessary to encourage efficient use of the spectrum by all FS licensees and provide a regulatory environment that will allow MVPDs to provide competitive services while protecting Federal earth stations.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.25(c)(3) Temporary conditional operating authority.

74.32(a) Operation in the 17.7–17.8 GHz and 17.8–19.7 GHz Bands.

Subpart E—Aural Broadcast Auxiliary Stations

Brief Description: This rule provides for the use of the 942–944 MHz band. (*Non-Substantive Revisions to the Table of Frequency Allocations*, Memorandum Opinion and Order, FCC 08–530).

Need: These rules ensure consistency with worldwide spectrum allocations.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:
74.502(a) and Note Frequency assignment.

Subpart F—Television Broadcast Auxiliary Stations

Brief Description: These rules reflect what frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations, and require registration of TV pickup stations in certain spectrum bands. (*Facilitating the Use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility To Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 11–120).

Need: These rules are necessary to prevent interference with licensed users of the same and adjacent spectrum bands.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.602(a) introductory text Frequency assignment.

74.605 Registration of stationary television pickup receive sites.

Brief Description: Section 74.638 sets forth the frequency coordination procedures between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands. (*Coordination Between the NonGeostationary and Geostationary Satellite Orbit*, Report and Order, FCC 10–15).

Need: These rules are necessary to ensure proper coordination of frequency assignments among Television Broadcast Auxiliary Station licensees, which minimizes the chances of harmful interference.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.638(a) through (d) Frequency coordination.

Brief Description: This rule waives the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The rule also eliminates the requirement

that MSS entrants to the 2000–2020 MHz band may not begin operations until the BAS incumbents in the top 30 markets by population and all fixed BAS links in the 1990–2025 MHz band have been relocated. MSS entrants will be allowed to conduct operations in markets where the BAS incumbents have not been relocated only if they successfully coordinate with the BAS incumbents. (*Relocation of 2 GHz Broadcast Auxiliary Service*, Report and Order and Further Notice of Proposed Rulemaking, FCC 09–49).

Need: These rules helped to coordinate the timely relocation of BAS licensees in order to implement new services in the 1990–2025 MHz band.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.690(e)(1)(i) Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

Subpart G—Low Power TV and TV Translator Stations

Brief Description: These rules establish processes to facilitate and enable low power television and television translator stations to transition from analog to digital operations. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11–110).

Need: These rules are necessary to enable low power television and television translator stations to conduct digital operations.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.735(b)(1) Power Emissions.

Brief Description: This rule creates a new “replacement” digital television translator service to permit full-service television stations to continue to provide service to viewers within their analog coverage areas who have lost service as a result of those stations’ digital transition. The replacement digital television translator license will be associated with the full-service station’s main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station’s main license. Almost all other rules associated with television translator stations are applied to replacement digital television

translators. (*Replacement Digital Television Translator Service*, Report and Order, FCC 09–36).

Need: These rules help preserve service to viewers who have lost television service as a result of a station’s digital transition.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.787(a)(5) Digital licensing.

Brief Description: These rules establish processes to facilitate and enable low power television and television translator stations to transition from analog to digital operations. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11–110).

Need: These rules are necessary to enable low power television and television translator stations to conduct digital operations.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.787(b)(1) Digital Licensing.

74.794(a)(1), (a)(2)(iii) Digital Emissions.

Brief Description: This rule extends FCC Form 323 ownership reporting requirements to low power television stations to file biennially. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09–33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of broadcast ownership in the United States.

Legal Basis: 47 U.S.C. 154, 303, 334 336, and 339.

Section Number and Title:

74.797 Biennial Ownership Reports

Subpart L—FM Broadcast Translator Stations and FM Broadcast Booster Stations

Brief Description: These rules modified the FM translator rules to allow AM stations to use currently authorized FM translators for “fill-in” service within their current coverage areas. (*Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, FCC 09–59).

Need: These rules were implemented to help AM radio stations provide a listenable signal to their listeners and better serve their local communities.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.1201(a) through (e), (g), (j) Definitions.

74.1231(a), (b), (h) Purpose and permissible service.

74.1232(d) Eligibility and licensing requirements.

74.1263(b) Time of operation.

74.1284(b), (c) Rebroadcasts.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

Subpart A—General

Brief Description: This rule establishes a definition for the term “significantly viewed.”

(*Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA); Amendments to Section 340 of the Communications Act*, Report and Order and Order on Reconsideration, FCC 10–193).

Need: This rule is necessary to implement Section 203 of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.5(i) Definitions.

Brief Description: This rule establishes procedures related to program carriage complaints and entities that elect to resolve a dispute through alternative dispute resolution. (*Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, FCC 11–119).

Need: This rule is necessary to establish procedures for resolving program carriage disputes.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.7(g)(2) General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

Subpart C—Cable Franchising

Brief Description: These rules address provide guidance and implement section 621(a)(1) of the Communications Act of 1934, which prohibits franchising authorities from unreasonably refusing

to award competitive franchises for the provision of cable services. (*Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, FCC 06–180).

Need: These rules are necessary for carrying out the Congressional mandate of section 621(a)(1) of the Communications Act of 1934.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.41 Franchise application process.

Subpart D—Carriage of Television Broadcast Signals

Brief Description: This rule provides satellite carriers the authority to offer out-of-market, but “significantly viewed” broadcast television network stations as part of their local service to subscribers. (*Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA); Amendments to Section 340 of the Communications Act*, Report and Order and Order on Reconsideration, FCC 10–193).

Need: This rule is necessary to implement Section 203 of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.54(c),(g), (i) Significantly viewed signals; method to be followed for special showings.

Brief Description: This rule establishes the standard for which is considered a good quality signal delivered by broadcasters to MVPDS. (*Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07–228).

Need: This rule ensures that MVPDS and their subscribers are able to receive clear, high quality broadcast signals.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536,

537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.55(c)(3) Definitions Applicable to the Must-Carry Rules.

Brief Description: This rule addresses the responsibilities of cable television operators with respect to carriage of digital broadcasters in light of the significant changes to the broadcasting and cable television industries resulting from the digital television transition. (*Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Third Report and Order and Third Notice of Proposed Rulemaking, FCC 07–170).

Need: This rule ensures that cable subscribers will continue to be able to view broadcast stations after the digital transition, and that they will be able to view those broadcast signals at the same level of quality in which they are delivered to the cable system.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.56(d) Signal carriage obligations.
76.56(f) Signal carriage obligations.
76.62(b), (h) Manner of Carriage.

Brief Description: This rule requires satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high-definition signals in a market in which any station’s signals are carried in HD. (*Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, FCC 08–86).

Need: This rule ensures that satellite subscribers will continue to be able to view broadcast stations after the digital transition and receive high-definition signals.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.66(b)(1), (d)(2)(vi), (k) Satellite Broadcast Signal Carriage.

Brief Description: These rules set forth carriage rights for stations that elected as part of the broadcast television incentive auction to relinquish their spectrum usage rights and engage in a channel sharing arrangement.

(*Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Report and Order*, Report and Order, FCC 12–45).

Need: These rules are necessary to establish carriage rights for broadcast television stations that relinquished their spectrum in the broadcast television incentive auction in order to share a television channel with another television broadcaster.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.66(n) Satellite broadcast signal carriage.

Subpart G—Cablecasting

Brief Description: These rules modernize rules concerning children’s programming to include restrictions on displaying internet website addresses. They were adopted collectively by the Commission to modernize its rules implementing the Act in light of the Digital TV Transition. (*In the Matter of Children’s Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, FCC 06–143).

Need: These rules are necessary to ensure that the Commission’s rules continue to respond the Congressional mandate in the Children’s Television Act by protecting children from advertising directing them to internet sites.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.225(b) through (e), Note 1 Commercial Limits in Children’s Programs.

SUBPART J—OWNERSHIP OF CABLE SYSTEMS

Brief Description: This rule prohibits cable operators from owning or having an attributable interest in cable systems serving more than 30 percent of multichannel video programming subscribers nationwide. It also eliminates the overbuilder exception.

(The Commission's Cable Horizontal and Vertical Ownership Limits; Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 07–219).

Need: This rule balances the need to ensure that cable operators cannot use their dominant position in the multichannel video programming distribution market to impede unfairly the flow of video programming to consumers with consideration of the efficiencies and other benefits that might be gained through increased ownership or control.

Legal Basis: 47 U.S.C. 152(a), 154(i), 303, 307, 309, 310, and 533.

Section Number and Title:

76.503(a) National Subscriber Limits.

Subpart K—Technical Standards

Brief Description: This rule incorporates by reference the technical standard, developed by an industry standards development body, that was designed to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany. (*Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, FCC 11–182).

Need: This rule is necessary to implement the Commercial Advertisement Loudness Mitigation Act to protect viewers from excessively loud commercials.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.607 Transmission of commercial advertisements.

Brief Description: This rule implements requirements for digital cable systems to support unidirectional digital cable products. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable*

Systems and Consumer Electronics Equipment, Third Report and Order and Order on Reconsideration, FCC 10–181). These rules are necessary to improve the operation of the CableCARDS and bolster support for retail CableCARD devices so that consumers may access cable services without the need to lease a set-top box from their cable operator.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.640(b)(4)(ii) and (iii) Support for unidirectional digital cable products on digital cable systems.

Subpart O—Competitive Access To Cable Programming

Brief Description: These rules establish policies and procedures for the consideration of complaints alleging unfair acts involving terrestrially delivered, cable-affiliated programming in violation of section 628(b) of the Communications Act of 1934. These rules will provide competitors to incumbent cable operators with an opportunity to obtain access to certain cable-affiliated programming that they are currently unable to offer their subscribers, thereby promoting competition in the delivery of video to consumer. (*Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, FCC 10–17).

Need: These rules are necessary to promote competition in the video distribution market.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1000 (b), (c)(1), (j), (l), (m)

Definitions.

76.1001 Unfair practices generally.

76.1002(b)(2) Specific unfair

practices prohibited.

76.1003(c)(3), (e)(1), (g)(1) and (2), (l) Program access proceedings.

76.1004(a) Applicability of program access rules to common carriers and affiliates.

Brief Description: These rules set forth the Commission's program access complaint procedures. (*Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and*

Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, Report and Order and Notice of Proposed Rulemaking, FCC 07–169).

Need: These rules provide procedures for resolving program access disputes in furtherance of section 628 of the Communications Act.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1003(i) through (k) Program access proceedings.

Subpart P—Competitive Availability of Navigation Devices

Brief Description: These rules provide for the commercial availability of set top boxes and other consumer equipment used to receive video signals and other services. (*Commercial Availability of Navigation Devices*, Report and Order, FCC 98–116).

Need: The intended effect of these rules is to expand opportunities for consumers to purchase this equipment from sources other than the service provider.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1200 Definitions.

76.1201 Rights of Subscribers to Use or Attach Navigation Devices.

76.1202 Availability of Navigations Devices.

76.1203 Incidence of Harm.

76.1206 Equipment Sale or Lease Charged Subsidy Prohibition.

76.1207 Waivers.

76.1208 Sunset of Regulations.

76.1209 Theft of Services.

76.1210 Effect on Other Rules.

Subpart Q—Regulation of Carriage Agreements

Brief Description: This rule pertains to carriage of video programming vendors by multichannel video programming distributors (MVPDs) and the procedures for addressing complaints alleging violations of the Commission's program carriage rules. (*Leased Commercial Access; Development of*

Competition and Diversity in Video Programming Distribution and Carriage, Second Report and Order, FCC 11–119).

Need: These rules are necessary to promote competition and diversity in the video programming and video distribution markets.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1302(c) through (k) Support for unidirectional digital cable products on digital cable systems.

Subpart T—Notices

Brief Description: This rule establishes annual consumer notice requirements with regards to cable operators charging fees for the rental of navigation devices and CableCARDS. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Third Report and Order and Order on Reconsideration, FCC 10–181).

Need: These rules are designed to protect consumers and ensure they are fully informed about fees related to the rental of navigation devices and CableCARDS from cable operators.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1602(b)(7) and (8) Customer service—general information.

Subpart W—Encoding Rules

Brief Description: These rules establish a definition of “unencrypted broadcast television” and make clear what practices with regards to encoding, storing or managing commercial audiovisual content are not prohibited. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, FCC 10–181).

Need: These rules are necessary to improve the operation of the CableCARDS and bolster support for retail CableCARD devices so that consumers may access cable services

without leasing a set-top box from their cable operators.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1902(s) Definitions.

76.1908(a) Certain practices not prohibited.

PART 78—CABLE TELEVISION RELAY SERVICE

Subpart B—Applications and Licenses

Brief Description: This rule reduces the regulatory burden for the 18 GHz band by adding new channel-size options for FS operations along with channelization and emission flexibility for multichannel video programming distributors below 18.3 GHz, thereby facilitating the relocation to spectrum at 17.7–18.3 GHz and 19.3–19.7 GHz. (*Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services*, Report and Order, FCC 06–141).

Need: These rules are necessary to encourage efficient use of the spectrum by all FS licensees and provide a regulatory environment that will allow MVPDs to provide competitive services while protecting Federal earth stations.

Legal Basis: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, and 309.

Section Number and Title:

78.19(f) introductory text, (f)(2) Interference.

Brief Description: This rule establishes procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in certain spectrum bands. (*Coordination Between the NonGeostationary and Geostationary Satellite Orbit*, Report and Order, FCC 10–15).

Need: These rules are necessary to ensure coordination of frequency assignments and prevent interference among users of certain spectrum bands.

Legal Basis: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, and 309.

Section Number and Title:

78.36(a) through (d) Frequency Coordination.

Brief Description: This rule waives the deadline by which Sprint Nextel must complete relocation of the broadcast

auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The rule also eliminates the requirement that MSS entrants to the 2000–2020 MHz band may not begin operations until the BAS incumbents in the top 30 markets by population and all fixed BAS links in the 1990–2025 MHz band have been relocated. MSS entrants will be allowed to conduct operations in markets where the BAS incumbents have not been relocated only if they successfully coordinate with the BAS incumbents. (*Replacement Digital Television Translator Service*, Report and Order, FCC 09–36).

Need: These rules helped to coordinate the timely relocation of BAS licensees in order to implement new services in the 1990–2025 MHz band.

Legal Basis: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

78.40(f)(1)(i) Transition of the 1990–2025 MHz Band from the Cable Television Relay Service to Emerging Technologies.

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

Subpart A—Video Programming Owners, Providers, and Distributors

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12–9).

Need: These rules are necessary to enable individuals who are deaf or hard of hearing to have access to captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.1(a)(4), (c) Closed captioning of televised video programming.

Brief Description: This rule establishes certain requirements for video programming distributors to caption television programming and establishes a standard for exemption from the requirement. (*Closed Captioning and Video Description of Video Programming*, Report and Order, FCC 12–83).

Need: This rule is necessary to implement section 613 of the Communications Act of 1934 and establishing a process by which video programming distributors may seek an exemption from the Commission's closed captioning requirements.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.1(d)(2), (f)(1) through (4), (f)(10) and (11) Closed captioning of televised video programming.

Brief Description: These rules establish the requirement for certain television broadcasters and multichannel video programming distributor systems to provide video description services. (*Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 11–126).

Need: These rules are necessary to implement the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

79.1(i)(1) and (2) Closed captioning of televised video programming.

79.3 Audio description of video programming.

Brief Description: This rule establishes a means by which video programming distributors are permitted to provide contact information to the Commission for the handling of closed captioning questions and complaints. (*Closed Captioning of Video Programming*, Order, FCC 09–109).

Need: This rule is necessary to ensure the Commission has necessary contact information for video programming distributors in order to promptly address closed captioning concerns and complaints.

Legal Basis: 47 U.S.C. 154(i), 303I, and 613.

Section Number and Title:

79.1(i)(3) Closed captioning of televised video programming.

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12–9).

Need: These rules are necessary to enable individuals who are deaf or hard

of hearing to have access to captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.4 Closed captioning of video programming delivered using internet protocol.

Brief Description: Part 79, Subpart A implements section 713 of the Communications Act of 1934, as amended. Section 713, Video Programming Accessibility, was added to the Communications Act by section 305 of the Telecommunications Act of 1996 and directed the Commission to adopt rules that generally require the closed captioning of video programming shown on television. In 2009, the rules were amended by adding paragraphs (a)(5)(i) and (ii) to § 79.1 defining what constitutes “new programming,” subject to captioning requirements for both analog and digital video programming shown on television. Paragraph (i) of this section, which was also added to § 79.1, adopted requirements for video programming distributors to make their contact information available to consumers.

Need: Closed captioning is an assistive technology that provides persons with hearing disabilities access to television programs. Closed captioning displays the audio portion of a television signal as printed words on the television screen. Congress has directed the Commission to prescribe and maintain regulation to implement the provision of closed captioning for video programming shown on television.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 330, 544a, 613, and 617.

Section Number and Title:

79.1(a)(5)(i) and (ii) New Programming.

79.1(i) Contact information.

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12–9).

Need: These rules are necessary to enable individuals who are deaf or hard of hearing to be able to have access to

captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.100 Incorporation by reference.

79.101 Closed caption decoder requirements for analog television receivers.

79.102 Closed caption decoder requirements for digital television receivers and converter boxes.

79.103 Closed caption décor requirements for apparatus.

79.104 Closed caption decoder requirements for recording devices.

PART 80—STATIONS IN THE MARITIME SERVICES

Subpart A—General Information

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart A contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

Need: Section 80.7 provides that certain material is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. In order to enforce any edition other than that specified in this section, the Federal Communications Commission must publish notice of the change in the **Federal Register** and the material must be available to the public. The need to continue the coordination with the **Federal Register** is ongoing.

Legal Basis: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.7 Incorporation by reference.

Subpart E—General Technical Standards

Brief Description: The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart E rules prescribe the general technical requirements for the use of frequencies and equipment in the maritime services.

Need: Section 80.203(b)(4) provides for authorized channels to be programmed via computerized remote control, while § 80.231 sets out the technical requirements for a class of equipment used to locate a survival craft or distressed vessel. The need for these rules is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as

amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.203(b)(4) Authorization of transmitters for licensing.

80.231 Technical Requirements for Class B Automatic Identification System (AIS) equipment.

Subpart F—Equipment Authorization For Compulsory Ships

Brief Description: The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart F rules prescribe the general technical requirements for certification of equipment used on compulsory ships.

Need: Section 80.277 specifies the equipment that may be used by Ship Security Alert Systems (SSAS). The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.277 Ship Security Alert System (SASS).

Subpart G—Safety Watch Requirements And Procedures

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart G rules set out the procedures for Coast Station safety watches.

Need: Section 80.314(d) describes the procedures for canceling false distress alerts. Section 80.327(e), (f), and (g) prescribe procedures for sending, receiving, and canceling of urgency signals. Section 80.329 (g) sets out requirements for stations hearing a safety signal. The need for these rules is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.314(d) Distress communications.
80.327(e), (f), (g) Urgency signals and messages.

80.329(g) Safety signals and messages.

Subpart H—Frequencies

Brief Description: The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart H describes the carrier frequencies and general conditions of use for the types of radiotelephony governed by 47 CFR part 80, and § 80.373 specifically describes the carrier frequency pairs assignable for private on-board mobile radiotelephony communications.

Need: Section 80.373(g)(2) allows, where needed, equipment designed for 12.5 kHz channel spacing using the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz, and 467.5625 MHz to be introduced for on-board communications. The need for this section is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.373(g)(2) Private communications frequencies.

Subpart I—Station Documents

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart I requires that licensees of radio stations have current station documents.

Need: Section 80.409(e)(6) requires a weekly entry that verifies that certain safety devices have been tested and inspected.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.409(e)(6) Station logs.

Subpart J—Public Coast Stations

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart J sets out the requirements and parameters for public coast stations.

Need: Section 80.475(d) sets out requirements for when certain AMTS systems are required to connect to the public switched telephone network. The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as

amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.475(d) Scope of service of the Automated Maritime Telecommunications System (AMTS).

Subpart R—Technical Equipment Requirements for Cargo Vessels not Subject to Subpart W

Brief Description: The Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart R rules provide the radiotelephone requirements for cargo ships of 300 to 1600 gross tons.

Need: Section 80.882 requires ships subject to this subpart to maintain a watch on the frequency 2182 kHz. The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.882 2182 kHz watch.

Subpart S—Compulsory Radiotelephone Installations for Small Passenger Boats

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart S provides that the provisions of Part III of Title III of the Communication Act require United States vessels which transport more than six passengers for hire while such vessels are being navigated on any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, or in the open sea to carry a radiotelephone installation complying with this subpart.

Need: Section 80.917(h) sets forth the conditions by which any small passenger vessel, the keel of which was laid after March 1, 1957, must have a reserve power supply located on the same deck as the main wheelhouse or at least one deck above the vessel's main deck, unless the main power supply is so situated. Further, beginning January 2, 2013, any small passenger vessel that does not carry a reserve power supply must carry at least one VHF handheld radiotelephone. The need for this section is ongoing.

Legal Basis: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.917(h) Reserve power supply.

Subpart W—Global Maritime Distress and Safety System (GMDSS)

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart W rules apply to all passenger ships regardless of size and cargo ships of 300 tons gross tonnage and upwards, mostly fishing vessels, with some exceptions.

Need: The rules in this subpart require that all compulsory vessels, including fishing vessels of 300 gross tons or more, must comply with all the GMDSS requirements appropriate to their area of operation. A separate safety system for fishing vessels would be expensive, difficult to administer, and would cause confusion during a distress incident. Sections 80.1101(c)(2)(iii), (c)(3)(iii), (c)(12)(vi), and (c)(13)(x) specify the appropriate performance standards to which listed equipment must conform, as well as applicable testing requirements.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.1101(c)(2)(iii), (c)(3)(iii), (c)(12)(vi), (c)(13)(x) Performance standards.

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart W contains the rules applicable to the Global Maritime Distress and Safety System (GMDSS). Every ship of the United States subject to part II of title III of the Communications Act or the Safety Convention must comply with the provisions of this subpart. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to the GMDSS. For the purposes of this subpart, distress and safety communications include distress, urgency, and safety calls and messages.

Need: Section 80.1107 provides that unless the normal use of the required radiotelephone station demonstrates that the equipment is operating, a test communication on a required or

working frequency must be made each day the ship is navigated. Further, when this test is performed by a person other than the master and the equipment is found to be defective, the master must be promptly notified. The need for this section is ongoing.

Legal Basis: 47 U.S.C. 151–155, and 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.1107 Test of radiotelephone station.

PART 87—AVIATION SERVICES

Subpart D—Technical Requirements

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart D provides for the technical requirements under which radio stations may be licensed and used in the aviation services.

Need: Section 87.133(g) sets forth the carrier frequency tolerances each station operating under this subpart must maintain. Any aeronautical enroute service transmitter operating in U.S. controlled airspace with 8.33 kHz channel spacing (except equipment being tested by avionics equipment manufacturers and flight test stations prior to delivery to their customers for use outside U.S. controlled airspace) must achieve 0.0005% frequency stability when operating in that mode. The need for this section is ongoing.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.133(g) Frequency stability.

Subpart F—Aircraft Stations

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart F provides that aircraft stations must limit their communications to the necessities of safe, efficient, and economic operation of aircraft and the protection of life and property in the air, except as otherwise specifically provided in this part. Contact with an aeronautical land station must only be attempted when the aircraft is within the service area of the land station.

Need: Sections 87.187(gg) and (hh) provide that the frequencies used for air-ground communications are listed in subpart E and that aircraft stations may use frequencies assigned to Government or non-Government aeronautical stations or radionavigation land stations if the communications are within the aeronautical or radionavigation land station scope of service, including specified frequencies in the Hawaiian islands and other specified coordinate locations.

Further, transmissions by emergency locator transmitters (ELTs) are intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station as a locating aid for survival purposes. Section 87.195 provides that ELTs that operate only on frequency 121.5 MHz will no longer be certified and that the manufacture, importation, and sale of ELTs that operate only on frequency 121.5 MHz is prohibited beginning July 10, 2019. The need for this section is ongoing.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.187(gg) and (hh) Frequencies.
87.195 121.5 MHz ELTs.

Subpart J—Flight Test Stations

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart J provides that the use of flight test stations is restricted to the transmission of necessary information or instructions relating directly to tests of aircraft or components thereof.

Need: Section 87.303(f) denotes the frequencies available for assignment to flight test land and aircraft stations and additional frequencies available for assignment only to flight test stations of aircraft manufacturers. Further, frequency assignments for Flight Test VHF Stations may be based on either 8.33 kHz or 25 kHz spacing. The need for this section is ongoing.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.303(f) Frequencies.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart A—General Information

Brief Description: Part 90 sets forth the conditions under which radio

communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States. Sets forth the rules governing the Emergency Alert System (EAS).

Need: Further clarified that and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to initiating construction.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title: 90.5(b) and (f) Other applicable rule parts.

Brief Description: The Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart A rules inform the general basis, purposes, and definitions of the rules.

Need: Section 90.5 lists other rule parts of importance that may be referred to with respect to licensing and operations in radio services governed under this part. Section 90.5(n) provides a cross-reference to Part 101, which governs the operation of fixed microwave services. The need for this rule is ongoing for clarity and to prevent confusion.

Legal Basis: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title: 90.5(n) Other applicable rule parts.

Subpart B—Public Safety Pool

Brief Description: Subpart B addresses the Public Safety Radio Pool.

Need: Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012), this provision allocates the 758–769 MHz and 788–799 MHz bands for use by the First Responder Network Authority to deploy a nationwide public safety broadband network as prescribed by statute.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Numbers and Title: 90.19 Nationwide Public Safety Broadband Network.

Brief Description: Subpart B outlines regulations for frequencies the Public Safety Radio Pool.

Need: For administrative convenience and clarity assigned channel names for the thirty-two frequency pairs listed in paragraph (d)(66)(i).

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Numbers and Title: 90.20(d)(66)(i) Public Safety Pool.

Brief Description: These rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, I. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: The rules were amended to clarify the frequencies available to Public Safety Entities.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Numbers and Title: 90.20(c)(7) Additional frequencies available.

Brief Description: Subpart B concerns the frequencies generally available to Public Safety Entities.

Need: Grandfathered public safety licensees licensed to operate on 157.225 MHz/161.825 MHz and 157.275 MHz/161.875 MHz.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title: 90.20(g)(2)(ii) Additional frequencies available.

Brief Description: This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title: 90.20(g)(3)(i) and (ii), (g)(3)(iii)(B) and (D), and (g)(3)(vi) Public Safety Pool.

Subpart C—Industrial/Business Radio Pool

Brief Description: Subpart addresses the Industrial/Business Pool including the entities eligible for licensure in the pool.

Need: The rules were amended to increase the availability of frequencies in the Industrial/Business Pool to Public Safety licensees.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Numbers and Titles:

90.35(a)(5) Eligibility.

Brief Description: Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart C rules set forth the rules specific to the Industrial/Business Radio Pool.

Need: Section 90.35(c)(91) explains assignment limitations to the frequency table, specifically a cross-reference that Subpart M of this part contains rules for assignment of frequencies in the 5850–5925 MHz band. This reference is necessary for clarity of the section.

Legal Basis: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title: 90.35(c)(91) Industrial/Business Pool (title of 90.35).

Subpart F—Radiolocation Service

Brief Description: The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation. Rules as to eligibility for licensing, permissible communications, frequency available, and any special requirements are set forth in this subpart.

Need: Clarifies that the frequency band set forth in the table in 103(b) is shared with and stations operating in this frequency band in this service are on a secondary basis to stations licensed in the Maritime Mobile Service.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Titles: 90.103(c)(1) Radiolocation Service.

Brief Description: Part 90 sets forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: The rules are needed to implement the Commission's authority under Title III of the Communications Act of 1934, as amended which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title:

90.103(c)(21) Radiolocation Service.

Subpart G—Supplemental Information to be Routinely Submitted With Applications.

Brief Description: Outlines the information that must be routinely provided with any application for licensure in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services.

Need: Further clarified that applicants must comply with the environmental provisions of § 17.4(c).

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title:

90.129(g) Supplemental information to be routinely submitted with applications.

Subpart H—Policies Governing the Assignment of Frequencies

Brief Description: Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart H rules inform about the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

Need: Sections 90.175(j)(18)–(22) provide types of applications that need not be accompanied by evidence of frequency coordination, including applications for frequencies in the 4940–4990 MHz band. This rule allows for efficiency and streamlining; the need for this rule is ongoing.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title:

90.175(j)(18) through (21) Frequency coordinator requirements.

90.175(j)(22) Frequency coordinator requirements (title of 90.175).

Subpart I—General Technical Standards

Brief Description: Part 90 states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart I sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such

requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths.

Need: These technical standards are needed to ensure that public safety communications devices are interoperable and do not cause harmful interference to other authorized communications. Section 90.205(j) specifies the rules for power and height limitations between 758–775 MHz and 788–805 MHz. Section 90.209(b)(5) Table 1, footnote 6 provides that operations using equipment designed to operate with a 25 kilohertz channel bandwidth may be authorized up to a 20 kilohertz bandwidth unless the equipment meets the Adjacent Channel Power limits of 90.221 in which case operations may be authorized up to a 22 kilohertz bandwidth. Section 90.209(b)(7) provides the conditions in which Economic Area (EA)-based licensees in frequencies 817–824/862–869 MHz (813.5–824/858.5–869 MHz) may exceed the standard channel spacing and authorized bandwidth. Section 90.210 Table 1, footnote 5 provides that equipment designed to operate on 25 kilohertz bandwidth channels must meet the requirements of either Emission Mask B or G, whichever is applicable, while equipment designed to operate on 12.5 kilohertz bandwidth channels must meet the requirements of Emission Mask D.

Section 90.221 specifies the frequencies and adjacent channel power limits equipment designed to operate with a 25 kHz channel bandwidth may be authorized up to a 22 kHz bandwidth. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), 1401–1473, and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title:

90.205(j) Power and antenna height limits.

90.209(b)(5) Table 1, fn 6 Bandwidth limitations.

90.209(b)(7) Bandwidth limitations.

90.210 Table 1, fn 5 Emission masks.

90.221 Adjacent channel power limits.

Subpart J—NON-Voice and Other Specialized Operations

Brief Description: This subpart sets forth requirements and standards for licensing and operation of non-voice and other specialized radio uses (other than radiolocation, including mobile relay stations.

Need: Describes the policies, duties and requirements for frequency coordinators.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.243(b)(1) Mobile relay stations.

Brief Description: Subpart J sets forth requirements and standards for licensing and operation of non-voice and other specialized radio uses (other than radiolocation). Such uses include secondary signaling, telemetry, radioteletypewriter, radiofacsimile, automatic vehicle monitoring (AVM), radio call box, relay, vehicular repeater, and control station operations.

Need: Amended provision to allow mobile repeaters to use either analog or digital control tones.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title:

90.247(f) Mobile repeater stations.

Subpart K—Standards for Special Frequencies or Frequency Bands

Brief Description: Sets Forth the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

Need: Describes the policies, duties and requirements for frequency coordinators.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.528(d) Public Safety Broadband License.

Subpart R—Regulations Governing Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands

Brief Description: This subpart regulates licensing and operations of all systems operating in the in the 763–775 and 793–805 MHz bands. It includes eligibility, operational, planning and licensing requirements and technical standards for stations licensed in these bands. Stations eligible to hold authorizations in these bands are State or local government entities, and nongovernmental organizations that provide services, the sole or principal purpose of which is to protect the safety of life, health, or property.

Need: Sections 90.542 and 90.543(e), respectively, set the broadband transmitting power limits and emission limits for this subpart. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7); Title VI of the Middle Class Tax Relief and Job

Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title:

90.542 Broadband transmitting power limits.

90.543(e) Emission limitations.

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

Brief Description: Subpart S regulates the frequencies in the 800 MHz band in order to foster the Provision of “Enhanced Specialized Mobile Radio,” a term used to designate 800 MHz systems that employ cellular system architecture.

Need: Revised the 800 MHz band plan for the U.S. Virgin Islands (USVI) in order to accomplish the Commission’s goals for 800 MHz band reconfiguration. Created consistency between Puerto Rico and USV.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473.

Section Number and Title:

90.617(k)(1) through (4) Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

Brief Description: This subpart regulates licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands and also supplements the Commission’s Part 1 rules regarding application procedures.

Need: Sections 90.617 (k)(3) and (4) set the minimum required median desired signal for mobile units and portable units for purposes of determining unacceptable interference. These rules result in efficient use of the spectrum regardless of the reconfiguration status of the band while preventing interference along the border and protecting operations by non-cellular licensees.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7); Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

Section Number and Title:

90.617(k)(3) and (4) Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas (title of 90.617).

Brief Description: This subpart sets out the regulations governing the licensing and operations of all systems

operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

Need: Implements bilateral agreements with Canada and Mexico.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.619(c)(2) introductory text, (c)(2) Table C3, (c)(5) introductory text, (c)(5) Table C5, (c)(7) introductory text, (c)(7) Table C7, (c)(11) introductory text Operations within the U.S./Mexico and U.S./Canada border areas.

Brief Description: Subpart S provides for the selection and assignment of frequencies in the 800 MHz band.

Need: Amended the provision to restore language that was inadvertently deleted when the rule was amended in another proceeding.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401–1473

Section Number and Title:

90.621(a) Selection and assignment of frequencies.

Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

Brief Description: This subpart sets out the regulations governing use of the 4940–4990 MHz (4.9 GHz) band. It includes eligibility requirements, and specific operational and technical standards for stations licensed in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

Need: Implements bilateral agreements with Canada and Mexico.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.1207(d) Licensing.

PART 95—PERSONAL RADIO SERVICES

Subpart H—Wireless Medical Telemetry Service

Brief Description: Part 95 contains the Commission rules relating to personal

radio services. Rules in subpart H contains rules that apply to the Wireless Medical Telemetry Service (WMTS) operating in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands. WMTS devices are used for remote monitoring of patients in thousands of health care facilities across the country.

Need: Section 95.2309(b) governs the initial registration requirements prior to the first use of a WMTS device by an authorized health care provider. The need for this rule is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302(a), 303, and 307.

Section Number and Title:
95.2309(b) WMTS frequency coordination.

Subpart I—Medical Device Radio Communications Service

Brief Description: Part 95 establishes the requirements and conditions under which stations and devices incorporating radio transmitters may be designed, manufactured, certified, marketed, operated and used in the Personal Radio Services. Subpart I contains rules that apply only to the Medical Device Radio Communications (MedRadio) Service.

Need: Section 95.2509 provides that the operation of Medical Body Area Network (MBAN) devices is subject to the frequency coordination procedures in this section. Section 95.2525 provides that to reduce interference and make the most efficient use of the authorized facilities, MedRadio transmitters must share the spectrum in accordance with other specified provisions within this subpart. Section 95.2533(c) provides that MedRadio programmer/control transmitters and medical implant transmitters may not be used to relay information in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands to a receiver that is not a part of the same Medical Micropower Network (MMN). Section 95.2533(d) provides that medical body-worn transmitters may relay only information in the 2360–2400 MHz band to a MedRadio programmer/control transmitter or another medical body-worn transmitter device that is part of the same Medical Body Area Network (MBAN). Section 95.2557(d) provides that MedRadio programmer/control transmitters operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands shall not transmit with a duty cycle greater than 3 percent. Section 95.2559 provides that to reduce interference and make the most effective use of the MedRadio frequency bands, MedRadio transmitter types must be

designed to operate in accordance with the rules in this section. Section 95.2563(e) provides that only MedRadio transmitters that are part of a Medical Micropower Network (MMN) may operate in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands. Section 95.2565 provides that each MedRadio transmitter type must be designed to maintain a frequency stability of ± 100 ppm of the operating frequency over the applicable temperature range set forth in this section. Section 95.2567 provides that each MedRadio transmitter type must be designed such that the MedRadio equivalent isotropically radiated power (M–EIRP) does not exceed the limits in this section. Section 95.2567(e) provides that for MedRadio transmitters operating in the 2360–2390 MHz band, the M–EIRP over the bands of operation must not exceed the lesser of zero dBm (1 mW) or 10 log (B) dBm, where B is the MedRadio 20 dB emission bandwidth in megahertz. Section 95.2567(f) provides that for MedRadio transmitters operating in the 2390–2400 MHz band, the M–EIRP over the bands of operation must not exceed the lesser of 13 dBm (20 mW) or 16 + 10 log (B) dBm, where B is the MedRadio 20 dB emission bandwidth in megahertz. Section 95.2569 provides that compliance with MedRadio equivalent isotropic radiated power (M–EIRP) limits can be determined by measuring the radiated field strength from the transmitter type, in accordance with the rules in this section. Section 95.2573 provides that each MedRadio transmitter type must be designed such that the MedRadio emission bandwidth (as defined in 95.2503) does not exceed the applicable limits set forth in this section. Section 95.2579(a)(5) provides that The field strengths of unwanted emissions from each MedRadio transmitter type, measured at a distance of 3 meters, must not exceed the field strength limits shown in the table in this paragraph for the indicated frequency ranges, if the frequencies of these emissions are, among other things, more than 2.5 MHz outside of the 2360–2400 MHz band (for devices designed to operate in the 2360–2400 MHz band). Section 95.2579(f) provides that for MedRadio transmitter types designed to operate in the 2360–2400 MHz band: In the first 2.5 megahertz above or below any of the frequency bands authorized for MBAN operation, the EIRP of any unwanted emission must be attenuated within a 1 megahertz bandwidth by at least 20 dB relative to the maximum EIRP within any 1 megahertz bandwidth of the fundamental emission. Section

95.2587 provides that the antenna associated with any MedRadio transmitter must be supplied with the transmitter and is considered part of the transmitter subject to equipment authorization and that MedRadio transmitters shall be tested for frequency stability, radiated emissions and EIRP limit compliance in accordance with applicable rules. Section 95.2593(c) provides that MedRadio programmer/control transmitters operating in the 2360–2400 MHz band shall bear the following statement in a conspicuous location on the device: “This device may not interfere with stations authorized to operate on a primary basis in the 2360–2400 MHz band, and must accept any interference received, including interference that may cause undesired operation.” Section 95.2595(c) provides that manufacturers of MedRadio transmitters must include with each transmitting device a disclosure that states that the transmitter must not cause harmful interference to stations operating in the 400.150–406.000 MHz band.

The need for these sections is ongoing.

Legal Basis: 47 U.S.C. 154, 303, and 307.

Section Number and Title:

95.2509 MBAN registration and frequency coordination.

95.2525 MedRadio interference.

95.2533(c), (d) Prohibited MedRadio uses.

95.2557(d) MedRadio duration of transmission.

95.2559 MedRadio channel access requirements.

95.2563(e) MedRadio frequency bands.

95.2565 MedRadio frequency accuracy.

95.2567 MedRadio radiated power limits.

95.2567(e) Transmitters—2360–2390 MHz band.

95.2567(f) Transmitters—2390–2400 MHz band.

95.2569 MedRadio field strength measurements.

95.2573 MedRadio authorized bandwidths.

95.2579(a)(5), (f) MedRadio unwanted emissions limits.

95.2587 MedRadio additional requirements.

95.2593(c) MedRadio labeling requirements.

95.2595(c) MedRadio disclosures.

PART 97—AMATEUR RADIO SERVICE

Subpart A—General Provisions

Brief Description: Part 97 provides the rules and regulations for the amateur

radio service. Subpart A provides general provisions for the service, including requirements, restrictions, and definitions.

Need: Section 97.3(a)(27) provides the definition of a licensee’s “in-law.” Section 97.31 provides the method and documentation required for requesting cancellation of a license grant on account of the licensee’s death. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 151–155, and 301–609.

Section Number and Title:

97.3(a)(27) Definitions.

97.31 Cancellation on account of the licensee’s death.

Subpart C—Special Operations

Brief Description: Section 97.221 specifies the conditions under which a digital Amateur Radio Service station may be automatically controlled. Section 97.221(c) clarifies when a station may be automatically controlled while emitting a RTTY or data emission.

Need: These rules are needed to ensure that Amateur Radio Service stations operate as intended and do not cause harmful interference, including while being automatically controlled.

Legal Basis: 47 U.S.C. 151–155, and 301–609.

Section Number and Title:

97.221(c) Automatically controlled digital station.

Subpart D—Technical Standards

Brief Description: These rules specify various technical rules for operation of Amateur Radio Service stations, including frequency sharing requirements, authorized emission types, emission standards, and transmitter power standards.

Need: These rules are needed to ensure that Amateur Radio Service stations operate as intended and do not cause harmful interference.

Legal Basis: 47 U.S.C. 151–155, and 301–609.

Section Number and Title:

97.303(h) Frequency sharing requirements.

97.305(c) Authorized emission types.

Brief Description: The rules and regulations of Part 97 are designed to provide for an amateur radio service having, among other principles, (1) recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications, (2) continuation and extension of the amateur’s proven ability to contribute to the advancement

of the radio art, and (3) encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art.

Subpart D sets forth the technical standards for equipment operating under this part including authorized frequency bands, emission standards and transmitter power standards.

Need: Section 97.307(f)(14) sets forth the emission standards for the 60 m amateur band. Section 97.313(j) states that no station may transmit with a transmitter output exceeding 10 W PEP when the station is transmitting a SS

emission type. The need for these sections is ongoing.

Legal Basis: 47 U.S.C. 151–155, and 301–609, unless otherwise noted.

Section Number and Title:

97.307(f)(14) Emission standards.

97.313(f), (i), (j) Transmitter power standards.

PART 101—FIXED MICROWAVE SERVICES

Subpart C—Technical Standards

Brief Description: Part 101 contains service and licensing rules for Fixed Microwave Services. Subpart C sets forth technical standards for these services.

Need: The revised rules establish antenna standards in the 10,700–11,700 MHz band (101.115(f)) and assignments and conditions for 30 megahertz bandwidth channels in the 6,525–6,875 MHz band (101.147(a) n.33 and (k)(8)). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, and 309.

Section Number and Title:

101.115(f) Emission limitations.

101.147(a) n.33, (k)(8) Frequency assignments.

101.147(a) note (34), (i)(9), (l), (o)(8) Frequency assignments.

[FR Doc. 2023–20561 Filed 9–25–23; 8:45 am]

BILLING CODE 6712–01–P



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 185

September 26, 2023

Part IV

The President

Executive Order 14108—Ensuring the People of East Palestine Are Protected Now and in the Future

Presidential Documents

Title 3—

Executive Order 14108 of September 20, 2023

The President

Ensuring the People of East Palestine Are Protected Now and in the Future

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. On the evening of February 3, 2023, a Norfolk Southern Railway Company (Norfolk Southern) train carrying hazardous materials derailed in the Village of East Palestine, located in Columbiana County in the State of Ohio. At least 11 rail cars contained hazardous materials, including vinyl chloride, ethylene glycol monobutyl ether, ethyl-hexyl acrylate, butyl acrylates, benzene residue, and isobutylene. Some cars caught fire, and some spilled their loads onto the ground. These substances traveled into local waterways, including Sulphur Run and Leslie Run, and flowed miles downstream. The Village's fire department and several other fire departments responded. On the evening of February 5, 2023, responders observed a dramatic temperature increase in a derailed tanker rail car. Norfolk Southern expressed serious concern that the temperature change could lead to a catastrophic tanker rail car failure, which could cause an explosion with the potential of deadly shrapnel traveling up to 1 mile. The incident commander on the scene determined that the safest course of action was to conduct a controlled release of the chemicals.

It is critical that Norfolk Southern continue to be held fully accountable under the law for this disaster, and continue to provide resources to address the effects in East Palestine and surrounding communities.

My Administration has mobilized a robust, multi-agency effort to support the people of East Palestine, Ohio, and surrounding communities. Within hours of the Norfolk Southern train derailment, the Environmental Protection Agency (EPA) deployed a team to East Palestine to support State and local emergency and environmental response efforts. On February 21, 2023, EPA issued a Unilateral Administrative Order (UAO) for Removal Actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9606(a). Pursuant to the UAO, EPA is directing and supervising the cleanup to protect the health, safety, and future of the East Palestine community and other affected communities. Norfolk Southern and its contractors are performing the cleanup under the UAO. Since February 21, 2023, working closely with Federal, State, and local partners, EPA has led and continues to lead cleanup efforts, air quality monitoring, soil sampling, and water sampling to ensure the protection of human health and the environment, keep residents of East Palestine and nearby areas of Ohio and Pennsylvania updated on these and other ongoing efforts, and, importantly, hold Norfolk Southern fully accountable under CERCLA for the cleanup operation. More than 115,000 tons of contaminated soil and more than 33 million gallons of contaminated liquid have been shipped offsite for disposal. The EPA has built and manages an extensive air monitoring and sampling network that uses several different technologies and approaches to provide separate and redundant sources of data on air quality at the derailment site and throughout the area. In addition to monitoring, EPA's network continues to conduct analytical air sampling at many locations in the affected areas. Together, these efforts are designed to ensure that contamination from the site does not enter nearby communities. To date, EPA has collected more than 18,000 air samples and more than 3,000

soil samples. The EPA's State and local partners have collected more than 425 monitoring-well samples and more than 3,200 surface water samples, and have conducted 31 rounds of drinking water sampling. Available data show that no contaminants of concern have been detected at levels of concern in the air in the affected communities at sustained levels since the evacuation order was lifted. Almost no contaminants of concern have been detected at levels of concern in water in surface streams since early May of 2023. Treated municipal drinking water shows no detection of contaminants associated with the derailment. To date, sampling indicates that residential groundwater wells have not been affected by chemicals associated with the derailment.

The Department of Transportation (DOT) has been coordinating with and supporting the National Transportation Safety Board (NTSB) to investigate the derailment. Officials from two DOT agencies, the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), also arrived on the scene within hours of the incident to investigate the causes of the derailment. The FRA is also assessing Norfolk Southern's compliance with rail safety regulations and scrutinizing Norfolk Southern's overall safety culture. The Federal Emergency Management Agency (FEMA) provided incident management and outreach support on the ground in East Palestine and has been closely coordinating with the Ohio Emergency Management Agency in furtherance of the multi-agency response and recovery effort. The Department of Health and Human Services (HHS), including through the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry, have also responded, including by deploying a team to conduct public health testing and assessments in the affected areas. The team has supported Federal, State, and local officials already on the ground to evaluate individuals who were exposed or potentially exposed to chemicals and help ensure timely communications to the public.

My Administration is committed to supporting the people of East Palestine and all those affected in surrounding areas of Ohio and Pennsylvania every step of the way, and continuing to hold Norfolk Southern fully accountable under the law.

Sec. 2. Policy. It is a continuing priority of my Administration to hold Norfolk Southern fully accountable under the law for this disaster and any of its long-term effects and to provide additional Federal assistance that the affected States, the people of East Palestine, and all those affected in surrounding communities may need.

Sec. 3. Federal Implementation. (a) The Department of Homeland Security, EPA, DOT, FEMA, FRA, PHMSA, and HHS are directed to use their authorities and available resources as appropriate to advance the policy established in section 2 of this order.

(b) Within 5 days of the date of this order, pursuant to section 503(b) of the Homeland Security Act of 2002, as amended (6 U.S.C. 313(b)), the Secretary of Homeland Security, through the Administrator of FEMA, shall designate a Federal Disaster Recovery Coordinator (Coordinator) to oversee long-term recovery efforts in the affected communities and conduct a comprehensive assessment of unmet needs of the affected communities in recovering from the derailment beyond the cleanup work directed by EPA. The Coordinator shall identify, in partnership with the State and East Palestine community, any unmet needs that are not addressed by Norfolk Southern and would qualify for Federal assistance, and shall immediately notify the relevant executive department or agency. The Coordinator shall repeat this assessment should Norfolk Southern stop meeting needs that it is currently addressing.

(c) The State of Ohio's request for a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* (Stafford Act), shall be held in abeyance to allow the State time to submit information on needs that may arise

in the future and cannot be addressed by Norfolk Southern, State, and local governments and therefore require Federal assistance under the Stafford Act. If the Administrator of FEMA receives such information from the State, including with respect to a change in the nature of assistance provided by Norfolk Southern, the Administrator shall immediately assess and submit a recommendation on whether a major disaster declaration is warranted.

(d) The EPA shall continue to direct removal of contaminated soils and wastewater from the site. The EPA shall also ensure that any remaining contamination in surface stream sediments is addressed and that air and water monitoring continue. Within 30 days of the date of this order, EPA shall submit a report to the President on the cleanup efforts and whether Norfolk Southern continues to comply with EPA's UAO to address the imminent and substantial endangerment its derailment caused. The report shall also explain the status of air, soil, surface water, groundwater, and drinking water sampling and monitoring. The EPA shall submit an updated report to the President every 60 days thereafter until all cleanup, assessment, and monitoring work required by EPA's UAO has been completed.

(e) Within 60 days of the date of this order, HHS shall submit a report to the President that summarizes key conclusions from the public health testing and assessments that have been conducted to date and the resources HHS and the CDC have provided to address any health conditions related to the derailment.

(f) In coordination with the affected States, HHS shall continue to monitor the public health consequences of the derailment, including any long-term health issues in the affected communities. Based on that monitoring, and based on the development of any acute medical conditions related to the derailment, the Secretary of Health and Human Services shall consider whether the circumstances warrant a declaration of a public health emergency under 42 U.S.C. 247d and, if the Secretary makes such a declaration, the Secretary shall exercise all appropriate authorities made available by such a declaration. The Administrator of EPA shall also consider, in consultation with HHS, whether the circumstances constitute a public health emergency under 42 U.S.C. 9604(a).

(g) The HHS shall provide technical assistance to the States of Ohio and Pennsylvania in the event that either State considers submitting a proposal for services through the Medicaid program for individuals affected by the derailment, such as an experimental, pilot, or demonstration project under 42 U.S.C. 1315.

(h) Within 60 days of the date of this order, DOT shall submit a report to the President on the actions that DOT is taking in light of the East Palestine train derailment. This report shall be updated within 120 days of the final NTSB investigation; the updated report shall include DOT's preliminary set of follow-on actions, which could include rulemakings, inspection activities, or other actions to ensure accountability. Should the Congress provide DOT with broader authorities than now exist, such new authorities shall be identified and timelines established for action.

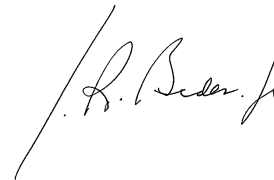
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 20, 2023.

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